



The Parliamentary Control of European Security Policy

*Dirk Peters, Wolfgang Wagner
and Nicole Deitelhoff (eds)*

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Dirk Peters
Wolfgang Wagner
Nicole Deitelhoff (eds)

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University of Oslo
P.O. Box 1143, Blindern
N-0317 Oslo, Norway
Tel: + 47 22 85 87 00
Fax: + 47 22 85 87 10
E-mail: arena@arena.uio.no
<http://www.arena.uio.no>
<http://www.reconproject.eu>

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Preface

Reconstituting Democracy in Europe (RECON) is an Integrated Project supported by the European Commission's Sixth Framework Programme for Research, Priority 7 'Citizens and Governance in a Knowledge-based Society'. The five-year project has 21 partners in 13 European countries and New Zealand, and is coordinated by ARENA – Centre for European Studies at the University of Oslo.

RECON takes heed of the challenges to democracy in Europe. It seeks to clarify whether democracy is possible under conditions of pluralism, diversity and complex multilevel governance. See more on the project at www.reconproject.eu.

The present report is part of RECON's work package 6 'The Foreign and Security Dimension', which aims to assess the status as well as the prospect for democracy within the field of foreign and security policy in Europe. What role parliaments play in European security policy, and what roles they could and should play, were the basic questions behind the workshop 'Parliamentary control of European Security Policy', which was organized in Frankfurt/Main in December 2007. The contributions to this volume reflect the workshop discussions.

Erik Oddvar Eriksen
RECON Scientific Coordinator

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Dirk Peters
Wolfgang Wagner
Nicole Deitelhoff

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Introduction

Dirk Peters, Wolfgang Wagner and Nicole Deitelhoff

Peace Research Institute Frankfurt, PRIF/Vrije Universiteit Amsterdam and PRIF/University of Bremen

Parliamentary control of European security policy is a thorny issue. For one thing, it is far from commonly accepted that parliaments should play a role in security policy at all. Security policy, a common argument goes, should be exempt from democratic scrutiny because it requires a degree of secrecy and flexibility that sets it apart from most issues of domestic politics. The problem of parliamentary involvement is further compounded by the peculiar process of Europeanization that is taking place in the security realm. Even if the idea was accepted that parliaments should be involved in security policies, how could this involvement be organized when both executive and parliamentary decisions are increasingly made at two interconnected levels, the European and the national one?

What role parliaments play in European security policy, and what roles they could and should play – these were the basic questions behind a workshop we organized in Frankfurt/Main in December 2007 as part of the RECON project, which examines the conditions for democracy in a range of issue areas, including the EU's Common Foreign and Security Policy. We were happy enough to assemble more than twenty experts on the role of parliaments in European security policy and to discuss over the two days of the workshop the problems and prospects for parliamentary control in this area.

The contributions to this volume reflect our workshop discussions. They systematically describe and discuss how parliaments at different levels are involved in the control of European security policy. The editors in the first chapter aim at providing an analytical overview of these different levels

together. We utilize the concept of the ‘parliamentary field’ and discuss the major characteristics and problems of this field in the area of European security policy. Subsequent chapters look at the different dimensions of this field in more detail. While Christopher Lord in chapter 2 discusses the question why parliaments should have a role at all in European security policy, the following three contributions reflect in detail the role of national parliaments (Suzana Anghel, Hans Born, Alex Dowling and Teodora Fuior), of the European Parliament (Esther Barbé and Anna Herranz Surrallés) and of the transnational cooperation among parliamentarians in transnational parliamentary assemblies (Stefan Marschall). The final chapter by Michael Hilger is devoted to the future of this latter form of inter-parliamentary cooperation, which is publicly much less visible than national parliaments or the European parliament and rarely discussed in the literature, but can make an important contribution to the democratic control of security policy. To conclude the volume we also include a brief summary of this report, prepared by Guri Rosén.

Chapter I

Parliaments and European security policy Mapping the parliamentary field

Dirk Peters, Wolfgang Wagner and Nicole Deitelhoff

Peace Research Institute Frankfurt, PRIF/Vrije Universiteit Amsterdam and PRIF/University of Bremen

Introduction¹

Research on the democratic and parliamentary control of European policies has mainly focused on the EU's first pillar.² The EU's Common Foreign and Security Policy (CFSP), which includes the EU's civilian and military crisis management capability (European Security and Defence Policy, ESDP) has received only scant attention.³ One of the reasons for this may be that there is a venerable tradition in political theory which applies different standards of democratic control to domestic policies on the one hand and foreign policies on the other and argues that foreign and security policy belong to the exclusive domain of the executive and lie outside the sphere of parliamentary control.⁴

This volume starts from the assumption that this view is, at the very least, highly problematic. Rather than lying rightly outside the sphere of parliamentary control, security policies should be included in the scrutiny of parliaments and the democratic control of security through parliaments

¹ We would like to thank Ben Crum, Marianne Riddervold and Anne Elizabeth Stie for helpful comments and suggestions.

² See, among many others, Weiler et al. 1995; Moravcsik 2002; Føllesdal/Hix 2006.

³ Important exceptions include Kantner/Liberatore 2006; Bono 2004; Hilger 2002; Hummel 2003; Koenig-Archibugi 2002.

⁴ Classics of this tradition include Locke 1960 [1690], particularly §§ 145–148 of the Second Treatise and de Tocqueville 1990 [1835/1840].

should be firmly institutionalized.⁵ Given the fact that in the past two decades security policy has become increasingly incorporated in European integration, parliamentary control must also address this European dimension and the lack of research into this issue is especially lamentable.

This volume is intended as a contribution towards filling this gap. Its prime goal is to map the field of parliamentary control of European security policy and thus to present a concise overview over the institutions and particular problems of parliamentary control in this sphere. While chapter two will elaborate on the argument why parliaments should play an important role in security policy and in European security policy in particular and chapters three to six will look at different institutions of parliamentary control, this chapter will develop an overall frame and, against this backdrop, draw together some of the results of the other chapters to present an overall view of parliamentary control of the EU's security policy.

What makes parliamentary control of European policies in general and also of European security policy unique is that different levels of parliamentary control interact with each other. There is not only one parliament which interacts with one executive. Rather there are numerous parliamentary institutions at both the member state and the European levels and, moreover, there exist also transnational institutions, i.e. institutions linking member state parliaments among each other and member state parliaments with the European level. In order to arrive at an overall picture of parliamentary control we therefore need a conceptual tool that allows us to look both at the different levels of parliamentary involvement and at how they interact with each other.

To this end we utilize the notion of the parliamentary field that has recently been developed by John Erik Fossum and Ben Crum (2008). According to this concept the relations between parliaments in the EU can be conceived as a field with particular institutional characteristics. Mapping this field and investigating its characteristics will not only help us to develop a detailed overview of parliamentary control procedures. It will also help us to explore the legitimacy base of the European Union's security policy. Fossum and Crum have developed three ideal-type parliamentary fields⁶ which could provide a basis for legitimizing European policies, depending on the

⁵ For an elaboration of this argument see section two of this chapter and the contribution of Christopher Lord to this volume (chapter 2).

⁶ It should be noted that in a subsequent version of this paper, Fossum/Crum (forthcoming) no longer develop three ideal types of the parliamentary field but reserve the term for inter-parliamentary cooperation on and across multiple levels of the European polity.

European Union's characteristics as a polity. Exploring the layout of the parliamentary field in the area of security policy and comparing it with Fossum and Crum's ideal-types will therefore provide us with a tool for highlighting achievements and problems in the parliamentary control of European security policy.

Thus, in what follows we will, first, briefly elaborate on the argument why parliaments should be involved in security policy at all. Secondly, we will develop the notion of the parliamentary field as our conceptual lens through which we will analyze parliamentary control of European security policy in this chapter. We will outline three ideal-type conceptions of the parliamentary field, based on three ideal-type conceptions of the EU as an international regime, as a would-be federal state, and as a regional component of a cosmopolitan order. Against this backdrop we can then map the actual parliamentary field by outlining arrangements at the national and supranational levels and institutions that cross these levels. In conclusion we will reflect on how the parliamentary field relates to the ideal-types and what this implies for the democratic legitimacy of the EU's security policy.

Democracy, parliaments, and the EU's security policy

The democratic control of European security policy is located at the interface of two areas that both are highly problematic in terms of democratic legitimacy and democratic control: security policy and European integration. To begin with, security policy has long been viewed as an issue area to which standards of democratic participation and democratic control should not be applied in the same fashion as to domestic politics.⁷ In this view, effective foreign and security policies require a considerable degree of flexibility and secrecy. Since this does not square well with the transparency and deliberative character of democratic decision-making processes, foreign and security policies should be isolated from such processes.

This view is highly questionable, however. Instead one may argue that security policy is a field in which democratic control is of particular importance. Especially in liberal democracies, democratic control of security policy in general and of the armed forces in particular can be regarded as a fundamental achievement of civilizing and democratizing the state. Because security policy is at the heart of the state and affects citizens much more fundamentally than other policies, e.g. by requiring them to risk their lives in war, the democratization of security might even be viewed as the

⁷ See fn. 4.

culmination of democracy (with a view on Kant see for example Eberl/Fischer-Lescano 2005). It is certainly the single most important area in terms of the democratic ideal that those affected by a decision must have an equal chance to influence it, as citizens would here potentially decide on their own physical survival.

Democratic control here implies control through parliaments as representative institutions. To be sure, parliaments are not the only channel through which democratic control may be exercised. The general public and civil society have their roles as well, e.g. through scandalizing decisions and demanding changes as could be seen in the widespread protests surrounding the 2003 intervention in Iraq by a US-led coalition. Furthermore, courts may also contribute to democratic control by examining the legality of decisions. However, neither the general public nor courts can substitute for parliamentary control as neither of them is entitled to make binding political decisions. As Christopher Lord elaborates in his contribution to this volume (chapter 2) parliaments have a particularly valuable contribution to make to the democratic control of policies in general and of security policy in particular. As representative institutions they are able to guarantee the principle of political equality in making or scrutinizing political decisions. And since parliaments cover all areas of political decisions in their work they are better equipped than issue-specific institutions to review functionally specific security cooperation in the context of all other policies.

But organizing democratic control of security policy within the European Union is far from easy and this touches on the second issue which makes democratic control of European security policy problematic. International cooperation and European integration pose particular obstacles to democratic and parliamentary control. These obstacles occur even though international cooperation may be considered a crucial prerequisite for maintaining democratic standards in an era of denationalization. The democratic principle – those who will be affected by a political decision should have an equal opportunity to take part in the making of that decision – presupposes that the political space (in which the decisions are made) and the social space (to which these decisions apply) are congruent (Scharpf 1993; Wolf 2000). Under conditions of globalization or denationalization (Zürn 2000) political and social interdependence have vastly increased among nation states and their respective societies and from this there resulted a growing incongruence between political and social spaces. With the increase in cross-border transactions, regulatory problems as well as their solutions have increasingly become transnationalized while political authority remained confined to

nation states. International institutions, then, help to re-establish congruence by tackling social problems on those levels where they emerge.

However, this generates the need to extend democratic control to the international level now. The more the reach of international institutions crosses national borders, i.e. the more they affect ordinary citizens' life, the more virulent the questions of legitimacy become. Thus international institutions create problems of democratic legitimacy inasmuch as they help to solve them. One may argue that these problems do not become manifest as long as national governments are controlled by national parliaments and national governments retain veto rights in international cooperation. In this case, international agreements would remain connected to national representative democratic institutions, thereby safeguarding the congruence principle. But there are good reasons to argue that this solution does not work in practice. To create intergovernmental legitimacy this way international governance would have to possess several important characteristics. Its procedures and decision-making processes would have to be sufficiently public and transparent so that both national parliaments and publics at large could receive information about the alternatives of policy-making. Moreover governance institutions would need to offer the opportunity for all those affected by a decision to participate in decision-making and, finally, these institutions would need to establish accountability to ensure that constituencies can attribute responsibility. Yet, as has been frequently noted, actual international governance arrangements violate almost all of these criteria. Decisions are usually made behind closed doors, within exclusive settings which are hardly accessible to publics at large. To make things worse, national governments appear to forge international governance institutions precisely because they attempt to insulate themselves from their national legislatures and from societal demands. They exploit the tendency of intergovernmental governance to shift the power balance between executives and legislatures towards the former (Moravcsik 1994; Wolf 1999). Furthermore, as regards the EU, legitimation via national parliaments is also insufficient because European topics are mostly irrelevant to national elections.

Therefore, even when the desirability of parliamentary control of security policy is accepted, it may prove highly difficult to institutionalize it in a European setting. Even in a purely intergovernmental setting mere reliance on national control procedures will not suffice. Fortunately parliamentary institutions do not only exist at the national level within the European Union. Instead there is a complex multilevel parliamentary field in which parliaments on the national and supranational levels take over different

responsibilities and interact in various ways. The solution for the problem of democratic and parliamentary control, then, may be found within this parliamentary field.

In the remainder of this chapter we will map this parliamentary field and assess its contribution to the democratic control of European security policy. In what follows, we will equip ourselves with a more elaborate conception of the multilevel parliamentary field and then utilize it to sketch and discuss the main aspects of this field in European security policy.

Multilevel parliamentary fields

John Erik Fossum and Ben Crum (2008) have developed the notion of the parliamentary field to capture the interplay of parliamentary institutions on and across different levels in the European Union. Their concept is based on Paul Di Maggio and Walter Powell's notion of an "organizational field" which denotes "those organizations that, in the aggregate, constitute a recognized area of institutional life" (DiMaggio/Powell 1983: 148), displaying both connectedness and structural equivalence (*ibid.*; Fossum/Crum 2008: 8). A "multilevel parliamentary organizational field" thus denotes a field in which parliaments are in some way interconnected in a specific area on and across different levels of political organization. The advantage of this notion is that it does not focus exclusively on separate channels of parliamentary control but directs research towards the totality of relevant parliamentary actors and also includes their interaction across different levels.

A multilevel parliamentary field can be institutionalized in a variety of ways. For the European Union Fossum and Crum (2008: 12-23) distinguish three ideal-type institutional layouts each of which is connected to a particular conception of the EU as a polity. If the EU is conceived as a functional regime, the ideal-type parliamentary field would have its prime locus at the level of national parliaments whereas the European level would serve to complement national arrangements and fulfil what they term a 'deliberative audit function'. In this view the European Union is simply a collaborative arrangement that has been created by member states to help them solve collective action problems. Member states delegate competences to the European level, but decision-making remains in the hands of member states (intergovernmentalism) and consequently democratic legitimacy remains derived from legitimizing mechanisms at the national level. The problems of achieving democratic legitimacy in intergovernmental settings through national parliaments, which we noted above, are tackled through complementary arrangements at the European level. The European

Parliament (EP), in this view, would not play a representative role in its own right since the sovereign remains located at the member state level. Rather the EP would “through standing committees and special enquiries, through debates and hearings, and so forth shed light on the nooks and crannies of the EU system, and as such also aid the national parliaments in their efforts to hold their executives accountable when they operate at the EU level” (Fossum/Crum 2008: 13). The EP would thus serve a deliberative audit function, further enabling the national parliaments to hold executives to account.

If instead the EU is conceived as a federal state in the making, the ideal-type parliamentary field would be organized in functionally specific domains. Both member state parliaments and the EP would serve the same functions (deliberation and decision-making), yet in different policy areas. Where policies are made primarily through intergovernmental decision-making, as is by and large the case in the EU's security policy, the structure would resemble that of the functional regime type just described with national parliaments playing the dominant role. In areas, however, where there is supranational European policy-making parliamentary control would have to involve a strong EP.

Both ideal-types discussed so far are intimately related to the idea of the nation-state. Parliamentary control is perceived primarily in terms of state boundaries with parliamentary power concentrated where executive state power is concentrated too, either at the level of member states or at the level of a federal European state. Legitimacy is arrived at by holding executives to account and by enabling those who are affected by a decision to participate or be represented in decision-making. Lately a third position in the debate about democratic legitimacy has received increasing attention which argues that conceptions of legitimacy beyond the nation-state would be more attuned to the character of the European Union. These conceptions come in a various shapes. Some scholars develop post-democratic legitimization strategies (implicitly Beck/Grande 2004; Moravcsik 2004; Neyer 2008; Buchstein/Jörke 2003), whereas the majority retains the idea of democratic legitimization but argues for a mixture of different sources of legitimization for the EU pointing to the EU's multilevel character. While we cannot discuss all different approaches that follow such a strategy here, we briefly describe one prominent feature that many of them share, i.e. the idea of deliberative democracy (see Schmalz-Bruns 2001).

Arguments about deliberative democracy have mushroomed in IR research during the last years.⁸ Deliberative democracy is seen as a particularly promising concept for democratizing the EU as it does not presuppose substantial social prerequisites like rich collective identities but rather holds the promise of producing those elements of community it relies on.

Deliberative democracy is an attempt to integrate input and output legitimacy into one model by aligning participation in decision-making with rationalization of decisions to ensure individual autonomy (Cohen/Sabel 1997; Habermas 1996, 2007; Niesen 2008). Legitimate decisions are seen as a result of public discourses in which those affected by the decision aim at arriving at a reasoned, i.e. rational consensus. While this presupposes that actors share some normative background, it does not require that they feel bound by a community in a strong sense. However, a closer look at empirical studies of deliberative procedures reveals that deliberation often does not go easily together with democratic procedures (for an excellent overview Niesen 2008).⁹ Strategies to solve the problem of insufficient participation or representation in deliberative processes are in abundant supply and most of them highlight either the inclusion of civil society actors or, more broadly, the situating of deliberative fora within some forms of transnational publics (e.g. Bohman 2005). However, this is not sufficient to help democratize politics as many studies have demonstrated that civil society organizations can neither represent a global *demos* (Nanz/Steffek 2005) nor are themselves democratically legitimized by anyone (Schmidt/Take 1997; Wolf 2000). Rather to be democratic, deliberative procedures need to combine weak (civil society/general public) and strong publics (e.g. parliaments) (Fraser 1992; Brunkhorst 2002; Deitelhoff [forthcoming]). They depend on public law and representative institutions to ensure equal access to deliberative procedures and influence in such procedures (Habermas 2005: 385).

Parliaments thus play a crucial role in conceptions of deliberative democracy. A parliamentary field reflecting the idea of deliberative democracy beyond

⁸ Arguments about deliberative democracy dealt with arguing and persuasion in diplomatic negotiations (Müller 2004; Deitelhoff/Müller 2005; Ulbert/Risse 2005), with CFSP (Sjursen 2006), and also with the areas of supranational decision-making in the EU (see Joerges/Neyer 1997; Neyer 2003; Schmalz-Bruns 1999, 2002; Eriksen 2006).

⁹ Overall, studies observe the highest likelihood for deliberation in exclusive in camera settings which are dominated by technocratic issues and experts, the EU comitology studies of Joerges and Neyer (1997) being a case in point (but see also Checkel 2001; Deitelhoff/Müller 2005; Ulbert/Risse 2005; Nanz/Steffek 2004). These features obviously violate central democratic principles such as transparency, accountability or publicity. Under such a perspective, however, deliberative politics do not lead to any kind of democratization of politics beyond the state in general and of the EU in particular but only to a rationalization of politics or as some claim to an expertocracy (see Maus 2002, 2007; Brunkhorst 2002, 2007; Schmalz-Bruns 1999).

the nation state would require interaction among parliaments across different levels. In contrast to the preceding models, any parliament would “no longer be the main institutional manifestation of a given, sovereign, democratic *demos*, but [...] rather one among a chain of strong publics who *together* seek to accommodate the interests and concerns of multitude of interdependent *demoi*” (Fossum/Crum 2008: 21, emphases in original). Relations on the different levels and across these levels would thus be institutionalized, in contrast to the preceding models where the different levels possess more or less clearly delineated spheres of competence. The European Union would then be neither a functional regime nor a federal state in the making. Rather it could be perceived as part of a larger deliberative cosmopolitan order.

The parliamentary field of European security policy

Based on the preceding reflection we can now examine the parliamentary field which we encounter in the sphere of European security policy. While the other contributions in this volume look at the individual aspects of the field in greater detail we confine our discussion to the key characteristics of the field. We look first at the member state and supranational level in turn and then at transnational arrangements and discuss how parliamentary involvement is organized at each level. In the following section we will then relate the results to the ideal-types presented above.

The national level:

Member state parliaments and European security policy

Probably the most characteristic feature of parliamentary involvement at the member state level is that there is no standard way in which member state parliaments are engaged in European security affairs and no guarantee that national parliaments are involved at all. As Suzana Anghel, Hans Born, Alex Dowling and Teodora Fuior point out in their contribution (chapter 3), there exist a wide variety of arrangements for the national control of European security policy, ranging from co-decision powers over troop deployments to a complete lack of parliamentary involvement (see also Born/Urscheler 2004; Wagner 2006; Dieterich/Marschall/Hummel 2008)

If we take national parliaments' participation in decisions about the national contributions to ESDP missions as an indicator, we can distinguish at least four typical practices which represent the wide spectrum of member state arrangements for parliamentary involvement. At one end of the spectrum there are states in which parliament appears to play no role whatsoever in the policy-making process on ESDP missions (Bulgaria, Greece and Romania). A somewhat more prominent role is granted to parliaments which debate

potential or actual ESDP missions, even though government is not formally bound by parliamentary decisions (Belgium, France, Poland, Portugal and the UK). Then there are states in which parliament can make binding decisions on national contributions to ESDP missions, namely Austria, Germany, Cyprus, the Czech Republic, Estonia, Ireland, the Netherlands and Spain. Here parliament cannot only debate ESDP missions and national contributions but actually veto the deployment of national troops. The end of the spectrum is marked by three member states (Finland, Luxembourg and Sweden), in which parliaments are involved at an even earlier stage of the decision-making process. Parliaments in these countries can commit their government to a particular position already during the negotiations on a potential ESDP mission in the Council, i.e. before an ESDP mission is put in place at the European level. Overall only in some member states can parliaments function as a direct check on national executive power.

But even where there is a parliamentary veto power over certain decisions as national troop deployments this does not ensure effective control. Rather, the effectiveness of the national channel of parliamentary control is hampered by several factors. It suffers in particular from a mechanism that has been pointed out by Andrew Moravcsik (1994) and Klaus Dieter Wolf (1999), namely the tendency of international cooperation to tilt the balance between executive and parliament towards the former. Once an international agreement has been reached it “may be costly, sometimes prohibitively so, for national parliaments, publics or officials to reject, amend or block ratification of and compliance with decisions reached by national executives in international fora” (Moravcsik 1994: 11). This weakens the position even of those parliaments that possess a veto power over troop deployments because a negative parliamentary vote after government has, in principle, signaled agreement at the international level would entail high reputational costs for the state and weaken its position in future negotiations.

In the military realm, this general effect is further exacerbated in several ways. First, EU military deployments are almost always part of arrangements in which other actors besides the EU and its member states play a crucial role. Even foreign ministers in the EU Council can no longer amend agreements previously reached between the conflicting parties or within the UN Security Council which form the basis of an ESDP mission. Second, integrated military units have become a crucial feature of European security policy. Even though decisions about the deployment of these units are still made on an intergovernmental basis, military integration raises the costs for both national governments and national parliaments to refrain from participation in an operation on which other members largely agree. States may still decide

not to participate or they may qualify their contribution in order to bring it in line with domestic preferences. But these options can be used only in a very restricted way due to the integrated nature of the units to be deployed. The EU's battlegroup concept (Lindstrom 2007), for example, implies that in the event of a decision to launch a military mission, the battlegroup currently on stand-by has to be sent abroad lest the EU refrains from intervening at all. If forces have been integrated, any state's decision against its participation in a mission *de facto* frustrates the entire deployment because other states' forces cannot work effectively without the missing state's contribution. As a consequence, states whose forces have been integrated on an international level may come under heavy peer pressure from those states that advocate the use of joint forces. The same effect results from any elaborate scheme of role specialization. If capabilities are no longer held by all member states but by only a few or even a single one, the menu of choice for the member state concerned has been severely transformed. Instead of deciding about its country's participation in a particular military mission, it *de facto* bears the burden of deciding about whether the EU may become involved at all, since no other member state could replace the capability under consideration.

Other factors that complicate national parliamentary control of European security policies can be added. National parliaments seldom have direct access to information on European operations from the European level. National governments may act as gate-keepers, which in turn makes effective control of European decisions through national parliaments more difficult. Moreover national parliaments do not receive information on the role that their governments played in the making of European decisions, which impinges on their ability to hold governments accountable (Gourlay 2004: 185, 194). Finally, the still modest but growing cross-pillarization in foreign and security policy (Stetter 2004) also poses a problem for national control of European security policies because it gives increasing weight to other European actors besides member state governments, who are not accountable to national parliaments.

Taken together, then, there is no uniform involvement of member state parliaments in European security policy. Some parliaments do not even debate central aspects of European security policy. Moreover, the effectiveness of co-decision powers, which some member state parliaments do possess, is limited due to some features of international security cooperation which pose serious obstacles to effective national parliamentary control.

The supranational level: European Parliament

How is this rather varied national foundation of the parliamentary field complemented at the level of supranational parliamentarism? Although no longer the sole directly elected parliament beyond the nation state,¹⁰ the European Parliament remains the prime embodiment of supranational parliamentarianism.¹¹ Especially since its first direct elections in 1979, it has been remarkably successful in extending its competences (Rittberger 2005). However, the realm of foreign, security and defence policy has remained exempt from this general appreciation.¹² Esther Barbé and Anna Herranz Surrallés demonstrate in their contribution (chapter 4) how MEPs consistently attempted to extend their power over issues of European security policy and how their success has remained fairly limited. The EP is, by and large, confined to a deliberating role and even its consultative powers have remained below the level desired by MEPs.

The EP's most important rights on foreign and security policy under the TEU concern information/consultation and the budget. According to article 21 TEU, the Presidency "shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration." Even though ESDP is not mentioned explicitly, it has been included (Gourlay 2004: 188f.). However, the EP is not entirely satisfied with the implementation of this provision. On the one hand, it appreciates the regular visits of key decision-makers in its Foreign Affairs Committee.¹³ On the other hand, the EP claims that

the Council's practice of merely informing Parliament and submitting a descriptive list of CFSP activities carried out in the previous year, instead of really consulting Parliament at the beginning of each year on the main aspects and basic choices to be made for that year and subsequently reporting to Parliament whether – and, if so, how –

¹⁰ Since 1991, the deputies of the Parlamento Centroamericano (ParlCen) are elected directly in its member states El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic (see www.parlacen.org.gt/index.html).

¹¹ For an overview of the European Parliament see Jacobs/Corbett/Shackleton 2005.

¹² For an overview of the European Parliament in foreign, security and defence politics see Diedrichs 2004; Brok/Gresch 2004; Thym 2006.

¹³ During its fifth parliamentary term (1999–2004), the Foreign Affairs Committee discussed developments in CFSP/ESDP with the EU's High Representative Solana (who attended ten committee meetings), various foreign ministers of the member states, special EU representatives to specific regions or countries, members of the EU military staff and the Secretary General of NATO (see the committee's activity report for the 5th legislature (1999–2004) (PE.341.376).

Parliament's contribution has been taken into account, constitutes a de facto infringement of the very substance of Article 21.¹⁴

In a similar vein, the EP has struggled to get hold of classified foreign and security policy documents. In 2002, Council and Parliament reached an Inter-Institutional Agreement (IIA) according to which the Parliament's President, the Foreign Affairs Committee's chair and four further deputies may inspect classified documents. However, the Council has reserved itself a right to deny access if it deems this appropriate.

The EP's budgetary powers are equally limited. Initially, the member states set up a special regime to exempt CFSP expenditure from the Community budget. An IIA reached in 1999 and updated in 2006¹⁵ brought the financing of CFSP closer to the community budget again. According to this IIA, Council, Commission and Parliament have to reach agreement on both the overall amount of the operating expenditure and on its distribution between various articles of the CFSP budget chapter such as "non-proliferation and disarmament", "emergency measures" or "European Union Special Representatives" (Diedrichs 2004; Kietz/Maurer/Völkl 2005). If the CFSP budget turns out to be insufficient, no additional funds can be appropriated without Parliament's consent. However, to ensure flexibility, the Commission may transfer appropriations autonomously between articles within the CFSP budget chapter. As a consequence, Parliament is sidelined on approving budgets for individual common actions (Schmalz 1998: 36). Moreover, in case no consensus on additional Community funds can be reached, the Council may unanimously opt for financing certain actions outside the Community budget. Finally, Parliament has no influence over expenditure arising from military operations which are not charged to the Community budget but are covered by member states following a "costs lie where they fall"-principle ("Athena-mechanism"). From Parliament's

¹⁴ European Parliament 2007, Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities (point H, paragraph 40, of the Interinstitutional Agreement of 6 May 1999) - 2005.

¹⁵ Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (1999/C 172/01) and Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (2006/C 139/01). The IIA of 2006 that entered into force in January 2007 replacing its predecessor formalizes the consultation procedure between Council and Parliament. Thus, the Council is obliged to transmit a forward-looking document by 15 June. Moreover, if Council decisions have financial implications, Parliament must be informed within five days. Finally, the IIA provides for a minimum of five consultation meetings between Council and Parliament.

perspective, military expenditure appears as a shadow budget which increases the Council's discretion in financial matters (Brok/Gresch 2004: 220).

Overall then we see that the supranational level in the parliamentary field has mainly the role of generating information and debating European security policy. Its direct involvement in the European decision-making process is highly restricted – even in the budgetary realm.¹⁶

Crossing the levels: inter-parliamentary cooperation

Between the national and the supranational levels an additional parliamentary layer has developed in European security affairs: the level of inter-parliamentary cooperation. This cooperation takes a variety of forms. There are on the one hand some fora, which have no firm organizational framework and bring together members of national parliaments and of the European Parliament. Member state parliaments' committees of foreign and defence affairs, for example, are invited twice a year by the EP's Foreign Affairs Committee to discuss foreign and security affairs. Moreover, there is a Conference of Defence Committee Chairs, in which the EP is also represented.¹⁷ Secondly, inter-parliamentary cooperation also takes place in more formally organized and publicly visible fora, i.e. in transnational parliamentary assemblies. Transnational assemblies are “transnational, multilateral actors which are constituted by groups of members of national parliaments” (Marschall 2005: 22, our translation). Such transnational parliamentary assemblies may offer a unique contribution to the democratic control of international arrangements because they are not modeled after the national standard of parliamentary control. In contrast to supranational parliaments they do not come in the guise of future parliaments of future federal states. Rather they constitute attempts to respond to the international cooperation among executives through transnational cooperation among parliaments.

In the area of European security policy there exist two such assemblies: the NATO Parliamentary Assembly (NATO PA), which is composed of MPs from NATO's 26 member states and at whose meetings the EP also is

¹⁶ The Treaty of Lisbon would bring about only minor changes to the European Parliament's competences in security and defence policy. The revised article 21 explicitly mentions defence policy as a subject of parliamentary control and doubles the number of annual debates from one to two.

¹⁷ The revised version of the protocol on the role of national parliaments that is attached to the Lisbon Treaty for the first time mentions foreign, security and defence policy explicitly as a prime subject of cooperation between parliaments. For a detailed discussion of these forms of inter-parliamentary cooperation see the chapters by Barbé and Herranz Surrallés and by Hilger in this volume.

represented; and the Assembly of Western European Union (WEU Assembly), to which not only WEU full members but overall 39 European countries can send parliamentarians (see the contributions of Stefan Marschall (chapter 5) and Michael Hilger (chapter 6) for a detailed discussion of these assemblies and their potential merits). Of these two, the WEU Assembly is certainly more directly concerned with issues of EU security policy. Like WEU, the WEU Assembly had almost been dissolved as a consequence of the emergence of ESDP. When ESDP was created, all elements of WEU which could be employed in international crisis management were transferred to the EU. Yet since EU member states could not agree on transferring the WEU Treaty's collective defence clause to the EU Treaty as well, WEU was not completely merged with the EU and some organizational remnants remained intact. Consequently, the WEU Assembly did not dissolve either. Since almost all operational tasks of WEU had been moved to the EU, the WEU Assembly sought to extend its sphere of competence to the EU's ESDP. To signify this adaptation, the Assembly added the designation "Interparliamentary European Security and Defence Assembly" to its name.

Art. IX of the Modified Brussels Treaty requires the WEU Council of Ministers to submit "an annual report on its activities and in particular concerning the control of armaments" to the Assembly. The Assembly can reject such a report by an absolute majority of its members.¹⁸ Such a rejection is the most powerful tool at the hands of the Assembly. Even though it has no legal consequences, the Council considers the public signal which would be sent out by such a rejection as highly undesirable, which gives the Assembly some leverage. Beyond debating and responding to the annual report, the Assembly is mainly concerned with drawing up reports on all aspects of European Security.

Transnational assemblies have several weaknesses, especially when compared to their supranational counterparts. First, their members "consider themselves primarily as representatives of home parliaments" and therefore view international politics "through the prism of national priorities, or those of their constituencies" (Šabič 2008: 266). Second, and related to this first weakness, there is a high turnover of their members because the composition of the assembly usually changes after each national election, when the newly elected national parliament sends a new delegation. Whereas both the European Parliament and national parliaments retain (by and large) the same composition over a complete legislative period, the composition of transnational assemblies is subject to almost continuous change. In the case of WEU, this problem is further exacerbated by the fact that national

¹⁸ Only once, in 1967, the WEU Assembly has actually rejected a report (Marschall 2005: 224).

parliaments tend not to send their foreign and security experts to the assembly. Only half of the members of the German delegation, for instance, are members of either the foreign or defence or EU committee of the German parliament. Regular members of the *Bundestag*'s committees of foreign and defence policy constitute only a third of the German delegation. This is due to a stipulation in the Modified Brussels Treaty which states that the national delegations to the WEU Assembly are identical with those for the parliamentary assembly of the Council of Europe.

Another practical problem that has hampered the work of the WEU Assembly in recent years lies in its relations with the EP. Since the Assembly has attempted to claim responsibility for the parliamentary control of the newly created ESDP it is regarded as a competitor by the European Parliament. This makes cooperation between the two assemblies extremely difficult, whereas cooperation between the EP and the NATO PA apparently works much more smoothly as becomes visible e.g. in the much stronger attendance of MEPs at the sessions of the NATO Parliamentary Assembly.

These practical problems contribute to the rather unenthusiastic assessments which the WEU Assembly's work usually receives. Such assessments, however, often apply a problematic standard. They focus on how the Assembly as a collective actor can influence other collective actors, in particular the Council of Ministers. These assessments result, for instance, in calls for stronger competences of the Assembly vis-à-vis the intergovernmental institutions (e.g. Habegger 2005: 230). The negative evaluations of their own work, which are reported from many members of the WEU Assembly (Jun/Kuper 1997: 153), indicate that members of the Assembly themselves tend to rely on this conception.

Yet there are also other ways of approaching the work of transnational parliamentary assemblies. Applying Anne Marie Slaughter's perspective (Slaughter 2004) such assemblies are not primarily collective actors but rather networks of actors and thus responses to the emergence of international executive networks. This would imply a different standard for assessing the contribution of these assemblies to reducing the democratic deficit. They cannot only contribute to parliamentary control by acting as collective opponents of the Council; but also by offering resources to their members which improve their capability to restore national control over executive decisions. It is therefore important to look at the interplay of the different levels of parliamentary control of European security policy – which leads us back to the concept of the parliamentary field.

The parliamentary field in European security policy

An overall assessment

If we look at the different aspects of the parliamentary field combined, we see that it does not conform completely to any of the ideal-type models that can be derived from assumptions about the character of the European Union. This is hardly surprising since the EU's overall polity character in the security realm is not very clear-cut either (e.g. Sjursen 2007). What is important to note, however, is that the institutional structures of accountability as we can currently see them in the parliamentary field appear to be somewhat out of sync with the developments in the executive realm.

The parliamentary field in the security realm does, on the one hand, not conform with what we would expect for a purely intergovernmental policy area. To be sure, some national parliaments possess well-developed tools to hold their national executives to account over European policy or at least to prevent them from deploying troops for ESDP operations. However the foundation for democratic accountability over European security policy is incomplete at best as far as the national level is concerned. There are parliaments which simply do not possess the necessary competences to control their national executives. And some of those possessing the necessary competences do not make regular use of them. Moreover the peculiar character of international security cooperation makes it difficult for national parliaments to exert control in any case.

The national basis for parliamentary control of European security policy therefore needs to be supplemented. It is complemented by both a supranational parliamentary level and by collaboration among national parliaments and between national parliaments and the EP. The European Parliament has some powers to create publicity over security-related decisions at the European level. Its function in the security realm matches quite well what Fossum and Crum (2008: 13) termed the deliberative audit function of the supranational level. It can inquire into European security policies and shed light on the details of European policy-making. The information generated by the EP could in principle increase the ability of national parliaments to hold their governments accountable. However, since national parliaments are so unevenly involved in European security affairs this will be at best partially successful, namely for those countries in which national parliaments possess sufficient control rights and actually make use of them.

Even if security cooperation in the EU could be considered merely a functional regime, the institutionalization of parliamentary control would thus have to be considered problematic. However the EU's security policy has developed beyond the confines of a regime and is no longer a purely intergovernmental enterprise. Although decisions continue to be made by unanimity in the Council the creation of permanent Brussels-based decision-making bodies and a moderate process of cross-pillarization have reduced direct member-state influence. The mere reliance on national channels of democratic accountability would thus be insufficient anyhow (Sjursen 2007: 6–8). The parliamentary field, however, has not adjusted to the increasing significance of executive actors beyond member state governments in European security policy. The EP remains basically confined to its deliberative audit function. In contrast to the federal model of the parliamentary field, then, the distribution of executive competences between the European and the member state level does not directly correspond with the allocation of parliamentary competences.

The lack of fit between the parliamentary field in European security policy and the two ideal-types that are based on nation-state models (audit democracy, federal democracy) may indicate that both the European Union itself and the arrangements for parliamentary control of the executive in Europe have moved beyond categories of the nation-state. What supports this conjecture are the various institutions of interparliamentary cooperation which have developed in the security field and which conform well with the deliberative model of the parliamentary field. However, in its current state of institutionalization this is a cooperation that has both great potential and clear limitations. The potential lies in particular in the additional information that can be generated through interparliamentary cooperation. National parliamentarians can, through their participation in interparliamentary fora, receive information that they may otherwise not be able to attain from their governments. It may also raise awareness of European security policy issues in those parliaments which possess the authority to control the executive but make only limited use of it. Another potential benefit of the current forms of interparliamentary cooperation lies in the links it creates to states outside the European Union. ESDP missions, for instance, are open for participation from non-EU members, but the inclusion of these countries in the political process operates only at the executive level, e.g. through the inclusion of government delegates in the Committee of Contributors for an ESDP mission. Affiliation to the WEU Assembly can provide a way for parliamentarians from non-EU members to become involved in debating and scrutinizing the relevant decisions at the European level.

However there are also some obvious limitations which result from the form in which interparliamentary cooperation is currently organized. It appears, for instance, that active participation in assembly sessions is not always a top priority of parliamentarians who tend to be overburdened already with their duties in their home parliament. This problem is further aggravated by the dysfunctional selection rule for the members of the WEU Assembly who are at the same time members of their national delegation to the Council of Europe's Parliamentary Assembly. Last but not least the turf battles that have developed between the EP and the WEU Assembly prevent fruitful cooperation on this level. This weakens the link between parliamentarians from member state parliaments and the EP, a link that is rather fragile in organizational terms anyhow.

Taken together, then, we see that the parliamentary field in European security policy has not developed in an ideal-type manner. Policy-making in the security realm has a strong intergovernmental basis, but intergovernmentalism is increasingly weakened through Brusselization and cross-pillarization in foreign and security policy. The parliamentary field matches this mixed character of policy-making only partially. While the role of the EP with its deliberative audit function appears fit for a purely intergovernmental realm, the field lacks the corresponding basis in strong member states parliaments due to the highly varied character of parliamentary involvement at the member state level. Inter-parliamentary cooperation could provide an important complement in such a situation, especially when the drift away from purely intergovernmental decision-making is taken into account. It is crucially weakened, however, by the practical problems of inter-parliamentary dialogue and the weak overall involvement of parliaments in the European decision-making process.

Conclusion

The map of the parliamentary field in European security policy to which the contributions for this volume combine demonstrates the complexities of establishing democratic and parliamentary control in a dynamic multilevel polity and moreover in a policy field for which parliamentary involvement has not always been regarded desirable. What has developed during the past two decades or so is a field in which there is no clear-cut privileged channel of parliamentary involvement. National parliaments certainly are central since they are the only organizations in the field with decision-making power and with direct access to the national executives. Yet national parliaments' actual powers vary widely and even strong member state parliaments will face control problems stemming from the dynamics of international cooperation and military integration. The European Parliament and various forms of

interparliamentary cooperation complement the work of member state parliaments. They provide opportunities for public scrutiny of European security policies, information-sharing and public debate. Working relations in the field, however, are not without frictions and the more executive decision-making departs from the purely intergovernmental model, the more problematic the existing arrangements for parliamentary involvement will become.

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Chapter 2

Is there a role for parliamentary participation in European security co-ordination?

Christopher Lord

ARENA, Centre for European Studies, University of Oslo

Introduction

The chaos of real world decision-making often appears to deviate from social science assumptions of rational policy choice and design. “Garbage can” accounts, in particular, have identified the role of accident, mimetism, randomness and *ephemera* in the matching of solutions to problems (Cohen et al. 1972; Kingdon 1984). There may be something of the “garbage can” to European security initiatives. A sometimes bewildering list of initiatives has been suggested since the St Malo summit of 1998. They include a European rapid reaction force, a command centre, a satellite and intelligence centre, a European Union arms procurement agency, a European security strategy, a principle of mutual defence proposed first in the Constitution and now in a further Treaty. Attention seems to switch between these initiatives, solutions seem to chase problems as much as *vice versa*, and those things that are unplanned sometimes seem more consequential than those that are carefully designed. Thus the twenty security missions to which the Union lays claim at the time of writing have been shaped by events in the international system as much as by the Union's capacities to act. As Christopher Hill has observed there is something a little problematic about the notion that actors altogether *choose* their foreign and security policies (2003: 292–297).

Yet none of this excludes the possibility that something of great moment may be happening in European security co-operation. The garbage can does not so much trivialise decision-making, as predict how decisions are likely to be made under conditions of great uncertainty: where actors cannot be certain of

what their own preferences will be in the future (uncertainties of preferences); where they cannot be sure what will work and what will not (uncertainties of technologies); and where they cannot know who the other relevant actors will be over the period needed to achieve shared outcomes (uncertainties of participants) (Cohen et al. 1972).

The scepticism that the garbage can expresses as to the possibility of rational policy selection under conditions of radical uncertainty may be even be more warranted in the case of large, rather than small, decisions. Large decisions may be large precisely because they involve indivisibilities. They cannot always be broken down into smaller parts or into experiments that allow actors to discover pay-off structures, retreat and adjust to their environment if they get things wrong. Instead, they have to be taken one way or the other, and their consequences then have to be lived with for a long time. Decisions involved in building military capabilities – taken years in advance and involving huge investments – fall precisely into this category.

Implicit in the foregoing conjectures is that decisions about European security co-operation are likely to involve a mix between short-term responses to events and large but precarious guesses about the future. Moreover, non-decisions may be as significant as decisions actually taken: decisions *not* to react to short-term events in particular ways or *not* to co-operate in particular long-term capacity-building projects may be as significant as any decisions to do these things

What does all this mean for public control? In what follows I argue that the correct response to the huge uncertainties involved in European security co-ordination is to match any involvement by Union institutions with an inter-parliamentary mode of democratic control that mixes *ex ante* accountability with agreed procedures for how emergency responses to events should be accountable *ex post*. In reaching this conclusion, I make no apologies for proceeding pedantically. The next section will return to core principles of democratic theory to clarify why democratic control of European security co-ordination will be needed at all. The following section will give reasons why that control will need to take a parliamentary form. The final section will then set out the patterns of inter-parliamentary co-operation I have in mind.

Democratic control?

Taking “public control with political equality” as its core definition (Beetham 1994: 27–28; Weale 1999: 14), justifications for democracy are of two kinds. Intrinsic justifications hold that democracy is desirable in and of itself, since it amounts to a form of autonomy in which the people can see themselves as authoring their own decisions directly or through representatives. Put another way, it “is that set of institutions by which individuals are empowered as free and equal citizens to form and change the terms of their common life together” (Bohman 2007: 66). Consequential justifications, on the other hand, hold that democracy is not so much justified by its inherent qualities, as by its likely effects. Thus it has been variously claimed that democracies are more likely to maintain peaceful international relations (at least amongst themselves); to sustain higher levels of economic and social development; to satisfy the needs of the governed; and to offer rights protections and guarantees against arbitrary government (at least if they are constructed in certain ways).

Given these justifications it is possible to identify five reasons as follows why security co-ordination at the European level should be democratically controlled.

(1) European security co-ordination will lead to legally enforced obligations. If it follows from “intrinsic” justifications that citizens in a democracy should be able to see themselves as authoring their own laws through representatives, it matters that sooner or later European security co-ordination will have to be paid for by taxes that individuals are legally obliged to pay; that sooner or later individual troops will have to meet their legal obligations to obey orders, to fight when told to do so, to spend time in dangerous or uncongenial parts of the world under the aegis of European security missions.

Of course, such legally enforced obligations will be experienced by individuals through the medium of national law. However, the origin of those obligations in Union-level co-ordinations can be expected to be visible, especially in the case of troops deployed in multinational forces that describe themselves as European Union security missions; that fly EU flags, and that receive their orders from more or less co-ordinated commands attempting to carry out mandates agreed by the European Council. If, moreover, governments, or the more mendacious sections of national media, repeat the trick of allowing the European Union to absorb a part of the blame for unwelcome consequences of decisions that have in fact been agreed by national authorities, they should not be overly surprised if public opinion attributes to the European Union a role in shaping the legal obligations that

sustain security co-ordination at the European level. Nor in a sense would those attributions be wrong. In so far as they feel a need to maintain the credibility and mutual reciprocity of European security co-operation, makers of hard law at the national level may feel themselves tightly constrained by a soft law of security agreements concluded at the European level. We will return to this point.

(2) European Union security co-ordination will be redistributive of values, and entail fundamental normative choices. Sometimes it is possible to act collectively without redistributing values at all, or even without choosing between alternatives that distribute “positive-sum” gains in different ways. Decisions of this kind are no more than technical solutions to pure co-ordination problems. They merely help co-ordinate mutually advantageous behaviours. Neither the intrinsic nor the consequential justifications for democracy seem compelling under such conditions. Pure co-ordinations do not raise the problem of how to secure the agreements of individuals to laws by which they are themselves coerced, since they do not in any meaningful sense compel people to do what they would rather not do. And, since they do not re-distribute values at all, they contain no risk of arbitrary choice between them.

Could European security co-operation amount to a purely technical co-ordination of actor preferences? I doubt it. It will always be possible to argue that the resources committed to security co-ordinations could have been used elsewhere. Above all, the development of a security policy in and of itself begs the question of what values that policy is intended to defend (Waever 1996).

Much has been written about the kind of international actor the Union can or ought to become. Debates about the feasibility and desirability of it developing as a military, a civilian (Duchêne 1972) or normative power (Manners 2002) need not be repeated here. Nor need a great deal be said to demonstrate that these categories are, in any case, interconnected. Military power requires normative justification if it is to be more than repression or naked force, and normative power supposes *justifiable* coercion if it is to be more than normative example. It is likewise hard to see how even an international actor with a “civilian-power bias” could avoid some coercive enforcement of norms. Trade sanctions may be intended to have just such an effect. Attempts to confine security roles to the civilian power end of the spectrum by restricting them to peacekeeping and to the reconstruction of post-conflict societies would at the very least involve the Union adopting the role of credible enforcer of norms negotiated with parties to the peace.

What will be involved in deciding those normative questions? According to a commonly held view it would involve Europeans in deciding what is good and what is right for others in the international system. That, it seems to me, fails to understand the true nature of the challenge: quite apart from whether they impose values on others or negotiate shared values with third parties, those who engage with the international environment need to decide what is good and what is right in *their own* behaviour. Moreover, those who co-ordinate their international engagements, assume some responsibility for the behaviour of those with whom they collaborate.

Consider, in this regard, what Rainer Schmalz-Bruns has said about the link between democracy and moral justification: “the ultimate foundation for a deliberative account of democracy lies in a basic moral right to justification”. Since moral justification is inherently inter-subjective we need to “offer one another” reasons “to convince ourselves of the acceptability of generally binding norms”. Those reasons must, in turn, “at least meet the formal qualification of being generally and reciprocally justifiable” (2007: 284). Thus “general and reciprocal justification” would require European security co-ordination to accord others in the international system any rights Europeans would want themselves to be accorded by others. And, if those rights are to be agreed within the European arena by mutual justification alone, the process of agreement will have to have the democratic quality of unforced agreement between equals.

(3) *European Union security co-ordination will require decisions about acceptable levels of risk.* In addition to control over the political allocation of values, control over the basic shaping conditions of social life implies individuals should have control over the risks to which they are exposed. At this point it might be objected that those taking part in European security missions are likely to be professional troops who have consented to a more risky way of life. Yet, it is by no means clear that society’s responsibility for military personnel disappears where those forces are professional volunteers. In any case, it would be difficult for European security co-operations to be simultaneously “all professional” and based on a balanced contribution from all member states, given that the largest Union country remains committed to military service precisely to limit how far its military can ever be a fully professional body. Above all, military deployments amount to contingent liabilities affecting whole societies and not just professional forces. They expose societies to contingent risks that they may in the future have to commit more resources and more lives than anticipated; and to risks of retaliations from those who do not respect distinctions between professional militaries and civilians.

In fact, European security co-operation may well involve two kinds of risk. Those involved in deploying multi-national forces; and those involved in encouraging specialisation in the force structures of member states. Each decision to divide labours entails a huge gamble on the reliability of others: will partners really be there when they are needed? Yet decisions *not* to divide labours may involve equally large gambles on self-sufficiency. In a dangerous world in which single member states may struggle to be self-sufficient security providers, risks in *not* co-operating may be as acute as those in co-operating.

(4) *European Union security co-ordination will involve path-dependent “lock-in” effects.* Consider the following proposals for European security co-ordination mentioned in the introduction: a European Union rapid reaction force; an arms procurement agency aimed at promoting the compatibility and interoperability of European militaries; collaboration in the training of forces; the pooling of certain capabilities such as the collection and analysis of intelligence; structured co-operation between member states that want to integrate their forces still more closely than ESDP itself, possibly on the basis of Treaties within the Union Treaty.

All of these suggestions can be expected to involve a heavy dose of path-dependence. They are likely to involve high start-up costs. Yet, once initiated, they may well yield increasing returns to scale. Capabilities – such as rapid reaction forces or more specialised security missions – can be expected to develop with use. Experience gained and skills developed in one mission will be available to subsequent ones. Each component of any specialised division of labour in force structures or in arms production can be expected to have positive externalities for all others.

The flip-side of increasing returns is that European security co-operation can be expected to involve limited exit options for its participants. The more national forces are integrated into a specialised division of labour, the more difficult it will be for them even to attempt to revert to self-sufficiency in security provision: the more their force structures will be based on the assumption that if those defences are to be used at all, they are to be used with partners, and a specific and fixed group of partners at that. Not the least reason for predicting that, if European countries go down one path rather than another of security co-ordination, they will only have limited options to switch directions (Pierson 2000), is that path dependencies will not just amount to technical gambles of deciding well in advance what military hardware to buy or what skills to cultivate. As implied elsewhere in this

chapter, they will also lock in decisions about identity, institutions, economy and society.

Path dependencies compound the arguments we have reviewed so far that European security co-operation will need to be democratically controlled. If it is likely to be harder to change particular paths of security collaboration once they are chosen, then it becomes all the more imperative that justifications should be offered in advance for decisions that are likely to confront the public with legally enforceable obligations, risks, moral choices and particular allocations of core values.

(5) *A bringer of democratic peace must itself be able to demonstrate that its military-civilian relations are democratically controlled within its own internal arena.* The European Union Security Strategy agreed between member states in 2003 asserts that “the quality of international society depends on the quality of the governments that are its Foundation. The best protection for our security is a world of well-governed democratic states” (Council 2003: 10) A role in promoting democratic peace is not, of course, the only use to which European security co-operation might be put. Such an objective could even be dangerous and utopian in a world of plural values (Gray 2007). Indeed, it would be indefensible and “self-defeatingly non-Kantian” if it involved treating others as “means and not ends”; as means towards a particular kind of peace desired by the European Union, and not as actors entitled to deliberate the conditions of their own peace and the conditions of their own self-government on a basis of equality (Jahn 2005).

But assume that European security co-operation could contribute to democratic peace without raising the last objection. That it could, in other words, be available to support others in *their own* democratic transitions. What would that presuppose for democratic control within the Union’s own internal arena? To answer this question it helps to clarify the more credible claims of democratic peace theory. It plainly is not the case that democracies never go to war (Rosato 2003). Rather, democracies do not appear to go to war on democracies. Thus the democratic peace amounts to a milieu goal. It involves persuading actors in other states that one reason why they might select democracy for themselves is that it would help promote an international public good. Yet it would to say the least be a hard sell for the EU to convince others that they should desire democracy on such grounds, if Europeans seemed themselves to be depreciating the “international public good characteristics” of a democratic peace by setting up security collaborations with lower standards of public control over military decisions and planning to those in member states.

Parliamentary control

All that has been said so far implies a need for democratic control of European Union security co-operation. But it does not necessarily imply a need for parliamentary control, which sceptics might feel is suited neither to security decisions, nor to the Union, and nor even to modern democratic practice.

A frequently expressed view is that parliamentary control is unsuited to security decisions that may have to be made in an emergency without betraying information that could be valuable to the intended targets of military action. If this view implies that security decisions form an area of justifiable executive discretion, it can only be strengthened by a further claim: namely, that executive discretion in general need not be a cause for concern in modern democracies, where voters can directly sanction governments through the ballot box, and where parliaments can, accordingly, be bracketed out of democratic control. Even a “forum role” which allows voters who can necessarily only make intermittent choices to observe a continuous debate about the performance of governments, is, arguably, now shared with modern media, which are more compelling, more watched, more savage and more independent in forcing governments to justify their decisions than executive-dominated parliaments could ever be.

To these doubts about parliamentarism in general might be added others that question whether it has much to offer the European Union. Familiar arguments against relying very much on either national parliaments or the European Parliament as means of controlling Union decision-making are worth summarising, if only to inform the discussion of possible solutions in the next section.

Against the view that public control of the Union could ever be adequately institutionalised through national parliaments it has been objected, first, that the latter only have individual control over Council members and not collective control over the Council; second, that national parliaments are structurally unequal both in their powers over their governments and in the weight of those governments in the Union’s political system; and, third, that there are limits to how far one political system can be controlled through the democratic institutions of another (Lord 2004: 181-182). The cost to parliaments of acquiring specialised forms of expertise needed for effective democratic control will increase where they have to monitor both domestic and Union matters; and, citizens may be forced to give priority either to sanctioning power holders in the national arena or in the European arena, in

so far as the one vote cast in domestic elections is also the only means of indirectly controlling Union decisions.

Against the view that a strong European Parliament could provide adequate public control it might be objected that empowering representative institutions has been insufficient to stimulate representative politics in an arena that is structurally unsuited to them. Even though the EP has significant powers (a veto on the appointment of the Commission and extensive legislative co-decision in a polity whose main business is rule-making) European elections still fail to link voters to the public control of Union institutions through a structure of choice that is relevant to the Union itself. To the extent those elections remain second-order (Reif/Schmitt 1980), and thus dominated by domestic politics, they have the “Alice in Wonderland” quality of not being about the institution that is, in fact, being elected. Since they are concerned neither with promises for the coming European Parliament nor with claims and counter-claims about the performance of the out-going European Parliament, it is questionable whether they deliver either *ex ante* or *ex post* public control. Moreover political parties that are under little pressure to compete on European Union issues are arguably more likely to use the powers of the Parliament to satisfy their own preferences, rather than those of the voters. Even if they are not intentional rent-seekers, gains from the political system that would accrue to the voters in a more competitive arguably accrue instead to a *Europe des parties* (Katz/Mair 1995).

None of this is likely to be a surprise to those who believe it is a mistake approaching a category error to believe that the Union could ever sustain a satisfactory system of parliamentary politics. Here inter-governmentalists and “post-modernists” are likely to be in curious agreement.

For inter-governmentalists only nations are likely to have the kind of *demos* needed for parliamentary politics, and only states are likely to have the legal and political hierarchy that can put the “sovereignty” into “popular sovereignty”. Indeed, from an inter-governmentalist perspective it might seem perverse that the Union pursues parliamentary solutions better suited to single states when, by virtue of the very fact that it is a multi-state system, it is likely to enjoy possibilities for constraint and control that are unavailable to single states. The Union should, in other words, play to its comparative advantage as a system of multiple veto points within multiple points. As long as security policies and missions require unanimity of participating governments – each of which will, in turn, be constrained in different ways by their own parties, by coalition partners, by non-coincident electoral cycles, by non-identical formal procedures for deploying force and so on –

little can be expected to happen except where an overwhelming case can be made for co-operation at the Union level.

For post-modernists, parliamentarism represents precisely the “totalising”, “one-size-fits-all”, “top-down” approach to discourse and rule-making which ought to be disaggregated into continuous, real-time negotiation of policy and criteria for policy between all those affected and the public authority. If this holds within the state it holds *a fortiori* beyond the state, where majoritarianism can be expected to be still more acutely contested, whether it takes the form of a formal majoritarianism that follows from vesting controlling powers in a supranational parliament, or of an informal majoritarianism which follows from a pattern of intergovernmental bargaining in which some governments and some parliaments linked to those governments may (as we will discuss below) find it harder than others to insist on their formal veto rights over security co-operation.

A full answer to the foregoing doubts – about the parliamentary control of security, about the suitability of the Union to parliamentary politics, and about their centrality to modern democracy – will have to await the discussion in the next section. As a first step, though, it is useful to establish the qualities of parliamentary representation which other forms of public control would find hard to replicate. In my view, there are at least two.

First, parliamentary systems offer a procedural solution to the challenge of political equality. They are elected on the principle of “one person one vote”, they decide on the principle “one representative one vote”, and they at least make it possible to agree the terms of a fair and unconstrained deliberation (access to speaking time, parliamentary protections from outside intimidation designed to limit the free expression of views and so on). The value of this emerges when we consider what is problematic in the notion that media debate can somehow substitute for the forum role of parliaments. Far from offering any guarantee of political equality, modern media are notoriously vulnerable to private concentrations of power. Even within one of the longest established and most economically and socially sophisticated member states, the ownership of large parts of the Italian media by a tycoon who has also served as Prime Minister, has been a source of concern in repeated Freedom House surveys of media freedom. To employ another example of direct relevance to the capacity of the media to mediate public debate on military deployments, all 50 newspapers owned by News International supported the war in Iraq, a statistic so unlikely to have occurred at random as to offer proof as good as any that the deliberative ideal

of “repression free will formation” can only be applied with a heavy dose of irony to the editorial policies of large sections of the media.

A second benefit of parliamentary politics lies in their holistic character. In other words, they provide a site for the making of policy and law where all problems can be comprehended in relation to all others. This is important if representatives are to have the opportunity to influence and deliberate trade-offs of value across the range of public policy, and control the externalities and cumulative unintended consequences associated with individual actors. Functional difficulties can be expected to arise where an over-arching structure of representative politics does not allow all specialised forms of policy co-ordination – presumably military ones included – to be considered in relation to all others. As Jürgen Habermas has argued, the decentred polity and society that does not also have some means of recentering decisions and managing connections between them is self-defeating: it risks being unable to benefit from its own “complexity” and “differentiation” (1996: 342–3). Each sub-system becomes insensitive to the cost it generates for other sub-systems, and functionally specialised co-ordinations cease to be a match “cognitively for accumulating problems” (ibid.: 52).

Which parliamentarism?

If it would be hard to justify European security co-ordination without some element of parliamentary participation, what form should it take? Some kind of national parliamentary contribution would surely be indispensable. To say the least, there are likely to be constraints for the foreseeable future on how far individual member states are prepared to delegate to a majority of the Council decisions exposing their own forces and citizens to risk. Even if attempted such delegations would probably lack legitimacy in member states whose government had been out-voted. Moreover, as long as military establishments remain national in nature, only national parliaments will be able to satisfy basic institutional requirements for public responsibility: only they will be able to sanction mistakes by demanding accounts from those with political responsibility for decisions and for resources; by forcing resignations; by threatening budget lines and so on. To migrate the co-ordination of security decisions to the European level, which may struggle to replicate the practices and culture of military responsibility to national governments and parliaments except through the intermediation of those domestic structures themselves, might even be to risk the very high levels of civilian control over the planning and conduct of military decision-making that has been achieved in member states.

If, then, it is hard to imagine doing without a national parliamentary contribution to controlling European security co-operation, does it matter that member state parliaments vary in their powers over the deployment of military force, and in their general powers within their political systems? Of the member states covered by Wolfgang Wagner's study (2006: 11) seven are classified as having a high level of control over military deployments (Denmark, Finland, Germany, Ireland, Slovakia, Spain and Sweden); five as having a medium level of control (Austria, the Czech Republic, Italy, Luxembourg and the Netherlands) and seven are classified as having a low level of control (Belgium, France, Greece, Hungary, Poland, Portugal and the UK).

Of course, all this amounts to an arbitrary distribution of controlling powers that has developed through the historical particularities of each member state. It does not reflect a reasoned attempt to adapt to challenges of public control posed by European security co-operation. Indeed the difficulty becomes more acute once it is considered that specific powers over military deployments are likely to be either nourished or constrained by the general powers of national parliaments within their political systems.

Thus to Wagner's typology it is useful to add more general classifications of the relative power of member state parliaments. Paul Pennings has devised a ranking based on the relative formal powers of governments and parliaments to dismiss or dissolve the other (2000). Döring and others (1995) have produced a ranking based more on the power of governments to dominate the parliaments through party systems; on the power of parliaments to set their own agendas and manage their own business; and on the skills and resources available to parliaments.

These two rankings suggest two qualifications to Wagner's classification if we accept that specific powers over military deployments are likely to be conditioned by the general powers of parliaments within their political systems. On the Döring (though not on the Pennings) ranking Germany needs to be reclassified as only a "balanced" system and not one in which "parliament dominates government". Given the constraints of political culture and history this minor reclassification of Germany might not make a huge difference. However, a second reclassification could be significant: although the Spanish parliament has strong powers over military deployments, the Spanish system is, in general, one where "government dominates parliament" on both formal and informal measures. It thus seems to me to be a reasonable surmise that there are at least four large member states where there is a high chance that an executive determined to deploy

force will usually be able to anticipate parliamentary approval: France, Poland, Spain and the UK. Of course voter approval is another matter.

Still, it is possible that, through some kind of serendipity, some national parliaments could operate as proxies for those with lesser controlling powers: that, for example, those with strong veto powers over deployments of force might provide “positive externalities” for others. All this will depend on which member states are likely to be minimum feasible coalitions for particular deployments and on those coalitions including at least one member state whose parliament has formal or informal veto powers at the time a decision for deployment needs to be made. The difficulty, if my analysis is correct, is that precisely some combination such as France, Poland, Spain and the UK could be a minimum feasible coalition, particularly if Members of that coalition, as well as German parliamentary and public opinion, felt it enough for German forces to contribute only to certain pre-specified roles.

But there are further problems. One is that control over military deployments is only one aspect of public control of security policy. The latter should, arguably, also extend to the shaping of capabilities ahead of time. Second, even domestic institutions with significant powers to control deployments both on account of their powers within their domestic systems and on account of the veto powers of their governments in the Council may feel constrained to maintain the overall credibility of European defence co-operation, especially, if in circumstances that cannot be predicted at the time, they might themselves feel some pressing need for the benefits of that collective defence in the future.

Wagner provides an example of the operation of just such a constraint in practice. The story, which is so telling that it is worth quoting in full, begins with a ruling of the Federal Constitutional Court (FCC).

By a narrow margin of 5:3 votes the Federal Constitutional Court (FCC) endorsed the government’s decision to have the Bundeswehr participate in the AWACS mission over Bosnia. Concerns about alliance solidarity and reliability played a decisive role in the judgement. The court noted that the Bundeswehr made up 30 per cent of the AWACS personnel. As a consequence the withdrawal of German soldiers at the very moment of this mission would endanger the no-fly zone over Bosnia. Furthermore “allies and neighbours would inevitably lose trust in German policy, the resulting damage would be irreparable.

(Federal Constitutional Court 2006: 32)

As Wagner then explains, the Bundestag has had to decide on 30 more deployments since this ruling, and plans for a NATO rapid reaction force (NRF) now seem to confront Germany with even tougher choices between the sustainability of the procedure for parliamentary approval and considerations of Germany's reliability as an ally. Unless Germany participates the NRF will not work. If Germany is to participate there can be no guarantee that effective use of the NRF will allow time for parliamentary approvals.

We will return to the question of how to reconcile speed of decision with parliamentary control. For the moment it is important to stick with the problem that parliaments whose governments contribute to multilateral force structures may feel individually constrained from challenging security missions they might have questioned collectively. An obvious solution – abstracting for the moment from the problem of how quickly decisions might be needed – would be to encourage a high level of exchange of information and assessments between national parliaments.

The emphasis here on exchanging “assessments” and not just “information” is deliberate. As is well known, what governs “perception and misperception” in deciding security questions is not just the quantity and quality of information but the wisdom with which that information is interpreted (Jervis 1976). A useful contribution that a network of member state parliaments could make here would not be to contributing skill they manifestly do not have to interpreting the information but in testing whether governments who ought to have such skill can sustain their case for security missions against all kinds of scepticism. Here it would matter not one jot that an inter-parliamentary network is likely to be even more cacophonous than a debate in any one parliament.

Perhaps the key point, though, is that no one parliament need fear “reputational costs” of asking hard questions about deployments if others are inclined to do the same. Thus a co-ordination between executives in security matters would seem to call for some matched co-ordination between their parliaments. But could a role for the European Parliament “add value” to an inter-parliamentary network otherwise dominated on security issues by national parliaments? One overwhelmingly important reason for answering “yes” is that – notwithstanding my previous remarks in praise of cacophony – modern legislative studies identify information and expertise as critical factors in the capacity of representative bodies to exercise control over executive decisions (Krehbiel 1991). Now networks of national parliaments could conceivably accumulate such expertise without much help from a European

Parliament. It might, for example, be possible to imagine the defence and security specialists in each national parliament adopting a system of sharing information and assessments similar to the telex system used in the early years of European foreign policy co-operation.

Yet, it is important to understand the limitations of national parliaments as a solution to the problem of the public control of any European security policy, as it is to understand their possibilities. At the end of the day, national parliaments face opportunity costs in developing expertise on Union matters: time spent on detailed monitoring of Union policies is time not spent on domestic politics. Indeed, national parliamentary activism on Union matters appears more likely where there is already a high level of politicisation of Union issues, or where there are already strong norms of parliamentary control (Johansson/Raunio 2001). In the absence of such conditions it is less clear that voters or parties are likely to award the careers of national parliamentarians sufficiently for them to invest their careers in building up expertise on Union matters.

Indeed, it cannot be stressed too strongly that *national* parliaments are just that. They are neither authorised nor motivated to exercise control on behalf of any-one else except for the national electorate they represent. Even if it is a fair surmise that the efforts of individual parliaments in scrutinising the contributions of their governments to ESDP could have external benefits for all, there is no guarantee that this can add up to a satisfactory level of control at the European level.

Assuming, as I do, that there is great variety in interests and value preferences between alternative approaches to European defence co-ordination, there is paradoxically even an argument for preferring some measure of public control at the European level. Such a state of affairs implies there can be no single public interest in a common defence discoverable, as it were, by some national parliaments on behalf of others. It implies, moreover, that some contradictory but equally reasonable value preferences towards the development of a common defence may be better represented than others just by virtue of in which national parliaments they happen to be articulated, and not by virtue of any deliberation between representatives *of all* those in whose name a European defence might be developed.

Not only, though, is exchange of information and assessments likely to fall short of ideal conditions for public control, but it would also be wrong to see it as a cost-free option for national parliaments. Knowledge and expertise of the issues to be monitored in European security co-ordination are to some

degree specific to the European Union arena. Even ESDP and CFSP have their own technical instruments, governance committees, and histories. The challenge to national parliaments in accumulating all the necessary expertise gets worse once it is remembered that one reason for co-ordinating security through the EU is the opportunity to set security objectives for the range of Union policies: to respond to holistic concepts of security – in which both problems and solutions are seen as having economic, social, governance and ecological dimensions – by setting security objectives that can be taken into account in the first and third pillars of the Union, not just by CFSP itself. Thus it would be a mistake to believe that proper parliamentary scrutiny of European security co-ordination can be confined even to acquiring specialised knowledge of the CFSP and ESDP that does not also extend to a wider understanding of the range of Union policies.

To the extent, then, that it is the European Parliament that is best placed to specialise in accumulating information and expertise on Union policies, it should be included in any inter-parliamentary network for the control of ESDP. Moreover, as set out in chapter 4 by Barbé and Surrallés, the Parliament already has powers, explicitly granted or honed through institutional cunning, that can be put at the service of such a network. Security joint actions are often financed (albeit modestly) out of the Commission's budget which has to be approved by the Parliament. There may even be circumstances in which the Union's security objectives require legislation that has to be co-decided by the Parliament. Conspicuous examples include money laundering directives introduced in response to security threats posed by organised crime.

If, then, a co-ordination between national parliaments and the European Parliament is the best answer to the question “at what level should European security be controlled?” what is the best answer to the question “what forms of parliamentary control should be employed?” Here it is useful to return to the argument that security decisions are unsuited to parliamentary control. A difficulty with this argument is that it ignores the variety of forms that parliamentary control can take and the degree to which they can be adapted to any need for speed and secrecy in security decisions.

Thus, for example, parliamentary control can put a heavy emphasis on *ex ante*, as opposed to *ex post*, accountability. The objection that security decisions need to be made speedily in an emergency has much less force if it can be demonstrated that some useful measure of public control could be secured through representative bodies exploring with governments the conditions under which force might be used ahead of time.

As it happens there is much to be said for an approach to public control that relies on deliberation before the event and not just sanction after the event (Mansbridge 2004): on agreeing standards in anticipation of contingencies and not just on defence of decisions already made. Where, indeed, cause-effect relationships are elusive, or decisions involve too many hands for particular consequences to be easily attributable to particular actions, there may be little alternative to putting the emphasis of public control on requiring that, however much or little decision-makers contribute to outcomes, they should at least act with regard to pre-agreed standards (March/Olsen 1995). Moreover, to the extent that *ex post* evaluation feeds back into continuous adjustments of *ex ante* standard setting through a process of learning it is wrong to dismiss the latter as naïve, even though, perhaps inevitably, it can only ever amount to a form of bounded rationality in which not all contingencies can be anticipated in advance.

So who should authorise such *ex ante* standards for the deployment and use of force in the name of the European Union? Let us begin with the easy answer: namely, some kind of representative body. One reason for this answer relates to the distinctive position that elected representatives occupy in the political division of labour. Representatives have both incentive to remain in touch with the general needs and values of publics and opportunity to accumulate specialised forms of knowledge (through committee memberships and so on) of the problem they are called on to regulate (in this case security deployments). They can thus blend those indispensable ingredients of effective and legitimate rule-making. Indeed, a second argument for parliamentary participation relates even more directly to legitimacy. To the extent that only elected bodies can provide public authorisation, action in compliance with standards agreed by them can mark off the difference between legitimate force and mere force. Whilst, of course, it is not hard to imagine how some standards set by representative bodies could be grossly incentive to the specific needs of the military, any suggestion that representative bodies should never have a role in setting the standards that guide their actions should be equally unwelcome to the military. It would deny them access to the principal means of legitimation of all public authority in democratic societies: that of being able to demonstrate action in compliance with a rule of law that citizens can see themselves as having agreed through their representatives.

Now, some might argue that elected governments meeting together in the Council of Ministers constitute a sufficiently representative body to set all standards for the use of force in the name of the Union, its member states and citizens. The fundamental and obvious difficulty with this argument,

however, is that the Council of Ministers comprises and co-ordinates the very member state executives responsible for the deployment of force by the European Union. At the best it is an instrument for self-regulation. If standards for the deployment of Union force are to have the credibility of authorisation by a rule-making that could conceivably have “said no” to them – if, indeed, they are to be justified “in the light of day” where they can be challenged by “any contrary opinion” (Mill 1972 [1861]: 239–40) – then parliamentary, and not just executive, approval will be needed. If, to re-iterate, the argument of the rest of this chapter is correct, that parliamentary role in standard setting would ideally include inputs from both national parliaments and the European Parliament.

Of course, accountability through a role for the parliaments of Europe in the *ex ante* setting of standards for the use of force will often provide an incomplete guide to decision in emergencies. Indeed, the very phenomenon of executive prerogative to which parliamentary control of security deployments is opposed has its ethical and intellectual roots in John Locke’s observation that it is not only likely that public dangers will arise that are unanticipated by existing laws; but, worse than that, it is at least imaginable that widely held conceptions of the public good may at some point require governments themselves to break the law. As it happens Locke’s own solution (1977 [1690]: 199–204) was laughably unsatisfactory (we should trust in heaven to judge whether those who rule us have used their discretion wisely under such circumstances). But solutions to the problem he identified are suggested by four centuries of subsequent experience in designing institutions for the constraint of the arbitrary use of power.

Amongst those solutions are procedures that allow time-limited exercises of discretion before formal authorisations are needed; and, indeed, procedures that allow for contestation of decisions if they subsequently appear to have been made without justification (Pettit 1996). Although it is less than clear that the US Congress definition of its own war powers has been accepted by the US Presidency, it provides a compelling example of how the need for executive discretion to act swiftly in a crisis might be reconciled with effective parliamentary control. Within 48 hours of engaging in hostilities or deploying forces into the territory of another state, the President has to report to Congress on the reasons and authority for the deployment, as well as its likely duration. Within a further 60 days, the President then has to terminate the deployment unless Congress has declared war or extended the period of the deployment by a further 60 days.

This procedure contains two qualities emphasised during the course of the chapter: namely, the importance in a democracy of “giving reasons” for decisions; and the importance of representatives being able to contest decisions where circumstances do not permit them to authorise them. Would it be too fanciful in the context of European security co-ordination to require that an emergency deployment would automatically lapse unless a certain proportion of the national parliaments of participating states had ratified it? After all, the new subsidiarity clause already introduces the general principle to the Treaty that groups of national parliaments should enjoy powers over Union decisions.

Conclusion

This chapter has argued that European security co-ordination will need to be democratically controlled to the extent it involves legal obligations, reallocations of value, normative choices, risks and path dependencies. It has further argued that parliamentary control is always an essential part of democratic control, and, whilst there are difficulties delivering parliamentary politics beyond the state, there is a strong case for matching any security co-ordination between member states with an inter-parliamentary co-operation between all national parliaments on the one hand and the European Parliament on the other. The difficulties of reconciling parliamentary participation with the speed and secrecy needed for security decisions should be met by developing procedures for *ex ante* parliamentary deliberation of the normative conditions and standards of European security co-ordination; and by *ex post* procedures that allow executives the discretion to act in an emergency provided there are subsequent opportunities for publics acting through their representatives to question, contest, and, if necessary, reverse decisions.

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Chapter 3

National parliamentary oversight of ESDP missions

Suzana Anghel, Hans Born, Alex Dowling and Teodora Fuior
Geneva Centre for the Democratic Control of Armed Forces

Introduction

This chapter¹ primarily explores current practices in the national parliaments of EU member states for scrutinising European Security and Defence Policy (ESDP) decision-making, with a focus on ESDP military and civilian missions. ESDP missions are one particularly important dimension of European security policy and offer an ideal ground to discuss parliamentary oversight for the following three reasons. First, while the use of force under international auspices has increased substantially, the democratic accountability of such action has lagged behind. Even established democracies – where the control of armed forces is taken for granted – are struggling to adapt their parliamentary control mechanisms to new realities. Second, increasingly, decisions regarding the use of force are being made by national governments in the framework of international organisations. One such example is the EU, which is carrying out civilian and military crisis management operations within the framework of ESDP. Since the EU launched its first military mission in 2003 (Operation Concordia in the Former Yugoslav Republic of Macedonia – FYROM), it has undertaken 20

¹ In 2007, the Sub-committee on Security and Defence (SEDE) of the European Parliament (EP) mandated the Geneva Centre for the Democratic Control (DCAF) to conduct a study on: ‘Parliamentary Oversight of civilian and military ESDP missions – European and national levels.’ The research undertaken for that study represents the foundation of this chapter. More information about the research project, as well as the complete text of the DCAF study mandated by the EP, may be found at: <[http://www.dcaf.ch/parliamentary-oversight-ESDP-missions/ index.cfm](http://www.dcaf.ch/parliamentary-oversight-ESDP-missions/index.cfm)> (accessed 12 November 2008).

operations, including 5 military and 15 civilian ESDP missions, not only in Europe but also in the Caucasus, Middle East, Southeast Asia and sub-Saharan Africa. Third, the increasing importance and number of ESDP missions has provoked strong debate regarding the complex nature of EU crisis management decision-making and resulting implications for parliamentary accountability at the national level.

The democratic deficit as constituted at the national level is primarily the result of four factors. Firstly, there are only a few national parliaments empowered to provide their government with a clear negotiating mandate prior to the adoption of a decision by the Council (Wessels et al. 2002). Secondly, due to diverging national legal procedures, few national parliaments are mandated to formally approve troop deployments in an international operation (Born/Urscheler 2004: 61-67). Parliaments' powers of approval are often limited to the deployment of armed forces and do not extend to the secondment of national police personnel to external police missions. Thirdly, national parliaments receive security and defence-related information from their respective governments and are therefore dependent upon their government's transparency or goodwill in making information available. Finally, national parliaments' powers of scrutiny are largely limited to the annual approval of funds for external operations, as part of the overall national defence budget (Gourlay 2004: 195). As a result, national parliaments possess an incomplete view of ESDP affairs and their oversight powers are limited to overseeing their national government's actions. They are neither collectively associated with the ESDP decision-making process nor able to collectively scrutinise the implementation of a Council decision.

In order to investigate if, and how, these aspects of the democratic deficit manifest into the practice of parliamentary oversight, we undertook research focused on the involvement of national parliaments in the early stages of the decision making process regarding national participation in ESDP. An EU-wide survey, completed by relevant committees and secretariats of national parliaments, was used to collect quantitative information about the involvement of parliaments in four ESDP missions, two civilian and two military. Additionally, in-depth qualitative research was carried out in the parliaments of France, Germany, Poland, Romania, Spain and the United Kingdom (UK). For a complete understanding of parliamentary oversight of ESDP mission, before presenting the findings of our research we will first review the context of executive decision-making in Brussels and we will clarify the distinction between *ex ante* and *post hoc* parliamentary accountability.

ESDP executive decision-making

The Political and Security Committee (PSC), composed of national representatives at the ambassador/senior level, plays a central role in the definition and follow-up of the EU's response to crisis. The PSC drafts opinions and may recommend that the Council adopt a Joint Action (European Council 2000). The Commission is associated through a representative attending PSC meetings and is more active in the case of civilian crisis management. In the end, all decisions are taken by the Council in one of its formations.²

Based on the Crisis Management Procedures (CMP) (Council Document 11127/03), six phases of the decision-making process can be distinguished:

- *Phase 1 - Routine.* This phase refers to on-going monitoring, analysis and early warning of a crisis situation. Member states and Commission representatives exchange information within the PSC. The European Union Military Staff (EUMS), the Police Unit, the Council General Secretariat (CGS), the Joint Situation Centre, and the Commission planning staff, in cooperation with other relevant bodies in the Council Secretariat and the Commission, carry out advance planning and preparatory actions, including civil-military co-ordination.
- *Phase 2 - Crisis build-up and development of the draft Crisis Management Concept (CMC).* In case a crisis builds up and EU action is judged appropriate, the PSC may call for an ad-hoc Crisis Response Coordinating Team (CRTC) to develop the Crisis Management Concept (CMC). The CMC includes an assessment of the situation on the ground and sets out options for EU action.
- *Phase 3 - Approval of the Crises Management Concept and development of strategic options.* The CMC is adopted by the Council. The timeframe for the development (phase 2) and the adoption (phase 3) of the CMC differs from mission to mission, depending on its complexity and size (one year, in the case of EUFOR Althea, or a few weeks in the case of Artemis and the Aceh Monitoring Mission). The strategic options for both military and civilian missions are developed and the draft decision to take action (i.e the Joint Action) is elaborated for approval by the Council.
- *Phase 4 - Formal decision to take action and development of planning documents.* The Joint Action must be adopted by unanimity within

² Denmark has opted out from actions with military and defence implications carried out under the EU Treaty and therefore does not participate in decision making on such activities.

the Council. Abstentions cannot hinder its adoption unless they represent more than one third of weighted votes in the Council. The text of a CFSP Joint Action covers: the mission mandate; its objective; its scope; the resources put at the Union's disposal by the member states; the initial duration of the mission; as well as the chain of command. The whole process of adopting a Joint Action can take between four and nineteen weeks, depending on the level of urgency and the political consensus among member states.³ Following the adoption of a Joint Action, the Council appoints the Operation Commander. In the case of military operations, a force generation conference is called, where individual EU member states and third country contributions of personnel and assets are identified.

- *Phase 5 - Implementation.* The PSC exercises political control and strategic guidance over the operation, be it civilian or military.
- *Phase 6 - Refocusing of EU action and termination of operations.* In case there is need for a change in the mandate or duration of the mission, the Crisis Management Concept is examined and revised. In case the Union's action is refocused or terminated, the relevant EU bodies assess the mission and look for lessons learned both in terms of inter-institutional cooperation and ground implementation.

From a democratic accountability perspective, phases 1 to 4 are of relevance to ex ante parliamentary scrutiny, as they take place before the actual launch of the mission. Occurring after the commencement of the mission, phases 5 and 6 are relevant to post hoc scrutiny by parliament.

Ex ante and post hoc parliamentary oversight of ESDP missions

Ex ante parliamentary accountability of ESDP missions refers to any oversight exercised by a parliament before the troops are deployed, whether it occurs before or after the Joint Action is signed in the Council (phase four of ESDP executive decision-making processes). The most important instrument for exercising ex ante accountability is the power of prior authorisation, that is parliament's power to approve, reject or even amend the executive's proposal to deploy troops abroad. Ex ante accountability can also allow parliament to exercise budget control, raise questions, organise (public) hearings and invite experts to voice their opinion on upcoming missions.

³ The scheme with the Procedure for the definition and adoption of Joint Actions is available at: <http://ec.europa.eu/external_relations/cfsp/fn/procja.pdf> (accessed 12 November 2008).

Post hoc accountability refers to any oversight exercised after the troops have been deployed abroad (phases five and six). Important parliamentary instruments in this regard are the power to: withdraw troops, extend the deployment, conduct inquiries, raise questions, hold hearings, conduct financial audits and visit troops.

Three factors determine the effectiveness of parliamentary accountability: authority, ability and willingness. Firstly, authority refers to the power of parliament to hold government accountable, which is derived from the constitutional and legal framework as well as customary practice. Customary practices are often non-binding but are powerful nevertheless, particularly if they are reinforced by the power of parliament to send the government (or a minister) home or to reject/amend the yearly budget for deployments abroad. If these additional powers are lacking, parliament depends on the willingness of the government to cooperate. Secondly, the ability of parliaments to hold the government accountable refers to resources, expertise, staff and access to (sometimes classified) information necessary to assess government decision-making. Thirdly the willingness of members of parliament to hold government accountable depends, among others, on party discipline (Born/Hänggi 2005).

National parliamentary oversight of ESDP

EU-wide survey on parliamentary oversight of ESDP operations

Our primary research included an EU-wide survey on the topic of parliamentary oversight of ESDP, focusing on two military missions – EU Force (EUFOR) Althea in Bosnia Herzegovina and EU Force in the Democratic Republic of Congo (EUFOR DRC) – and two civilian ESDP missions – the EU Police Mission in Bosnia and Herzegovina (EUPM Bosnia) and the EU Border Assistance Mission at the Rafah Crossing point in the Palestine Territories (EU BAM Rafah). These missions were chosen for their variety: EUFOR Althea is conducted within the Berlin Plus Agreement, using NATO assets and capabilities, whilst EUFOR DRC was an autonomous EU mission with Germany as the framework nation. EUPM was chosen since it was a substantial mission in terms of human and material contributions from EU member states. EU BAM Rafah was one of the most recent missions launched by the EU at the time we conducted our research, in a territory which enjoys public attention and media focus for decades.

A questionnaire was distributed via email to the committees responsible for defence, European affairs, internal affairs and foreign affairs within the

parliaments of the 27 member states of the EU in February 2007. A total of 39 replies were received from parliamentary staffers and MPs from 25 European parliaments. The responses suggested that ESDP matters are seen as being the responsibility of the defence committees (18 responses), in the majority of parliaments. EU committees are less involved in these matters (8 responses) whilst foreign affairs (6 responses) and interior affairs committees (3 responses) play an even more peripheral role in ESDP. Most respondents appeared to have some difficulty in pointing out exactly how their parliament scrutinised the four missions in question. 11 respondents out of 39 stated that ESDP matters are simply not discussed within their committees. This might indicate that ESDP missions do not figure highly on the parliamentary agenda in EU member states.

Parliamentary oversight of four selected ESDP missions

The findings of the DCAF questionnaire survey on parliamentary oversight of the four ESDP missions are considered below, with an overview of the results given in Table 3.1.

Table 3.1: Oversight of ESDP case study missions in respondent states.

ESDP operations	Parliament** approved participation in at least one mission	Parliament** debated participation in at least one mission	Parliament** had no involvement
Military operations: EUFOR Althea and EUFOR DRC	Austria, Bulgaria*, Germany, Cyprus, Czech Republic*, Estonia, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain, Sweden	Belgium, France, Lithuania, Poland, Portugal, Slovenia, UK	Greece, Slovakia, Romania
Civilian operations: EUPM Bosnia and EUBAM Rafah	Austria, Czech Republic, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands, Romania*, Sweden	Belgium, Denmark***, France, Poland, Portugal, Germany, Slovenia, UK	Bulgaria, Cyprus, Estonia, Greece, Lithuania, Slovakia, Spain

Source: DCAF Survey 2007.

* This table represents strictly the results of the questionnaire survey of the four case study missions. Since some of the missions were launched, new legislation dealing with national deployments abroad was adopted in Bulgaria, Czech Republic and Romania. The parliaments in these countries no longer have the formal power of prior approval for national participation in ESDP operations.

** For the purposes of this table, ‘parliament’ may refer to activity either in the plenary or in a committee. Debate means, at least, that some formal information was received from the government and the issue was on the agenda of a committee.

*** Denmark participates only in the civilian aspects of ESDP. It does not participate in ESDP military missions nor in the elaboration and implementation of any decisions or actions of the Union which have defence implications.

EUFOR Althea

Operation EUFOR Althea received prior approval in 12 parliaments, during the period between the Joint Action decision in Brussels (12 July 2004) and the date of the deployment of national troops.⁴ The 12 parliaments in question were: Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Netherlands and Luxembourg. The Finnish parliament discussed and approved the mission before the Joint Action decision was taken at the European level. Furthermore, three parliaments (France, Poland and the UK) that do not have formal approval authority discussed and agreed upon the national participation in this ESDP operation before the decision was taken in the Council. These discussions took place in EU committees. In practice, committees were only briefly informed about a text that had already been negotiated and the issues failed to raise any significant political interest within the debates. There was no consultation or formal information received by the parliaments of Belgium, Greece, Romania and Spain. Despite these four countries contributing to the operation, no debates or hearings were held by parliamentary committees.

EUFOR DRC

Operation EUFOR DRC received prior approval in ten parliaments: Austria, Cyprus, Czech Republic, Finland, Germany, Ireland, Italy, Luxembourg, Netherlands and Spain. In Luxembourg, the Committee for Foreign and European Affairs, Defence, Cooperation and Immigration, was consulted by the government and agreed on the Joint Action more than three weeks before the text was adopted by the Council, on 27 April 2006. The other parliaments appear to have approved the mission after that date. Other parliaments which do not have the power of prior approval were informed by their governments and discussed EUFOR DRC within the EU Committee – in the cases of France and the UK – and within the Defence Committee – in the cases of Belgium, Poland and Slovenia. In France, the discussion took place one month before the Joint Action was adopted by the Council.

EUPM BiH

Operation EUPM BiH received prior approval in nine parliaments: Austria, Czech Republic, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands and Romania. The operation was discussed in six parliaments that do not have the power of prior authorisation: in the Defence Committees of Belgium and Slovenia, in the EU Committees of Denmark, France and the UK, as well as in a joint session of the Defence, Foreign Affairs and EU committees in Poland. No debate or hearing was held and no information

⁴ Member states may join a mission once after the date of the official mission launch and after its initial phase on the ground is completed.

was provided to parliaments of other countries that contributed personnel to the operation. This was the case in: Bulgaria, Estonia, Greece, Slovakia and Spain.

EUBAM Rafah

Operation EUBAM Rafah received prior approval in 6 parliaments: Austria, Finland, Ireland, Italy, Luxembourg and the Netherlands. Austria and Ireland did not participate with personnel in the mission but approved it nevertheless. EU committees in Denmark, France and the UK were informed about the mission and discussed the operation, around the date that it was launched. The parliaments of other countries that have contributed personnel to EUBAM Rafah were neither informed nor consulted about the operations. These include, Belgium, Greece, Romania and Spain.

Analysis

Prior approval: before Joint Action decision versus before deployment

As far as parliaments that possess the power of prior authorisation are concerned, missions were approved before deployment but usually after the EU Council adopted the Joint Action. Finland and Luxembourg are exceptions to this sequence, where the parliaments have approved missions before the Joint Action decision was taken. In Sweden, parliament is consulted prior to all European Council decisions and has to decide formally on the participation of the Swedish forces in a mission. However, no detailed information on how and when the four operations were approved was provided in the response to our questionnaire. According to Irish legislation, parliament should also be consulted as soon as the Joint Action is initiated but this rule can be ignored when “in the opinion of the minister” the issue “is confidential”,⁵ which was the case in each of the four missions considered here.

Most governments are not required to secure parliamentary approval prior to signing a Joint Action in Brussels. Consequently, even parliaments that have prior authorisation power are often confronted with a *fait accompli*, due to the difficulty for a government to withdraw its commitment to contribute to ESDP missions after having committed to a Joint Action. Nevertheless, some parliaments receive information about Joint Actions before they are adopted. This practice is most prevalent within countries where parliaments have no formal power of approval but contribute greatly to ESDP missions, such as France, Poland and the UK. Otherwise, parliamentary awareness about such

⁵ European Union Scrutiny Act, *Number 25 of 2002*, Sections 2 and 3, online available at: <<http://www.irlgov.ie/bills28/acts/2002/a2502.pdf>> (accessed 12 November 2008).

negotiations and about Joint Actions adopted by the European Council is limited.

In the Netherlands, government and parliament make use of a "Decision framework for military deployments for international missions",⁶ aimed to make decisions more systematic and transparent. The Framework puts forward ten points of attention which are important for military deployment decision-making.⁷ The reply to the questionnaire from the Dutch parliament indicated that the procedures for debating and approving the deployment in parliament, can be done within one day in case of emergency.

Role of parliament: Plenary versus Committee

Prior authorisation of national participation in at least one of the four ESDP operations was given in 15 out of 25 respondent parliaments. In some parliaments, this authorisation was given by the plenary and in other parliaments it was a committee decision. There are countries where the authority to approve national participation depends on the case. In Finland, the Plenary usually has to give consent.⁸ However, if less than ten personnel are assigned to an operation, the deployment is approved by the Foreign Affairs Committee. In Spain, the Standing Bureau of the Congress determines whether the matter is to be decided in the Defence Committee or in the Plenary, depending upon the importance of the mission.

Role of parliament: military versus civilian ESDP missions

In most respondent parliaments, greater emphasis was placed on parliamentary approval of military ESDP operations than civilian missions, with 14 of the 25 parliaments giving approval to at least one military mission, compared with only ten parliaments approving civilian operations. Yet the figures are low even for military missions, indicative of a general lack of parliamentary scrutiny of ESDP.

Participation in civilian missions frequently escapes parliamentary attention because of the small number of personnel deployed. For such operations, deployment decisions are often taken at a lower executive level than would be applied to a military mission, with no obligation to report the decision to parliament.

⁶ Tweede Kamer (Second Chamber of Parliament), 2000–2001, 23 591, Nr. 7, The Hague, The Netherlands.

⁷ Tweede Kamer (Second Chamber of Parliament), Onderzoek NATO Response Force (Research into NATO Response Forces), 2005–2006, Nr. 30162, The Hague, The Netherlands.

⁸ Mandatory if there is no UN mandate for an operation.

The highest levels of parliamentary control over ESDP missions appear to be in: Austria, the Czech Republic, Finland, Italy, Latvia, Luxembourg, Netherlands and Sweden, where both civilian and military operations passed through formal parliamentary prior consultation and approval. It is noteworthy that, in the case of Czech Republic, the government sought parliamentary approval for all four ESDP operations in question, even though current legislation does not give parliament any formal power of prior approval.

Parliamentary committees with overlapping mandates

The information provided in the questionnaire suggests that ESDP operations often fall under the competency of several parliamentary committees. The slow machinery of committee structures and overlapping committee mandates have served to dissipate awareness on ESDP issues. The following committees may all potentially be involved in ESDP scrutiny: foreign affairs, EU affairs, defence, interior, development aid, budget and human rights committees. The role of these committees differs from country to country, ranging from non-involvement to a lead role. In some parliaments, like the Polish and the Dutch ones, the joint meeting of several committees is a common practice when ESDP operations are debated. In most countries, all international operations abroad, including ESDP operations, are seen as a competence of defence committees. In spite of the rapid development of civilian missions, it appears that interior committees neither play a role in approving nor overseeing civilian ESDP operations. In those parliaments that do not possess the authority to approve missions, defence committees are less active in ESDP oversight and EU committees tend to have a stronger role, such as in France and in the UK.

Parliamentary control over budgets of ESDP missions

The so-called 'power of the purse' does not appear to signify strong parliamentary scrutiny of ESDP missions. Important elements of ESDP missions are partly financed through either the EU common budget (civilian missions) or the Athena mechanism (military missions) and therefore fall outside of the competence of, or are difficult to be overseen by, national parliaments.

The parliaments that responded to the questionnaire approved the budgets for the four ESDP missions only as part of the annual defence budget which is approved in its entirety each year in the budget law. Nearly all of the responses received indicated that the budget for each individual mission was not approved whilst national participation in the respective mission was considered. Information about the estimated budget of an operation may be

offered when it is required during parliamentary debates, but it is not formally approved.

The exceptions are Italy and Germany, where the approval for a mission includes the approval of its estimated budget. In Germany, the Parliamentary Participation Act prescribes that any military deployment proposal of the government to parliament should include information about the estimated costs.⁹ In Italy, the approval of national participation in a mission is given through a budgetary approval law. Furthermore, every year the parliament must pass a law in order to allow for the renewal and extension of the mandate. Detailed information about costs, type of forces, tasks and status of forces must be provided.

Parliamentary oversight of ESDP missions in six selected member states

This part of the chapter presents the findings of our in-depth research in the parliaments of six member states: France, Germany, Poland, Romania, Spain and the UK. These countries were chosen on the basis of their significant contributions to ESDP missions as well as their differing political-constitutional models. 41 detailed interviews were conducted with MPs – from both governing and opposition parties, and staffers – from relevant parliamentary committees or research/policy units, all in the native language, with the aim of gaining a deeper insight into the national procedures and practices of parliamentary oversight of ESDP operations.

France

Until 21 July 2008, i.e. during the whole period which is of direct interest to the present analysis, the French parliament did not approve *ex ante* or *post hoc* the deployment of French troops to an ESDP mission, although it was mandated to clear the Council Joint Action prior to adoption.¹⁰

Article 88-4 of the French constitution offers the legal basis to exercise oversight of European affairs. The two parliamentary bodies which receive

⁹ See the sub-section on Germany below.

¹⁰ The 21 July 2008 constitutional reform requires that the French government inform parliament on troop deployments on missions abroad, prior or within three days from deployment. The parliament is informed on the mission's objectives and may discuss, without taking a vote, the government's decision to deploy (modified art 35 of the French Constitution). In case the duration of a mission exceeds four month, the government has to request the parliament's authorisation to continue to contribute French troops. At the government's request, the National Assembly may have the final say on the continuation of engagement.

information about ongoing ESDP negotiations prior to the adoption of a Council Joint Action are the Delegation for the European Union at the Senate and its counterpart at the National Assembly. The main task of each Delegation is to provide *ex ante* political clearance of EU documents.

In the case of EUFOR DRC, EUPM in BiH and EU BAM in Rafah, the government informed in writing the Delegations about the EU's intention to conduct the operations, and requested that each Delegation examine the Joint Actions according to an emergency procedure. The Presidents of the Delegations followed the emergency procedure, lifting the parliamentary scrutiny reserve and clearing the Joint Actions. The members of the Delegations were informed of these decisions afterwards. In the event of a potentially contentious document, the President of each Delegation can refuse the emergency procedure, ask for a debate and also notify the specialised committee (defence or foreign affairs). The French representative in the EU Council is not permitted to vote until the specialised committee has examined the contentious document. In spite of this power, this procedure has yet to be applied to an ESDP operation.

The Delegations may still debate a Joint Action in spite of the emergency procedure. This occurred in the National Assembly Delegation during the planning of operation EUFOR Althea, on 8 July 2004.¹¹ The EUFOR DRC operation received more attention in parliament, due to the French interest in the Great Lakes region and the past contributions to Operation Artemis and MONUC. On 22 March 2006, the Chief of Staff of the Army informed the Senate Committee on Foreign Affairs, National Defence and Armed Forces about the planning for operation EUFOR DRC.

Post hoc parliamentary oversight takes place mainly during the debate on the budget rectification. Yet individual costs per operation are only provided to MPs on request, either when the initial budget law or the rectification of the budget is discussed. The members of the Defence Committee of the National Assembly have visited troops in Bosnia, The Palestinian Territories and Congo. In addition, the MPs of the National Assembly were informed about the status of the four missions in the plenary by Ministers of Foreign Affairs and European Affairs during the June 2006 parliamentary session. In the Senate, two questions concerning EUFOR Althea were addressed in the Plenary. In the Plenary of the National Assembly, one question regarding EUFOR Althea was posed.

¹¹ Minutes of the debate held on 8 July 2004 by the National Assembly Delegation for the European Union, online available at: <<http://www.assemblee-nationale.fr/12/europe/c-rendus/c0092.asp>> (accessed 12 November 2008).

The interviewed MPs and parliamentary staffers stressed that the French parliament has a limited oversight role in foreign affairs and defence under the framework of the 1958 Constitution. At present there is a significant degree of consensus on French participation in ESDP operations and therefore MPs tend to focus on other more conflicting issues.

All the individuals interviewed in Paris were in agreement that the approval of ESDP missions should remain at the national level and the oversight role of national parliaments in ESDP should be enhanced. In this context, it was suggested that a body combining the features of the WEU Assembly and COSAC may be more appropriate to facilitate communication between the national parliaments and ensure ESDP oversight.

Germany

The German Bundestag exercises strong ex ante and post hoc oversight over military ESDP missions. According to the Parliamentary Participation Law adopted in 2004, any participation of armed forces personnel in missions requires prior parliamentary authorisation. The government needs to inform the Bundestag ‘in good time’ before the military is deployed abroad. Parliament must be informed about the following elements of a deployment:¹² the mandate, geographical scope of operations, legal basis of the military deployment, maximum number of troops to be deployed, the capabilities of these troops, the duration of the mission and the estimated financial costs.¹³ Parliament does not have the power to alter the government’s plans; it can only accept or reject government proposals to deploy troops abroad.¹⁴ To date, the Bundestag has never refused such a proposal. The Parliamentary Participation Act gives the Bundestag the power to withdraw German troops, to discontinue their mission¹⁵ and also to approve any extension of mission mandates.

¹² Parliamentary Participation Act, Para 3(2), online available at (in German): <<http://bundesrecht.juris.de/parlbgb/BJNR077500005.html>> (accessed 12 November 2008).

¹³ However, the provision of a detailed proposal and information applies to regular armed forces only. The deployment of Germany’s special military forces (*Kommando Spezialkräfte* – KSK) is exempt from this procedure. Parliamentarians only receive general information about their deployment, normally as part of a wider military deployment. Given the secret nature of the tasks of KSK soldiers, such as in counter-terrorist operations, no specific information is given about their exact mandate, area of operations or number of soldiers.

¹⁴ Parliamentary Participation Act, Para 3(3), online available at (in German): <<http://bundesrecht.juris.de/parlbgb/BJNR077500005.html>> (accessed 12 November 2008)

¹⁵ Parliamentary Participation Act, Para. 8, online available at (in German): <<http://bundesrecht.juris.de/parlbgb/BJNR077500005.html>> (accessed 12 November 2008).

Votes held in the plenary on upcoming military deployments are free votes, meaning that parties do not require their MPs to follow the party line. Defence Committee meetings are always held behind closed doors and the level of secrecy surrounding them depends on the nature of the issue being considered. MPs are prohibited from repeating or commenting on what has been said by participants during the meeting.

The Bundestag is not involved in the early stages of preparation and planning of any military ESDP mission, nor do the cabinet ministers or the chancellor inform the Bundestag about Germany's role in future ESDP missions. Policy-making and planning in this field are regarded as being the prerogative of the executive and outside of the responsibility of parliament. Therefore, the Bundestag deals with ESDP missions on a case by case basis.

At each parliamentary session of the Defence Committee – of which there are twenty-two to twenty-four per year – the Defence Minister or his Deputy, accompanied by high-ranking military personnel, gives an overview of all current military deployments abroad. Furthermore, Defence Committee members receive a confidential detailed report from the Defence Ministry on all military ESDP missions on a weekly basis. The military EUFOR DRC mission – which was German-led – was extensively discussed in the German Bundestag in terms of mandate, number and quality of German troops. MPs visited troops deployed to the mission in Congo in 2006 and parliament has exercised similar rights by recently visiting German troops stationed in Afghanistan.

In contrast to its *ex ante* and *post hoc* oversight of ESDP military missions, the Bundestag has no approval power in civilian missions, but exercises a limited *post hoc* oversight role, after personnel have been deployed.¹⁶ Article 8 of the Police Act stipulates the right of the Bundestag to be informed about deployments of police abroad and its authority to end a deployment.¹⁷ The oversight of civilian ESDP missions is complicated by the fact that police missions are not only staffed by federal police but also by the police services of the German *Länder* (regional states). Therefore, legislative control takes place not only on the federal level but also at the regional level. Within the Bundestag, the Interior Committee is responsible for oversight of civilian

¹⁶ Former minister Otto Schilly (SDP) described the role of parliament in ESDP civilian missions, when he stated in an Interior Committee meeting that 'ESDP civilian missions are part of executive decision-making (*Exekutivsache*).'

¹⁷ Federal Police Act (*Bundespolizeigesetz*), Art. 8(1) – version of 1 February 2007, available at: <http://bundesrecht.juris.de/bundesrecht/bpgs_1994/gesamt.pdf> (accessed 12 November 2008).

ESDP missions, its meetings always held behind closed doors. MPs do not receive information about the budgets or expenditures of civilian ESDP missions.

There is no regular flow of information from the Ministry of the Interior to the Interior Committee of the Bundestag. The Interior Committee is dependent upon the initiative of individual MPs to request information about the current state of civilian ESDP operations. MPs have visited the EUPM BiH and the EU BAM Rafah missions. Interviewees perceived these visits to be crucial to the post hoc parliamentary oversight of civilian ESDP missions.

The majority of the MPs and staffers interviewed argued that there is a need for a greater parliamentary oversight role, both at the national level in the Bundestag and at the European level through the EP (see also Chapter 4 by Barbé/Herranz Surrallés). A number of suggestions were put forward to strengthen the role of the Bundestag in ESDP missions, such as: ensuring that committees have better access to information about missions at an earlier stage in the planning process; the organisation of public parliamentary hearings; and improved cooperation between national parliaments of EU member states in sharing of information and experiences. With regards to civilian ESDP operations, several interviewees stated their belief that oversight powers should parallel the Bundestag's powers of scrutiny for military ESDP missions.

*Poland*¹⁸

The Sejm and Senat of the Republic of Poland do not have any formal institutional oversight of Polish participation in ESDP missions. However, there has been a steady flow of information regarding ESDP missions to parliament and both houses of parliament have shown an active interest in staying informed about ESDP developments. The oversight of ESDP missions has not followed a consistent procedure and has differed significantly with each mission. The parliamentary procedures for dealing with both military and civilian missions are not established and have become an ad hoc prerogative of the Speakers of the Sejm and Senat; the Polish Council of Ministers informs the Speakers of the Sejm and Senat once a decision on deployment has been taken and they decide on an ad hoc basis which committees should be given the information.

Polish participation in Operation EUFOR ALTHEA was debated by the EU Committee several days before the Joint Action was adopted by the Council,

¹⁸ The field report on Poland was prepared by Antoni Mickiewicz of DCAF Brussels.

whereas Operation EUFOR DRC was discussed by the Defence Committee almost three months after the adoption of the Joint Action but before the operation was launched. EUPM BiH was debated in a joint meeting of the Defence, EU and Foreign Affairs Committees after the Joint Action adoption but before the operation's launch.

Polish parliamentarians do not receive information on a systematic basis from either national or international sources regarding ESDP missions. However, despite not being legally obliged to inform parliament of a decision to participate in ESDP and other international missions, on most occasions the government has communicated these decisions to parliament. Cabinet Ministers, Ministry of Defence staff and military officials have appeared before the Sejm and Senat committees, sometimes in joint committee meetings. The Defence Committee of the Senat has held several specific hearings on ESDP together with the EU Committee.

Participation in international fora is an additional means for MPs to gain information on ESDP. For instance, in February 2007, the Head of the Polish Delegation to the WEU Assembly presented a report to the Senate Defence Committee on his attendance at the WEU Assembly conference on ESDP in Berlin.¹⁹ No formal visits are made by Polish parliamentarians to ESDP missions.

In common with other national parliaments, the Polish parliament is able to exercise scrutiny of external missions through its budgetary powers. However, this capacity is limited in its extent as the budget for Polish missions abroad is set out in a block that also contains many other defence provisions.

The parliamentarians interviewed all expressed the belief that more information relating to ESDP missions should be exchanged between the EU and the defence committees of the Sejm and Senat. This improved flow of information would negate the need for the defence committees to rely on incomplete information about ESDP missions provided by the government.

Romania

The Romanian parliament is neither consulted nor requested to approve national participation in ESDP operations. The decision to send troops on missions abroad belongs to the President, with the sole obligation to inform the parliament of this decision within five days. The prior approval of

¹⁹ See <<http://www.senat.gov.pl/k6/kom/kon/2007/070220.htm>> (accessed 12 November 2008).

parliament is required only in the case of military and civilian operations where troops are not deployed on the basis of an international treaty to which Romania is party, excluding ESDP missions from parliamentary approval.²⁰ Since the current legal framework entered into force on 15 March 2004 the Romanian parliament has not been requested to approve any overseas mission.

The debate and the approval of the Budget Law is parliament's only opportunity to exert influence over decision-making regarding participation in international operations. The Defence and Budget Committees commonly amend the budget proposal but changes are rarely significant. The total financial burden of international operations abroad is difficult to calculate from the defence budget documents, as costs are spread over numerous budgetary appropriations.

Romania's participation in EUFOR Althea and EUPM BiH received formal prior approval of the parliament before the current legislation came into force in 2004. The Romanian participation in EUFOR Althea was based on prior parliamentary approval, which was given when the mission was still under NATO mandate. Between 1996 and 2002, parliament adopted 11 parliamentary decisions on national participation in SFOR. These decisions pertained to each modification of the mandate, extension of the mission and supplementation of the forces. No further act of parliament relating to this operation was adopted after June 2002.

The Romanian participation in EUPM BiH was approved by a parliamentary decision on 4 November 2002 (after the Council Joint Action was adopted). On 12 November 2003, the parliament also ratified a treaty with the EU regarding Romania's participation in EUPM.

The participation of Romania in EUBAM Rafah was approved by the Ministers of Administration and Interior. Small police missions do not need the approval of the President.²¹ The status of the police officers dispatched to such operations is similar to that of liaison officers. No information about this mission was received by the parliament, before or after it was launched.

²⁰ Law no. 42 from 15 March 2004 regarding the participation of armed forces in missions outside Romanian territory. See Article 7, paragraph (1) and (2). Available from <<http://dlaj.mapn.ro/ro/act.php?NOR=L42/2004>> (accessed 12 November 2008); (in Romanian).

²¹ They are deployed in base of Article 9 and Article 27 of Law no. 42 from 2004, which provide that participation in individual missions outside the Romanian territory is decided by the competent minister.

The President informs parliament about forces deployed abroad through a letter which is read to the plenary at the beginning of each session. However, ESDP operations have not provoked any questions or statements in the plenary, nor in the hearings and consultations of the Defence Committees. Small numbers of MPs, usually members of Defence Committees or Foreign Affairs Committees, visit troops deployed abroad, accompanying the Minister of Defence or other government officials on their visits. Romanian troops deployed in different operations in BiH were visited several times, yet no official follow-up mechanisms exist to relay findings to parliament.

Most of the interviewed MPs expressed their belief that a complete change in the legislation is needed, to give parliament the power of prior approval for national participation in international missions. When a decision must be taken quickly, emergency procedures could be established to allow the Defence Committee to grant approval instead of the plenary. The MPs also remarked that the budget proposal documents should contain more clear information about the financial burden of different types of international operations.

Due to the recent accession of Romania to the EU, the present situation may soon improve. Ex ante accountability of ESDP missions might find a strong legislative foundation in the Romanian Constitution,²² which stipulates that the government should transmit to the parliament the drafts of all documents of a binding character, before they are agreed in Brussels. A Joint Committee for European Affairs has been established by both chambers²³ and this committee is mandated to 'exercise parliamentary oversight of European affairs'. It remains to be seen what role this committee will play in ESDP oversight.

Spain

The Spanish parliament gives prior approval to the participation of armed forces in all military operations abroad. This authority lies with the lower Chamber of the Spanish parliament, the Congress of Deputies. Spanish legislation mentions two procedural steps – consultation and authorisation –

²² *Constitution of Romania*, Article 148 (5), online available from <http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=6#t6c0s0a148> (accessed 12 November 2008).

²³ Parliament Decision no. 52 from 20 December 2006 regarding the establishment of the Committee for European Affairs, online available from <http://www.cdep.ro/pls/legis/legis_pck.frame> (accessed 12 November 2008); (in Romanian).

both prior to mission deployment.²⁴ The Ministry of Defence (MoD) prepares a draft agreement, gathering information about missions which are being negotiated and discussed within international organisations and the means available at the national level. The draft must be approved by the Council of Ministers and is then submitted for the prior consultation of the Defence Committee. After the Committee informally agrees with the general terms of the draft, the MoD elaborates on the official, detailed text of the agreement. The final text is submitted to parliament for formal approval. There is no legislative provision regarding parliamentary involvement in the decision-making process on ESDP police missions and the Interior Committee is not involved in the scrutiny of civilian ESDP operations.²⁵

The government has requested prior approval of parliament for international missions on three occasions since the new legislation was adopted in December 2005, including Spanish participation in EUFOR DRC. Practice demonstrated that the law needs to be clarified through further procedural regulations. Most importantly, it was noted that parliament must determine whether the approval authority belongs to the Defence Committee or to the Plenary.²⁶ Also, the distinct procedural steps of consultation and authorisation outlined in legislation in practice were fused into one procedure; there is no formal flow of information between parliament and the government prior to the government's submission of the decision to participate in an operation for parliamentary approval.

Participation of Spanish armed forces in EUFOR DRC was submitted by the government for parliamentary approval on 19 May 2006. The decision to approve participation was taken by the Defence Committee on 30 May, (one month after the Council Joint Action) after a debate during which the Defence Minister was present.

The Joint Committee for the European Union has a marginal role in the scrutiny of ESDP operations. It can call for the plenary to debate EU issues, but ESDP operations are seen as a competence of the Defence Committee. There is no legislative provision regarding parliamentary involvement in the

²⁴ Organic Law no. 5 from 17 November 2005 on National Defence, Article 17, available from <http://noticias.juridicas.com/base_datos/Admin/lo5-2005.html> (accessed 12 November 2008); (in Spanish).

²⁵ Interview S2 held in Madrid in February 2007.

²⁶ Furthermore, there is no specification about what type of information related to the operation the government request should contain. It is not specified whether or not the decision to end participation in an operation also belongs to Parliament, considered an important issue in view of the recent public controversy about Spain's deployment to Iraq. It should be noted that civilian missions are not covered by the legislation.

decision-making process on ESDP police missions and the Interior Committee is not involved in the scrutiny of civilian ESDP operations.

Parliament approves funds for external operations as part of the yearly defence budget law. However, it is an 'expandable budget', meaning that a small amount of spending is forecast in the MOD budget and it is increased during the year by using the Emergency Fund, under the administration of the Ministry of Economy. There is no requirement for parliamentary approval when money is transferred from this fund.²⁷

Since the Spanish parliament has the power of prior approval for all international military operations, post hoc scrutiny has been somewhat neglected. The government has pledged to limit the number of personnel it will deploy in all missions abroad to a maximum of 3,000 persons.²⁸ Parliament frequently receives information about the number of total deployments and also about ESDP operations. However, ESDP missions have aroused limited debate. There were no committee hearings or questions about ESDP missions in parliament. Members of the Defence Committee have visited troops deployed in Afghanistan, BiH and Kosovo.

The level of parliamentary involvement in military operations is considered to be satisfactory by most MPs. The military is also pleased with parliamentary approval as it gives political and democratic legitimacy to the military deployments abroad. It was suggested that ESDP scrutiny could also be performed by inter-parliamentary organisations such as the WEU Parliamentary Assembly, which should be endowed with powers for post hoc scrutiny, like summoning European and national officials to hearings.

United Kingdom

The bicameral parliament of the United Kingdom does not have powers to formally approve any aspect of British contributions to ESDP operations. However, the parliament does exercise a scrutiny role over CFSP and ESDP, most actively through the European Union Select Committee of the House of Lords, and more precisely through its Sub-Committee C handling foreign affairs, defence and development policy. The Committee has a mandate to approve all legally-binding decisions of the Council of Ministers before the

²⁷ This "*presupuesto ampliable*" started in 2006 for example, with an allocation of €10 million, approved by parliament within the defence budget. At the end of the year it reached around €450 million, with the additional money coming from the Emergency Fund.

²⁸ At present this number is approximately 2500. The maximum number of Spanish deployments was 4200 when the pledge was made and at the time they also had troops in Iraq.

government signs them, thus implying *ex ante* approval power.²⁹ The Sub-Committee receives a draft agreement from the government, accompanied by an 'explanatory memorandum'. It may: approve the document; hold the document under a scrutiny reserve, requesting further information or clarification; or conduct a full inquiry. If the government proceeds to sign a Joint Action without approval from the Committee, it is deemed an 'override', which is not desirable for the government, but is not legally prohibited.³⁰ The Sub-Committee's mandate is document-oriented, so civilian and military missions are scrutinised equally.

Despite these powers, the realities of ESDP decision-making are such that *ex ante* scrutiny over ESDP is difficult to exercise in practice. The government may deposit a draft Joint Action for the Committee's approval, already agreed in Brussels, which though not yet legally binding is essentially politically binding. Additionally, it is frequently the case that a Joint Action is not deposited in time for *ex ante* approval. During negotiations over the EUBAM Rafah Mission, the government wrote to warn the Sub-Committee that it may not deliver the documents for scrutiny in time to secure approval for signing the Joint Action in Brussels. It nonetheless made an effort to keep the Sub-Committee informed of developments.

The Sub-Committee is kept informed of ESDP through various means. ESDP reports by EU Presidencies receive close interest from the Sub-Committee members, to provide forewarning of upcoming issues as well as ongoing missions. Also, the UK Minister for Europe, who has responsibility for ESDP operations, appears before the Sub-Committee twice per year, as do senior officials from the Ministry of Defence and Foreign and Commonwealth Office (FCO).

The Defence Committee of the House of Commons plays a marginal role in ESDP oversight. The Committee's mandate is to scrutinise the work of the MoD, whereas ESDP policy is primarily the jurisdiction of the FCO. The Committee does have the power to scrutinise the UK's military budget, yet it is a blunt instrument of oversight, since budgetary endorsement does not allow for approval of specific ESDP operational budgets. The Defence

²⁹ The core scrutiny power of the Lords Committee derives from the Scrutiny Reserve Resolution, of 6 December 1999, which commits the government to awaiting the completion of parliamentary scrutiny before agreeing to a legislative proposal in the Council of Ministers. It expressly does not give power to mandate ministers or force their hand.

³⁰ Nonetheless, the government is expected to justify its decision to override the Committee in writing. All overrides are listed in the Committee's Annual Report.

Committee has not been directly involved in oversight of any of the ESDP operations in question.

The interviewees in the UK diverged in their perceptions of the need to strengthen national parliamentary accountability for British involvement in ESDP operations. The wider issue of the democratic legitimacy of the royal prerogative in troop deployment has become high profile since the war in Iraq, with many supporting a stronger role for parliament. Some parliamentarians argued that parliamentary oversight powers should not be extended in the area of ESDP operations, due to the time constraints imposed by the nature of ESDP missions and the lack of parliamentary expertise in the field of military operations. It was also suggested that there may be scope for increased parliamentary oversight of the renewal of ESDP mission mandates, as committees would have greater time to scrutinise the progress of ESDP operations.

It was pointed out that there are already several oversight bodies at the inter-parliamentary level (such as the NATO Parliamentary Assembly and the WEU Parliamentary Assembly; see chapters 5 by Marschall and 6 by Hilger in this volume), that exist alongside the EP and national parliaments to form what they perceived as a 'confused' legislative architecture. One interviewee recommended that platforms such as COSAC could provide a valuable forum for national parliaments to exchange ideas and experiences relating to ESDP scrutiny. The opaque decision-making process of the General Affairs and External Relations Council of Ministers in Brussels was ultimately considered to be a primary impediment to legislative oversight, be it at the national or European level (see also Chapter 4 by Barbé/Herranz Surrallés).

Models and best practices of national parliamentary oversight

Based on the EU-wide survey and the case studies conducted for our research, four models of national parliamentary oversight of ESDP may be extrapolated.

- (A) *Prior authorisation role before the adoption of a Joint Action:* Parliament authorises government to proceed with an ESDP mission before the EU Council adopts a Joint Action. By so doing, parliament influences its government's position in the Council debate on the future ESDP mission in question. This practice was followed in Finland, Luxembourg and Sweden.

- (B) *Prior authorisation role before the deployment of troops:* Parliament authorises its government to proceed with an ESDP mission after a Joint Action is adopted by the EU Council but before the deployment of troops abroad. This practice was followed in: Austria, Germany, Cyprus, Czech Republic, Estonia, Ireland, The Netherlands and Spain. Germany and Spain apply this model to military ESDP missions only.
- (C) *Consultative role:* Parliament does not have the formal power of prior authorisation, but it debates ESDP missions, sometimes even before the adoption of the Joint Action by the EU Council. If the government fails to obtain parliamentary support, it may proceed with signing the Joint Action and deploying troops under ESDP auspices. This practice was followed in Belgium, France, Poland, Portugal and the United Kingdom.
- (D) *No role:* Parliament is neither informed nor consulted about imminent ESDP missions, even when the country deploys troops in the operation. In Bulgaria, Greece and Romania, parliament is involved in neither military nor civilian ESDP mission decisions. In Cyprus, Estonia and Spain, parliament is not involved in civilian ESDP mission decisions.

These models indicate that it is feasible to involve parliament at an early stage of the ESDP decision-making process, contrary to the commonly held assumption that slow parliamentary procedures do not allow sufficient time for parliaments to be given a strong *ex ante* role in crises management decision making.

- In Finland, Sweden and Luxembourg, parliamentary approval is given before the Council has adopted a Joint Action, which means that parliament influences its government's position in the Council debate on the future ESDP mission in question. After receiving notice of a proposal for a Joint Action establishing an ESDP mission, the government in these countries informs parliament without delay. The government explains and justifies its negotiating position and is obliged to take into account parliament's views.
- If only from a consultative position, parliaments in UK or France also get involved in early stages of the decision making process, by giving political clearance to binding EU documents regarding ESDP.
- Before the EU Council meets to decide upon a Joint Action, in the Netherlands the government is *de jure* obliged to supply parliament with information about the annotated agenda of the upcoming EU

Council, including upcoming deployments of troops abroad. This leads to a *de facto* approval power of parliament.

In 14 out of 25 countries, parliaments give prior authorisation to national deployments in military ESDP missions. However, when parliament's consent is asked *after* the Joint Action is adopted by the EU Council, the power of prior approval is often more theoretical than practical; national legislatures are in this situation left to approve a *fait accompli* which has already been decided on by their governments in Brussels.

- To ensure rapid parliamentary decision-making for rapid deployments, parliamentary prior approval is required in Finland for the assignment of national troops to stand-by units, including an EU Battlegroup. For the deployment of a stand-by unit in operations, only the Foreign Affairs Committee must be consulted.
- In the Netherlands, procedures allow parliamentary debate and approval of deployments abroad to be dealt with within one day.
- German law leaves parliament to decide whether a mission is of sufficient importance to merit involvement. For missions of low intensity and importance, a government request is circulated among the members of parliament and it is considered to be approved unless, within seven days, one faction or a minimum of five per cent of parliamentarians call for a formal approval procedure. For the same reason legislation authorises a committee to give prior approval in the case of minor national participation in a mission: in Denmark (observer missions), in Ireland (when less than 12 persons are deployed) and in Finland (for less than 10 persons deployed).

Independent of the power of prior approval, parliaments can influence early stages of decision making process on ESDP through other means:

- In order to avoid overstretch of personnel deployed abroad, parliament and government may set various types of deployment thresholds, based on: a financial ceiling (e.g. in Finland, currently set at 100 million Euros per year); a troop limit (e.g. Spain 3000 troops, Finland 2000 troops and Lithuania 420 troops); or a geographical restriction (e.g. in Lithuania).
- Representatives of parliament take part in discussions about deployments abroad in executive bodies. In Portugal, parliament is represented by three members in the Superior Council for National Defence, the executive body that decides on deployments.

- Despite no legal obligation to do so, the Czech government seeks prior parliamentary approval of ESDP missions as part of customary practice.

Conclusions and recommendations

On the basis of the study into parliamentary oversight of ESDP missions, we conclude that a democratic deficit exists at the national level. In spite of the many good national oversight practices which we have identified, the present lack of uniformity in parliamentary oversight powers has negative consequences on the effectiveness of the parliamentary oversight architecture. Indeed, a real possibility exists that an ESDP mission (or EU battlegroups) will be dispatched without national parliamentary approval if the specific troop contributing countries are all countries with no role for parliament in military or civilian deployments abroad (see also chapter 2 by Lord).

The democratic deficit aggravates in the case of civilian missions, because current parliamentary oversight procedures and practices cover military deployments (if at all) but hardly civilian police deployments. Only 10 out of 25 national parliaments have the power of prior authorisation for civilian ESDP missions. Due to their smaller size, lower costs and lower political risk, civilian missions also attract less attention from members of parliament than military missions. This reality is quite significant given the fact that eight out of 10 current ESDP missions are civilian.

The study also sheds new light on the meaning of prior authorisation power in the case of deployments under the flag of the EU. Prior parliamentary authorisation only makes sense if parliamentary approval is given prior to the Joint Action decision to deploy troops by the EU Council of Ministers. If parliament approves the mission after this Council decision, it will be confronted with a *fait accompli*. Therefore, prior authorisation should be prior to the EU Council Joint Action decision. *Ceteris paribus*, the same applies to deployments under the banner of the NATO and the UN.

National parliaments need to assess their powers in the light of ESDP decision-making in Brussels. Upgrading prior authorisation rules to enable parliaments to debate and authorise decisions before a Joint Action decision is made by the Council (as is already the case in Finland) would be one important step. The parliaments of troop contributing states could also conduct impact evaluations as well as financial audits of past expenditures related to ESDP missions. The many good practices identified in this chapter prove that improved ESDP oversight is possible, but political will is needed to implement such procedures and customary practices.

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Chapter 4

The power and practice of the European Parliament in security policies

Esther Barbé and Anna Herranz Surrallés

Autonomous University of Barcelona/Institut Universitari d'Estudis Europeus and Institut Universitari d'Estudis Europeus

Introduction¹

When the EU started to officially develop its security and defence dimension in 1998, the involvement of the European Parliament (EP) in this domain was far from being considered a necessary and self-evident development. This was, on the one hand, because the European Security and Defence Policy (ESDP) was born as a strictly intergovernmental activity; thus national parliaments simply remained the natural locus for the scrutiny of governments' performance in this new EU policy area. And on the other, because the primary concern of ESDP architects was to ensure its efficiency and efficacy, for example through the establishment of flexible arrangements for cooperation among groups of states as well as flexible budgetary procedures outside the EU framework; scant room therefore seemed to be left for parliamentary oversight at supranational level.

Less than a decade after the first steps of ESDP, however, the Parliament has a role to play in security and defence policies. Two developments illustrate this statement: first, the Treaty of Lisbon has formally extended to ESDP the same information, consultation and debating rights conferred to the Parliament in the Common Foreign and Security Policy (CFSP); and second, in 2004 the European Parliament set up a Subcommittee on Security and Defence

¹ The authors are grateful to all the members of the EP's Secretariat, the Policy Department and political groups that kindly agreed to be interviewed for the writing of this chapter.

(SEDE) which is striving to become a fully-fledged parliamentary committee.² Even though the Parliament's powers are of a very limited nature, its association with security and defence issues is an indication that even the more intergovernmentalist core of EU activity has not been able to live and grow completely outside the EP's reach.

This chapter examines the European Parliament's role in different areas of European security policy in order to assess why, how and to what extent supranational parliamentary oversight is performed in this issue area. Three concrete security-related issues are reviewed: (i) ESDP operations, (ii) arms control and (iii) EU intelligence services in the context of the fight against terrorism. These areas have been selected so as to reflect different possible intersections among the institutional settings that govern European security policies: ESDP, CFSP and Justice and Home Affairs (JHA). At the same time, the three cases selected deal with the issues described as the key threats to the security of the Union: regional conflicts and state failure, proliferation of Weapons of Mass Destruction, and terrorism (European Council 2003).

The chapter proceeds as follows: the first section is dedicated to a brief overview of the evolution of the EP's legal powers in CFSP. After having outlined the general limits in which the Parliament operates, the second section turns to the evaluation of the EP's practice of oversight in concrete cases. The remainder serves the purpose of highlighting some open questions in the parliamentary oversight of security policies and summarising the findings about the state and prospects of supranational input legitimacy of European security policies.

Evolution of the Parliament's legal powers in foreign and security policies

Since its institutionalisation in 1993, CFSP has experienced a high-speed development in terms of functional and geographical scope and institutional complexity. Accordingly, Title V of the Treaty on European Union (TEU) on the CFSP has been subsequently modified by the Treaties of Amsterdam, Nice and Lisbon. Conversely, the main legal tools at the disposal of the Parliament to oversee the EU's performance in this policy domain remain anchored in the prerogatives of Article 21 of the TEU already established by

² The Subcommittee on Security and Defence is made up of 36 MEPs, supported by a Secretariat comprising 8 staff and other expert staff within the Directorate-General for External Policies (including the Policy Department, which was also set up in 2004). During the Sixth parliamentary term (2004–2009) there is only one other Subcommittee, that of Human Rights (DROI). Both Subcommittees are part of the Committee on Foreign Affairs (AFET), the biggest Committee of the Parliament with a total of 86 members.

the Maastricht Treaty (Article J.7). The prerogatives laid down in this article have been labelled “soft accountability powers” (Diedrichs 2004) or “tribunitian functions” (Larhant 2005), since they give the EP a modest informative, consultative and debating role.³ While it is true that a closer examination of the successive Interinstitutional Agreements (IIAs) agreed between the Parliament, the Council and the Commission offers a more complete picture of the evolution of the EP’s authority in CFSP and ESDP,⁴ the informal increase of powers through IIAs should not be exaggerated. This section is intended to highlight the successes and limits of the Parliament’s struggle for powers in CFSP. Three aspects are reviewed: information, consultation and budgetary powers.

Information without consultation

From the point of view of the European Parliament, the most promising provision of the former Art. J.7 was that “the Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy”. However, this requirement of consultation very soon proved to be as promising as it was difficult to implement. Due to its vague wording, it was not clear whether the consultation was to be *ex-ante* or *ex-post*; and more crucially, there was no specification of what CFSP activities were to be considered as “main aspects and basic choices of the CFSP”. Ever since 1993, the Parliament has tried to pin down the obligations for the Council and the Commission deriving from the TEU, while the Council has continued to favour a relaxed understanding of the EP’s rights.

The first annual reports of the European Parliament on the implementation of the CFSP already served the purpose of highlighting major disagreements with the Council over compliance with the newly established Treaty obligations. The Parliament demanded, for example, more regular written information, specifically in the form of a yearly report from the Council on the progress reached by the Union in CFSP (European Parliament 1995). The reports also complained about the lack of attention the Council had paid

³ The exact wording of the former Art. J.7 of the TEU is: “The Presidency shall *consult* the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly *informed* by the Presidency and the Commission of the development of the Union’s foreign and security policy. The European Parliament may ask *questions* of the Council or make *recommendations* to it. It shall hold an annual *debate* on progress in implementing the common foreign and security policy” [emphasis added].

⁴ The content and context of the negotiation of the most important IIAs have been described in detail by other authors: Diedrichs (2004); Maurer *et al.* (2005); Thym (2006).

to the Parliament's views, stressing that the Council had ignored the recommendations submitted by it, neither mentioning them in the Council's decisions, nor giving any explanations for their acceptance or rejection (European Parliament 1996). The strongest case was made, however, with the consultation prerogative, which was understood by the Parliament in a quite demanding way as an *ex-ante* power covering all CFSP acts. Specifically, the EP urged the Council to

consult *beforehand* on the *positions* and common *actions* which it intends to adopt, forward to it as a matter of priority draft *declarations* and *decisions* and allow it a reasonable period of time for it to express any reservations on any text before it is published. [Emphasis added]

(European Parliament 1996)

Three interinstitutional agreements (adopted in July 1997, November 2002 and May 2006⁵) would contribute to narrowing the obligations of the Council and the Commission as regards the information rights of the Parliament, and to a lesser extent, those of consultation (see Table 4.1). The IIA of 1997 was a major step forward in the information provisions, since it introduced for the first time a reference to the right of the Parliament to know about the implementation of specific CFSP measures and the expenses involved. Another major step in the information rights of the Parliament came with the IIA of 20 November 2002 concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy. By virtue of this agreement, a Special Committee within the Parliament was set up, consisting of five MEPs (supported by some members of the Secretariat) who had right of access to confidential documents.⁶ Of course, the IIA of 2002 does not include the whole range of secret information, and member states and third parties still have the chance to deny access to documents that concern them. However, this IIA represents the

⁵ The IIA of 16 July 1997 is referenced in the "Resolution on the proposal for an Interinstitutional Agreement between the European Parliament, the Council and the European Commission on provisions regarding financing of the Common Foreign and Security Policy", *Official Journal of the European Communities*, C 286, 22.09.1997, p. 80. The complete reference of the IIA of 20 November 2002 is: "Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy", *Official Journal of the European Communities*, C 298, 30 December 2002, p.1-3. And finally, the IIA of 17 May 2006 is: "Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management" *Official Journal of the European Communities*, C 139, 14 June 2006, p. 1-17.

⁶ The Special Committee is chaired by the Chairman of the AFET and composed of four members designated by the Conference of Presidents, among them the Chairman of SEDE.

acknowledgement of the EP's right to be seriously engaged in political dialogue in foreign and security policies.

In 2005 and 2006, in the run-up to negotiations over a new IIA on budgetary discipline and sound financial management, the Parliament decided to take a clear confrontational stance in order to obtain true consultation rights. For example, in its annual report on CFSP of 2004, issued in late 2005, the Parliament even mentioned the possibility of appealing to the European Court of Justice (ECJ) to denounce the Council's practice of only informing about past activities, instead of consulting the Parliament as stipulated in the Treaties.⁷ But the toughest battle took place when the EP played the budgetary card. When negotiating the budget exercise of 2006, the Parliament decided to reduce by 50 per cent the CFSP budget proposed by the Council as a move to press for the inclusion within the IIA of clearer consultation mechanisms in this policy domain. The result of this bargaining was the introduction of two articles (42 and 43 of the IIA of 2006) whose main novelty was the "Joint Consultation Meetings" procedure.

After that, the EP agreed to re-establish the amount of 159.2 millions euros initially planned for CFSP (Fernández 2007: 144). It must be acknowledged, however, that the prerogatives obtained in the IIA 2006 were neither that significant in terms of consultation nor were they completely innovative. In fact, measures such as the Joint Consultation Meetings had already been informally in place since 2003.⁸ Besides, despite the label these meetings are not part of a consultation framework, but are meetings at which the EU Presidency (through the Political and Security Committee) informs the Parliament (represented by the Committees of Foreign Affairs and of Budgets) about CFSP matters in a framework of regular political dialogue (see Table 4.1).

⁷ This was, of course, not possible due to the fact that the European Court of Justice has no jurisdiction over CFSP, but it was part of the Parliament's strategy to trigger the interinstitutional conflict before the negotiation of the new IIA in 2006.

⁸ See "Declaration of November 2002 of the European Parliament, the Council and the Commission on financing the CFSP in accordance with the IIA of 6 May 1999". And an exchange of letters referred to in the minutes of an ECOFIN meeting on 24 November 2003 (quoted in Thym 2006: 116).

Table 4.1: Evolution of the information and consultation rights (including financial aspects) of the Parliament in the CFSP

Information	TEU 1992	IIA 1997	IIA 2002	IIA 2006
	<p>The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.</p>	<p>The Presidency shall on a regular basis inform the European Parliament on the development and implementation of CFSP actions.</p>	<p>The European Parliament shall be kept regularly informed by the Council Presidency and the Commission of the development of the common foreign and security policy. <i>A mechanism should be introduced to ensure that these principles are implemented in this field.</i></p> <p>The President of the European Parliament and a <i>special committee</i> shall be informed by the Presidency of the Council or the Secretary-General/High Representative of the content of the sensitive information.</p> <p>In the case of a <i>refusal</i> of the transmission of information originating from a third State, an international organisation or a Member State, <i>the Council shall give the reasons.</i></p>	<p>The Presidency will keep the European Parliament informed by <i>holding joint consultation meetings at least five times a year</i>, in the framework of the regular political dialogue on the CFSP.</p>
		<p>The Council shall, each time it adopts a <i>decision in the field of CFSP entailing expenses</i>, immediately and in each case communicate to the European Parliament an estimate of the costs envisaged ('fiche financière').</p>	<p>[Subject not addressed]</p>	<p>Whenever it adopts a decision in the field of the CFSP entailing expenditure, the Council will immediately, and <i>in any event no later than five working days following the final decision</i>, send the European Parliament an estimate of the costs envisaged ('financial statement').</p>

	TEU 1992	IIA 1997	IIA 2002	IIA 2006
Information		The Commission shall inform the budgetary authority on the execution of CFSP actions and the financial forecasts for the remaining period of the year on a quarterly basis.	[Subject not addressed]	[No change].
Consultation	The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration.	On a yearly basis the Presidency of the Council shall consult the European Parliament on a document established by the Council on the main aspects and basic choices of the CFSP, including the financial implications for the Communities budget.	[Subject not addressed]	Each year, the Council Presidency will consult the European Parliament on a <i>forward-looking Council document</i> , which will be transmitted by June 15 for the year in question, setting out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the European Union and an evaluation of the measures launched in the year n-l.

Source: Own compilation.

To sum up, the Parliament's rights of information have gradually become more and more specified, with non-negligible mechanisms such as the Special Committee or the joint consultation reflecting a growing interinstitutional trust in CFSP matters; but in the domain of consultation the EP has experienced time and again the impossibility of pushing for more concrete obligations. An *ex-ante* consultation in line with the "consultation procedure" of the first pillar has remained unattainable. The Treaty of Lisbon does not offer substantial changes, except for the already mentioned extension of Article 21 provisions to the ESDP.

Partial budgetary authority

The financing of CFSP was also a major issue of interinstitutional dispute from the very first years of implementation of this policy. To be sure, Article J.11 of the TEU concerning the financing of the CFSP contained provisions with a high degree of potential contentiousness. Firstly, the Council could decide whether to charge the CFSP operational expenditure to the Communities' budget (following the normal budget procedure) or finance it from the member states' contributions (without the Parliament's involvement), but with no clear criteria determining the use of one source or the other. Secondly, the Treaty introduced the problematic distinction between operational and administrative expenditures, whereby the latter is always financed through the EC Budget. The insertion of CFSP expenditure under the administrative category had important institutional implications given that, by virtue of the Gentlemen's Agreement of 1970, the Council's administrative expenditure is not subject to the scrutiny of the European Parliament.

During the first years of running of the CFSP, the above-mentioned structural limitations for the EP, together with the lack of an IIA specifying the budgetary procedures for the CFSP, made the financing of this policy an issue of serious interinstitutional friction. Initially, the Council was inclined to avoid the use of the Community budget as far as possible, and when it did so, it used mechanisms of dubious legal basis. For example, in a broad interpretation of the administrative expenditures, the Council financed a wide range of actions from the Community budget using this category of costs, thus avoiding parliamentary scrutiny. Or more deviously, the Council pressed the Commission to use ordinary Community funds from various budget lines for CFSP purposes, thus intergovernmentalising the use of the Community budget through the back door. Since the European Court of Justice (ECJ) has no jurisdiction over CFSP matters, the EP could not block any of these practices. The Parliament tried several times to negotiate an Interinstitutional

Agreement on the CFSP with the Council and the Commission, but the Council did not show any predisposition to negotiate (Monar 1994, 1997).

Ever since, the Parliament has lobbied for more control over the budgeting of the CFSP expenditure and over the appropriation of Community funds for urgent actions. The already mentioned IIA of 1997, which was later integrated into the IIA of 1999 on the budgetary procedure for the period 2000–2006,⁹ introduced some clarity in this regard. As seen in the previous section, the 1997 IIA mentioned for the first time the Council's obligation to communicate to the EP the envisaged costs of all CFSP decisions entailing expenditure (see Table 4.1). The "financial statement" referred to in the IIA had to include aspects such as the time frame, the staff employed, the use of infrastructure, transport facilities, training requirements or security arrangements. The 1997 IIA also served to formalise the general budgetary procedure for the CFSP.¹⁰ Specifically, it established that each year the Parliament and the Council would have to reach an agreement on the overall amount of CFSP expenditure and that an *ad hoc* consultation procedure should be set up to ensure an agreement. If an agreement was ultimately not reached, the amount allocated to the CFSP chapter would remain the same as in the previous year. More remarkable was the clarification of the mechanism for the financing of urgent measures and further appropriation of funds from other chapters. On the financing of urgent actions, a new article was included for that purpose the amount of which could not exceed 20 per cent of the global amount of the CFSP chapter. And regarding additional appropriations, it was established that in case the CFSP budget proved to be insufficient, transfers from other chapters would have to be agreed between the Council and the Parliament, thus giving the EP further control over specific CFSP activities.

The significant changes introduced by the 1997 IIA could be regarded as a result of the tenacity of the EP, but in fact, other factors such as the Council's pragmatism also played a role. In particular, the financing of activities through member states' contributions in a burgeoning area of activity proved very soon to be inefficient. Financing CFSP from the Community budget could be considered to be a more viable solution (Maurer et al. 2005). However, from the Council's perspective, financing the CFSP through the Community

⁹ Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, *Official Journal of the European Communities*, C 172, p. 1–22.

¹⁰ Some of the provisions of the IIA 1997 were backed by an Opinion of the Court of Auditors on the Common Foreign and Security Policy, No 1/97, 10 April 1997, issued in response to a request from the European Parliament.

budget did not prove to be trouble-free either. Negotiations on the CFSP budget in the following years were tough and the draft budget by the Commission and the amounts proposed by the Parliament usually fell behind the Council's ambitions (Monar 1997; Thym 2006).

The European Parliament has also had considerable success in preventing the Council's abuse of the category of administrative expenditures for financing CFSP activities without the Parliament's oversight. A case in point is the Council's practice of considering the costs incurred by the EU Special Representatives as administrative expenses. The European Parliament expressed on many occasions that since the activity of the EU Special Representatives is derived from a Joint Action, the expenditure had to be counted as operational. Moreover, this has to be framed in the context of an ever-growing criticism of the EP towards the proliferation and role of Special Representatives, which were soon deemed to be a factor of intergovernmentalisation of CFSP that risked undermining the role of the European Commission's delegations. In the end, the Parliament forced the inclusion of the Special Representatives expenditure under the operational category by threatening to put an end to the Gentlemen's Agreement. The Parliament's claims on that issue were clearly backed by a report of the Court of Auditors on the financing of the CFSP which was elaborated at the request of the European Parliament.¹¹

Less success has been achieved in the financing of ESDP, particularly in the operations with a military character. As established by the Treaties, CFSP expenditures arising from operations having military or defence implications are to be charged to the member states (Art. 28 TEU). With the launch of the first ESDP military operation in 2003, the EP brought to the fore the problem of ESDP extra-budgetary financing. Aware of the difficulty of changing the Treaty's provisions on this matter, the Parliament pressed for the revision of the IIA on budgetary procedure in order for the "common costs" of military operations in the framework of the ESDP to be financed from the General EU Budget. This was not attained in the IIA of 2006, which continued to refer only to the budgetary line of "crisis management operations", but not "conflict management", thus maintaining the distinction between civil and military components of ESDP. Some have argued that the Parliament's "budgetary blackmailing" during the previous years resulted in

¹¹ See the recommendations on "Operating versus administrative costs" of the Court of Auditors' "Special Report No 13/2001 on the management of the common foreign and security policy (CFSP), together with the Council's replies and the Commission's replies", *Official Journal of the European Communities*, C 338, 30 November 2001, p. 14.

the Council's increasing reluctance to seeing more budgets kidnapped by the EP (Thym 2006).

Certainly, the prospects for an increase in the Parliament's powers in financing CFSP and ESDP are not promising. In fact, the Lisbon Treaty not only maintains the status quo, by including some of the provisions of the 2006 IIA, but it could even reduce the Parliament's authority. The new Article 26 (Article 28 TEU) stipulates that "the Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy". In this case, the EP would only be consulted, whereas the IIA 2006 establishes that the Parliament and the Council must seek a solution to obtain extra financing. Of course the EP can still use its budgetary power, but the Parliament is well aware of its institutional limits and the risks that an overuse of the budgetary card would entail for its credibility.¹²

The Parliament's oversight in practice

This section moves from the hieratic questions of authority to the more flexible terrains of political and institutional praxis. Even within the limits of its authority, Parliament has considerable room for manoeuvre in deciding the level of oversight it is disposed to carry out on European security policies. The following three subsections illustrate the importance of the practice of oversight.

ESDP operations

The Parliament kept an eye on the ESDP developments from the very inception of this policy. Even before the launching of the first operations, the EP insisted on the need to be granted a role in its approval and financing. At the beginning, the Parliament was quite ambitious in this regard. For example, in 2003 the EP claimed that crisis management operations needed prior parliamentary consultation and approval by an absolute majority of the Parliament (European Parliament 2003). It also insisted that the EP should be responsible for approving the mandate and objectives of any crisis management operation under the ESDP as well as for the costs incurred by the EU joint actions.¹³ Up to date, these ambitions have fallen short of the Parliament's actual role, especially as regards the ESDP military operations.

¹² Interview at the European Parliament, 23 November 2007.

¹³ The report also proposed that the competent committees of the EP and national parliaments should meet whenever a major EU crisis operation was envisaged by the Council (European Parliament 2003).

However, the Parliament's use of its information and debating rights as well as its budgetary powers in this domain should not be underestimated.

The EP has been successful in increasing the flow of information received from the Council about ESDP operations. The setting up in 2004 of SEDE, the Subcommittee on Security and Defence within the Committee on Foreign Affairs (AFET), has contributed to this increase, given that SEDE's main responsibility is precisely to monitor the ESDP civilian and military operations. In 2005 the Chairman of the SEDE mentioned the objective of discussing one or two of the ESDP missions under way at each meeting of the Subcommittee, in which usually a representative each from the Council and the Commission actively participates.¹⁴ For some years now, dialogue with the Council has included the standard practice that the Ambassador of the country holding the EU Presidency informs the Subcommittee on its programme and developments in ESDP.¹⁵ As can be seen in Table 4.2, SEDE has discussed ESDP missions with the responsible institutions, mainly from the Council, at about two thirds of the meetings. Discussions increasingly include possible future missions, which is very important for making the Parliament aware of new ESDP dossiers from the outset. The Council officials that attended SEDE meetings also spoke about lessons learned, challenges to civil-military cooperation or capabilities. Therefore, even if the information given is not "top secret", these discussions help the Parliament to develop long-term strategic thinking.¹⁶

In order to improve the quality of information, the Committees concerned frequently decide to deal with certain issues "in camera" in order to enable the Council to give all the members of the Subcommittee some sensitive information on topical issues such as ESDP missions. Of course, debates "in camera" do not imply that the members of the Subcommittee are given information about particularly sensitive issues, as for example on policy scenarios in ESDP operations, because the meeting rooms are not secured,¹⁷ but it is of notable significance that the MEPs of the Special Committee potentially have access to documents such as the Crisis Management

¹⁴ Minutes of the meeting of the SEDE of 01 December 2005.

¹⁵ Even some ESDP bodies which fall beyond the EP's jurisdiction such as the Military Committee and the Military Staff have appeared before SEDE.

¹⁶ SEDE has especially been working on building confidence with the Council, for example through sending delegations to the next country holding the EU Presidency to meet with relevant ministries concerned (Defence, Foreign Affairs, but also Interior).

¹⁷ The members of the Subcommittee have been active in denouncing the lack of information, most notably in the case of the EUSEC mission in the Democratic Republic of Congo. In this case, the Subcommittee decided to send a letter to the SG/HR Javier Solana to request a briefing on the EUSEC mission (see minutes of the meeting of 13 October 2005).

Concept, the document that contains the practical planning for an EU military operation.¹⁸ Although security-cleared MEPs cannot share this confidential information with other MEPs, it can be useful for them for giving general advice for the EP's positioning. However, with regard to the mechanism of the Special Committee, some complaints have been voiced about the classification by the Council of sensitive information which is sometimes considered by the MEPs of this Committee to be only of a general nature.¹⁹

Table 4.2: Exchange of views between SEDE and the Council/Commission on ESDP operations during the first half the 2004-2009 parliamentary term.

<i>Date</i>	<i>Institution</i>	<i>Subject</i>
28.07.04	Directorate General of the European Union Military Staff	Forthcoming take-over of the SFOR Mission in Bosnia-Herzegovina by EUFOR (ALTHEA)
01.09.04	EU Operation Commander	ALTHEA Mission in Bosnia-Herzegovina
28.11.04	DG Crisis Management operations, Council, General Secretariat	Conflict Prevention and Crisis Management
28.11.04	DG External Relations	Conflict Prevention and Crisis Management
18.04.05	Council	EUPOL Kinshasa police mission in the Democratic Republic of the Congo
20.06.05	Political Security Committee	current ESDP operations (Althea, EUPOL, Proxima, EUJUST Themis, EUJUST, Kinshasa, EUJUST LEX); possible future ESDP operations (Palestine, Georgia, Indonesia/Aceh),
11.07.05	Council Secretariat	"AMIS II" mission in Darfur and the support of the EU
13.10.05	Council, Task Force Western Balkans	Situation in the Balkans, with special emphasis on Kosovo and FYROM
13.10.05	European Commission	Border Assistance Mission in Moldova
26.01.06	Political Security Committee	Follow-up of the ongoing and possible future (DR Congo, Kosovo) ESDP missions or operations
26.01.06	DG E IX, Council	EUPOL COPPS and EU BAM Rafah in the Palestinian Territories
04.05.06	DG.E VIII, Council secretariat	EUFOR DR Congo mission
20.06.06	Political Security Committee	Launching of the EUFOR DR Congo operation; CIVMIL cooperation; continuation of the ALTHEA operation in Bosnia-Herzegovina; preparation of the future police mission in Kosovo

¹⁸ Interview at the European Parliament, 22 November 2007.

¹⁹ This was the case, for example, with the document entitled "Generic standards of behaviour for ESDP operations", in relation to which the Chairman of SEDE demanded to be removed from the classification of sensitive information.

<i>Date</i>	<i>Institution</i>	<i>Subject</i>
12.07.06	Political Security Committee	Follow-up of the ongoing 12 ESDP operations with particular emphasis to EUFOR DR Congo and the future police mission in Kosovo
12.09.06	DG VIII, Council Secretariat	EUFOR operation in the DR Congo
03.10.06	Commission	EU Border Assistance Mission to Moldova and Ukraine
27.11.06	Political Security Committee	Operations in: DR Congo, Sudan (Darfur), Bosnia-Herzegovina, Kosovo, Palestine and Indonesia (Aceh).
22.01.07	Political Security Committee	Follow-up of the ongoing and future ESDP operations
22.01.07	Aceh Monitoring Mission, Council	ESDP mission in Aceh.
19.03.07	EU Military Committee	Ongoing as well as upcoming ESDP operations in Bosnia and Herzegovina (ALTHEA), the Democratic Republic of Congo (EUFOR DR Congo, EUSEC DRC), Kosovo (future rule of law mission), and Afghanistan (police mission).
03.05.07	GD VIII, Council Secretariat	Relations between EU and NATO, including the implementation of Berlin Plus (EU missions in Sudan and Afghanistan, and on the building of capacities)
28.07.07	Political Security Committee	Ongoing and potential ESDP missions (Kosovo, Operation ALTHEA in Bosnia-Herzegovina, Afghanistan, DR Congo, Palestine, Sudan, Chad, Guinea-Bissau)
17.08.07	Political Security Committee	ESDP missions (Kosovo, Operation Althea in Bosnia- Herzegovina, Afghanistan, DR Congo, Palestine, Sudan, Chad, Guinea-Bissau)
05.11.07	DG E VIII, Council Secretariat	EUFOR Chad/Central African Republic.

Source: authors' compilation from the minutes of SEDE meetings.

Another privileged channel of information is provided by the ad-hoc delegations that the EP sends to supervise ESDP missions. Despite procedural restrictions,²⁰ the Subcommittee has been active in sending ad-hoc delegations for example to Althea in Bosnia Herzegovina (April 2005), EUFOR, EUSEC and EUPOL in DR Congo, both to the Headquarters in Potsdam (July 2006) and to Kinshasa (November 2006). Some delegations have even been sent to explore the situation before the ESDP operation was launched, as in the case

²⁰ In the case of SEDE, the Subcommittee has a limit of 18 MEPs (i.e. half of the Subcommittee) that can go on an ad hoc mission, out of which only 1/3 (six MEPs) may travel outside Europe. The composition of the delegations might vary from one to even a dozen MEPs and can be made up of parliamentarians from different Committees and, in some cases, the chairman of the competent interparliamentary delegation.

of Kosovo (June 2006) or Chad (August 2007).²¹ The delegations' programmes include talks with the liaison offices of the EU, EU Special Representatives, military experts, headquarters of other institutions operating on location such as the UN or NATO, local authorities and NGOs. The information obtained by these delegations is sometimes even considered to be more valuable than other information provided by high-level officials attending SEDE or AFET.²² The information obtained by the delegation is compiled in a report (normally restricted), which functions as part of the institutional memory and can later be used in the formulation of questions and reports.

Regarding consultation, even though there is no provision for the Parliament to give its opinion or make recommendations before the launching of ESDP operations, the EP has started to do this in some cases.²³ In fact, the Chairman of SEDE set out the objective of adopting a resolution or recommendation before each ESDP mission or operation. This was considered "a matter of principle" in order to develop parliamentary control over ESDP.²⁴ So far, the Parliament has not been able to accomplish this aim, especially in the case of the civilian missions, in part due to the workload of MEPs and AFET and SEDE's Secretariat, which cannot give priority to small civilian missions; but also to the lack of interest of MEPs in certain ESDP operations.²⁵ The Parliament is nonetheless seeking to have its recommendations taken into account by the Council, for example by being referenced in the Joint Action launching the mission. In particular this was sought in the case of the resolution on the ESDP operation in Chad and the Central African Republic (CAR) in September 2007 (European Parliament 2007a). The wording of the resolution reflects this ambition since it states that the EP "approves" the mission, while also establishing the conditions to be met for the Parliament to maintain this approval. This resolution was tabled through the political group of the EPP (group of the Chairman of the Subcommittee, Karl von Wogau) and not through AFET in order to get the resolution approved faster, before the Council's Joint Action could be taken. This is of significance since it shows that, if it had the prerogative to do so, the Parliament could react in time to take a stance before the launching of an ESDP operation.²⁶

²¹ SEDE also plans to intensify the sending of delegations to visit the battle groups.

²² Interview at the European Parliament, 20 November 2003.

²³ Some examples are the Althea resolution of 10 November 2004 or the resolution on the criteria for EU peace-keeping operations in the Democratic Republic of Congo of 23 March 2006.

²⁴ See also minutes of the SEDE meeting of 21 February 2006.

²⁵ Interview at the European Parliament, 23 November 2007.

²⁶ For more proposals on how such an approval mechanism of ESDP missions could work, see Nickel/Quille (2007).

In the budgetary domain, the EP oversees the spending related to ESDP civilian operations that falls under the EU General Budget.²⁷ As mentioned in the previous section, the EP has special leverage in cases where the annual CFSP budget is insufficient to implement an ESDP Joint Action inasmuch as the Parliament has to agree on the appropriation of additional funds. Additionally, the Joint Consultation Meetings formally introduced by the IIA 2006 have also contributed to keeping the EP informed about spending for ESDP operations. In this regard, it is noticeable that although it was not foreseen in the 2006 IIA, the Chairman of the SEDE has also begun to take part in these meetings.²⁸ However, the existence of various amounts related to ESDP missions financed through the member states clearly hinders the Parliament's supervisory tasks. In the case of civilian crisis management operations, the costs that the Council decides should be supported by the member states' budgets follow the principle that "costs lie where they fall", i.e., every member state finances its own personnel and equipment. Other intergovernmental sources of financing civilian operations may include the European Development Fund. In the case of the military operations, the costs are exclusively financed by the member states' budgets in line with the above-mentioned principle and by the so-called Athena mechanism. This mechanism consists of a common fund made up of contributions from the member states (except Denmark) and third states participating in the operations to finance the common costs of the military missions such as infrastructure, transportation, administration or communication costs.²⁹

The EP has repeatedly criticised these intergovernmental mechanisms as constituting "shadow budgets" (European Parliament 2004), which prevent an assessment of the financial coherence and effectiveness of ESDP operations. In the context of increased "civil-military" expenditures, the EP has expressed its difficulties in understanding the budgets related to civilian crisis management operations (set-up and running costs) or its structure (such as overheads, administration or operational aspects). The Athena mechanism in particular has earned the harshest criticism for its total lack of democratic accountability, because neither the European Parliament nor the national

²⁷ The ESDP operations without military character are, in principle, charged to the CFSP budget, following the provisions of Article 28 TEU. However, the Joint Action establishing the mission specifies whether any costs will be supported by member states. This normally includes the costs related to seconded national personnel and costs incurred during the preparatory phase of an operation, e.g. fact finding missions.

²⁸ Interview at the European Parliament, 19 November 2007.

²⁹ The organisational structure and procedure of the Athena mechanism is described in the Council Decision 2004/197/CFSP of 23 February 2004, which established that mechanism to administer the financing of the common costs of European Union operations with military or defence implications, *Official Journal of the European Communities*, L63, 28 February 2004, p. 68.

parliaments can monitor the way it is administered. In its turn, the Council has opposed the financing of the military operations from the EU budget on efficiency grounds. For example the High Representative for CFSP argued that even the financing of civilian operations was problematic because “funds can only be disbursed two to three weeks after adoption of the Joint Action launching the operation [...] and delays in procuring essential equipment are frequent and hamper effectiveness”.³⁰ However, examples such as the problems in getting the financing and necessary equipment in the ESDP operation in Chad show that financing through member states’ budgets is not always as “automatic” and “effective” as it is on paper.³¹

Arms control

Issues related to arms control have been on the agenda of the EP since the old days of the EPC. More specifically, the issue of arms exports is one of the Parliament’s traditional security concerns and an area in which it already issued important resolutions in the early 1980s. International arms control and disarmament processes have also kept the EP’s attention for decades. In the 1990s there was even a subcommittee on security and disarmament within AFET. At present, the EP’s main activities in arms control are related to the implementation of the EU Code of Conduct for Arms Exports adopted in 1998 as well as the control of small arms and light weapons (SALW) at an international level, although it also deals increasingly with the non-proliferation of Weapons of Mass Destruction.

In arms exports control, the EP has always favoured mechanisms ensuring responsible arms trade. The EU Code of Conduct adopted in 1998, while not legally binding, was considered by the EP a major development in this respect. The Code of Conduct does not contain any provisions for the Parliament’s involvement in its implementation, but through active participation it has acquired an almost institutionalised role in this area. Since 1998, the EP draws up an own initiative annual report on the implementation of the Code of Conduct, based on the annual report drawn up by the Council. The EP’s progressive “infiltration” in the process of implementation of the Code of Conduct is seen in the increasing relations that the EP has cultivated with COARM (the Council Working Group that deals with arms exports). If at the beginning, the EP worked very much on

³⁰ Cited in “Note: prepared for SEDE meeting of 26 January 2006 on the Financing of ESDP” of the European Parliament’s DG of External Policies for the Union, 25 January 2006.

³¹ Adjectives used by former UK Minister for Europe, Denis McShane, in a Written Answer to the House of Commons, December 2004, para. 484W (quoted in “Note: prepared for SEDE meeting of 26 January 2006 on the Financing of ESDP” of the European Parliament’s DG of External Policies for the Union, 25 January 2006).

its own, there is now an on-going dialogue with COARM.³² For example, the EP's rapporteur on the Code of Conduct is invited to some COARM meetings and, in its turn, COARM attends the meetings of SEDE once per Presidency.³³ Moreover, the Council's Seventh Report on the Code of Conduct started to include a specific chapter on "dialogue with the European Parliament". The fact that the Parliament's annual reports are mentioned in the following annual Council report is an important development, since it satisfies one of the main claims of the Parliament in the CFSP and ESDP domain, which is that its resolutions and recommendations are at least referenced in the Council's reports and acts.

However, affirming that the EP has gained recognition on the issue of arms exports is far from saying that it is able to effectively influence the policy making process. The fact that every member state has different transparency standards makes the information flow very uneven and difficult to assess. Indeed, the Parliament does not examine the Council's report in detail, country by country (this is left to NGOs as well as peace research institutions); and no direct allegations about particular countries are included in the EP's report. The EP works more on lobbying for improving the implementation of the Code of Conduct, e.g. demanding more transparency on the part of the member states; urging the Council to decide on a common basis which countries meet the criteria of the Code of Conduct; or calling for simplified intra-Community transfers in order to avoid indirect exports through member states with looser policies on arms exports. One of the most recent and important developments in this regard was the Parliament's demands for the establishment of measures against the irresponsible brokering of weapons collected in the course of ESDP operations and other external peacekeeping operations involving the EU and its member states (European Parliament 2006a). This demand was the result of a case of irresponsible brokering that an ad-hoc delegation of the EP discovered in Bosnia-Herzegovina. Specifically, MEPs were informed of an alleged transfer of arms collected by the EUFOR Althea to countries such as Iraq and Sudan, where the Code of Conduct stipulated that no arms should be sold. The Parliament's demand for legally binding arms brokering criteria for EU operations abroad is very characteristic for this institution's role in the security domain, since here it is not about supervising individual member states' actions, but about monitoring the responsible behaviour of the EU as a whole.³⁴ Overall, however, the lack of further progress by the member states in implementing the Code of Conduct has even generated a parliamentary

³² Interview at the European Parliament, 21 November 2003.

³³ This practice began with the UK, Austrian and Finnish Presidencies.

³⁴ Interview at the European Parliament, 21 November 2007.

debate on whether it is worth continuing the practice of issuing annual reports on the implementation of the Code of Conduct.³⁵

Another aspect of arms control where the EP has gained salience is in outreach activities such as the promotion of an International Arms Trade Treaty in the framework of the United Nations, aimed at establishing binding common standards on the global trade in conventional arms. The most important development in the Parliament's role in this domain has been its participation at international conferences on that topic, such as the UN Review Conference on Small Arms and Light Weapons that took place in June 2006. Pursuant to the Treaties, only the Commission and the Council may represent the EU before intergovernmental organisations such as the UN. However, in the aforementioned case, an arrangement was found that enabled the Parliament to be represented in the EU delegation: the EP participated through the delegation of Austria, the country then holding the EU Presidency. To assuage the concerns of some member states on the EP's involvement in the UN Conference, prior contacts were established between the Parliament and the relevant Working Group of the Council (CODUN). Before the Conference, the plenary held a debate on this topic and a resolution was issued. The EP was thus able to disseminate its position through its various contacts with national delegations, UN officials and civil society representatives who remained at the sidelines of the conference.³⁶ This experience was deemed an institutional success of the EP, although again, it is difficult to assess how much influence the Parliament actually asserts in shaping the EU's positions.

Other activities in arms control regimes in which the EP has participated during the sixth parliamentary term include the sending of a delegation to the state parties annual conference of the Ottawa Treaty banning the use, stockpiling, production, and transfer of antipersonnel landmines; its participation in the Interparliamentary Forum on Small Arms and Light Weapons (SALW); and the promotion of a resolution on SALW in the framework of the ACP interparliamentary assembly, which was deemed a major development. Finally, the EP has also been active in the area of non-proliferation of weapons of mass destruction (WMD), where the EP is seeking a higher profile. In this context the Subcommittee has established an ongoing dialogue with Annalisa Giannella, Personal Representative on Non-Proliferation of WMD of Mr Javier Solana. Through the Subcommittee, the

³⁵ Interview at the European Parliament, 19 November 2007 and 21 November 2003. The recent practice of issuing annual reports on the implementation of the ESDP also pushes in the direction of reconsidering its own initiative annual reports on arms exports.

³⁶ Interview at the European Parliament, 21 November 2007.

Parliament has also attended to issues related to the Convention on Certain Conventional Weapons (CCW) and the Convention on Biological and Toxin Weapons (BTCW). EP's awareness on these topics is of crucial importance because it is the responsibility of the EP to decide on the increase in budget allocations for "non-proliferation and disarmament" introduced by the IIA 2006.

Intelligence and fight against terrorism

Since the early 1990s intelligence cooperation at EU level has grown in connection with CFSP/ESDP, as reflected in the institutional setting: the European Union Satellite Centre (EUSC), the EU Joint Situation Centre (SitCen), and the Intelligence Division (INTDIV) within the EU Military Staff. More recently, the Counter-Terrorism Coordinator, appointed in 2004, can also be counted as belonging to the EU intelligence community.³⁷

To date, EU intelligence services do not undertake data collection tasks, nor do they have their own operational responsibilities or powers. As Müller-Wille put it, "they work with pen and paper", so the danger that they may infringe civil liberties is low (2006: 503). However, in the context of the US global war against terrorism after 9-11 and the EU's increasing activity in fighting international terrorism, cooperation between intelligence services within the EU and between the EU and third states has started to raise concerns about the risks that these activities might entail for the respect of human rights and civil liberties. As representative of EU citizens, the Parliament has set itself up as a guarantor that counter-terrorist measures do not contravene fundamental rights and freedoms. Two cases may illustrate Parliament's oversight activities in this domain. The first is related to the increasing concern about member states' direct or indirect involvement in illegal practices of data collection by their intelligence services. The second illustrative case concerns the policies on transferring personal data between intelligence services for security reasons – measures that entail the risk of bordering on illegality if they infringe fundamental liberties. Parliament's efforts in scrutinizing these issues has, at most, had mixed results.

On the issue of the use of information gathered through illegal practices, the most important and widely known activity undertaken by the EP is without doubt that of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (TDIP), which worked between January 2006 and February 2007. The EP established a *temporary* committee, which is different from an *enquiry*

³⁷ Other security services with intelligence components are Europol and Eurojust. For more on the democratic control of these institutions, see Wagner (2004).

committee and thus had very limited powers, as it could not summon witnesses and its proposals or initiatives were not mandatory.³⁸ Thus it comes as no surprise that the TDIP had to carry out its tasks without the cooperation of the member states and the Council and its Presidencies. In the same vein, the Temporary Committee was unable to solicit cooperation from various EU institutions such as the High Representative for the CFSP, the Anti-terrorism Coordinator or Europol, since it lacks authority over them. One might argue that the EP was not competent to undertake such investigations because there are other mechanisms in place at state level to carry out the adequate parliamentary and judicial oversight.³⁹ However, as the Parliament has argued, all these activities also have profound implications for EU intelligence and security services as a whole, in two senses. Firstly, the member states' involvement by action or omission in the US illegal practices (i.e. abductions, detention at secret sites, torture or other cruel, inhuman or degrading treatment of prisoners) on the territory of the European Union would imply the violation of the EU's fundamental values (Art. 7 TEU and many articles of the European Convention on Human Rights). But second, and not less important, the use of information unlawfully obtained by other countries' intelligence services would mean that EU intelligence services are also working with "information obtained by torture", since they rely entirely on information provided by member states.⁴⁰

Despite the inability of the Parliament to hold member states and institutions to account in the CIA flights affair, the TDIP succeeded in contributing to a Europe-wide debate on the limits of anti-terrorist policies. A large number of members of national parliaments, NGOs, journalists and experts appeared before the TDIP and the final report encouraged "national parliaments of European countries to continue or launch thorough investigations, in the ways they consider most appropriate and efficient, into these allegations, including by setting up parliamentary committees of inquiry" (European Parliament 2007b). In effect, some of the evidence gathered through the TDIP did trigger investigations from national parliaments, most notably in Germany and the UK. In this context, the EP itself has also recently started to pay more attention to EU intelligence and security services, which are

³⁸ The temporary committee was established because there was no legal basis to set up an enquiry committee (Art. 193 TCE).

³⁹ On such mechanisms for oversight of intelligence services at national level, see Born/Wetzling (2007).

⁴⁰ On these considerations, see European Parliament (2007b). For a further discussion on the practical consequences for the EU's policies of using information obtained from illegal practices, see Geyer (2007).

currently neither accountable to national parliaments nor to the European Parliament.⁴¹

On the issue of data protection, one of the main points of contention for the EP was the Agreement between the European Union and the United States of America on the processing and transfer of passenger name records (PNR) of 2004. This agreement, pursued by the US as a measure in the context of its fight against terrorism, would enable US security agencies to have access to personal data provided by passengers when booking a plane ticket, including their names and addresses, as well as information about their credit cards, email addresses, telephone numbers and hotel or car reservations. The Parliament, very sensitive to measures that might violate the right to respect for private and family life (Article 8 of the European Convention on Human Rights), decided to use its legal control powers and appeal to the ECJ urging the cancellation of the decisions of the Council and the Commission authorising the PNR agreement with the US.⁴² Apart from the violation of Article 8 of the European Convention on Human Rights the Parliament considered that the decisions violated the EC Directive on data protection and contained various inadequate and unjustified procedures, such as having imposed the urgent provision of Article 300.3, whereby it is possible for the Council to decide without the consultation of the Parliament. The ECJ deemed the Parliament's appeal as justified and annulled both decisions with effect from 30 September 2006, thus giving a major political victory to the Parliament.⁴³

The limits of the EP in the PNR case were revealed, however, when a new agreement was renegotiated in 2007 and the Council decided to use the third pillar provisions, thus excluding the Parliament from the negotiations and rendering it unable to impugn the decision again before the ECJ.⁴⁴ From the

⁴¹ The EP has started to demand that it be conferred the authority to appoint, and dismiss, the Counter-Terrorism Coordinator and the Directors of SitCen and the EU Satellite Centre (EUSC); and to ensure that the Counter-Terrorism Coordinator and the Directors of SitCen and the EUSC submit an annual report to Parliament on their activities and budget and by ensuring that any subsequent recommendations and remarks from Parliament are duly taken into account. See European Parliament (2007c, 2006b).

⁴² Council Decision 2004/496/EC of 17 May 2004 on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection.

⁴³ On the Parliament's powers of legality control in the external dimension of JHA, see Martín y Pérez de Nanclares (2007).

⁴⁴ Council Decision 2007/551/CFSP/JHA of 23 July 2007 on the signing, on behalf of the European Union, of an Agreement between the European Union and the United States of

Parliament's point of view, the revised agreement still entails an inadequate protection of personal data and rights of EU citizens, for example by permitting sensitive data to be made available (e.g. ethnic origin, political opinions or sex life of the individual). In view of these deficits, the EP has continued to demand the invocation of the so-called "passerelle clause" of the TEU, enabling the PNR agreements to be made part of the community pillar and thus giving the Parliament co-decision rights together with the Council.

In sum, this case illustrates the grey area of the external dimension of JHA, in which the Council can decide to play by first or third pillar rules, thus choosing the degree of desired parliamentary oversight. It seems that this practice could be reduced with the Treaty of Lisbon, given that it establishes co-decision as the normal procedure in the area of Justice and Home Affairs, including the hitherto excluded Police and Judicial Cooperation in Criminal Matters. The effective oversight of the emerging cooperation in this area will also depend on the ability of the Parliament itself to further develop adequate mechanisms. In fact, the issues related to the external dimension of JHA, and in particular activities associated with combating terrorism, pose practical problems for EP's work, since they fall under the competence of AFET/SEDE as well as the Committee on Civil Liberties, Justice and Home Affairs (LIBE), while at the same time not being a core priority of any of them. For example, the last report on the external dimension of the anti-terrorism campaign was dealt with by SEDE, but it is only LIBE that takes part in the High Level Political Dialogue on Counter-Terrorism between the Council and the Commission. The Parliament has also proposed that the Special Committee acquires a stronger role in scrutinising new intelligence organs at EU level. However, it is difficult to see how 5 MEPs, in addition to their normal parliamentary work in one or two committees and interparliamentary delegations, can perform such scrutiny.

“Intra-parliamentary” challenges for supranational input legitimacy

Challenges to parliamentary oversight of European security policies at EU level may come from various different directions: from a growing ESDP activity along a purely intergovernmental path; from the blurred nature of security challenges (internal/external) and the means to face them (civil/military); or the highly debated international norms regulating the use of military force.⁴⁵ There are however other challenges and tensions arising from within the European Parliament itself which are also worth mentioning.

Internal organisation of the EP

A security and defence committee?

When the Subcommittee on Security and Defence was set up at the beginning of the sixth parliamentary term, the idea was raised to upgrade it to a full committee as early as the mid-term, in 2006. For various political and procedural reasons, this objective was not achieved. The discussion might be picked up again when the next parliamentary term approaches. The decision is, however, controversial, with various practical and normative arguments at play.

On the practical terrain, the proponents of a full committee argue that ESDP has become an important field of activity of the EU that deserves closer attention on the part of the EP. A full committee would reinforce the Parliament's ability to monitor this policy area by enabling it to issue more reports; giving it direct access to the plenary to table more resolutions; allowing more personnel within the Secretariat or facilitating direct contacts with the corresponding committees in the national parliaments. As already emphasised in this chapter, the workload of the Subcommittee is too high to allow it to closely monitor ESDP operations, mainly the civilian ones, some of which are not even discussed within AFET. A less frequently voiced argument in favour of a full committee is also that the increased visibility and expertise of the EP in security and defence matters would undermine the WEU Assembly's claims that this institution is the best suited body to scrutinise ESDP. However, there are also contrary arguments in this practical dimension, the most important one being that separating AFET and SEDE would entail the risk of losing political power in foreign and security policies in general; this is because, in the opinion of some, a large committee more effectively ensures that representatives of the Presidency and high ranking

⁴⁵ For a recent and detailed discussion on the different sources of challenges to a democratic oversight of EU security policies, see Bono (2006).

officials from the Council and the Commission attend the meetings of the Parliament than two smaller ones.⁴⁶

However, the most profound discussion is situated in the normative context. The separation of foreign policy on the one hand and security and defence on the other is still seen as a taboo for many. This is precisely the reason why there is no formal Council configuration for the ministers of defence, and one of the main arguments why some political groups within the EP did not support the possibility of upgrading SEDE to a full Committee.⁴⁷ The Treaty of Lisbon would seem to offer arguments for those in favour of a full committee because, for the first time, it includes a separate section on Common Security and Defence Policy; at the same time, the first sentence of the section declares that “The common security and defence policy shall be an integral part of the common foreign and security policy” (Article 27.1). Proponents insist that there would be no conflicts of competence between AFET and SEDE because the first would deal for example with the political decisions on the deployment of a Battle Group, while the second would monitor operational aspects related to the troops, equipment and logistics. However, from another point of view, the separation between political and technical aspects would be an odd one, since MEPs’ representational role is by definition a political one and if deprived of the political role, the ESDP dossiers would probably not be attractive enough for MEPs. Besides, the increasingly blurred distinction between civilian and military missions, the cross-pillarisation of the instruments of foreign and security activities could make the separation of tasks more and more difficult. Be this as it may, whether SEDE remains as a subcommittee or becomes a full committee, cooperation between SEDE and AFET should remain close and even be strengthened.

Relations with national parliaments: How and what for?

In all of the issue areas examined in this chapter, the EP has manifested its interest in promoting cooperation with national parliaments. For example, the EP has called for joint meetings between the foreign affairs and budget committees and national parliaments to discuss the military budget. In the domain of arms exports, the EP has called for an annual debate with the national parliaments on their assessment of the progress made by the member states in the implementation of the 1998 Code of Conduct. In the intelligence domain, the EP has explicitly noted the necessity of enhanced dialogue with the national parliaments on the fight against terrorism with a

⁴⁶ Interview at the European Parliament, 23 November 2007.

⁴⁷ Interview at the European Parliament, 20 November 2007.

view to guaranteeing joint parliamentary control of the activities of the various security and intelligence services.

On a general level, some important progress has been made in the interparliamentary dialogue since the beginning of the present parliamentary term. On the one hand, the chairman of SEDE attends biannually the Conference of Defence Committee Chairs convened at the initiative of the defence committee of the parliament whose country holds the EU Presidency. On the other hand, AFET invites the committees of foreign affairs and defence of the member states to debate foreign and security policy matters twice a year. The fact that the organisation of these meetings falls under the competence of AFET has however been criticised by the Subcommittee because the majority of topics addressed falls outside the interests of the representatives of the committees of defence of national parliaments. Finally, it must be acknowledged that the EP has also made progress in its relations with the NATO Parliamentary Assembly, which are channelled through SEDE. The EP has a permanent delegation in the NATO PA (although with a special observer status) and has even started to organise joint meetings. In contrast, relations with the WEU Assembly are almost nonexistent since the EP does not even send a delegation to the meetings of this institution.

This higher level of dialogue notwithstanding, in the opinion of the Parliament itself more substantive and regular cooperation is still outstanding. However, there seems to be some lack of overall strategy in the EP's contribution to interparliamentary cooperation. To what extent, for instance, should interparliamentary cooperation be developed? What objectives should interparliamentary cooperation attain? It is not clear whether it should be limited to sharing information and best practices; to monitoring areas which concern both the national and supranational levels (ESDP expenditure, implementation of the Code of Conduct); or whether it should even be able to make joint recommendations and issue resolutions. Another crucial question is how much leadership the Parliament should exert in interparliamentary cooperation. In this sense, Protocol 1 of the Treaty of Reform (Articles 9 and 10) is inconclusive. Article 9 mentions the shared responsibility of the EP and national parliaments to find ways to promote interparliamentary cooperation; while Article 10 leaves the initiative for organising interparliamentary conferences on common security and defence policy to national parliaments, with the possible participation of the EP. The Parliament's claims that more efforts should be put into cooperation with national parliaments are an indication that the present loose framework of interparliamentary conferences is not satisfactory or sufficient. However, it is

not clear to what extent the EP is interested in actively participating (or leading) an institutionalised transnational parliamentary forum for security and defence policies along the lines proposed by the WEU Assembly.⁴⁸

Conclusions

This chapter started with the observation that the European Parliament has been acknowledged a role in European security policies, though with the obvious limits imposed by the very intergovernmental nature of this policy area. The chapter proposed to examine why and how the EP has acquired its actual position in this field.

On the why question, the chapter has argued that, in spite of the intergovernmental character of European security policies, the pressure for a higher involvement of the Parliament has derived from the fact that there are aspects of these activities which are hardly divisible into the sum of its parts. This is most salient in ESDP missions, where the mix of instruments from different pillars and sources of financing is the order of the day. Therefore, the right of the Parliament to at least be informed on these developments has been difficult to override. Parliament's oversight of EU arms control or intelligence activities has also offered interesting insights in this respect. In the case of arms control, the EP has become concerned about compliance with the EU Code of Conduct by the EU itself and not only by its member states, for example by calling for responsible arms brokering in the framework of ESDP missions. As regards the case of intelligence, the Parliament has maintained that even if national security agencies' involvement in illegal detention should be treated as matters of national concern, the practical consequence that EU policies may rely on threat assessments based on unlawful information confers on the Parliament the moral obligation to demand explanations from EU institutions and member states. In sum, as a matter of *congruence*⁴⁹, the development of mechanisms of supranational input legitimacy appears to be a justified development.

This functionalist explanation, however, would be incomplete without referring to more political or bureaucratic factors. Certainly, the European Parliament was eager to play a role in CFSP/ESDP and JHA issues from the very outset, even before the congruence problems mentioned above started to materialise. The MEPs and, not less importantly, the Parliament's expert staff have tried to make the most of the EP's formal and informal powers to

⁴⁸ See Hilger 2005.

⁴⁹ Following Eriksen and Fossum (2007: 9-10), congruence is defined as a basic democratic principle whereby "those affected by laws should also be authorized to make them."

gain further involvement in the intergovernmental policy-areas. The grey zone of democratic accountability, which has emerged from the fast-growing and increasingly cross-pillarised nature of the CFSP and JHA have just provided the Parliament with good arguments to claim more involvement. Besides, the EP has also been keen on exploiting its (self)image as a watchdog of human rights and democratic principles to claim more powers in European security policies, arguing for the safeguarding of European values.

Concerning the how question, the chapter has emphasised the importance of the practice more than the legal powers of the Parliament. As seen in the first section, the Parliament has obtained only limited concessions in its formal rights on security policies, especially in the aspect of consultation, which remains largely unattained, at least in the way the Parliament conceives it (mandatory, *ex-ante* consultation). However, through the use of its information, debating and partial financial powers the Parliament has managed to increase the *accountability* of European security policies.⁵⁰ The cases reviewed have demonstrated that the flow of information and interinstitutional contacts have been growing incrementally through the years. In general, this development has taken place through a progressive process of confidence building and informal exercises that consolidate into fixed practices. But the chapter has also signalled instances of growing conflict, such as the episodes in the intelligence domain or in the financing of ESDP military operations, where the pressure of the Parliament has been followed by even more intergovernmental practices by the Council, which ultimately always has the option of ignoring or circumventing the EP.

The chapter has also maintained that the European Parliament's better oversight of European security policies does not preclude national parliaments' rights. On the contrary, they seem to be reinforcing each other, as the analysed cases show. In the cases of ESDP missions and arms control, the Parliament has persistently demanded more transparent information to be delivered to national parliaments, because only they can hold governments to account. Or in the intelligence domain, as mentioned, it was precisely the EP's debate on the member states' involvement in illegal detention that motivated debates and even parliamentary investigations at the national level. However, it has also been underlined that the EP still lacks a clear strategy on interparliamentary cooperation in security-related areas and it is unsure whether the Parliament will be interested in or prepared for leading

⁵⁰ We refer to accountability also in the sense of Eriksen and Fossum (2007: 9-10), as: "the relationship wherein obligatory questions are posed and qualified answers required [...] a justificatory process that rests on a reason-giving practice, wherein the decision-makers can be held responsible to the citizenry".

mechanisms of interparliamentary cooperation that go beyond the scheme of the present interparliamentary conferences.

Finally, it can also be pointed out that the way in which the Parliament attempts to oversee security policies is sometimes confronted with inherent dilemmas. The chapter has argued that the Parliament's activity in the security and defence domain has focused on fostering EU-wide debates and promoting public involvement. The Parliament has been especially successful in triggering public awareness in those cases where it has acted as a moral tribune, for example, by denouncing the agreements with the US on Passengers Name Records for infringing civil liberties or the EU intelligence services for allegedly working with data obtained through torture. However, paradoxically enough, the Parliament's public battles with the Council to keep the EU's policies accountable and within the law may reinforce the citizens' impression of the undemocratic character of EU policy-making, especially if the Parliament's accusations do not make the Council change its course of action.

On the other hand, the EP's guaranteeist stances and continuous pledges for tighter democratic control have sometimes been criticised for being overplayed and irresponsible. Indeed, proponents of intergovernmental cooperation have used such arguments to justify further intergovernmental cooperation in the name of efficiency and security. Maybe for this reason, after more than a decade of interinstitutional conflicts, the Parliament has started to put even more effort into building confidence with the Council in the day-to-day practice of European security policies. Certainly, the future role of the Parliament in this policy domain may well depend on the extent to which it is able to convince citizens that legitimacy and efficiency are not conflicting concepts.

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Chapter 5

Transnational parliamentary assemblies and European security policy

Stefan Marschall
University of Siegen

Introduction

In most national systems, decisions on security matters are not made under sufficient democratic scrutiny. This widespread deficit in the control of executive policy-making has intensified since security and defence policy became a part of the Europeanization processes. The already adopted decisions as well as future plans to transfer competences in the field of security policy to the EU level (e.g. by setting up multinational “battle groups”) have stirred a new debate on their consequences for the role of democratic parliamentary control. Born and Hänggi describe the emergence of a “double democratic deficit” (Born and Hänggi 2004): Neither on the national nor on the European level are parliaments appropriately involved in decision-making, leaving the processes and their results without adequate democratic legitimacy (see also chapters 3 and 4 of this volume).

The bulk of the literature that describes this legitimacy deficit and discusses possible remedies confines itself to the study of national parliaments or the European Parliament. Less attention has been granted to another form of parliamentary institution that has emerged within the last decades and, in the future, might play an important role in the control of security policy: parliamentary assemblies.

This chapter pays tribute to this group of organizations and enquires what contribution parliamentary assemblies could provide for the control of security policy by parliamentarians and parliaments. In the first section, this

innovative, institutionalised form of interparliamentary cooperation is introduced and some empirical observations on parliamentary assemblies are presented. In a second step, two parliamentary assemblies that are associated with intergovernmental organisations in the field of security policy are analysed in depth, namely, the Assembly of Western European Union and the NATO PA. Finally, the chapter discusses the potential contributions of these and other assemblies to the parliamentary control of foreign and security affairs and particularly European security policy.

Parliamentary assemblies: some empirical observations

Parliamentary assemblies (PAs) are a very peculiar type of organization within the international arena, since one of their distinctive features is that they are composed of delegations from national parliaments. Thus the PAs' delegates have a double mandate: they are both full members of a national legislature and members of an assembly. A second characteristic is a structural one, as these assemblies are more than just sporadic meetings of national parliamentarians. Instead, their existence, mode of operation, and competences are based on written statutes or rules of procedure. Typically, they have an organisational backbone in the form of a general secretariat. Their degree of institutionalisation distinguishes parliamentary assemblies from numerous ad-hoc forms of transnational parliamentary cooperation. Most of the parliamentary assemblies are affiliated to an Intergovernmental Organisation (IGO) and more than a few of them have become an integral part of a transnational organisation's structure.

According to the aforementioned definition, today's European Parliament does not qualify as a parliamentary assembly, whereas its predecessor did. The parliamentary branch of the European Communities, the "Common Assembly" was founded in the 1950s with the summoning of parliamentarians from the member states several times a year in order to discuss issues on the Community's agenda. The Common Assembly changed its institutional character in the late 1970s with the introduction of direct elections. In consequence, it was transformed from an "assembly" into a "parliament". Aside from this exceptional case, PAs seem to be robust and stable and not merely a transitional organisational phenomenon.

In relation to parliamentary assemblies there are three empirical observations that appear particularly noteworthy:

- the expansion of this form of interparliamentary cooperation within the last sixty years,
- the spread of this type of organisation all over the globe,
- the varying extent of assemblies' affiliation to intergovernmental organisations.

The expansion of parliamentary assemblies

The success story and the real “boom” of parliamentary assemblies essentially started after World War II, although the Interparliamentary Union had already been founded at the end of the 19th century (cf. Habegger 2005), and the second parliamentary assembly, the Assembly of the Commonwealth, came into life in the early 20th century (see Figure 1).

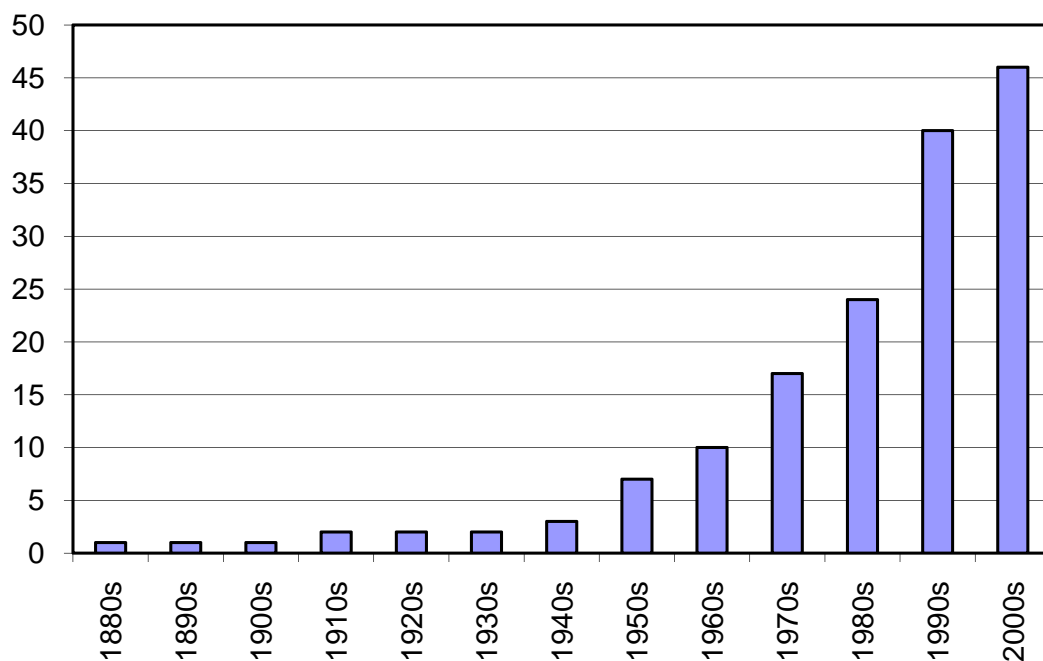


Figure 5.1: Rise of parliamentary assemblies (PAs) by decades (accumulated, N = 46).
Source: Marschall (2005b) and additional data collection.

A notable signal was sent out in 1949 with the creation of the Consultative Assembly of the Council of Europe. The foundation of the Council of Europe's Consultative Assembly provided a starting point for the expansion of PAs after World War II (cf. Council of Europe 1990). At that time, incorporating a parliamentary assembly into an international organisation was a “complete innovation” (Robertson 1961: 245) in the field of institutional

engineering, as up to that moment a transnational parliamentary body was not considered an essential or desirable player in the arena of international relations. Since then, more than 45 parliamentary assemblies have been brought into being.

The global spread of parliamentary assemblies

Europe was certainly the birthplace of this kind of interparliamentary cooperation and it still has a remarkable “European bias”, since most assemblies are seated here. Meanwhile, however, transnational parliamentary associations have been brought into being throughout the world (figure 2).

Among the group of transnational assemblies, there are quite a few intercontinental associations, most prominently the “Interparliamentary Union” which brings together delegates from about 145 national legislatures, or the “Conference of Parliamentarians of the Arctic Region” assembling MPs from several continents including Europe, Asia and North America.

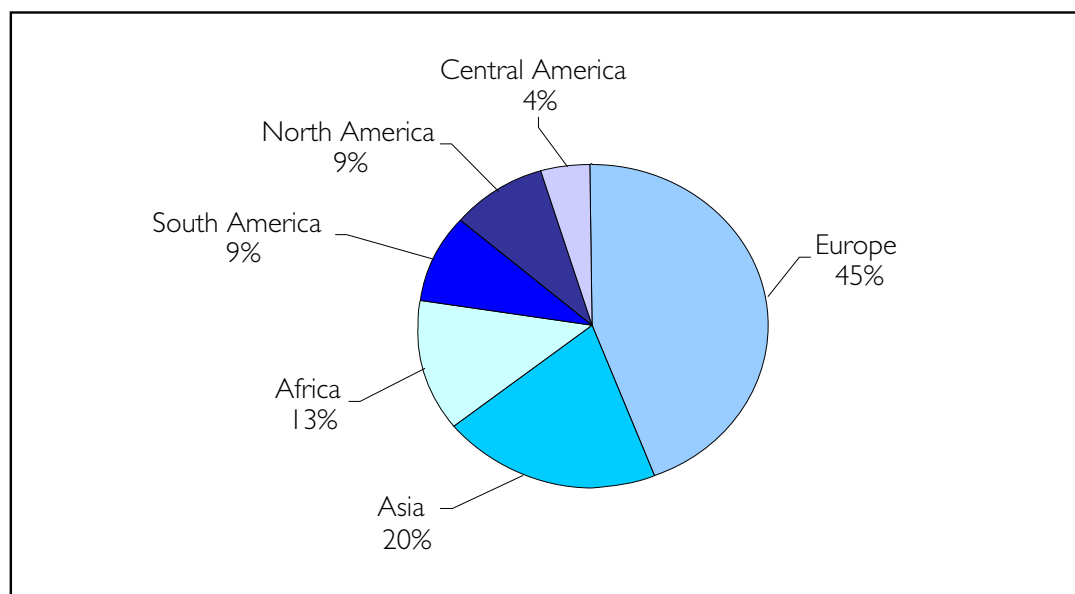


Figure 5.2: Regional distribution of PAs (in percent, N = 45, indicator: seat of secretariat).

Source: Marschall (2005b) and additional data collection.

Variation in the assemblies' affiliation to IGOs

The assemblies are affiliated to international organisations to differing degrees; some of them even exist without any ties to an IGO. Judging by the character of the relationship between assemblies and intergovernmental organisations, one can distinguish three types of parliamentary assemblies.

The first group is formed by parliamentary assemblies with an autonomous status and no formal or informal relations to an intergovernmental institution. 26 per cent of PAs world-wide belong to this group. Assemblies that are formally independent, but have established *informal* ties to an IGO make up the second group, to which about 32 per cent of all PAs belong. The remaining 42 per cent of PAs are an *institutional part* of international organisations. Assemblies of this kind are explicitly mentioned in the legal framework of the respective transnational organisation, for example in its treaties or protocols.

Parliamentary assemblies in the field of security policy

The cases of the WEU Assembly and the NATO PA

If the existence of parliamentary assemblies in the realm of intergovernmental organizations is a “complete innovation” as Robertson put it, the formation of assemblies in the sensitive area of military security policy might be considered utopian. But they do exist. We can spot some PAs affiliated to security organizations and thus witness the establishment of interparliamentary cooperation on the international level within a policy field over which many national parliaments have only little control at home.

The roots for the weakness of national parliaments regarding decisions on security affairs go back to a traditional understanding of the nature of foreign policy. In this policy area the core competences were for a long time almost exclusively the remit of the executive branch – a tradition that finds its expression nowadays in the French term “*domaine réservé*”, the British “royal prerogative” or in the US-American “executive privilege”.

However, the executive prerogative has become increasingly contested in the literature on international relations. Furthermore, recent research shows that there is a huge variation in the degree of parliamentary participation in and control of executive decisions, for example on the deployment of troops in military conflicts (Dieterich 2007; Marschall 2007; Wagner 2006; see also chapter 3 of this volume). In several cases, the power of parliaments in the field of security policy has expanded remarkably over the past few decades. But in many states, parliamentary involvement in security questions is still

inadequate. And even formally strong parliamentary players can become weak when it comes to the litmus test: In states in which parliament has by law a powerful position, government might be able to obstruct an effective parliamentary control on the grounds of secrecy or by using other evasive strategies.

In the light of the relative weakness of parliaments within the national arena, one might find it rather astonishing that beyond the national level parliamentarians have formed associations for the control of executives' policy-making in security affairs. One such example of a transnational parliamentary body in the field of security policy in Europe is the "Interparliamentary European Security and Defence Assembly", also known as "Assembly of Western European Union" (WEU) (see also chapter 6 of this volume). A second case that reaches beyond the territorial scope of the European Union is the Parliamentary Assembly of the North Atlantic Treaty Organization (NATO). Both the Assembly of Western European Union and the NATO PA demonstrate at least that interparliamentary cooperation – however organised – is possible even in this delicate policy field which usually lies within the domain of executive privilege.

By looking at the origins and (considering the national role of parliaments in security affairs) the astonishing ascent of these two assemblies, functional theories of delegation can be tested for their explanatory power with regard to the establishment of parliamentary control. While these theoretical approaches assume that principals (here the "member states" of an organisation) deliberately pool decision power in international organisations and an institutional structure of non-majoritarian institutions in order to enhance their policy-making powers, the rise of majoritarian institutions like parliamentary assemblies can hardly be explained by a simple functional delegation logic (cf. Majone 1996; Mankiw 1990; Rittberger 2003). Those who can decide on the structure of international organisations, i.e. governmental actors, are – from the perspective of functional delegation or intergovernmental integration theories – unlikely to complement the institutional design with a parliamentary body that limits their scope of action and that might hamper intergovernmental bargaining. Especially in the field of security policy, governments which inherently face only few restrictions in their scope of action are unlikely to impose new self-restraints on the international and supranational level. Given this logic of action, how can it be explained that nevertheless parliamentary assemblies have been established that are attached to military alliances? Does the mode of establishment and institutionalisation have an effect on the control powers?

To answer these questions it might be worthwhile to take a closer look at the genesis and the rise of these parliamentary bodies (see also Marschall 2005b; Robertson 1966).

Western European Union

Origins and development

The birth of the WEU Assembly was closely associated with the demise of another project, namely the failed establishment of a “European Defence Community” (EDC). The idea of creating an EDC can be traced back to a plan by French Prime Minister René Pleven, who in 1950 proposed setting up a pan-European defence force in order to integrate Germany into a military alliance. West Germany, France and Italy were invited to take part in the EDC. The Pleven plan failed ratification in the French Parliament, where a majority feared a remilitarisation of Germany and a substantial infringement on French national sovereignty by the EDC.

Once implemented, the plan would have established pan-European troops composed of national components. The proposed institutional structure of the EDC resembled the institutional design of the European Coal and Steel Community (ECSC). The organisation would have been composed of a Council of Ministers, a Court of Justice, a Commissariat as well as a “Common Assembly”. With regard to the Assembly of the EDC, Pleven’s plan proposed three options: (1) an Assembly identical to the “Common Assembly” of the European Coal and Steel Community, (2) an Assembly arising out of the ECSC Assembly, or (3) an Assembly composed of delegates specifically designated by the national parliaments for this purpose.

The negotiating parties agreed on the first option. Article 33 Section 1 of the EDC Treaty provided for an Assembly of the European Defence Community identical to the Common Assembly, except that it would include three additional delegates each from West Germany, France and Italy.

The Assembly was intended to monitor the Commissariat’s work. Article 35 of the Treaty stipulated: “The Commissariat shall reply, orally or in writing, to questions which are put by the Assembly or by its members”. And the Commissariat was obliged to provide the Assembly with an annual “general report” concerning its activities (cf. Art. 36 Section 1 EDC Treaty). The Assembly was even authorised to force the Commissariat to resign if a motion of censure was adopted by at least two thirds of the members voting and if those attending represented a majority of the Assembly’s membership (cf. Art. 36 Section 2 EDC Treaty).

Pursuant to Article 38 Section 1 of the Treaty, the Assembly was explicitly seen as the predecessor of a parliament “elected on a democratic basis”. Remarkably, this article stipulated that:

The definitive organization which will take the place of the present transitional organization should be conceived so as to be capable of constituting one of the elements of an ultimate federal or confederal structure, based upon the principle of the separation of powers and including, particularly, a bicameral representative system.

(Art. 38 Section 1 EDC Treaty)

Before the EDC Treaty failed ratification, the Common Assembly of the ECSC had already drawn up a draft treaty for a “European Political Community” (EPC) that was designed to provide a frame for the EDC. The Assembly proposed the establishment of a directly elected first chamber (“the People’s Chamber”) and a second house (“Senate”) whose members would be appointed by the national parliaments.

When both the EDC and the EPC were rejected by the *Assemblée Nationale*, the Brussels Treaty of 1948 – which was originally intended as a precautionary measure against possible German rearmament¹ – was amended in “great haste” (Robertson 1966: 123) and the organisation renamed to “Western European Union”. Seizing this opportunity, the parliamentarians, especially the members of the Consultative Assembly of the Council of Europe, were able to exercise significant pro-parliamentary influence on the treaty amendment (Björck 1990: 24).

The amendments of the Brussels Treaty were signed in the Paris Agreements of 23 October 1954. They included a new Article IX for the Treaty of Brussels stating:

The Council of Western European Union shall make an annual report on its activities and in particular concerning the control of armaments to an Assembly composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the Council of Europe.

The insertion of Article IX into the Treaty can be seen as a “side-effect” of the debates on the parliamentarization of the European Defence Community. Almost unwittingly, it seems, the signatories of the Brussels Treaty adopted a basic structure that resembles the well-known national institutional

¹ The main feature of the Treaty of Brussels was the commitment to mutual defence should any of the signatories be the victim of an armed attack.

democratic arrangements: “The combination of Council and Assembly constitutes a significant attempt to transfer the structure of executive responsibility to a European level” (Borcier 1960: 11).

However, contrary to the EDC plans, membership of the Assembly of Western European Union was not tied to membership of the Common Assembly of the European Coal and Steel Community. Instead the Assembly is composed of the member states’ representatives sent to the Consultative Assembly of the Council of Europe. This regulation reflects the involvement of the Council of Europe’s Assembly in the discussions over a substitute for the EDC.

Thus, the integration of a parliamentary body in the newly founded Western European Union was to some extent “accidental” – at least the process of amending the Treaty as well as the quality of the inserted article seem to give evidence for this impression: “Probably never in history was an international institution created so laconically and with so simple and general a formula” (Robertson 1966: 123).

The parliamentarization of a previously PA-free institution can be explained by the fact that the preceding organisation, the European Defence Community, was supposed to be part of the European integration process which included a strong parliamentary branch. Faced with the failure of the Pleven plan, parliamentarians seized the opportunity to promote the establishment of an Assembly in the Treaty of Brussels. In this respect the WEU Assembly is the “rudiment” of the Assembly of the EDC (Dransfeld 1974: 164). The parliamentarization of the Brussels Treaty can be seen as a concession to those favouring an integrated European political community: “It [the institution of a WEU Assembly] was linked with the wishes of the advocates of the European idea to have the same type of democratic representative institutions as in the national framework” (Johnston 1995: 55).

However, the WEU itself did not to emerge as a pivotal organization – neither within the architecture of European integration nor within Western security structures. During the decades of the Cold War, the dominance of NATO overshadowed WEU, which in effect only played a minor part within the security architecture of the Western hemisphere. After the collapse of the Warsaw Pact, WEU tried to find its place within the security structures by identifying new responsibilities (“Petersberg missions”), thereby rendering new importance to its organization and its parliamentary body.

Another milestone in the history of the Assembly of WEU was the decision to transfer most of WEU's operational functions to the European Union at the end of the 1990s, thereby de facto dissolving WEU as an independent organization. Facing the loss of its functions to the European Parliament and possibly sooner or later of its right to exist, the Assembly of WEU proposed a new design for the parliamentary control of European Security and Defence Policy, including the establishment of a bicameral parliamentary structure constituted by the European Parliament and the former WEU Assembly. The search for a status within the European defence structure found its expression in the renaming of the Assembly to "Interparliamentary European Security and Defence Assembly".² However, the EP fiercely opposed this proposal and governments rejected the Assembly's proposed bicameral approach to the parliamentary control of ESDP, as the Lisbon Reform Treaty does not provide for the establishment of such a parliamentary structure.

Control powers

What are the control powers of the Assembly of Western European Union? The amended Brussels Treaty mentions the institution and its competencies only in passing (the sole reference to it in the Treaty can be found in the aforementioned Article IX), while, for example, the founding treaty of the Council of Europe devotes much more text to its Consultative Assembly (Art. 22 to 35 of the Statutes). On the basis of the Brussels Treaty, the only control power (in fact, the only power at all) granted to the Assembly is through the receipt of an annual report on the activities of the Council of Ministers.

The somewhat vague, cursory mention of the Assembly in the statutory framework had to be supplemented and specified by other regulations. The legal "tabula rasa" situation (Robertson 1966: 124) offered parliamentarians the opportunity to define and expand their own role: "The Assembly, however, made good use of the lack of further precision" (van Eekelen 2002: 35).

In 1955, the Assembly and the Council of Ministers adopted the Charter and the Rules of Procedure of the WEU Assembly that filled that gap. By officially approving the Charter and Rules of Procedure, the Ministers ultimately accepted the far-reaching proposals of the Assembly's "Committee on Organisation", although the representatives of the executives had previously expressed strong objections to some of the Committee's suggestions.

² For a short period of time (2000 to 2003) the Assembly was given the name "The Interim Security and Defence Assembly".

The control activities spelled out in the Charter of the Assembly go far beyond the mere right of the parliamentarians to receive the report of the Council of Ministers as laid down in the Treaty. Art. V Section f of the Charter stipulates that the Chairman of the Council of Ministers shall deliver to the Assembly an oral presentation of the annual account and answer questions put by members of the Assembly: “After presentation of the report, Representatives may raise matters in the course of debate, to which the Chairman of the Council may reply”. Additionally, individual representatives may put questions in writing to the Council via the President of the Assembly. The annual report is intensively discussed in the Assembly’s standing committees. Furthermore, pursuant to Art. V Section e, the committees of the Assembly can formulate questions that are transmitted to the Council of the WEU. Should the Council not respond to such questions, the reaction of the Assembly might be to “go public”:

If a reply is postponed or omitted for reasons of European public interest, the question shall be published with a statement of the reasons given by the Council which deferred or prevented the publication of a reply.

(cf. Art. V Section e Charter)

The Assembly can submit to the Council “recommendations” and “opinions”, it can pass “resolutions”, and – according to Art. VIII Section c of the Charter – is entitled to “express its views” on the budget of the organisation. However, all these communicative actions are non-binding for the executive delegates, although the Council is obliged to reply to the “recommendations” of the Assembly.

Arguably the sharpest sword of control is the “motion to disagree to the content of the report” (cf. Art. V Section h). The WEU Assembly can adopt such a motion by an absolute majority of its members, thereby expressing its disagreement with the report of the ministerial committee. In practice, only one motion of disapproval has been adopted so far (1967), two more have been introduced but failed to achieve the required majority. Even such a vote of censure does not have a binding effect on the executive power-holders, as it does not entail any immediate consequences for the Council of Ministers. However, Borcier underlines the symbolic power of a motion of disapproval: “the image of a European parliament censuring its executive” (1960: 23). In contrast, Jun and Kuper (1997) as well as Leinert (1980) are sceptical as regards the efficacy of the Assembly’s power to control the Council, as there are many ways for the executive actors to evade effective parliamentary scrutiny.

NATO Parliamentary Assembly

Origins and development

The second assembly associated to a security organisation, the Parliamentary Assembly of the North Atlantic Treaty Organization, is perhaps one of the most remarkable forums of parliamentary cooperation (cf. Brumter 1986; Charman and Williams 1981; Lunn 2001). The Parliamentary Assembly of NATO has experienced an increase in relevance and a tremendous degree of “parliamentarization” since – in complete contrast to the WEU Assembly – it was founded as a rather weak, loosely organised, autonomous association in the mid-1950s.

The North Atlantic Treaty itself, signed in Washington in 1949, contained no provisions for the creation of a parliamentary branch, although there had been a “predisposition among the European negotiators of the Atlantic Pact towards consultative bodies” (Charman and Williams 1981: 19). While the Washington Treaty was under discussion, the negotiations on the Council of Europe and on the Organisation for European Economic Cooperation took up the option of a parliamentary assembly. At the talks about the establishment of the North Atlantic Treaty Organization, however, this point was not seriously considered at all.

Later on, the Consultative Assembly of the Council of Europe once again gave the impulse for an institutional change. On its initiative, a first “Transatlantic Meeting of Parliamentarians” took place in Strasbourg in 1951. During the meeting that brought together parliamentarians of the NATO member states, the representatives criticised the lack of a parliamentary body to represent the “North Atlantic peoples” in NATO. Later the plan to change the Consultative Assembly of the Council of Europe to an “Atlantic Consultative Assembly” was controversially debated. However, due to organisational difficulties this idea was not put into reality.

In 1953, members of the Norwegian Storting started the first official initiative for the creation of an Atlantic Assembly when the Norwegian government delegation was requested to introduce such a proposal in the NATO Council. Responding to this initiative, the Secretary General of NATO, Lord Ismay, submitted to the North Atlantic Council the proposal “that member governments encourage the setting up of parliamentary groups particularly interested in NATO. These groups could then establish their own contacts and perhaps meet in Paris, for example, to study matters of common interest” (cited in Brumter 1986). Why should the governments be supportive of the creation of such a parliamentary body? Because it could promote the effectiveness of security policy-making within the Member

States of the Treaty Organization. As the Deputy General Secretary of NATO, Jonkheer van Vredenburg, contended in July 1953:

Without the collective approval of a parliamentary majority, the national Governments can take no decision concerning NATO. Without the personal action of each parliamentarian in his constituency, NATO decisions in turn cannot be understood by the citizens of the member states.

(cited by Charman and Williams 1981: 5)

The first official meeting of a NATO parliamentary assembly took place in July 1955 as a “Conference of NATO Parliamentarians” and resolved to set up a Standing Committee that was assigned to reach an agreement on guidelines for the procedure to elect national delegates. The seat of the “Conference” was Paris, chosen with a view to developing close contact to the organs of the Treaty Organization. After the French withdrawal from the military branch of the alliance, the NATO organs as well as the Conference moved to Brussels in 1967. That very year the “Conference” changed its name to “North Atlantic Assembly” and in 1974 the Belgian Parliament granted the NATO PA special legal status. During the 1960s the Assembly tried to deepen and institutionalise its relations to the Treaty Organization. In 1968 the NATO Council adopted an agreement that requested the Secretary General of NATO to regularly submit a report to the Parliamentarians as well as communicate to them the feedback from the NATO Council with regard to the resolutions and positions of the Assembly.

In the “Declaration on Atlantic Relations” of 1974 the leaders of the NATO governments declared that “the cohesion of the Alliance has found expression not only in co-operation among their governments, but also in the free exchange of views among the elected representatives of the peoples of the Alliance.”³ Although it did not expressly mention the NATO PA, this statement has been understood as an official acknowledgement of the Assembly’s existence and work. Apart from this indirect recognition, the relationship with NATO remained informal, although there had been several initiatives by the parliamentary side to incorporate the Assembly into the North Atlantic Treaty. In the end, formal incorporation, one of the prior goals of the Assembly, was given up in 1979.

The end of the Cold War and the transformation period in the former socialist states opened a window of opportunity for the North Atlantic

³ See NATO 1974 (“Ottawa Declaration”).

Assembly. Shortly after the fall of the Iron Curtain, the Assembly established contact with parliamentarians in Central and Eastern Europe and initiated a partnership and cooperation programme in order to foster the parliamentary culture in the former member states of the Warsaw Pact. The new role and the greater self-confidence of the organisation found its expression in the renaming of the Assembly in 1999. Since then the official name of the Assembly is “NATO Parliamentary Assembly”. In a speech held in May 1999, the former president of the Assembly, Javier Ruperez, justified the renaming with a substantial change in the Assembly’s relationship to the Treaty Organization:

This decision to rebaptize the Assembly is the result of extensive discussions. It reflects a political choice and sustained efforts, in the past two years or so, to enhance our ties with NATO.⁴

Another observation indicates that the Assembly has moved away from being only a loose association of pro-NATO parliamentarians and progressed towards the status of a “normal” parliamentary assembly. For a long time, there has been a conflict regarding the composition of the national delegations of the Assembly, between those “who think that it must faithfully reflect the composition of the parliaments of the Members states” on the one hand and those “for whom the Assembly can only be composed of ardent supporters of NATO” on the other hand (Brumter 1986: 48). In practice, the second point of view dominated initially, when representatives of the French Communist Party were not admitted to the North Atlantic Assembly, although the party had a sufficient share of mandates in the *Assemblée Nationale*. In 1981, the Communist Party of France was allowed to nominate two members for the French delegation of the Atlantic Assembly for the first time. Since then, the first point of view has become the guideline for the composition of the national groups in the Assembly. Nowadays, the formation of the delegations reflects the size of the political groups in the respective national parliaments, regardless of whether they are critical or supportive of NATO. For example, a member of the party “Die Linke”, which has a rather sceptical perception of NATO, is part of the German delegation of the NATO Parliamentary Assembly. In terms of the recruitment of members and the results of recruitment procedures, Charman and Williams see a shift from a former “old boy atmosphere” to a more professional working culture in the Assembly: “Younger parliamentarians are being nominated and a broader spectrum of views is emerging” (1981: 171).

⁴ <<http://www.naa.be/archivedpub/speeches/rup990521.asp>> (accessed 17 November 2008).

Control powers

Regarding the control of security policy, the composition of the delegations of the Assembly is crucial, since representatives of parties that tend to be critical towards the alliance might be expected to take much more advantage of instruments of control that are at the Assembly's disposal than members of governmental parties. However, due to the informal nature of its relationship to NATO, the control power of the Assembly is highly restricted. The parliamentarians adopt "declarations", "recommendations", "resolutions", and "opinions". According to Art. 23 Section 3 of the Rules of Procedure, "recommendations" are addressed to the North Atlantic Council "asking to take certain action [...] and in the expectation of a reply from the Council". "Resolutions" can be directed to all or to a limited number of governments of NATO. An "opinion" expresses the view of the PA in answer to a request from the NATO Council. The production of the texts takes place in the interplay between plenary session and debates within the standing committees of the Assembly.

None of these documents are binding for the North Atlantic Council, however. What is more, unlike in the WEU Assembly, the Rules of Procedure of the NATO PA do not mention any interpellation powers, neither for individual members, nor the Assembly's committees, nor for the Assembly as a whole.

Facing this lack of parliamentary power, Brumter comes to a pessimistic conclusion: "Having no power of initiative or control, the Assembly cannot even be considered as a consultative institution" (1986: 91). At first glance, the Parliamentary Assembly qualifies as little more than a "talking shop". On the other hand, Geoffrey Freitag, one of the early protagonists of the Assembly, underlines how much has been achieved by the parliamentary assembly since its starting point:

Today, the struggle of recognition over, the Assembly has come of age and it is my belief that we who have supported its endeavors through the years have nurtured a child; strong, self-reliant and resourceful, secure in its convictions and wise in the knowledge of its own limitations.

(cited by Charman and Williams 1981)

Indeed, it is interesting to see that the NATO Assembly changed not only its name, but also its institutional idea in the course of time. It started out as a club of parliamentarians in favour of the transatlantic idea who sought to promote the US-European partnership within their national legislatures. Yet

over the years, the club has become a rather “normal” parliamentary assembly that also encompasses within its membership representatives of parties critical towards the Treaty Organization and its mission.

Nevertheless, the real power of the assembly remains rather obscure, so that the verdict of former Secretary General of the Assembly, Simon Lunn, on the impact of the NATO PA might seem most appropriate – at the same time signalling the limitations for empirical research on the Assembly: “In summary then the Assembly’s role vis-à-vis NATO lies outside the realm of direct influence” (Lunn 2001).

Assemblies and the control of European security policy. Limitations and potential of multi-level parliamentarianism

Are transnational assemblies adequate and effective instruments or do they at least show the potential to exercise parliamentary control over security policy, especially European security policy? Focussing on their establishment and their control competences, what are the lessons we can draw from the two case studies on the WEU Assembly and the NATO PA?

Divergence and convergence?

The two cases provide different answers to the question why parliamentary assemblies have been created in the field of military security policy, and these answers might explain the extent of their respective control powers.

The first answer, as our study of the genesis of the WEU Assembly reveals, might be surprising: somehow “by accident”. The parliamentary assembly was incorporated into the Brussels Treaty virtually by chance as a substitute for the strong parliamentary branch that was supposed to be installed in its (aborted) forerunner, the European Defence Community. The failure of the EDC offered an opportunity for parliamentary actors to amend and “parliamentarize” the Treaty of Brussels whose original institutional design had not made provisions for a parliamentary body.

The second, significantly different answer is derived from the genesis of the NATO Parliamentary Assembly. In this case, the creation of an assembly was originally the result of an autonomous initiative of pro-NATO parliamentarians in the member states of the Alliance. At the outset, the executive actors were reluctant to accept this new “partner” organization. When, eventually, they officially recognised the work and existence of a parliamentary assembly, however, they declined to incorporate the Assembly

into the treaty structure of the organization. The major appeal of a parliamentary assembly to the executive side was the expectation that the implementation of security policy could be facilitated by a transnational group of parliamentarians *in favour* of the North Atlantic Alliance who would promote the ideas of the Treaty Organisation within their national political systems and societies.

These different points of departure still matter and have an effect on control capacities. On the one hand, the WEU Assembly is a formal part of the institutional structure of the WEU; it is explicitly mentioned in its basic treaty. On the other hand, the NATO PA is an autonomous private association of parliamentarians which has never been formally incorporated into the institutional design of the Treaty Organization. The degree of affiliation makes a difference in terms of control, because the impact and power of a parliamentary body plausibly depend on its formal inclusion in the decision-making processes: the more closely a parliamentary assembly is affiliated to an IGO, the bigger its impact might be on the decisions taken by that organisation and the more binding are its control activities. Thus, parliamentary assemblies that, like the WEU Assembly, are recognised IGO bodies have – at least formally – better chances of influencing and scrutinizing policy-making than autonomous assemblies. And indeed, whereas the NATO PA has no formal rights in relation to the North Atlantic Council, the Charter of the WEU Assembly, which was also adopted by the Council of Ministers, grants several interpellation powers and even a vote of censure to the members of the Assembly.

Although these differences can be explained by the institutional ideas on which the assemblies were founded – while the WEU Assembly was intended as a future parliament within a process of regional integration, the NATO PA was envisaged by NATO executives as a supporters' club of an intergovernmental organization – it should also be taken into consideration that in the course of their existence the institutional ideas converged, since the NATO PA in many respects evolved into a “normal” parliamentary assembly.

This “normalisation” points to the limitations of a purely government-oriented, functional delegation approach. Since this approach focuses mainly on the governmental actors and their strategies and ignores the impact of parliaments and parliamentarians on the design of institutions and control competences, it cannot fully explain the creation and empowerment of parliamentary bodies like the two assemblies discussed here. The case studies – as well as the analysis of other parliamentary assemblies – illustrate that

empowerment is a dynamic process in which the parliamentary bodies themselves try to define and expand their control powers.⁵

Weak and strong?

Beyond the (diminishing) differences between the two bodies, both parliamentary assemblies are weak compared to national parliaments and the European Parliament, since neither the WEU Assembly nor the NATO PA has any effective influence on the decision-making processes of the IGO to which they are more or less closely tied. Existing parliamentary control instruments can be evaded by the governments or at least are not credited with sufficient power to sanction the executive branch.

Still, one might argue that by virtue of their mere existence and work, parliamentary assemblies have a *high potential* to contribute to the control of executive activities in the field of security policy. Most of the potential contributions are closely connected to the fact that the members of the assemblies are at the same time members of national legislatures. Empirically, we can find sporadic evidence to support this:

- Though weak themselves, parliamentary assemblies can support the supervision of executive players by empowering other agents of governmental control, e.g. the media or courts. A recent example of this capacity was the widely published investigation reports of the Consultative Assembly of the Council of Europe concerning secret CIA detention centres in Europe.
- The parliamentary assemblies provide an additional channel of information for the national parliaments and parliamentarians on the opinion and decision-making processes and results within international organisations – an information channel that could function as an early-warning mechanism, supporting the respective control activities of national legislatures. It might even give more policy-related power to those parliaments that are effectively weak players in security policy-

⁵ How can these dynamics of transnational parliamentary bodies be explained? Why do they tend to seize power? A plausible explanation might be that their individual members, the national parliamentarians, bring in a self-confident role orientation when they join transnational associations of interparliamentary cooperation. Being directly elected and accountable to voters, parliamentarians develop a strong understanding of the legitimacy they import from their national arenas into the realm of international politics. This explains why in parliamentary assemblies members enjoy a free mandate and are not restricted in their rights to vote and speak as individuals. They transfer the working procedures and principles with which they are acquainted in their national arenas to the transnational assemblies, for instance the establishment of a party group system or the interplay of committee sessions and plenary debate.

making. Documents of the parliamentary assemblies (such as Reports, Recommendations, or Conclusions) are sent to national legislatures and supply parliamentarians with additional information. The working papers of the PAs are usually debated within the committees of national parliaments.

- Within the assemblies' delegations, the national oppositions are supposed to be appropriately represented. As oppositional party groups serve in their domestic parliaments as the key actors in the parliamentary control of the governments, the members of national oppositions benefit from their involvement in transnational parliamentary forums. By their membership in PAs they are granted access to information that would otherwise be difficult to acquire. This flow of information might find its expression in control activities in national parliaments, e.g. when parliamentarians refer in interpellations to their home governments to information gained from the transnational assemblies.
- The national oppositions have a chance to express their points of view and indicate to the representatives of other countries that there might be controversial discussions on executive policy decisions back home, thereby contributing to a pluralistic process of opinion formation in the transnational realm. This was for example the case during the Iraq war 2003, when national delegations could not easily find a common point of view regarding a military intervention without a sufficient UN mandate. The Parliamentary Assembly of NATO provided a forum for these conflicts to be articulated.

Parliamentary assemblies might be weak, but their members are not necessarily so. On the contrary, membership in transnational assemblies can empower parliamentarians in their relationship to executives at home. Two- or multi-level executive behaviour (Putnam 1988) can be counteracted by multi-level parliamentarianism. A "double democratic deficit" could be offset by what can be called a "double parliamentarization".

Obstacles – to be overcome?

The effectiveness of multi-level parliamentarization depends on who is delegated by the parliaments to represent the respective legislature in the transnational assemblies: key parliamentarians in the respective policy field, or "backbenchers". For reasons of efficacy, the members of the PAs should have a solid standing and a profound network within their national parliaments in order to spread and process the information they obtain on the international level and in order to carry out effective control measures.

At first glance, the composition of the delegations indicates that in some cases there is a high correlation between being a member in the national parliamentary defence committee and a delegate in a parliamentary assembly in the field of security policy. For example, of the German group in the NATO Parliamentary Assembly, nine of the twelve delegates are full members of the defence committee of the Bundestag. This does not hold for the WEU Assembly, however, because delegations to the WEU Assembly are identical with the delegations to the Consultative Assembly of the Council of Europe. Consequently, only two of the 18 parliamentarians sent by the Bundestag, for instance, are members of the defence committee of the German parliament.

There are other obstacles on the road to effective multi-level parliamentarianism. Due to the expansion of parliamentary assemblies over the past few decades, parliaments have increasingly been called upon to nominate delegates to a growing number of transnational bodies. In smaller parliaments this demand could only be met by some parliamentarians being members of not one but several parliamentary assemblies. This tendency towards multiple memberships can also be observed in smaller party groups within national legislatures that are assigned to nominate candidates to several delegations. On the one hand such multi-membership might be beneficial, since it enhances the interconnectivity between parliamentary assemblies. On the other hand, “multi-hatting” is liable to produce a work-load that forces parliamentarians to neglect certain aspects of their transnational commitments.

In order to recruit well-connected, prominent parliamentarians for the assemblies’ work, the incentive structures for membership in parliamentary assemblies should be reconsidered. Given that re-election is one, if not the crucial objective of parliamentarians, their time-consuming involvement in transnational assemblies might be counterproductive. Within parliaments as well as within the party groups, the international commitments of members should be rewarded with the assignment of prominent positions within the national legislatures, the allocation of resources and some degree of remuneration when they are re-elected.

Furthermore, certain limits to parliamentary cooperation are set by parliamentary bodies themselves. For example, conflicts have arisen between the WEU Assembly and the European Parliament over the future architecture of the parliamentary control of the ESDP, based on the reluctance of an existing institutional structure to share powers (which might imply losing influence). The proposals of the WEU Assembly to establish a bicameral parliamentary body to control the ESDP, with the EP as the first

and the WEU Assembly as the second chamber, failed to find sufficient support among the Members of the European Parliament. Conflicts might also surface between different transnational assemblies, for example between the NATO PA and the WEU PA, reflecting friction between the intergovernmental organisations themselves. Such “clashes” of parliamentary bodies can also be observed in the relationship between the European Parliament and national parliaments, when MEPs are not inclined to augment the policy power of member states’ parliaments in decision-making processes of the European Union (Börzel 2000).

Cooperation, therefore, (especially if it is imposed upon the parliamentarians) does not necessarily improve the effectiveness and efficiency of parliamentary control, but can result in a remarkable increase in transaction costs. To avoid such effects, cooperation has to be organized in a way that it produces synergy, for example through a functional communication infrastructure or a sustainable system of division of labour.

Despite such pitfalls and challenges there are, from a normative perspective, good reasons for the establishment and stabilization of a complex European network of parliamentary cooperation, bringing together national, transnational and supranational parliaments and parliamentarians, in order to tackle the legitimacy problem of policy-making in defence and security questions. This is a strong argument in favour of incorporating the WEU Assembly as a second permanent parliamentary actor into a system of parliamentary control of European Security and Defence Policy. However, it is strongly recommended that the recruitment provisions of the Brussels Treaty are changed and that the members of the WEU Assembly are nominated independently from the delegations of the Consultative Assembly of the Council of Europe. In fact, there are good reasons for linking membership of the WEU Assembly to membership of the NATO PA. This would help to avoid a duplication of work; it could tie the parliamentary organisations more closely to each other and contribute towards bridging the gap between the Atlantic and the European approach to security issues. Double-hatted parliamentarians would indeed become well-connected, prominent players in defence policy-making at home and in the transnational arenas.

Research perspectives

Parliamentary assemblies could provide an additional channel for the democratic control of executive decision-making in the area of security and foreign matters, serving as a strand of multi-level parliamentarianism. They have the potential to empower parliamentary players in the national arenas within a policy field that is traditionally dominated by the executives. In view of an increasing transfer of policy power in security matters to levels beyond the nation state, it would make sense to further assess the capabilities of these exceptional transnational organisations.

What kind of future research is necessary? In order to assess the two-level power of parliamentary bodies, it would be useful to take an in-depth look at concrete cases of decision-making. Process-tracing could reveal to what extent the parliamentarians have measurable influence on the outcomes of decision processes either through their work in the parliamentary assemblies or in their national arenas. Under what conditions does the impact of the parliamentarians grow? Furthermore, there is still much to be learnt about the processes of empowerment of transnational assemblies. What are the formal and informal factors that promote such processes? Further research might provide an answer to the complex question whether and how far this form of parliamentary transnationalization can contribute to remedying the “double democratic deficit” in security policy-making.

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Chapter 6

An insider's view Perspectives for interparliamentary cooperation on European security policy

Michael Hilger

Head of Political Section, Secretary to the Political Committee, Assembly of WEU

Introduction: CFSP and ESDP under whose scrutiny?

Within the EU, intergovernmental cooperation under the CFSP (Common Foreign and Security Policy) and ESDP (European Security and Defence Policy) are fast-growing policy areas. This is particularly evident in the field of international crisis management which the EU took over from WEU in 2000. Since then, the number and scope of ESDP civil and military operations has steadily increased and will most likely continue to do so following the implementation of the innovations contained in the Lisbon Treaty.

In Brussels, the EU has established permanent decision-making structures for its civilian and military crisis-management operations (Political and Security Committee (PSC), Military Committee, Military Staff). Government representatives meet and take decisions on the basis of the instructions they receive from their capitals about the kind of missions to be undertaken, cost-sharing and – in the case of military missions – about the number of troops to be deployed and under whose command they will be sent abroad.

The Lisbon Treaty and the related EU Council Declarations 30 and 31 confirm the intergovernmental character of CFSP/ESDP. The EU

governments also state that the relevant provisions of the Reform Treaty “do not increase the role of the European Parliament”.¹

On the other hand, in the Lisbon Treaty, national parliaments have been given a stronger role within the EU than ever before. For the first time, the Lisbon Treaty introduces an interparliamentary dimension to the EU Treaty. However, national parliaments have so far primarily focused on the subsidiarity issue.

This chapter argues that it is also necessary to develop strong interparliamentary tools for the scrutiny of the EU’s intergovernmental foreign, security and defence policy. Because there is an important national input to be made, giving national parliaments their own access to the EU is another means of applying the subsidiarity principle. When European intergovernmental cooperation is mirrored by interparliamentary cooperation between national parliamentarians also meeting at European level, there is more transparency and democratic accountability than when scrutiny is confined to the national level alone.

This European interparliamentary role has effectively been exercised by the WEU Assembly – a body at the service of the national parliaments which has been dealing with European foreign and security policy both before and since the establishment of the CFSP and ESDP. The Assembly is made up of the representatives of the national parliaments who use it as their instrument to scrutinise intergovernmental action in the field of European foreign, security and defence policy. Now also known as the European Security and Defence Assembly, it is currently transforming itself into an EU-wide body so that the parliamentarians of all 27 EU member states will be able to benefit from the same voting and participation rights with respect to the day-to-day scrutiny of CFSP/ESDP.

In the absence of any formal recognition of that role in the EU Treaty, but in the light of the continuing validity of the modified Brussels Treaty, Article IX² of which established the WEU Assembly, its members act on the basis of the parliamentary instruments provided for within the WEU legal

¹ Declaration 31, IGC 2007, Draft Declarations, Document CIG 3/1/07 Rev 1, Brussels, 5 October 2007.

² The official title is: “Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, signed at Brussels on March 17 1948, as amended by the Protocol modifying and completing the Brussels Treaty, signed at Paris on 23 October, 1954”. The wording of Article IX is: “The Council of Western European Union shall make an annual report on its activities [...] to an Assembly composed of representatives of the Brussels Treaty Powers [...]”.

framework. These are defined in the modified Brussels Treaty, the Assembly's Charter, Rules and Procedures and in agreements between the WEU Council and the Assembly.³

The risk with the Lisbon Treaty is that it will lead to a mere conference model, whereas the members of the WEU Assembly are convinced that a simple conference on ESDP is not enough to ensure effective scrutiny of this area of EU activity.

The Convention's unfinished business

The democratic paradox of ESDP

What is new in the Lisbon Treaty?

The Laeken Declaration of the EU Council had already tasked the European Convention with looking into the role of national parliaments in the EU. In the Lisbon Treaty, some effort has been made to strengthen the role of national parliaments in the EU decision-making process, not least because the support of national parliaments was considered essential to overcome the crisis that followed the failed ratification of the European Constitution. The Lisbon Treaty contains a new Title II with "provisions on democratic principles". Article 12 (f) introduces the idea of "interparliamentary cooperation between national Parliaments" and "with the European Parliament" into the main part of the Treaty for the first time.⁴ The Protocol appended to the Constitution "on the role of national Parliaments in the European Union"⁵ has been maintained.

Although EU Council Declaration 31 stresses that the European Parliament's role with regard to the CFSP would not be increased, the EP will undoubtedly benefit from the new text of Article 36 of the Lisbon Treaty which makes provision for it to be regularly informed and consulted on CSFP/ESDP matters and for its views to be taken duly into consideration by

³ For more details on the WEU Assembly, see chapter 5 by Stefan Marschall in this volume.

⁴ All references to the Lisbon Treaty in this chapter relate to the "Consolidated Texts of the EU Treaties as amended by the Treaty of Lisbon" (which also contains the Protocols) published by the United Kingdom Foreign and Commonwealth Office in January 2008, <<http://www.fco.gov.uk/en/>> (accessed 17 November 2008).

⁵ This Protocol on the role of national Parliaments in the European Union states: "The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union" and "a conference of Parliamentary Committees for Union Affairs [...] may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy [...]".

the EU High Representative. The European Parliament will also continue to be consulted on the basis of the interinstitutional agreements and where it previously met annually, now “twice a year it shall hold a debate on progress in implementing the common foreign and security policy including the common security and defence policy” (Article 36 paragraph 2). Furthermore, the relevant EP Committees are to be kept regularly informed (see also chapter 4 of this volume).

However, there is no provision in the Lisbon Treaty for a mechanism for informing and consulting a body composed of representatives of the national parliaments, or for direct information to be provided to the national parliaments on these subjects, notwithstanding the fact that they are the ones to have the last word when it comes to launching and funding a military operation. Hence, although the role of the national parliaments is generally strengthened by being incorporated into Article 12 of the Lisbon Treaty, this does not remedy the fact that they are in a weak position with regard to the CFSP and ESDP and that a democratic deficit remains in this area.

This situation might improve when the Protocol on the role of the national parliaments is implemented. Article 9 of this Protocol leaves it up to the European Parliament and the national parliaments together to define and organise their interparliamentary cooperation. That cooperation with the European Parliament could lead indirectly to the representatives of the national parliaments being better informed collectively about the CFSP and ESDP, but this will depend on the willingness of the European Parliament (which, it should be noted here, is mentioned first in Article 9) to open its doors to national parliamentarians.

The democratic paradox of ESDP

As regards parliamentary scrutiny of governments, a distinction must be drawn between national parliaments and the European Parliament, and in the case of the national parliaments, a further distinction is necessary between their activities at national and at European level.

At national level, individual national parliaments exercise democratic scrutiny over the government of their country. There are major differences between the powers of parliaments vis-à-vis governments (see also chapter 3 of this volume). Some parliaments have far-reaching powers, others less so. But what they all have in common is the final word on their country's defence budget, and many have a decisive say in the deployment of troops abroad, even if the decisions to launch such an operation are taken at the European level in the framework of the European Security and Defence Policy. Parliamentarians

also provide the most effective channel of communication between politicians and the citizens for whose benefit policy is made.

But a national parliament has difficulty obtaining information about the ESDP decision-making process taking place at the European level. It has no regular access to the European institutions and therefore has to rely above all on its own government, which supplies it with information according to national policy criteria. National parliaments have to assess decisions taken in the EU without being represented at that level, whereas the governments themselves consult one another regularly in the EU Council.

That is why, in other cases of intergovernmental cooperation, such as in NATO or the OSCE, national parliaments engage in interparliamentary cooperation (between parliamentarians from different countries) and look to the intergovernmental executive of the Presidency for the necessary exchange of information, dialogue and consultation (for instance the regular dialogue between the NATO Parliamentary Assembly and the NATO Secretary-General, or the exchange of views of the OSCE Parliamentary Assembly with the OSCE Presidency).

In contrast, the European Parliament is informed about CFSP and ESDP developments on the basis of the EU Treaty and of interinstitutional agreements with the Council. It regularly receives information either from the Presidency or from the CFSP High Representative. Also, in Brussels, MEPs' proximity to the European Council offers many possibilities for informal dialogue. In future, the European Parliament may be able to strengthen further its role in foreign, security and defence policy. But at the same time it is very clear that national governments will retain their decision-making prerogatives, even in the event of further "Brusselisation" of that policy area.

This results in a democratic paradox: national parliaments decide on the financial and other means provided for the CFSP and ESDP, but they lack both the structure (no interparliamentary EU body with which to engage in interparliamentary dialogue) and the information (no regular dialogue with the EU executive) they require to fulfil their constitutional task of scrutiny over their governments at national level. At the same time, members of the European Parliament are kept informed but do not vote member states' defence budgets.

This means that parliamentary oversight of CFSP/ESDP cannot be a task exclusive to one parliamentary body. The European Parliament and the

national parliaments of the EU member states have complementary not competing prerogatives. Ideally, both cooperate as much as possible, drawing benefit from one another's strengths. However, the national parliaments have so far been reluctant to accept any formula in which the European Parliament was the dominant partner. At the same time, the European Parliament has been unwilling to engage in meaningful cooperation with the WEU Assembly, thereby weakening overall parliamentary scrutiny for the sake of institutional interests.

Still, some say national parliaments should only scrutinise their national governments at home. However, research undertaken by the Free University of Brussels for a WEU Assembly report⁶ on how national parliaments monitor troop deployments shows that ESDP missions tend to generate less parliamentary debate, fewer questions to government and fewer hearings of the government representatives responsible for this area than do other military deployments. The findings of the report also indicate that parliamentarians who are members of the WEU Assembly are better informed about ESDP missions than those reliant only on national sources.

Interparliamentary cooperation

Strengths and weaknesses of different models

An assessment of the provisions of the Lisbon Treaty on interparliamentary cooperation

The solution proposed by the Convention and maintained in the Lisbon Treaty, which is contained in the Protocol on the role of national parliaments, tasks both the European Parliament and the national parliaments with organising interparliamentary cooperation in the EU.

Cooperation with the European Parliament could lead indirectly to the representatives of the national parliaments being better informed collectively about CFSP and ESDP, though this will depend on the good will of the European Parliament. But as mentioned above, even before the future of the European Constitution was called into question by the “no” vote in the referendums held in France and the Netherlands, there had been little progress in the area of cooperation between the European Parliament and national parliaments.

⁶ Document 1911, <<http://www.assembly-weu.org/en/index.php>> (accessed 17 November 2008).

The Protocol also offers a “conference of Parliamentary Committees for Union Affairs” the possibility of holding interparliamentary conferences on foreign, security and defence policy matters. This conference may possibly be composed like the present-day Conference of European Affairs Committees (CEAC, also known by its French acronym COSAC) of representatives of both national parliaments and the European Parliament. But as we will see, the weakness of the “conference” model is that though it may provide for interparliamentary exchanges of views, it does not necessarily entail dialogue with the EU executive.

What is the potential of the Lisbon Treaty’s provisions? Today, cooperation between the European Parliament and national parliaments is limited to meetings between the European Parliament and national parliamentary committees responsible for monitoring CFSP and ESDP. Some of those meetings take place on a regular basis (for instance those between the chairmen of the foreign affairs committees of the national parliaments and the European Parliament); others are of a more ad hoc nature (for instance the meetings between the chairmen of defence committees). In the absence of any formal obligation they depend on the willingness of the relevant Council or Commission bodies to address such meetings. Therefore new cooperation agreements between the EP, the national parliaments and governments and the EU executive bodies would need to be drawn up on the basis of Article 9 of the Protocol in order to ensure a reasonable flow of information between the EU executive and the parliamentarians. It may also be possible, in future, to include the national parliaments in the interinstitutional agreements between the EP and other EU institutions.

None of the current meetings produces detailed reports or other documents of substance. No recommendations are voted. Yet these kinds of documents are crucial in order to provide the public with parliamentarians’ assessments of intergovernmental action and to render the actions of governments more transparent. One outstanding feature of existing interparliamentary assemblies is the wealth of reports and recommendations resulting from the discussion and voting in committee that takes place there.

Another problem concerns the lack of representativeness of meetings between chairmen of committees only. In many parliaments, the committee chairman is automatically drawn from the party in government. Hence, exchanges between parliamentarians representing mainly government parties run the risk of simply mirroring discussions at intergovernmental level and omitting other major sections of opinion represented in national parliaments.

Nonetheless, interparliamentary cooperation under the Lisbon Treaty may enable the representatives of national parliaments to participate regularly in EP committee and subcommittee meetings where they could be informed and consulted about CFSP and ESDP matters. It may also be possible in future for the representatives of national parliaments to participate in the EP's half-yearly debates on the progress achieved in the area of the CFSP and ESDP. However, up until now, the European Parliament's rules of procedure have not permitted national parliamentarians to participate in its plenary sessions.

The new Conference of European Affairs Committees

The new Conference of European Affairs Committees (CEAC) was originally set up in 1989 on the basis of the Protocol on the role of the national parliaments that was appended to the Amsterdam Treaty to deal with the community aspects of the EU.

The Conference is not an interparliamentary assembly although it has some of the characteristics of one. It has a good record of attendance of government representatives, although normally only from the country hosting the conference. CEAC is made up of members of the European Parliament and of the national parliaments of EU member states. Every country, including countries with bi-cameral parliaments, sends only six parliamentarians. The small size of the delegations raises questions as to whether they are an adequate reflection of their countries' dimension (its political and military weight) and the political groups represented in the national parliament. CEAC does not vote on recommendations but publishes a "contribution" drafted by the heads of delegation.

In the Lisbon Treaty, Article 10 of the Protocol on the role of the national parliaments makes provision for organising "a conference of Parliamentary Committees for Union Affairs" which would be authorised to "submit contributions" for the attention of the EU bodies. As soon as the Lisbon Treaty enters into force that Conference will replace the current CEAC set up.

The competence of a new Conference of Parliamentary Committees for Union Affairs to be set up on the basis of Article 10 of the Protocol covers all areas of Union activity. There will no longer be any distinction between the Community and intergovernmental pillars, which means that this Conference will be entitled to submit contributions concerning ESDP for the attention of the Council of the European Union and organise interparliamentary conferences on that specific subject or on any other topic in any other area.

Those broader competences will necessarily have an impact on the structures, composition, organisation and working methods of the Conference. Article 10 of the Protocol is extremely flexible in that respect, since the Conference is totally free to decide on its configuration (in particular, it could be an information tool exclusively for national parliaments only or have a mixed composition involving national parliamentarians and members of the European Parliament).

In order to contribute to all areas of EU activity, the Conference will need to set up working groups, or even numerous committees, so as to be able to monitor the EU's activities on a permanent basis. This also implies the creation of a strengthened secretariat and even the presence of experts, not only in the legislative field but also in all areas of intergovernmental cooperation, including security and defence.

The interparliamentary model

Improved involvement of national parliaments in CFSP and ESDP

The conclusion to be drawn is that national parliaments cannot carry out their task of scrutiny properly without collective access to the European level and the solutions put forward in the Lisbon Treaty do not carry sufficient conviction. The WEU Assembly therefore suggests national parliaments use the model of the interparliamentary assembly.

The interparliamentary assembly model offers certain advantages over the conference model. Its added value depends essentially on two factors: the composition of its membership on the one hand and the information flow between the EU executive and the parliamentarians on the other hand.

Normally, interparliamentary assemblies reflect the size of the member countries and the political groupings represented in the national parliaments. A decision needs to be made about the size of delegations to the EU interparliamentary body. Delegations based on those of the representatives of parliaments to the Council of Europe would give a total of 406 members (the European Parliament by comparison currently has 785 members and in future will have 751). Another aspect of the membership issue is whether, within the interparliamentary body, sufficient representatives could be found among members sitting on the foreign affairs, European affairs and defence committees of national parliaments. As opposed to the conference model, under the interparliamentary model countries are represented according to their demographic and economic (military) weight allowing for a better representation of the full spectrum of political groupings in a given national parliament.

Also, under the interparliamentary model, information gathered at European level is available to a larger number of parliamentarians as compared to meetings of chairmen of defence committees or the CEAC. This is especially important with respect to the role of national parliamentarians in informing public opinion and conveying public opinion to the European level and with respect to the much greater proximity of national parliamentarians to European citizens in comparison to MEPs.

As regards the information flow between the EU Council and the interparliamentary body, an obligation on the EU Council to provide the interparliamentary body with oral and written reports of its intergovernmental activities would help initiate and facilitate the dialogue between parliamentarians and governments. These and other EU documents would provide the basis for the scrutiny work of the interparliamentary body. Members must also have the opportunity to put oral and written questions to the EU Council to which it should be obliged to reply within a reasonable time frame.

As opposed to ad hoc conferences, the interparliamentary model offers an ongoing consultative dialogue between national parliamentarians and the EU executive, as well as a regular follow-up process.

Further advantages of the interparliamentary model over the conference model are that:

- Parliamentarians would be able to organise their political work in permanent committees in which they could meet to draft reports and discuss and vote on recommendations to governments;
- Governments would be obliged to reply to the recommendations of the national parliamentarians (something the EU executive is not obliged to do with the resolutions of the European Parliament Subcommittee on Security and Defence);
- Parliamentarians would have a permanent independent staff and a budget with provision for fact-finding visits at their disposal;

One condition for any form of interparliamentary scrutiny to work effectively is that the parliamentarians tasked with working in the EU context must be able to provide their national colleagues with proper feedback about their work. This depends on whether national parliaments allow for regular debates on the results of work done in the interparliamentary framework.

Conclusion

There is some potential in the Lisbon Treaty and its first Protocol for establishing regular interparliamentary cooperation within the European Union. However, it is questionable whether the conference model they propose, with all the shortcomings described above, can provide the kind of interparliamentary instruments the national parliaments of the EU member states need to carry out their national constitutional tasks. Nevertheless, it is up to the European Parliament, and in particular the national parliaments, to build on the possibilities opened up by the Lisbon Treaty in order to determine how to organise and promote effective and regular interparliamentary cooperation within the EU and to create the appropriate instruments within the EU framework.

In the absence of any formal obligation on the part of the EU Council to be accountable to national parliamentarians under the Lisbon Treaty, it is necessary to establish an informal arrangement that would eventually become a standard practice. Indeed, European governments must be persuaded that it is in their own interests to establish at European level a process of regular structured dialogue and consultations through a body, be it a conference or an interparliamentary assembly, in which national parliamentarians of all member countries are represented.

In parallel, the WEU Assembly – so far Europe's only Security and Defence Assembly directly related to ESDP – will continue making its specific contribution to the parliamentary oversight of CFSP/ESDP, increasing transparency and public awareness in an area that is notoriously lacking in democratic scrutiny. The Assembly will also remain an inspiration, for good and for bad, showing the way forward to remedy the democratic deficit in European intergovernmental cooperation on foreign, security and defence policy. It is a structure that is already up and running. There is no need to reinvent the wheel.

Today, none of the three parliamentary actors (the national parliaments, the WEU Assembly, the European Parliament) has the full legal competence, the necessary institutional position, the political weight or the technical means to claim the exclusive prerogative to scrutinise CFSP and ESDP. A combination of their competences would be fitting. What we need is an open-minded approach and not competition for exclusivity.

Report summary

Guri Rosén

ARENA, Centre for European Studies, University of Oslo

In early December 2007, the Peace Research Institute Frankfurt organized a workshop within the RECON project entitled *Parliamentary Control of European Security Policy*.¹ One of the subfields of the project is the EU's Foreign and Security Policy where the main goal is to investigate the conditions and prospects for democratic input and control of the EU's foreign and security policy. Thus, the purpose of the workshop in Frankfurt was to map the parliamentary control of EU security policy in order to get an overview of the current level and scope of parliamentary control and to identify remaining challenges. The contributions to this volume build on the discussions at this workshop.

In the opening chapter by Dirk Peters, Wolfgang Wagner and Nicole Deitelhoff, *Parliaments and European Security Policy: mapping the parliamentary field*, the authors apply a conceptual tool for analysing parliamentary control aimed at a better understanding of parliamentary involvement at different governance levels, and how parliamentary activity at these levels may also be interlinked. Building on three models of parliamentary fields that have been developed by Ben Crum and John Erik Fossum within the RECON project, Peters, Wagner and Deitelhoff suggest that a good way to analyse parliamentary involvement in the area of security policy is to use ideal types of institutional configurations that each correspond to particular visions of the European Union. They employ three such ideal types, each giving emphasis to different levels of parliamentary activity and suggesting different patterns of interaction.

¹ Visit the RECON website for more information: <<http://www.reconproject.eu/>>.

The first ideal type sees the EU as a functional regime, and this places the responsibility for holding decision-makers to account on the national parliaments, while the European Parliament is confined to an auditory role assisting the national parliaments in conducting oversight. The second model conceives of the EU as a federal state in the making with competences allocated according to functional divides. This would give the European Parliament a more prominent role compared to the first model in the sense that its role in supranational policy areas becomes more important. Finally, the third ideal type represents a departure from the notion that parliamentary control necessarily takes place within state boundaries, i.e. either within the nation state or a European federal state. Rather, a third alternative, based on ideas derived from deliberative democratic theory, is to see the EU as a post-national, regional Union, existing within a larger cosmopolitan order. In this case, the ideal type parliamentary field would depict a high degree of interaction between different parliamentary levels thus ensuring the accommodation of different interests. Having spelled out three ideal types for parliamentary involvement in European security policy, the question becomes how the practice of oversight actually takes place. What parliamentary field is dominant?

Based largely on the findings in this report, Peters, Wagner and Deitelhoff conclude that neither of the ideal types is particularly fitting to the empirical reality of EU security policy. The functional ideal type designates an intergovernmental policy area, but by studying the development of policy in this area it becomes clear that the policy has moved beyond intergovernmentalism. However, this is exactly what causes the democratic deficit at the national parliamentary level. Moreover, the European Parliament seems to be confined to a role of auditing the activities that take place at the European level, much in line with the first ideal type. Thus, the federal model of the parliamentary field, which predicted an overlap between executive and parliamentary competence does not fit this picture. Peters, Wagner and Deitelhoff argue further that although the current status of transnational parliamentary cooperation is rather weak, it may still be the ideal type that has the most to offer for the future of parliamentary oversight over ESDP. The lack of fit of the two models based on the primacy of the nation state indicate that what is needed to capture the development of the EU's security policy and the parliamentary involvement both in empirical and normative terms, requires a model that is not based on the concept of the nation state.

The subsequent chapters provide detailed accounts of why parliaments have an important role to play in EU security policy as well as how parliamentary oversight takes place at different institutional levels.

Why is this exercise important?

The notion that security policy should be subjected to parliamentary control cannot be taken for granted. Traditionally, the area of foreign policy has been regarded as a governmental prerogative. The exceptionality of the foreign and security area, for instance the need for rapid response and secrecy, has frequently been put forward as an argument for why traditional democratic accountability should not apply in this policy area. In Christopher Lord's chapter, *Is there a role for parliamentary participation in European security co-ordination?*, these claims are countered. First, Lord presents five reasons for why security policy should be subjected to democratic control: they entail legal obligations that necessarily affect citizens (taxes and troops); they entail value choices that require public endorsement; they entail decisions on what is an acceptable risk, which should be subjected to public debate; promoting democratic peace externally requires an adherence to democratic standards internally; and finally, coordinating security policy at the European level will necessarily entail some type of path-dependency, which in turn implies that exit options are restricted.

Against the backdrop of this set of reasons, Lord argues that the task of democratic control has to be given to parliaments because, first of all, parliaments offer a procedure for ensuring political equality through the one representative – one vote formula. Secondly, parliamentary bodies allow issues to be assessed in context. In other words, all decisions are considered with regard to other decisions, resulting in a more holistic approach both to value choices and functional problems. Lord then proceeds by asking at what level parliamentary control should take place in the case of the EU. On the one hand, he argues that by exchanging views on for instance plans of deployment of troops national parliaments can counteract government arguing that criticism of collective endeavours results in reputational costs. On the other hand, he underlines that the information and expertise provided by the European Parliament as well as the powers at its disposal is invaluable and provides for more efficient control, especially in a complex policy field such as security policy.

Having showed why democratic control should be exercised at both the national and the European parliamentary level, Lord asks what form this parliamentary control should take. His argument is that, with the need for speed and secrecy as a backdrop, parliamentary control should be exercised ex

ante rather than ex post where parliaments explicate a set of criteria setting the standards for subsequent action. An additional reason for focusing on ex ante control is that tracing the causal chain in the case of complex events can render accountability difficult. With regard to ex post control, Lord refers to the practice in the USA where the President has been given the prerogative to act without the approval of the Congress within a limited amount of time, should a situation require quick response. But, should the Congress not accept the President's reasons for taking action, the President is forced to withdraw troops or disengage in a conflict.

Parliamentary control at the national level

The chapter by Suzana Anghel, Hans Born, Alex Dowling and Teodora Fuior, entitled *National Parliamentary Oversight of ESDP Missions*, assesses the role of national parliaments in the oversight of four ESDP missions, two military operations in Bosnia Herzegovina and Congo and two civilian missions in Bosnia Herzegovina and Palestine. Based on a survey of members of national committees responsible for ESDP missions as well as a series of in-depth case studies, Anghel et al. conclude that four models of parliamentary oversight can be identified. The first model includes countries such as Finland and Sweden, where governments need parliament's authorization before agreeing to a Joint Action. The second model encompasses countries where governments need parliamentary approval before deployment but only *after* the Council has decided on a Joint Action. Countries like Austria, Germany, Ireland and Spain fall into this second category. The third model signifies countries where parliaments have a consultative role. This means that they do not have a formal power to approve ESDP missions but that missions are debated in parliament. Parliaments in Belgium, Poland, Portugal and the UK all have this consultative role. Finally, the fourth model includes countries where parliaments are not involved at all. In Bulgaria, Greece and Romania, parliaments are not informed and not consulted about ESDP missions.

Anghel et al. conclude that this wide variety of oversight practices of ESDP missions at the national level constitutes a democratic problem. Not only are parliaments in several countries hardly involved in the process of decision-making, but the fact that practices are so different means that there is a lack of *collective* oversight. Furthermore, in the case of civilian missions, there is even less parliamentary involvement. Hence, according to Anghel et al., the EU's European and Defence Policy suffers from a democratic deficit. One of the points that is raised by the authors as especially problematic is the practice represented by the second model, namely that parliaments are left to approve a mission *after* a decision has been made at the European level. This means that parliaments are presented with a *fait accompli*.

Given the difficulties of controlling security policy that have followed from European integration, to what extent has the European Parliament been able to compensate for these deficiencies of parliamentary control?

The supranational level

In the chapter by Esther Barbé and Anna Herranz Surralés, *The power and practice of the European Parliament and European Security Policies*, it is argued that despite its intergovernmental nature, the EP plays a role in ESDP, and the authors' goal is to find out to what extent, how and why the EP exercises oversight over ESDP policy-making. In the case of ESDP operations the EP has managed to increase the flow of information by participating in in camera meetings and by sending ad hoc delegations to areas where the EU is active. Prior to military operations, the EP has sent opinions and recommendations, and in the case of civil missions it also has a say over the budgetary provisions. In the case of arms control, the EP has engaged and gained influence in areas such as the EU Code of Conduct for Arms Exports as well as Weapons of Mass Destruction. Furthermore, by being active at an international level towards the work in the UN, the EP is part of processes of control of Small Arms and Light Weapons. Finally, in the case of intelligence and the fight against terrorism, the EP's work has been concentrated on ensuring that counterterrorist measures do not infringe on fundamental rights. However, Barbé and Surralés emphasise that the concrete results in terms of control and oversight are mixed.

Despite the EP's success in exercising oversight, democratic accountability in the area of security policy faces several challenges. First of all, although the EP has managed to improve its access to information, it has not been able to establish a proper consultation procedure. Secondly, although the EP has used its budgetary powers to get more control over CFSP activity, ESDP operations are still escaping the EP's influence and control because financing comes directly from the member states and not from the EU budget. Notwithstanding these challenges and the limits to the EP's powers, Barbé and Herranz conclude that the EP has had some success in increasing its powers over security policy by building on informal practices that at later stages have become more or less institutionalized. Thus, by looking at how the EP exercises its oversight in practice, the authors find that the members of the EP tend to actively exploit problems of the institutional structure to increase the EP's competences in the security realm. The EP has been proactive, and this strategy has been helped especially by the lack of rigid separation between activities within the different pillars. For instance, in every operation there will be civilian components that are financed by the Community budget, and hence are subjected to the control of the EP. At the

same time, it is also pointed to examples of the Council reacting to the EP's activity by strengthening the intergovernmental approach, and that a further proactive strategy on the part of the EP may be challenged in the future as well. To what extent is the transnational level able to balance the challenges confronted by parliaments at the national and supranational levels?

The transnational level

In the chapter, *Transnational Parliamentary Assemblies and European Security Policy*, Stefan Marschall's aim is to analyse what kind of contribution to parliamentary control over security policy one could expect from transnational parliamentary assemblies. In the last fifty years the number of parliamentary assemblies has not only exploded, they have also been established all over the globe. Despite the difference in affiliation with International Governmental Organisations (IGOs) – some assemblies are not affiliated at all, some are informally affiliated, and some are part of the institutional configuration of IGOs – all parliamentary assemblies are different from ad hoc transnational parliamentary cooperation in that they have institutionalized structures.

Even in the field of security policy, there are parliamentary assemblies, and Marschall explores two of these in his chapter, namely the Assembly of the Western European Union (WEU) and the Parliamentary Assembly of NATO². The interesting question is why should governments set up parliamentary assemblies that may possibly restrict their actions? With regard to the WEU Assembly, Marschall describes how this was created practically by accident after fervent pressure on the part of national parliamentarians. The establishment of a parliamentary assembly affiliated to the new Western European Union was also a kind of consolation price after the plan to build a European Defence Community (EDC), which included a role for the ECSC's Common Assembly, failed. The NATO Assembly on the other hand, was a much weaker institution at the time of its creation, but has, according to Marschall increased its relevance over time. The NATO Assembly was established in the mid 1950s, and Marschall argues that governments held the creation of such an assembly to be beneficial because national parliamentarians could help promote NATO at home. It was not incorporated into the Treaty structure, however, and its powers are therefore rather weak.

² The WEU Assembly is also known as the Interparliamentary European Security and Defence Assembly.

Although the NATO Assembly has been described as a talking shop, and even though both the NATO and the WEU Assemblies are much weaker than any national parliament, the process of empowering these assemblies, driven forward by national parliamentarians, is to Marschall a sign that this is a dynamic process and that individual members who perceive of themselves as legitimate controllers make a difference. Furthermore, he states that the existence of these assemblies represents a potential. This is first of all due to the geographical proximity between the assemblies and the organisations to which they are affiliated. The assemblies can provide access to information for other actors, e.g. the media, other national parliamentarians or the national opposition. In conclusion, and quite similar to the authors above, Marschall argues that in order to alleviate the current democratic deficit in the area of European security policy, a complex European network of national, supranational and transnational parliamentary bodies needs to be established. In addition, he also argues that the WEU Assembly should be incorporated into the ESDP structure in order to exercise parliamentary control.

In the final chapter by Michael Hilger, *An insider's view: perspectives for parliamentary cooperation on European security policy*, the provisions of the Lisbon treaty concerning interparliamentary cooperation are analysed and found to be a positive development, albeit insufficient. Hilger argues that the ESDP presents a democratic paradox; on the one hand, national parliaments control the financial means of the ESDP but lack information, while on the other hand the EP has this information but cannot control the financing of the ESDP. Consequently, one parliamentary body cannot be in charge of overseeing the EU's security policy. However, the interparliamentary Conference of European Affairs Committees (COSAC) that currently brings together national and European parliamentarians is not up for the task, according to Hilger. By contrast, what is needed is an interparliamentary *assembly* similar to the WEU Assembly. Compared to the conference model represented by COSAC, an interparliamentary assembly has the advantage of being composed according to the principle that the number of seats is relative to country size. Moreover, such an assembly may improve the flow of information between the EU executive and the parliamentarians because the assembly is a permanent body, which allows for continuous communication and more regular follow-up processes.

To sum up, there are three general tendencies in all the chapters of this report. First, they all conclude that parliamentary control has suffered as a consequence of European integration of security policy. Secondly, there is a consensus that control of the European security is flawed at all levels. Thus, the main inference is that control at only one level is not sufficient. Thirdly,

all contributions repeat the message that the activity at different parliamentary levels has to be combined and coordinated to become more efficient. The question is what to do with this knowledge? Further research will have to deal with the need to develop both explanatory models of how parliaments engage in security policy and the factors that shape their success, as well as normative thinking around what type of engagement is required and desired.

List of workshop participants

Christopher Bickerton	<i>University of Oxford</i>
Giovanna Bono	<i>European Parliament</i>
Michael Clarke	<i>University of Bath</i>
Nicole Deitelhoff	<i>Peace Research Institute Frankfurt</i>
Teodora Fuior	<i>Geneva Center for the Democratic Control of Armed Forces</i>
Hannes Hansen-Magnusson	<i>University of Bath</i>
Anna Herranz Surrallés	<i>Universitat Autònoma de Barcelona</i>
Michael Hilger	<i>Assembly of Western European Union</i>
Hartwig Hummel	<i>Heinrich-Heine-Universität Düsseldorf</i>
Philip Liste	<i>Peace Research Institute Frankfurt</i>
Christopher Lord	<i>University of Reading</i>
Stefan Marschall	<i>Heinrich-Heine-Universität Düsseldorf</i>
Harald Müller	<i>Peace Research Institute Frankfurt</i>
Dirk Peters	<i>Peace Research Institute Frankfurt</i>
Kolja Raube	<i>ARENA - Centre for European Studies, University of Oslo</i>
Marianne Riddervold	<i>ARENA - Centre for European Studies, University of Oslo</i>
Guri Rosén	<i>ARENA - Centre for European Studies, University of Oslo</i>
Gabriele Schlag	<i>Goethe University, Frankfurt/Main</i>
Andreas Schmidt	<i>Peace Research Institute Frankfurt</i>
Helene Sjursen	<i>ARENA - Centre for European Studies, University of Oslo</i>
Anne Elizabeth Stie	<i>ARENA - Centre for European Studies, University of Oslo</i>
Wolfgang Wagner	<i>Peace Research Institute Frankfurt / Vrije Universiteit Amsterdam</i>
Linda Wallbott	<i>Technische Universität Darmstadt</i>

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How can parliaments on all levels contribute to the democratic control of European security policy? This question is the focus of the present report from RECON's Work Package 6 on the foreign and security dimension of the EU. The report results from the workshop 'Parliamentary Control of Foreign and Security Policy', which was organized by the Peace Research Institute Frankfurt in December 2007. Individual contributions discuss why parliaments should have a role in European security policy at all and examine how different parliaments are actually involved in this area: the European Parliament, transnational parliamentary assemblies and national parliaments. To conclude, the editors draw together the results and employ the concept of the parliamentary field to discuss the findings against the backdrop of RECON's theoretical base.

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