

Analysis No. 230, January 2014

PARLIAMENTARY OVERSIGHT OF EU FOREIGN AND SECURITY POLICY: MOVING BEYOND THE PATCHWORK?

Anna Herranz-Surrallés

The highly influential parliamentary debates in the United Kingdom, the United States or France on the Syrian conflict have fostered the perception that parliaments are gaining salience in first-order international affairs. This article examines whether this momentum can also be observed when it comes to the European foreign and security policy. Far from this, the article argues that more than a consistent tendency towards a stronger role of parliaments, we observe divergent trends leading to a patchwork of parliamentary oversight at national, supranational and transnational levels. The article concludes with some reflections on the prospects for improving the multi-level parliamentary oversight of the CFSP/CSDP.

Anna Herranz-Surrallés is Marie Curie Fellow (Regional Programme Beatriu de Pinós) at Maastricht University

Introduction

The decision of the House of Commons not to support the government's plan to join a military action against the Syrian regime last August came as a surprise to many. In times when representative democracy is often criticised for the rigidity of party discipline and executive predominance, a parliamentary vote against a crucial governmental foreign policy initiative is certainly uncommon. The situation was even more exceptional in the case of Westminster, traditionally a weak parliament in terms of 'war powers', meaning that the government has no legal obligation to consult the parliament on troop dispatches. As it is the case in many other Western democracies, this limited involvement of the parliament in security and defence policy responds to an ingrained tradition to consider decisions on war and peace as an executive prerogative, too sensitive and urgent to be left at the fate of party politics and public opinion. More recently, other factors such as participation in military alliances have also often militated against parliamentary veto on deployments, in the name of the efficiency and credibility of multilateral security arrangements¹.

However, the British government's political commitment to consult the parliament without the certainty of a comfortable victory, and bearing in mind the backlash that a negative vote could mean for the Anglo-American special relationship, is an indication that sidestepping parliaments in decisions on the use of force is becoming more difficult in practice. Similarly, the decision of the President Barack Obama to consult the US Congress on this matter, or the French opposition's loud calls for a vote at the *Assemblée Nationale*, seem to confirm this trend. Whether this momentum is also perceptible when it comes to EU's Common Security and Defence Policy (CSDP) is however less clear. This article briefly examines the trends and prospects of parliamentary control of the CSDP, arguing that there is so far no consistent trend towards a stronger role of parliaments, but rather, divergent trends leading to a patchwork of parliamentary oversight at national, supranational and transnational levels. The article concludes with some reflections on the prospects for improving the multi-level parliamentary oversight of the CSDP.

The national level: European defence under control?

Determining the appropriate level of representation and parliamentary control in the complex multi-level system of the EU has never been an

As it is the case in many other Western democracies, this limited involvement of the parliament in security and defence policy responds to an ingrained tradition to consider decisions on war and peace as an executive prerogative, too sensitive and urgent to be left at the fate of party politics and public opinion. More recently, other factors such as participation in military alliances have also often militated against parliamentary veto on deployments, in the name of the efficiency and credibility of multilateral security arrangements

¹ For example, several of the Central and East European Countries relaxed the requirements of parliamentary control of troop deployments in the context of NATO accession (see D. PETERS – W. WAGNER, *Between Military Efficiency and Democratic Legitimacy: Mapping Parliamentary War Powers in Contemporary Democracies 1989–2004*, «Parliamentary Affairs», vol. 64, no. 1, 2011, p.1 83).

easy enterprise. However, over sixty decades of integration, a sort of democratic ‘golden rule’ has developed that whenever member states agree to pool their sovereignty by adopting the principle of majority voting at the Council of Ministers, then the European Parliament should be granted strong powers as co-legislator, to compensate for the democratic loss at the national level². Conversely, in intergovernmental areas such as foreign and security policy, where decisions have remained subject to a unanimous voting by all member states, the chain of accountability and representation can continue tracing back to the national parliaments. For this reason the European Parliament has very limited prerogatives in matters of foreign and security policy, and virtually any when it comes to military operations. However, this straightforward division of parliamentary responsibilities poses several problems in practice.

A first and much discussed problem for the national parliamentary oversight of the CSDP is that this policy is in fact less intergovernmental than it appears on paper³. Even if governments have continuously reasserted the principle of unanimity when taking key decisions in the Common Foreign and Security Policy (CFSP), the day-to-day practice seems to be very much run by EU civil servants and seconded personnel by member states working permanently in Brussels⁴. The Lisbon Treaty further contributed to this institutional hybridisation by fusing the former three posts of High Representative, External Relations Commissioner and Presidency of the Foreign Affairs Council into one single post of High Representative/Vice-President of the Commission (HR/VP), now held by Catherine Ashton; and giving birth to the European External Action Service (EEAS) joining personnel from both the EU institutions and national diplomatic services. Besides leading the EEAS, the HR/VP also holds now the formal right of initiative (together with the member states) and the chairmanship of a crucial body in the political direction of the CFSP/CSDP, the Political and Security Committee (PSC). In this sense, as noted by an observer in the PSC, member states’ governments may still be the decision-takers but no longer the sole decision-makers⁵. No wonder,

Even if governments have continuously reasserted the principle of unanimity when taking key decisions in the Common Foreign and Security Policy (CFSP), the day-to-day practice seems to be very much run by EU civil servants and seconded personnel by member states working permanently in Brussels

² B. RITTBERGER, *No Integration without Representation! European Integration, Parliamentary Democracy, and two forgotten Communities*, «Journal of European Public Policy», vol. 13, no. 8, 2006, pp. 1211-1229.

³ H. SJURSEN, *Not so Intergovernmental After All? On Democracy and Integration in European Foreign and Security Policy*, «Journal of European Public Policy», vol. 33, no. 1, 2011, pp. 1078-1095.

⁴ S. VANHOONACKER - H. DIJKSTRA - H. MAURER, *Understanding the Role of Bureaucracy in the European Security and Defence Policy: The State of the Art*, European Integration Online Papers, Special Issue, no. 14, 2010.

⁵ P. MORILLAS, *Institutionalization or Intergovernmental Decision-Taking in Foreign Policy: The Implementation of the Lisbon Treaty*, «European Foreign Affairs Review», vol. 6, no. 2, 2011, pp. 243-257.

therefore, that the ability of national parliaments to individually control this hybrid EU foreign policy system is becoming ever more difficult and costly⁶.

This leads to a second challenge, which is the variegated picture of national systems and traditions of parliamentary oversight. The 28 national parliaments of the EU have not only different formal powers on troop deployments, but also very different degrees of involvement in EU affairs in general, different executive-legislative balances, and different resources as well as political willingness to hold the government to account on certain topics. This results in a “patchwork of parliamentary control at the national level”⁷, where some parliaments enjoy veto powers over troop dispatches (e.g. Germany, Spain, Finland or Sweden), while others do not (e.g. United Kingdom, France, Belgium or Poland)⁸. The picture is even more complex if we take into account the actual political practice, as for example, parliaments having relatively strong war powers may exhibit little interest in actually using them, as it has been found to be the case in Italy; while parliaments with no veto powers on troop deployments like the Dutch *Tweede Kamer* may still exert a good control over the CSDP by virtue of its strong powers in EU affairs⁹. Overall therefore, the degree of parliamentary oversight of CSDP military operations, when several of the parliaments of the participating member states have little or any involvement at all, is often judged as deficient¹⁰.

Finally, a more recent and less explored problematic aspect for national parliament’s control function is the integration of defence capabilities. This is certainly not a novelty in the EU, but proposals on so-called ‘pooling and sharing’ are gaining salience as the only way to maintain sizeable military capabilities in a context of significant defence budget cuts. Although the pooling and sharing concept does not formally imply a cession of sovereignty in the traditional sense (i.e. there is no departure from the unanimity requirement), further integration of capabilities implies de facto a considerable limitation of sovereignty. If successful, this may lead to further interdependency between member states and, with it,

Finally, a more recent and less explored problematic aspect for national parliament’s control function is the integration of defence capabilities. This is certainly not a novelty in the EU, but proposals on so-called ‘pooling and sharing’ are gaining salience as the only way to maintain sizeable military capabilities in a context of significant defence budget cuts

⁶ A. HUFF, *Problems and Patterns in parliamentary Scrutiny of the CFSP and CSDP*, OPAL Online Paper Series, 14/2013.

⁷ D PETERS – W. WAGNER – C. GLAHN, *Parliamentary Control of Military Missions. The Case of EU NAVFOR Atalanta*, RECON Online Working Paper 11/24, 2011, p. 18.

⁸ W. WAGNER – D. PETERS – C. GLAHN, *Parliamentary War Powers Around the World, 1989-2004. A New Dataset*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper 22, 2010.

⁹ A. HUFF, *Problems and Patterns...cit.*

¹⁰ S, ANGHEL - H. BORN - A. DOWLING - T. FUIOR, *National parliamentary oversight of ESDP missions*, in D. PETERS - W. WAGNER - N. DEITELHOFF (eds.) *The Parliamentary Control of European Security Policy*, RECON Report No. 6, Oslo, ARENA Centre for European Studies, 2008, pp. 51-76.

additional constraints on national parliaments' say over military operations, as a failure to meet multilateral commitments would damage the country's reliability as a partner and endanger the overall idea of political and security integration¹¹. Therefore, the more the EU develops common institutions and shares defence capabilities, the more urgent the question on whether the erosion of national parliaments' control is or should be compensated by stronger supranational or transnational oversight.

The supranational level: European Parliament's oversight in the shadows

Despite the limited role that the Treaties grant to the European Parliament in the area of security and defence, in practice, there is much more parliamentary oversight at EU level than it appears on paper. Compared to their national colleagues, European parliamentarians' easy access to the centre of EU decision-making and higher specialisation in EU affairs places them in a privileged position to follow CSDP developments. For example, through its Sub-committee on Security and Defence (SEDE), Members of the European Parliament (MEPs) have the chance of regular dialogue with a wide range of relevant representatives and officials involved in the decision-making and implementation of CSDP operations, ranging from Chiefs of operations and EU military personnel, to NATO officials or representatives of the defence industry. The Parliament has also often made use of the possibility to send delegations of parliamentarians to the headquarters of the CSDP operations to gain first-hand information on their implementation¹². The Parliament's now higher authority vis-à-vis the High Representative (due to her new 'hat' as Vice-President of the Commission) has also meant an increase in the contacts between the EU foreign policy chief and the Parliament¹³. By virtue of a political agreement with the HR/VP, the Parliament can also hear senior staff members of the EEAS, such as the EU Special Representatives and Heads of EU Delegations, before being posted abroad. But more importantly, as a budgetary authority, the European Parliament has the right to approve the budget for the CFSP, from which most CSDP civilian operations are financed.

The more the EU develops common institutions and shares defence capabilities, the more urgent the question on whether the erosion of national parliaments' control is or should be compensated by stronger supranational or transnational oversight

Despite the limited role that the Treaties grant to the European Parliament in the area of security and defence, in practice, there is much more parliamentary oversight at EU level than it appears on paper. Compared to their national colleagues, European parliamentarians' easy access to the centre of EU decision-making and higher specialisation in EU affairs places them in a privileged position to follow CSDP developments

¹¹ W. WAGNER, *Langfristiges Ziel europäische Armee: Wie viel Europa verträgt der deutsche Parlamentsvorbehalt?*, in I. WERKNER - J. KURSAWE - M. JOHANNSEN - B. SCHOCH - M. VON BOEMCKEN (eds.) *Friedensgutachten 2013*, Berlin, etc., LIT Verlag, 2013.

¹² E. BARBÉ - A. HERRANZ-SURRALLES, *The Power and Practice of the European Parliament in European Security Policies*, in D. PETERS - W. WAGNER - N. DEITELHOFF (eds.), *op. cit.*

¹³ K. RAUBE, *The European External Action Service and the European Parliament*, «The Hague Journal of Diplomacy», vol. 7, no. 1, 2012, pp. 65-80.

The involvement of the European Parliament has certainly not happened overnight. It has been an incremental process, achieved through tough inter-institutional negotiations and persevering complaints of the Parliament on the democratic deficit of the CFSP/CSDP¹⁴. However, the drive by the European Parliament has gradually been waning over the last parliamentary term, in parallel with the general context of ‘CSDP fatigue’ in the EU. After a decade of fast CSDP developments, the financial crisis seems to have displaced political efforts and budgetary commitments away from security and defence. Member States have so far not agreed on the implementation of the innovations laid down in the Treaty of Lisbon, such as the possibility to entrust a military operation to a group of states or the start-up fund to speed up the launch of operations. The lack of capabilities and political will became glaring in the military interventions in Libya in 2011 or Mali in 2013, neither of which could be carried out in the EU framework. In this context, the Parliament has been less concerned with institutional matters of democratic control, and more with pressing for an ambitious deployment of the Lisbon Treaty.

The European Parliament thus seems to have found comfort, or perhaps resignation, with the existing (and mostly informal) arrangements, some of which confine the Parliament to a rather silent oversight, in small settings and behind closed doors. For example, CSDP operations are now less often discussed in plenary and, in the case of small civilian operations, these are sometimes not even discussed in committee or subcommittee. This is far from the objective expressed by the former chairman of the SEDE during the last parliamentary term, Karl von Wogau, to extend the highly symbolic practice of passing own-initiative resolutions laying down the Parliament’s opinion on specific military operations¹⁵. MEPs can surely still perform a good level of oversight through other channels, such as the more restricted setting of the SEDE or the Joint Consultation Meetings, or by strengthening the mechanisms to share confidential information through the Special Committee, to name a few examples. However, these practices cannot provide for a substitute for the function of the European Parliament as a forum for public deliberation of different policy options and for holding decision-makers to account through public justification¹⁶.

The involvement of the European Parliament has certainly not happened overnight. It has been an incremental process, achieved through tough inter-institutional negotiations and persevering complaints of the Parliament on the democratic deficit of the CFSP/CSDP. However, the drive by the European Parliament has gradually been waning over the last parliamentary term, in parallel with the general context of ‘CSDP fatigue’ in the EU

The European Parliament thus seems to have found comfort, or perhaps resignation, with the existing (and mostly informal) arrangements, some of which confine the Parliament to a rather silent oversight, in small settings and behind closed doors

¹⁴ A. HERRANZ-SURRALLÉS, *The contested ‘parliamentarisation’ of EU Foreign and Security Policy: the Role of the European Parliament following the introduction of the Treaty of Lisbon*, Peace Research Institute Frankfurt, Report 104, 2011.

¹⁵ E. BARBÉ - A. HERRANZ-SURRALLEES, *op. cit.*

¹⁶ C. LORD, *The political theory and practice of parliamentary participation in the Common Security and Defence Policy*, «Journal of European Public Policy», vol. 18, no. 8, 2011, pp. 1133-1150.

The transnational level: Interparliamentary cooperation... or conflict?

Inter-parliamentary cooperation is often mentioned as a remedy to alleviate the erosion of national parliaments' role in EU affairs. Specifically, regular transnational contacts between parliamentarians may help reduce informational asymmetries vis-à-vis their respective executives, provide specialized knowledge, or facilitate their formulation of policy options¹⁷. Moreover, cooperation between national parliaments and between them and the European Parliament seems just a logical solution in those areas such as foreign and security policy, where establishing a clear-cut division of competences and lines of democratic representation is often difficult¹⁸. However, oddly enough, interparliamentary cooperation in matters of security and defence, instead of gaining momentum, has been waning considerably; and more worryingly, it has lately turned into a source of conflict between the national parliaments and the European Parliament¹⁹.

The decrease in interparliamentary defence cooperation has been the result of the dissolution in June 2011 of the Parliamentary Assembly of the Western European Union (WEU), which had been the main setting at the disposal of national parliaments to deal with matters of security and defence since 1954. The WEU Assembly was created with relatively strong powers, it was organised transnationally into political groups and thematic committees, and national parliamentarians were assisted by a permanent secretariat in Paris. In view of its impending dissolution due to the EU's absorption of the WEU functions, the Lisbon Treaty provided the legal basis to create a new inter-parliamentary mechanism to deal with foreign and security policy. However, the process of negotiating this mechanism exposed the strained relations between parliamentary levels in the sense of what we could call a 'sovereignty surplus'²⁰, or the fact that both national parliaments and the European Parliament appeared to claim the primary responsibility for the collective oversight of this policy domain²¹.

Inter-parliamentary cooperation is often mentioned as a remedy to alleviate the erosion of national parliaments' role in EU affairs. Specifically, regular transnational contacts between parliamentarians may help reduce informational asymmetries vis-à-vis their respective executives, provide specialized knowledge, or facilitate their formulation of policy options

¹⁷ T. RAUNIO, *Losing Independence or Finally Gaining Recognition? Contacts Between MEPs and National Parties*, «Party Politics», vol. 6, no. 2, 2000, pp. 211-223.

¹⁸ B. CRUM – J.E. FOSSUM, *The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU*, «European Political Science Review», vol. 1, no. 2, 2009, pp. 249-271.

¹⁹ A. HERRANZ-SURRALLÉS, *The EU's Multilevel Parliamentary (Battle)Field: Explaining Inter-parliamentary Cooperation and Conflict in the Area of Foreign and Security Policy*, «West European Politics», 2014 (forthcoming).

²⁰ N. WALKER, *Surface and Depth: The EU's Resilient Sovereignty Question*, University of Edinburgh, School of Law, Working Paper Series, 2010/10, 2010.

²¹ A. HERRANZ-SURRALLÉS, *op. cit.*

The two-year negotiations consisted more on a tug-of-war for the share of seats of the European Parliament in the new inter-parliamentary mechanism, rather than a discussion of the aims and functioning of the conference²². The final compromise solution was a watered-down form of interparliamentary cooperation, an interparliamentary conference, organised into national delegations, with no powers over CFSP/CSDP decision-makers and no permanent secretariat. Some national parliaments have actually been trying to boost the political standing of the Conference by submitting ambitious proposals to the Review Committee Working Group of the Conference. For example, the German parliament proposed the creation of political groups, and the Spanish parliament put forward an amendment providing for the possibility to vote on an annual report by the High Representative²³. However, other delegations and the Review Committee made clear that any measure in this direction would be contrary to the Treaty of Lisbon and the initial agreement of the Interparliamentary Conference²⁴, thus showing the limits of transnational parliamentary oversight of security and defence.

Conclusion

In their conclusions at the last Interparliamentary Conference for the CFSP, in September 2013, parliamentarians from across Europe affirmed that “the evolution of the international geopolitical scenario has highlighted the central role of Parliaments which are at the core of global decision making with respect to crises and conflicts”. When it comes to EU security and defence policy, however, this statement is more the expression of a wish than of an actual trend: oversight of the CSDP by national parliaments is irregular across the different member states; the European Parliament has played an ever growing role in foreign and security policy, but its authority to do so is not fully recognised, and even openly challenged by some national parliaments; and interparliamentary cooperation in security and defence matters has in fact decreased compared to previous mechanisms. The resulting image is therefore more

In view of its impending dissolution due to the EU's absorption of the WEU functions, the Lisbon Treaty provided the legal basis to create a new inter-parliamentary mechanism to deal with foreign and security policy. However, the process of negotiating this mechanism exposed the strained relations between parliamentary levels in the sense of what we could call a 'sovereignty surplus', or the fact that both national parliaments and the European Parliament appeared to claim the primary responsibility for the collective oversight of this policy domain

²² Siding with the European Parliament, the proposal by the Presidency parliament was 54 seats (one third of the total seats of the conference) for MEPs, while most national parliaments wanted to limit the representation of the European Parliament to 6 seats. The final compromise was achieved at 16 MEPs.

²³ *Amendments of national parliaments to the rules of procedure of the inter-parliamentary conference for the common foreign and security policy (CFSP) and the common security and defence policy (CSDP)*, Vilnius, 4 September 2013, http://renginiai.lrs.lt/renginiai/EventDocument/1ce0171a-1309-477c-ae0c-a784d73fd8aa/Proposals%20of%20national%20Parliaments%20to%20the%20RoP_EN.pdf.

²⁴ Ad Hoc Review Committee Working Group, *Synopsis on the proposals submitted by the national parliaments*, Vilnius, 4 September 2013, http://renginiai.lrs.lt/renginiai/EventDocument/1ce0171a-1309-477c-ae0c-a784d73fd8aa/SYNOPSIS_EN.pdf.

of a patchwork of parliamentary oversight, rather than a well-functioning multi-level parliamentary system. Some of the practical implications that can be drawn from this diagnosis are the following:

- *National Parliaments*: given the intergovernmental traits of the CFSP/CSDP, national parliaments are to remain the centrepieces of democratic control. To do so, however, parliaments need to ensure an adequate level oversight. Given that legislative-executive relations are part and parcel of the idiosyncrasy of each member state's political system, convergence towards stronger war powers would certainly be difficult. However, there is ample room for reducing the patchwork of parliamentary control by converging on the procedures and attitudes, for example by mainstreaming CFSP/CSDP in the Foreign Affairs or Defence Committees instead of only in the European Affairs Committees²⁵, or ensuring at least one debate on each CSDP operation in which national resources are committed.
- *European Parliament*: without neglecting the prerogatives of national parliaments, the oversight at the European level could be enhanced by conferring a more substantial meaning to the European Parliament's right to be "consulted" on the CFSP, as laid down in the Treaties. This could even foresee a formal request of the Parliament's opinion on the launch of CSDP operations. Such an option would not override the attribution of competences, since in the classical consultation procedure, the opinion of the Parliament is not binding, in recognition that the main sovereignty resides in the member states. A more formal consultation would contribute to further checks and balances, to recognize the actual role that the European Parliament is already playing in the oversight of the CFSP/CSDP, and raise public awareness on this policy.
- *Interparliamentary cooperation*: given its founding agreement, the new Interparliamentary Conference for the CFSP offers little room for strengthening transnational oversight in the direction of the former WEU Assembly or even the NATO Assembly. However, there is still room for considering ways to intensify contacts, such as creating thematic working groups, organising informal meetings between political families besides the conference, or sending joint parliamentary delegations to visit CSDP operations' headquarters. As regards the relations between the national parliaments and the European Parliament, the progressive implementation of the Lisbon Treaty and further clarification of the legal and political authority that each parliamentary level enjoys in the control of the CFSP/CSDP should also serve to iron out the suspicions between the European Parliament and

When it comes to EU security and defence policy, however, this statement is more the expression of a wish than of an actual trend: oversight of the CSDP by national parliaments is irregular across the different member states; the European Parliament has played an ever growing role in foreign and security policy, but its authority to do so is not fully recognised, and even openly challenged by some national parliaments; and interparliamentary cooperation in security and defence matters has in fact decreased compared to previous mechanisms.

²⁵ A. HUFF, *op. cit.*

national parliaments, and hence promote smoother vertical interparliamentary cooperation.

- *Efficiency vs. Democracy?* Sceptics may object that further parliamentary involvement in security and defence policy at both national and EU levels would result in a loss of efficiency and reliability of the EU and its member states as defence allies. However, it is not the parliamentary procedure per se that should be blamed for possible delays or failure of a planned operation²⁶; but rather the failure of political elites to convince their populations to follow them on particular choices. When decisions in the area of security and defence are plagued with uncertainties and hard ethical dilemmas, technocratic decisions and behind-closed door debates may only contribute to increase the elite-public divorce in the long run. Using the momentum of the prominence that parliaments have shown in the Syrian crisis, the impending European elections are just an excellent occasion to bring the debate on the choices lying ahead of European foreign and security policy closer to the public.

²⁶ For example, in case of necessity the German Bundestag could even squeeze all the steps necessary for the parliamentary authorization of troop deployment in just one day (W. WAGNER, *Langfristiges Ziel europäische Armee...*). Also, the European Parliament has shown that, in case it was consulted on CSDP operations, it would be able to give an opinion before the approval of the Council Joint Action (see E. BARBÉ – A. HERRANZ-SURRALLÉS, *op. cit.*).