

Occasional Paper

n° 57 April 2005

Wolfgang Wagner

The democratic legitimacy of European Security and Defence Policy

*published by
the European Union
Institute for Security Studies
43 avenue
du Président Wilson
F-75775 Paris cedex 16
phone: + 33 (0) 1 56 89 19 30
fax: + 33 (0) 1 56 89 19 31
e-mail: institute@iss-eu.org
www.iss-eu.org*



In January 2002 the EU Institute for Security Studies (EUISS) was created as a Paris-based autonomous agency of the European Union. Following an EU Council Joint Action of 20 July 2001, it is now an integral part of the new structures that will support the further development of the CFSP/ESDP. The Institute's core mission is to provide analyses and recommendations that can be of use and relevance to the formulation of EU policies. In carrying out that mission, it also acts as an interface between experts and decision-makers at all levels.

Occasional Papers are essays or reports that the Institute considers should be made available as a contribution to the debate on topical issues relevant to European security. They may be based on work carried out by researchers granted awards by the EUISS, on contributions prepared by external experts, and on collective research projects or other activities organised by (or with the support of) the Institute. They reflect the views of their authors, not those of the Institute.

Publication of Occasional Papers will be announced in the EUISS Newsletter and they will be available on request in the language - either English or French - used by authors. They will also be accessible via the Institute's Website: www.iss-eu.org.

The European Union Institute for Security Studies

Paris

Director: Nicole Gnesotto

© EU Institute for Security Studies 2004. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photo-copying, recording or otherwise without the prior permission of the EU Institute for Security Studies

ISSN 1608-5000

Published by the EU Institute for Security Studies and printed in Condé-sur-Noireau (France) by Corlet Imprimeur, Graphic design by Claire Mabille (Paris)

by Wolfgang Wagner

The democratic legitimacy of European Security and Defence Policy



Wolfgang Wagner has an MA in political science from the University of Tübingen and a Ph.D. from the University of Frankfurt am Main. Since 2002 he has been working at the Peace Research Institute Frankfurt. Publications include Die Konstruktion einer europäischen Außenpolitik (Frankfurt: Campus, 2002), 'Why the EU's foreign and security policy will remain intergovernmental' (Journal of European Public Policy 2003) and 'Building an Internal Security Community' (Journal of Peace Research 2003).

Contents

Summary	3
1 Introduction	5
2 Democratic legitimacy: a contested concept	7
3 Pillars of democratic legitimacy for ESDP	11
3.1 <i>ESDP and public support</i>	11
3.2 <i>ESDP and national democracy</i>	16
3.3 <i>The European Parliament and ESDP</i>	21
3.4 <i>ESDP and international law</i>	25
4 Conclusion	29
Annexes	31
<i>Table 1. Support for key issues? Common Defence and Security Policy</i>	31
<i>Table 2. Defence: national or EU?</i>	32
<i>Table 3. Differences in support for European security policy</i>	33
<i>Table 4. EU level decision-making in defence</i>	34
<i>Table 5. Support for European defence</i>	35

Since the EU has assumed responsibility for military operations, questions of democratic legitimacy have become more prominent in European Security and Defence Policy (ESDP). Although democracy has been a contested concept, four 'pillars' can be distinguished that contribute to a democratically legitimate ESDP. This Occasional Paper analyses each of these pillars.

The first pillar builds on the notion that democratic legitimacy results from the effective provision of public goods ('output legitimacy'). As the Europeanisation of security and defence policies helps to provide public goods more efficiently, citizens support or even demand an ESDP. Eventually, legitimacy therefore rests on the concurrence of policies with citizens' preferences ('government for the people'). Public opinion can be seen as an indicator of the extent of citizens' demands for a European security and defence policy. The available data suggest that there has been a permissive consensus as regards the political project of a European security and defence policy. Such benevolent attitudes, however, do not necessarily extend to a European defence policy 'in action'. Moreover, large variations in support across member states persist.

A second pillar has been suggested by adherents of 'intergovernmental input legitimacy', who consider the 'output' of a political system less important for democratic legitimacy than the 'input' into decision-making. From this perspective, a policy is deemed legitimate to the extent that parliament has been able to participate in security and defence policy-making. Adherents of 'intergovernmental input legitimacy' emphasise in addition that only national parliaments can provide democratic legitimacy. However, the Europeanisation of defence policy tends to undermine national parliaments' ability to exercise effective control over defence policy.

Input legitimacy at the supranational level constitutes the third pillar of democratic legitimacy. The European Parliament plays a key role in this regard but it lacks the powers to compensate for national parliaments' loss of powers. Another important way to redress the deficit of parliamentary legitimacy is to strengthen cooperation between national parliaments, which could centre on the European Parliament, COSAC or the WEU Assembly.

The fourth pillar is respect for and compliance with international law. It is shown that military operations mounted without a United Nations Security Council mandate lack legitimacy. Nevertheless, the EU has so far abstained from making any explicit statement that EU-led military operations would require a UNSC mandate. The deliberate ambivalence of ESDP as regards such a mandate has weakened the robustness of this fourth pillar of legitimacy.

Taken together, none of the four pillars on which the legitimacy of ESDP rests is very robust. In particular, none yet appears sufficiently stable to hold in the event of military operations involving large numbers of casualties.

Introduction

Since 2003, the European Union has become a contributor to international peace missions. After having taken over the police mission in Bosnia in January, the EU assumed command of some 350 troops in the former Yugoslav Republic of Macedonia in April and sent a further 2,000 to the Bunia region of the Democratic Republic of Congo in June. On 2 December 2004 the EU took over the command of some 7,000 troops in Bosnia from NATO (formerly IFOR/SFOR, now Operation *Althea*).

The assumption of command of military operations by the EU includes assuming responsibility for possible casualties. Thus, decision-makers in Brussels as well as in national capitals should be aware of the extent to which EU-led missions have been supported by European citizens, of the problems that a 'Europeanisation' of security and defence policy raises for democratic legitimacy, and of how possible democratic deficits could be redressed. Put differently, the rapid development from the 1999 Helsinki Headline Goal to the first military operation warrants a discussion of ESDP's democratic legitimacy.

This paper seeks to contribute to the discus-

sion of ESDP's democratic legitimacy. The major challenge in doing so is, of course, to define what 'democratic legitimacy' means in the context of ESDP. 'Legitimacy' refers to subjective, normative convictions that usually differ between cultures, and there has been a plurality of democratic traditions and hence understandings of democratic legitimacy within the European Union. This challenge is well known from the debate about the EU's democratic deficit in general, which may therefore serve as a starting point. Indeed, congruence with the preferences and expectations of the public and the participation of parliaments on a national as well as a European level are three important pillars of democratic legitimacy in ESDP as well. In addition, respect for international law will be added as a fourth pillar. The discussion of the four pillars makes clear that two of these pillars (public support and participation of national parliaments) are weakened as ESDP progresses from a political project to a defence policy in action. This underlines the necessity to compensate an emerging 'democratic deficit' by a strengthening of parliamentary oversight at the European level and by strict adherence to international law.

Democratic legitimacy: a contested concept

A broad consensus in the European Union holds that democratic legitimacy is indispensable in European politics. Thus, countries applying for membership of the EU must be stable democracies before the European Council will open accession negotiations. Once a member of the EU, voting rights may be suspended if democratic norms are systematically violated. Furthermore, ‘to develop and consolidate democracy’ has been an explicit objective of the Common Foreign and Security Policy.¹ If one takes the EU at its word, therefore, one should judge EU policies by standards of democratic legitimacy.

However, democracy has remained a contested concept, i.e. it means different things to different people. A brief look at member states’ constitutions reveals a remarkable range of views on the institutions and procedures that are considered essential for ensuring democratic legitimacy. For example, the ratification of changes to the Treaty on European Union may require the consent of either one or two chambers of parliament, or may even require a referendum (the results of which may be either legally binding or merely consultative). The plurality of democratic institutions and procedures highlights a fundamental feature of legitimacy, namely that it refers to beliefs that are subjective and normative, and therefore differ across cultures and historical periods.

Given the range of views on what is considered democratically legitimate, the debate on

democracy in the EU has moved away from advocating particular versions of democracy, and thus from privileging one tradition over another. What appears more appropriate is to design a political system that can be considered democratically legitimate from a broad range of perspectives in different member states. The challenge then is to combine institutions and procedures in a way that avoids incompatibilities and deadlock.²

The endeavour of designing a multiply legitimate European polity may build upon three schools of thought that have been prominent in the debate on the EU’s democratic legitimacy. The most important cleavage between these schools of thought concerns the question whether legitimacy is primarily ensured by effective governance (‘government for the people’ or ‘output legitimacy’) or rather by participatory procedures (‘government by the people’ or ‘input legitimacy’). A second cleavage, among proponents of ‘input legitimacy’, stems from the question of whether participation should be organised along intergovernmental or supranational lines, i.e. whether they regard national societies or a European citizenry as the political subject:³

▶ Proponents of output legitimacy argue that the European Union will be considered legitimate to the extent that it contributes to the effective provision of public goods such as security, wealth or a clean environment. The effective provision of what citizens

¹ See Article 11 TEU-N (Treaty on European Union, ‘Nice version’).

² For this approach, see Christopher Lord and Paul Maignette. ‘E Pluribus Unum? Creative Disagreement about Legitimacy in the EU’, *Journal of Common Market Studies*, vol. 42, no. 1, 2004, pp. 183-202.

³ For the latter distinction, see Derk Bienen, Volker Rittberger and Wolfgang Wagner, ‘Democracy in the United Nations System. Cosmopolitan and Communitarian Principles’, in Daniele Archibugi, David Held and Martin Köhler (eds.), *Re-Imagining Political Community. Studies in Cosmopolitan Democracy* (Cambridge: Polity, 1998), pp. 287-308.

demand has been considered crucial to the democratic legitimacy of national democracies. However, interdependence among states and societies has limited national governments' capacity to provide public goods unilaterally. Therefore, a Europeanisation of politics appears legitimate to the extent that it helps to regain the ability to provide public advantages/benefits/services jointly. Fritz Scharpf has been the most prominent representative of this 'output' school of democratic thought.⁴

Adherents of 'intergovernmental input legitimacy' consider the 'output' of a political system less important for democratic legitimacy than the 'input' into decision-making. From this perspective, a policy is deemed legitimate to the extent that the decision-making process has been open to participation by citizens. Whereas elections are a key mechanism allowing citizens to participate in the selection of programmes and persons, parliament is the key institution to which citizens delegate the competence to make laws and supervise their execution. Referendums and civil society's activities may also add to democratic legitimacy. According to this perspective, however, the feasibility of input legitimacy rests on several prerequisites. Most importantly, democracy presupposes a shared sense of common identity among the citizens of a polity. Without such a common identity, minorities in particular may experience governance as a subjection under foreign rule. Adherents of 'intergovernmental input legitimacy' consider

national identities to be the only ones that have the necessary qualities for democratic self-governance. As one adherent of 'intergovernmental input legitimacy' has pointed out, national communities are characterised by common experiences and a joint historical memory, whereas the European Union lacks such attributes. As a consequence, democratic legitimacy will remain with the nation-state for the foreseeable future.⁵

Adherents of 'supranational input legitimacy' share the conviction that participation by citizens rather than the provision of public goods is the key to democratic legitimacy. However, they do not preclude the possibility of a common European identity. Adherents of 'supranational input legitimacy' point out that national identities are not simply given but have evolved over long periods of time. Moreover, national identities have followed national institution-building.⁶ By implication, the process of European integration may lead to a weakening of national identity and a concomitant strengthening of a European identity. Since the nation-state has become too small for democratic self-governance, they maintain, supranational institutions are not only an expression of an emerging European citizenry but may even foster or generate a common European identity. To adherents of 'supranational input legitimacy', the European Parliament is the most important institution in this respect because it represents a European citizenry and its workings are organised along ideological instead of national lines.⁷

⁴ Among many other contributions, see Fritz Scharpf, *Governing in Europe. Effective and Democratic?* (Oxford/ New York: Oxford University Press, 1999).

⁵ This approach has been particularly prominent in the German debate on the EU's democratic deficit. Prominent adherents include the Federal Constitutional Court's former judge Dieter Grimm, who had a strong influence on the 1993 ruling on the Maastricht Treaty. See Dieter Grimm, 'Does Europe Need A Constitution?', *European Law Journal*, no. 1, 1995, pp. 278-80. See also Peter Graf Kielmannsegg, 'Integration und Demokratie', in Beate Kohler-Koch and Markus Jachtenfuchs (eds.), *Europäische Integration* (Opladen: Leske + Budrich, 1996), pp. 47-72, as well as Anthony D. Smith, 'National Identity and the idea of European Unity', *International Affairs*, vol. 68, no. 1, 1992, pp. 55-76.

⁶ See Benedict Anderson, *Imagined Communities. Reflections on the Origins and Spread of Nationalism* (London: Verso, 1991).

⁷ Prominent adherents of 'supranational input legitimacy' include Jürgen Habermas. See his 'Staatsbürgerschaft und nationale Identität', in *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats* (Frankfurt a. M.: Suhrkamp, 1992), pp. 632-60.

These three approaches have been the most influential in the debate on the EU's democratic legitimacy. Among adherents of input-legitimacy, the possible role of the EU level has been a matter of contention. Moreover, the trade-off

between the effective provision of public advantages/benefits/services, on the one hand, and adherence to participatory procedures, on the other, has been widely debated in both academia and European politics.

Pillars of democratic legitimacy for ESDP

Security and defence policy poses a particular challenge to both democratic theory and practice. Because its functioning is based on command, obedience and secrecy, the military logic is very different from the public and deliberative decision-making that characterises democracies. The EU already experienced such problems of compatibility when ESDP led to a new category of ‘secret documents’ that has to be exempt from the prevailing policy of transparency.

Notwithstanding these peculiarities, the three schools of thought apply to security and defence as well, and are the bases of the pillars of the EU’s legitimacy. They therefore serve as a point of departure for the following discussion.⁸ Conformity to international law will be added as a fourth pillar of democratic legitimacy that distinguishes security and defence from other issue areas in the European Union. The ensuing paragraphs assess the extent to which ESDP as it stands can be considered democratically legitimate from these four perspectives and discuss options for enhancing democratic legitimacy.

3.1 ESDP and public support

From the early days of the European Communities, the effective provision of public advantages/benefits/services played a prominent role in conferring democratic legitimacy on the process of European integration. The Euro-

peanisation of commodity markets or environmental protection was considered democratically legitimate and received broad support because a majority of citizens demanded competitive industries, a clean environment, etc., and because interdependence rendered national policies increasingly incapable of providing these public goods.

European integration may also enhance the effectiveness of security and defence policy.⁹ The armaments market is characterised by economies of scale because research and development as well as procurement are extremely expensive. Standardisation and harmonisation of military equipment can therefore increase value for money significantly. Moreover, role specialisation can help to avoid expensive duplication. Finally, a European security and defence policy may contribute to burden-sharing among the member states during peace support missions, thereby avoiding undersupply as a consequence of free-riding.

Instead of trying to assess the extent to which European integration contributes to effective security and defence, we may inquire directly whether a Europeanisation of security and defence has been supported or even demanded by the citizens of the European Union. This can be done by analysing public opinion data.

Since the Danish voters rejected the Maastricht Treaty in a referendum in 1992, public opinion has been taken more seriously as an indicator of democratic legitimacy. Until then,

⁸ A different approach is taken by Martin Ortega, ‘Military intervention and the European Union’, *Chaillot Paper* 45 (Paris: Institute for Security Studies of WEU, 2001). Ortega defines legitimacy as ‘the general conviction among a distinct majority of the international community that the use of armed force is correct and acceptable’ (p. 37). He then goes on to identify the academic community, public opinion, media and NGOs, individual states, state consensus, and international organisations (most importantly the UN Security Council) as distinct building blocks of legitimacy. In order to be legitimate, the use of armed force has to be accepted by these international actors. Whereas Ortega is concerned with legitimacy as such, the focus of this study will be on democratic legitimacy in particular.

⁹ See Burkard Schmitt, ‘The European Union and armaments. Getting a bigger bang for the Euro’, *Chaillot Paper* 63 (Paris: EU Institute for Security Studies, 2003).

the notion of a 'permissive consensus'¹⁰ was frequently used to characterise the indifferent but benevolent attitude of the public vis-à-vis the élites' efforts to foster European integration. The Danish rejection of the Maastricht Treaty caught many by surprise and demonstrated that the politics of European integration could no longer flourish without popular support. It is worth noting that security and defence already played a part in the Danish referendums of 1992: only after Denmark had been granted an opt-out from Economic and Monetary Union and from security and defence policy did the Danish people accept the Maastricht Treaty in a second referendum.

However, the interpretation of public opinion data has to take account of a number of difficulties. First, the wording of questions can have a tremendous impact on the resultant distribution of answers. For example, during the late 1960s and early 1970s, surveys that used the word 'communist' to portray the Vietcong found greater support for the American war in Vietnam than polls that did not describe the Vietcong as 'communist'.

Second, results are influenced by the response categories among which respondents are asked to select. Many surveys prefer 'either/or' questions because clients are usually interested in support for specific projects and care little for undecided or indifferent responses. Therefore, results from either/or questions obscure the extent to which respondents may have no particular attitude at all. Thus, if a middle position is included, the result may change dramatically.

Third, polls often mirror current events and thereby overemphasise temporary opinions and fail to reflect stable, long-term attitudes. This makes it difficult to draw inferences on such

attitudes from a single poll. For example, a low percentage of respondents expressing trust in the European Commission when it resigned en masse in 1999 did not imply a lack of support for a general strengthening of the Commission.

Finally, all the distortions just enumerated are all the more serious the less respondents know about the subject under consideration and the less they are interested in it.

Given these methodological difficulties, opinion polls should generally be interpreted with great caution. More specifically, one should hesitate to compare results from different polls which have used different question wordings and possible response categories. Unfortunately, there are very few polls which regularly put the very same questions to a high number of respondents. Fortunately, the European Commission's 'Eurobarometer' is among the few surveys which fulfil these criteria.

Whether the methodological difficulties are particularly prevalent in foreign, security and defence policies has been a matter of debate. On the one side, foreign, security and defence policy are regarded as having few tangible effects on the everyday life of citizens. As a consequence, interviewees usually devote little attention to these policies and are ill-informed about international affairs. On the other, the process of globalisation has blurred the boundaries between the realms of domestic and international politics. As a result of an expansion of higher education and media coverage, citizens have become better informed about international affairs.

The notion that security and defence policy has little effect on ordinary citizens' lives certainly does not apply to the large-scale use of military force, when governments may even ask their citizens to risk their lives on the battlefield.

¹⁰ The term 'permissive consensus' was coined by V. O. Key and popularised for European integration research by Leon Lindberg and Stuart Scheingold to describe the indifferent attitude in EC member states as regards the efforts of élites to foster European integration. See V. O. Key, *Public Opinion and American Democracy* (New York: Knopf, 1961), and Leon N. Lindberg and Stuart A. Scheingold, *Europe's Would-Be Polity. Patterns of Change in the European Community* (Englewood Cliffs, NJ: Prentice-Hall, 1970), p. 41.

Although a government's popularity may often rise when the use of military force is ordered (the 'rally around the flag' effect¹¹), it declines again with the number of casualties suffered.¹²

These findings demonstrate that EU-led military missions may have a tremendous impact on the democratic legitimacy of the EU. On the one hand, a successful defence of European interests and values by military means may give a boost to the popularity of European integration. On the other hand, large numbers of casualties may severely damage the democratic legitimacy of European institutions.

It should be noted that the polls that are discussed below do not refer to a European security and defence policy 'in action' but to a European security and defence policy as a project of European integration. Most of the polls have been ordered by the Commission of the European Communities and published by Eurobarometer twice a year. Eurobarometer is well-suited to comparing public opinion across member states and over longer periods of time because the same wording is used in all member countries and – with minor exceptions – in each survey.

Since 1989, Eurobarometer has regularly examined the 'support for key issues' of European integration, including 'a common defence and security policy' (see Table 1). In the entire period from 1989 to 2003, large majorities have

voiced support for a common defence and security policy: on average, ESDP has been supported by 71.6 per cent. The lowest rate was 60 per cent in spring 1996, the highest 79 per cent in autumn 1994. Only between 12 per cent (autumn 1994) and 26 per cent (spring 1996) of the interviewees said they were against a common defence and security policy.¹³ Thus, net support has ranged between 34 and 62 per cent.¹⁴

Support for a European security and defence policy drops when interviewees are asked to choose between national and European defence. Again since 1989, Eurobarometer regularly asks respondents whether they prefer 'national or joint decision-making' in a wide range of issue areas.¹⁵ A European security and defence policy still receives net support, the margin is smaller, namely 4.5 per cent on average (see Table 2), occasionally (as in autumn 1993, spring 1999 and autumn 2000), supporters of national security and defence even outnumber those of European security and defence policy. Compared with other issue areas for which Eurobarometer examines attitudes on European decision-making, defence has received medium levels of support.¹⁶ The lowest levels of support for European decision-making have been recorded for issue areas that have an impact on individual rights and standards of living or on culture and

¹¹ See Kenneth Waltz, 'Electoral Punishment and Foreign Policy Crisis', in James Rosenau (ed.), *Domestic Sources of Foreign Policy* (New York: Free Press, 1967), pp. 263-93; and J. E. Mueller, 'Presidential Popularity from Truman to Johnson', *American Political Science Review*, vol. 64, no. 1, 1970, pp. 18-34. Oneal, Lian and Joyner demonstrated that the timing of a military escalation as well as media coverage have an impact on government popularity; see John R. Oneal, Brad Lian and James H. Joyner, Jr., 'Are the American People "Pretty Prudent"? Public Responses to U.S. Uses of Force, 1950-1988', *International Studies Quarterly*, vol. 40, 1996, pp. 261-76.

¹² See John Mueller, *War, Presidents and Public Opinion* (New York: Wiley, 1973) as well as John Mueller, *Policy and Opinion in the Gulf War* (Chicago: The University of Chicago Press, 1994) and Scott S. Gartner, Gary M. Segura and Michael Wilkening, 'All Politics Are Local. Local Losses and Individual Attitudes Toward the Vietnam War', *Journal of Conflict Resolution*, vol. 41, no. 5, 1997, pp. 669-94.

¹³ The low support rate in early 1996 probably results from the Dayton accord in December 1995 that brought an end to the Bosnian war and demonstrated the value of NATO for European security.

¹⁴ Net support refers to the number of supporters minus the number of opponents. See Oskar Niedermayer, 'Die Entwicklung der öffentlichen Meinung zu Europa', in Mathias Jopp, Andreas Maurer and Heinrich Schneider (eds.), *Europapolitische Grundverständnisse im Wandel. Analysen und Konsequenzen für die politische Bildung* (Bonn: Europa Union Verlag, 1998), pp. 419-48.

¹⁵ The exact wording is: 'Some people believe that certain areas of policy should be decided by the (NATIONAL) government, while other areas of policy should be decided jointly within the European Union. Which of the following areas of policy do you think should be decided by the (NATIONAL) government, and which should be decided jointly within the European Union?'

¹⁶ For the following, see Russel J. Dalton and Richard C. Eichenberg, 'Citizen Support for Policy Integration', in Wayne Sandholtz and Alec Stone Sweet (eds.), *European Integration and Supranational Governance* (Oxford/New York: Oxford University Press, 1998), pp. 250-82, pp. 259-60.

identity; the highest have been recorded for typical problems of interdependence (such as environmental protection and migration) and external policies (such as development aid and diplomacy). It is important to note that respondents have distinguished between 'defence' and 'foreign policy'. This distinction again illustrates that decision-making in defence may result in tangible effects on ordinary citizens' life.

The question concerning 'national or joint decision-making' also illustrates one of the methodological problems mentioned above, namely that the wording of questions and response categories affects the distribution of responses. In the spring of 1996, interviewees were not compelled to choose between either 'national decision-making' or 'joint European decision-making'. In addition to these two response categories, 'both national as well as European decision-making' was offered as a further possible response. Immediately, 39 per cent of those questioned chose this middle position. At the same time, support for European decision-making in defence collapsed from 52 per cent to 29 per cent whereas, 27 per cent preferred national decision-making. Yet another distribution can be found in a special Eurobarometer survey of November/December 2000 that suggested 'NATO' as an additional category. In this survey, 43 per cent opted for the EU, 24 per cent for national governments, and 17 per cent for NATO.¹⁷ As mentioned above, these distorting effects are the stronger, the less interviewees are acquainted with the topic in question and therefore prefer to avoid extreme positions. Richard

Sinnott therefore assumes that there has been a high proportion of 'non-attitudes' in defence policy.¹⁸

In the special 'Eurobarometer' survey of November/December 2000, one question referred to the European Rapid Reaction Force as envisioned at the Helsinki European Council in 1999.¹⁹ Nearly three out of four respondents supported that project and only 14 per cent opposed it. As to the type of European army, 37 per cent opted for a 'permanent European Rapid Reaction Force in addition to national armies', 19 per cent preferred 'one single European army that would replace national armies', 18 per cent demanded a 'European Rapid Reaction Force that would be put together only when needed' and 12 per cent wanted 'no European army, but only national armies'. A further question concerned possible roles of a European army.²⁰ Here, respondents considered 'defending the territory of the EU' to be the most important task (mentioned by 71 per cent); 'defending human rights' (51 per cent) ranked behind 'guaranteeing peace in the EU' (63 per cent) and 'intervening in case of a disaster in Europe' (58 per cent). Only 44 per cent thought that a European army should intervene 'in conflicts on the EU borders' and only 18 per cent wanted a European army to intervene 'in conflicts in other parts of the world'.

Finally, the special Eurobarometer poll inquired into the preferred decision-making mechanism in the event of military intervention.²¹ The most frequent response (47 per cent) was that decisions should be made 'only by the governments of the countries which are willing

¹⁷ Philippe Manigart. *Public Opinion and European Defense* (Belgium: Royal Military Academy, 2001), p. 11.

¹⁸ Richard Sinnott. 'European Public Opinion and Security Policy', *Chaillot Paper* 28 (Paris: Institute for Security Studies of WEU, 1997), p. 39. The concept of 'non-attitudes' was introduced by Philip Converse, who was puzzled by the fact that responses to different questions were frequently contradictory. Converse argued that many interviewees had no attitude at all and responded randomly. See Philip E. Converse, 'Attitudes and Non-Attitudes: Continuation of a Dialogue', in Edward Tufte (ed.), *The Quantitative Analysis of Social Problems, Reading* (Boston, MA: Addison-Wesley, 1970), pp. 168-89.

¹⁹ The precise question wording was: 'Recently, the EU has decided to set up a rapid reaction force of 60,000 men. Personally, do you believe it is a very good thing, a rather good thing, a rather bad thing, or a very bad thing?'

²⁰ The precise question wording was: 'The European Union has decided to institute a common security and defence policy. Among the following possible functions of a European army, for what, in your opinion, should it be used?'

²¹ The precise question wording was: 'Let us suppose that a decision in principle is being taken to send troops within the framework of a crisis outside the EU. In that case, who should take the decision?'

to send troops', 11 per cent opted for unanimous voting, whereas 17 per cent preferred 'majority voting, keeping the right for each state not to send troops'. Only 7 per cent were in favour of 'majority voting, forcing each state to send troops'.

Taken together, the various surveys reflect broad support for the project of a European security and defence policy and a European Rapid Reaction Force. Moreover, the data available for the ten new member countries indicate that this support is found in Central and Eastern Europe as well.²² According to these surveys, the further integration of security and defence policy is democratically legitimate in the sense that this concurs with the preferences of a majority of European citizens.

However, three caveats are in order. First, the survey results heavily depend on the precise wording of questions and response categories. This dependence not only illustrates the general methodological difficulties in polling but indicates little acquaintance with European security and defence policy. Because interviewees are not well informed about European security and defence policy, their responses are heavily influenced by the precise wording of questions and response categories.

Second, almost all questions have referred to European security and defence policy as a political project. It would therefore be premature to conclude that citizens are prepared to bear the costs of that project. Support for security and defence frequently drops if linked to an increasing defence budget.²³ This effect is evident in a recent poll on transatlantic trends that was carried out in nine EU member states (France, Germany, the United Kingdom, Italy, the Netherlands, Poland, Portugal, Spain and Slovakia).²⁴ Whereas 71 per cent of interviewees endorsed the statement that the 'EU should become a superpower like the US', only 48 per cent supported such an endeavour 'even if this implies

greater military expenditures'. It is even more difficult to assess how support for a European security and defence policy would be affected by successes and failures of EU-led military missions.

Third, support for a European security and defence policy is distributed unevenly across the member states. For example, the percentage of respondents who prefer European over national decision-making has been significantly higher in Italy or Germany than in Ireland or Sweden (see Table 3). In the latter two states as well as in the United Kingdom, a majority of interviewees even favour national decision-making in defence. A combination of factors may account for these differences: Ireland and Sweden have a long tradition of neutrality, which raises problems of compatibility with the EU's defence efforts. For the United Kingdom (as well as for Denmark), a strong affiliation to the United States and NATO has led to similar concerns. In contrast, Italy and Germany have been long-standing champions of a federal Europe which, by definition, would include a common security and defence policy. It is important to note that these different traditions or 'national identities' have been rather stable – notwithstanding changes in the security agenda and redefinitions of what 'neutrality' or 'federalism' refers to. Tables 4 and 5 show the highest and the lowest levels of support for a European defence policy. The tables show that there has been almost no convergence of attitudes among West European societies. As a consequence, support for a European security and defence policy has been fragmented along member state lines and is likely to remain so for the foreseeable future.

In sum, the term 'permissive consensus' seems to aptly describe the situation in security and defence policy. Citizens in EU member states have, by and large, had a benevolent attitude vis-à-vis ESDP. It is important to note, however, that such an attitude towards ESDP as

²² In candidate countries Eurobarometer polls have been carried out since 2001.

²³ Franz Kernic, Jean Callaghan and Philippe Manigart, *Public opinion on European security and defense. A survey of European trends and public attitudes toward CFSP and ESDP* (Frankfurt a. M.: Lang, 2002), p. 24.

²⁴ Results are available at [http://www.transatlantictrends.org/apps/gmf/ttweb2004.nsf/0/461EA7D25CC77DA185256F020059C76D/\\$file/Topline+with+logo+f\[RTF bookmark start: }_Hlt90347133i\[RTF bookmark end: }_Hlt90347133nal.pdf](http://www.transatlantictrends.org/apps/gmf/ttweb2004.nsf/0/461EA7D25CC77DA185256F020059C76D/$file/Topline+with+logo+f[RTF bookmark start: }_Hlt90347133i[RTF bookmark end: }_Hlt90347133nal.pdf) (accessed December 2004).

a project does not necessarily extend to a European defence policy 'in practice'. From the perspective of output legitimacy, the deployment of European troops therefore involves considerable risks. While a successful mission may give a boost to democratic legitimacy, failure and/or large numbers of casualties may heavily damage the legitimacy of ESDP and the EU more generally.

3.2 ESDP and national democracy

The previous section has shown that ESDP has been supported by citizens across the EU but that this support does not appear to be stable enough to hold in cases of failed missions. As a consequence, the overall democratic legitimacy of ESDP should not be based on output legitimacy alone but needs to be supplemented by input legitimacy. Thus, decision-makers should be accountable to the citizens and their representatives, and the decision-making process should be open to participation by them. To be sure, general elections are a key mechanism for holding governments accountable for their decisions. Moreover, the institutions of civil society such as non-governmental organisations (NGOs) may contribute to the articulation of citizens' concerns. However, as all EU member states are representative democracies, parliaments have remained the key players for adherents of input legitimacy. According to Heiner Hänggi, 'parliaments are the central locus of accountability for any governmental decision-

making concerning the use of force'.²⁵

Although all EU member states are democracies, there have been a multitude of different democratic traditions among them. This has been particularly apparent with regard to the role of parliaments in security and defence politics. In a groundbreaking study at the Geneva Centre for the Democratic Control of the Armed Forces (DCAF), three factors determining the effectiveness of parliamentary accountability have been distinguished:²⁶ 'Authority' refers to 'the power which parliament uses to hold government accountable' and which is 'derived from the constitutional and legal framework as well as customary practices'. 'Ability' denotes the resources, such as specialised committees, budget and staff, which are necessary to make effective use of the authority conferred upon parliament. Finally, 'attitude' refers to the 'willingness to hold the executive to account' which, among other things, depends on the extent to which legislative-executive relations are characterised by party discipline.²⁷ Although each of these factors has had an influence on the effectiveness of parliamentary accountability, the authors of the DCAF study conclude that 'the strongest means of parliamentary oversight by far is . . . the constitutional or legal right to approve or reject such use of force.'²⁸ In contrast, budget and staff are certainly indispensable in making use of legal authority but they *reflect* rather than cause legal powers.

The parliaments of member states differ vastly as regards their involvement in decision-making on the use of force.²⁹ In former colonial powers, governments are usually allowed to

²⁵ Heiner Hänggi. 'The Use of Force Under International Auspices: Parliamentary Accountability and "Democratic Deficits"', in Hans Born and Heiner Hänggi (eds.), *The 'Double Democratic Deficit'. Parliamentary Accountability and the Use of Force Under International Auspices* (Aldershot: Ashgate, 2004), pp. 3-16, quote from p. 11.

²⁶ Ibid.

²⁷ All quotes from Hans Born, in *ibid.*, pp. 203-15, quotes from pp. 209-11.

²⁸ Hänggi, *op. cit.*, p. 14. See also *ibid.*, p. 211.

²⁹ In addition to the volume by Hans Born and Heiner Hänggi, a good overview has been given in Assembly of the Western European Union, *The Interim European Security and Defence Assembly, National Parliamentary Scrutiny of Intervention Abroad by Armed Forces Engaged in International Missions: The Current Position in Law* (Doc. A/1762), Paris, 2001. This report covers all then EU members except for Ireland and Austria. Parliamentary competencies in Denmark, France, Germany, Sweden, the United Kingdom and Poland are further treated in Jürgen Mittag, *The Parliamentary Dimension of CFSP/ESDP. Options for the European Convention* (Brussels/Cologne, 2003). Alexander Siedschlag, 'Nationale Entscheidungsprozesse bei Streitkräfteeinsätzen im Rahmen der Petersberg-Aufgaben der EU – Deutschland, Frankreich, Großbritannien, Italien, Schweden', in Erich Reiter, Reinhardt Rummel and Peter Schmidt (eds.), *Europas ferne Streitmacht. Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP* (Forschungen zur Sicherheitspolitik 6) (Hamburg et al.: Mittler, 2002), pp. 222-32.

deploy troops without the consent of parliament. For example, the governments in France and the United Kingdom decided to participate in NATO air strikes against Serbian targets in 1999 without consulting their respective parliaments. In a similar vein, no parliamentary approval is required in Spain or Belgium.

In contrast, parliament's consent prior to a deployment of troops has been required in Germany, Austria, Denmark, Sweden and Ireland. In Italy and the Netherlands, governments have regarded parliamentary approval as indispensable, although there has been no constitutional requirement to do so. However, in some of these countries, the law regarding deployment provides for exceptions from and modifications of the general rule of parliamentary approval. In Austria, parliament has delegated its right to approve or disapprove of military deployments to a standing committee (*Hauptausschuss des Nationalrates*) which has participated in the exercise of various executive tasks. Moreover, the government may deploy troops without parliamentary approval if time does not allow for prior consultation. In this case, a debate must be held within 15 days. If parliament does not endorse the deployment, the troops have to be ordered back.

Yet another exemption from general parliamentary approval can be found in Sweden. Here, the government may deploy troops without consulting parliament if the deployment takes place within the framework of multilateral security institutions. In particular, deployments based on a 'standby agreement' as provided by Art. 43 of the UN Charter do not require the consent of the *Riksdag*. Similarly, deployments based on international agreements that have been endorsed by parliament are exempt from further approval. In Ireland, there has been still

another exemption from general parliamentary approval for deployments consisting of less than twelve armed soldiers.

This brief survey of deployment law underlines the differences among EU member states with regard to parliament's role in security and defence policy. Put differently, there has been no common understanding of national input legitimacy between, e.g. Sweden and France, or Germany and the United Kingdom. As a consequence, it is impossible to demand common minimum standards or to give general recommendations for parliamentary participation in decisions on deployment. In contrast, the variations inherent in national input legitimacy imply that a EU-led mission can be considered democratically legitimate if the respective national standards have been adhered to in each of the contributing states. Whereas the adherence to standards of parliamentary involvement will hardly cause any problems in those member states with fairly low standards of parliamentary participation, members with higher standards assume a key role in the overall process.

The most important consequence of varying national standards of parliamentary participation is that EU-level decisions on the use of military force have to be taken unanimously. The adherence to standards of parliamentary participation in each member state would be severely undermined if decisions were taken by (qualified) majority voting, because national parliaments could no longer prevent their governments from participating in a military mission. However, demanding national standards of parliamentary involvement can also be undermined by the integration of military forces on an international level.³⁰ If forces have been integrated, any state's decision not to participate in a mission de facto frustrates the entire deploy-

³⁰ Respective concerns have been voiced, among others, by Hartwig Hummel, 'Die Europäische Union und der 'demokratische Friede': Zur parlamentarischen Kontrolle der Europäischen Sicherheits- und Verteidigungspolitik', in Peter Schlotter (ed.), *Europa – Macht – Frieden? Zur Politik der 'Zivilmacht Europa'* (Baden-Baden: Nomos, 2003), pp. 159-78; and by Giovanna Bono, 'The European Union as an International Security Actor: Challenges for Democratic Accountability', in Hans Born and Heiner Hänggi (eds.), op. cit., pp. 163-81. Matthias Koenig-Archibugi has even argued that the disentanglement from parliamentary control has been an important driving force for EU governments to advocate a Europeanisation of foreign, security and defence policy. See Matthias Koenig-Archibugi, 'International Governance as New Raison d'État? The Case of the EU Common Foreign and Security Policy', *European Journal of International Relations*, vol. 10, no. 2, 2004, pp. 147-88. It should be noted, however, that national parliaments may be weakened as regards decision-making on the use of force but that they retain another important instrument of control, namely the 'power of the purse', because parliaments have to endorse military spending.

ment, 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 the joint forces.

Since the end of the Cold War, EU member states have faced strong incentives to integrate their military forces. Firstly, shrinking defence budgets in all member states have made their efficient spending more pressing. Member states have therefore been more prepared to participate in joint armaments projects and to engage in role specialisation in order to obtain greater value for money. Furthermore, the integration of military forces has been promoted for political reasons. With the common threat to Western Europe's security disappearing, experts and decision-makers across Europe have been concerned about a renationalisation of security and defence policies. The integration of military structures has been a powerful instrument to give credibility to the commitment to prevent renationalisation.

The extent to which the integration of military forces undermines national standards of parliamentary control varies significantly between EU member states. The effect is, of course, most pronounced in those with the most demanding standards of parliamentary involvement. Germany provides a particularly good illustration of the conflicting demands of military integration, on the one hand, and parliamentary control, on the other. As a consequence of two World Wars and the involvement of the *Wehrmacht* in Nazi crimes, Germany has been a champion of both multilateralism and antimilitarism.³¹ Since the fierce debate over rearma-

ment in the 1950s, a reluctance to use military force and a commitment to multilateralism have become prime pillars of postwar German security policy. However, since the end of the Cold War and the growing number of peace support operations out of area, tensions between these two principles have mounted. As the EU has only recently become an actor in security and defence policy, the major conflicts have been experienced within NATO. However, similar conflicts are likely to arise if the EU assumes a more prominent role in military missions.

Immediately after the Cold War, participation by the *Bundeswehr* in out-of-area missions was widely opposed in Germany. Indeed, the German government refrained from sending the *Bundeswehr* to the Persian Gulf in 1990/91. At the time of that crisis, German politicians were eager to demonstrate the country's peaceable nature and were 'surprised that the USA and Israel, among others, condemned Germany for not contributing militarily against Iraq'.³² German decision-makers had to realise that the NATO partners now expected Germany, as an ally, to make a substantial contribution to non-Article 5 operations.³³ Moreover, they realised that 'similar behaviour in a future conflict would probably result in a crisis with its major allies'.³⁴ From then on, German governments aimed at overcoming the antimilitarist culture as an obstacle to the deployment of the *Bundeswehr* out of area. For this purpose, 'reliability as an ally' and 'alliance solidarity' became prominent arguments in the German debate over out-of-area-missions.³⁵ These arguments were buttressed by references to integrated force structures of which the *Bundeswehr* had been part. References to Germany's participation in

³¹ Among many others, see Hanns Maull, 'Germany and the Use of Force: Still a Civilian Power?', *Survival*, vol. 42, no. 2, pp. 56-80, particularly pp. 66-8. Thomas U. Berger. *Cultures of Antimilitarism: National Security in Germany and Japan* (Baltimore, Md.: Johns Hopkins University Press, 1998), and Jeffrey J. Anderson and John B. Goodman, 'Mars or Minerva? A United Germany in a Post-Cold War Europe', in R. O. Keohane, J. S. Nye and S. Hoffmann (eds.), *After the Cold War. International Institutions and State Strategies in Europe, 1989-1991* (Cambridge, MA: Harvard University Press, 1993), pp. 23-62.

³² N. Philippi, 'Civilian Power and War: The German Debate About Out-Of-Area Operations 1990-99', in S. Harnisch and H. Maull (eds.), *Germany as a Civilian Power? The Foreign Policy of the Berlin Republic* (Manchester: Manchester University Press, 2001), p. 51.

³³ Rainer Baumann, 'German Security Policy Within NATO', in Volker Rittberger (ed.), *German Foreign Policy Since Unification. Theories and Case Studies* (Manchester: Manchester University Press, 2001), p. 166.

³⁴ Philippi, op. cit., p. 51.

³⁵ See Michael Schwab-Trapp, *Kriegsdiskurse. Die politische Kultur des Krieges im Wandel 1991-1999* (Opladen: Leske und Budrich, 2002).

NATO's Airborne Warning and Control System (AWACS) illustrate this point: AWACS has been designed to recognise enemy aircraft over a given territory, most importantly in the event of an attack. In addition to this defensive function, it has an offensive function, namely to help identifying and selecting targets for air strikes. In 1993, NATO offered its AWACS fleet to enforce the no-fly zone over Bosnia that the United Nations Security Council had agreed on. The German government's decision not to withdraw *Bundeswehr* personnel from AWACS met considerable criticism from the opposition and even from within the governing coalition. Thus, in early 1993, the Federal Constitutional Court (FCC) had to give a preliminary ruling on whether, as the opposition argued, the participation of the *Bundeswehr* violated the German constitution.³⁶

By a narrow margin of five votes to three, the FCC endorsed the Government's decision to allow the *Bundeswehr* to participate in AWACS missions over Bosnia. Concerns about Alliance solidarity and reliability played a decisive role in its ruling. The Court noted that the *Bundeswehr* provided around 30 per cent of AWACS personnel. As a consequence, a withdrawal of German soldiers at the time of this mission would have jeopardised the enforcement of the no-fly zone over Bosnia. Furthermore, 'allies and European neighbours would inevitably lose trust in German policy; the resulting damage would be irreparable'.³⁷ Thus, the fact that the *Bundeswehr* participated in an integrated military structure played a decisive role in legitimising Germany's first combat (in contrast to humanitarian or peacekeeping) mission out of area. Since then,

the scope of Germany's contribution to out-of-area missions has grown continually.³⁸

In the final ruling of July 1994, the FCC affirmed the principle that any deployment of the *Bundeswehr* must have prior parliamentary approval. According to the FCC, the use of the armed forces is not within the executive's sole discretion but, as a 'parliamentary army', part of the democratic constitutional order. However, the principle of prior parliamentary approval is circumscribed in two cases:

The Bundestag's participation in particular decisions on the use of force that the constitution stipulates must not damage Germany's capability to defend itself and to make alliance commitments.³⁹

Since the FCC's ruling, the Bundestag has dealt with more than 40 deployments of the *Bundeswehr* (including the prolongation and extension of missions).⁴⁰ However, this practice has again come under pressure since NATO's Prague summit decided to set up a multinational 'Response Force' that could be deployed for the most demanding peace support missions within a few days. The deployment of the NATO Response Force (NRF) was simulated at an informal NATO summit in Colorado Springs in October 2003. It soon became clear that a rapid deployment could be endangered by the required prior approval of the German parliament. As with AWACS, German troops would play an essential role in the NRF. In contrast to AWACS, however, even a belated 'green light' would possibly cause problems. As a consequence, German Defence Minister Peter Struck immediately launched a debate on reform of

³⁶ After a previous preliminary ruling on German participation in monitoring a maritime embargo against Yugoslavia and a further preliminary ruling on the *Bundeswehr*'s participation in UNOSOM II, the main ruling was made in July 1994 (BverfG E [decisions of the Federal Constitutional Court], vol. 90, 286, II, pp. 286-394). However, I will focus on the preliminary AWACS ruling, because it was part of the very decision-making process on Germany's first combat mission.

³⁷ BverfG E, vol. 88, 173, II, p. 183; author's translation.

³⁸ For an overview, see Rainer Baumann and Gunther Hellmann, 'Germany and the Use of Force: "Total War", the "Culture of Restraint", and the Quest for Normality', *German Politics*, vol. 10, no. 1, 2001, pp. 61-82.

³⁹ Author's translation ['Die verfassungsrechtlich gebotene Mitwirkung des Bundestages bei konkreten Entscheidungen über den Einsatz bewaffneter Streitkräfte darf die militärische Wehrfähigkeit und die Bündnisfähigkeit der Bundesrepublik Deutschland nicht beeinträchtigen.'].

⁴⁰ Berthold Meyer, *Von der Entscheidungsmündigkeit zur Entscheidungsmüdigkeit? Nach zehn Jahren Parlamentsvorbehalt für Bundeswehreinsätze naht ein Beteiligungsgesetz* (Frankfurt a. M.: Peace Research Institute Frankfurt, 2004).

Germany's parliamentary proviso. Struck's suggestion was supported by his American colleague, Donald Rumsfeld, who urged NATO members 'to bring NATO's decision-making structures up to date so that NATO military commanders can take decisive action against fast-moving threats in the 21st century'.⁴¹

To be sure, the conflict between the democratic control of the armed forces and the demands of alliance politics are nowhere likely to be as intense as in Germany, where both demanding standards of parliamentary control and multinational integration were designed to prevent a resurgence of militarism. However, the EU may experience similar conflicts to the extent that ESDP steps into NATO's shoes. In particular, the project of EU 'battle groups', i.e. small, integrated multinational forces to be deployed at short notice, is likely to result in conflicts very similar to those over the NRF. Moreover, the EU comprises a few member states that remained apart from military alliances during the Cold War. As the brief survey of member states' standards given above demonstrates, some of those states (e.g. Austria and Sweden) have had high standards of parliamentary control similar to those of Germany.

Therefore, the challenge in setting up a European Rapid Reaction Force (and European battle groups in particular) is to find a balance between cost-saving role specialisation and an integration of forces, on the one hand, and a duplication of capabilities, on the other, that allows single member states to abstain from EU-led missions. If certain capabilities were only available from a single member, its government and possibly its parliament would certainly come under heavy pressure not to block a joint

mission unilaterally. Thus, the compatibility of member states' political systems should be taken more seriously into consideration when composing multinational integrated military structures.⁴²

Forms of 'flexible', 'enhanced' or 'structured' cooperation also help to mitigate the conflict between the benefits of military cooperation and the possibility for individual member states to 'opt out' from joint military endeavours. Although 'opt-outs' have accompanied various major projects of European integration (including economic and monetary union and Schengen), negative connotations (e.g. 'Europe à la carte' or 'Europe à deux vitesses') have prevented the spread of this instrument.

Flexibility has become a prominent feature of European security and defence policy. After the Danish voters rejected the Maastricht Treaty in a referendum, Denmark was granted several opt-outs, including security and defence policy. The fact that the Danish *Folketing* has comprehensive competencies in that issue area may well have contributed to this opt-out. Further flexibility resulted from the transfer of operational tasks from WEU to the EU, as this left ten member states with a commitment to mutual defence. Finally, EU members have participated in armaments cooperation to varying degrees, because some members have been among the world's largest producers of arms whereas others have no significant arms industry at all. As a consequence, membership of European armaments institutions has been limited to states with viable industries.⁴³

The 'Convention on the Future of Europe'⁴⁴ proposed several institutional reforms designed to acknowledge member states' differences in

⁴¹ United States Department of Defense, News Transcript, Press Conference with Secretary Donald H. Rumsfeld and NATO Secretary General Lord Robertson, Wednesday, 8 October 2003; <http://www.defenselink.mil/transcripts/2003/tr20031008-secdef0746.html> (August 2004).

⁴² See Marc Houben and Dirk Peters, 'The Deployment of Multinational Military Formations: Taking Political Institutions into Account', *Policy Brief* no. 36 (Brussels: Centre for European Policy Studies, 2003).

⁴³ In November 1996, 10 members of WEU established the Western European Armaments Organisation (WEAO) as a sub-organisation of WEU. WEAO was tasked with research and development and considered to be a possible precursor of a European Armaments Agency. Also in 1996, the United Kingdom, France, Italy and Germany founded OCCAR (Organisation Commune de Coopération Pour l'Armement), based in Bonn. Because OCCAR has legal personality, it has managed joint procurement projects including the *Tiger* combat helicopter.

⁴⁴ The 'Convention on the Future of Europe' (usually abbreviated to 'European Convention') was established by the heads of state or government in December 2001 in order to elaborate proposals for institutional reform. The Convention was composed of 15 representatives of the heads of state or government, 30 representatives of the national parliaments, 16 members of the European Parliament,

security and defence, and to give them a constitutional basis.⁴⁵ According to Article III-310 of the Constitutional Treaty, ‘the Council may entrust the implementation of a task⁴⁶ to a group of Member States which are willing and have the necessary capability for such a task.’ However, it is the Council as a whole that will define the task’s ‘objectives and scope and the general conditions for their implementation’. This provision provides reluctant member states with an opportunity to opt out of joint missions while joint decision-making prevents ‘coalitions of the willing’ from becoming detached from the other member states.

Moreover, a protocol to the Constitutional Treaty defines more demanding military capabilities.⁴⁷ Those member states that wish to enter into such more demanding commitments establish ‘permanent structured cooperation’. Whereas the Convention had left it to those members interested in more demanding cooperation to establish ‘structured cooperation’ and to define the criteria and commitments to be fulfilled, the Intergovernmental Conference that followed the Convention gave the Council, acting on the basis of a qualified majority vote,⁴⁸ a greater say in these decisions.

Both provisions aim to give interested member states the opportunity to reap the benefits of military cooperation (such as role specialisation) while giving the more reluctant member states the opportunity to ‘opt out’. Since demanding standards of parliamentary control may contribute to a more reluctant stance towards security and defence policy, the oppor-

tunity to opt out is a welcome instrument for preserving national input legitimacy.

3.3 *The European Parliament and ESDP*

As demonstrated in the previous section, interdependence and integration in European security and defence policy have reached a level that renders national input alone increasingly inadequate in ensuring democratic legitimacy. Even though unanimity has remained the prime decision-making rule, national decisions have de facto been pre-formed by European decision-making to a considerable extent. The general argument advanced by proponents of supranational input legitimacy therefore applies to the realm of security and defence policy as well. From this point of view, an additional input at the European level seems appropriate.

To adherents of supranational ‘input’ legitimation, a strengthening of the European Parliament (EP) has been the key to enhancing democratic legitimacy. It would be unrealistic, however, to expect a strengthening of the EP along the lines of its competencies in single market legislation, where the EP co-decides with the Council. At the same time, the EP has been marginalised in security and defence policy to such an extent that ample room for its strengthening remains.

Indeed, member states have only hesitantly endowed the EP with competencies in foreign, security and defence policy. In fact, the

2 representatives of the European Commission and a large number of representatives from the candidate countries and observers from other EU institutions. They met from March 2002 to July 2003. A special working group chaired by Michel Barnier dealt with issues of security and defence. In July 2003, the President of the convention, Valéry Giscard d’Estaing, presented a draft for a ‘treaty on a European constitution’ to the European Council, which, after making some amendments, adopted the text. The treaty is currently in the process of ratification.

⁴⁵ See Jolyon Howorth, ‘The European Draft Constitutional Treaty and the Future of the European Defence Initiative: A Question of Flexibility’, *European Foreign Affairs Review*, vol. 9, no. 4, pp. 483-508.

⁴⁶ Here, ‘tasks’ refer to the amended Petersberg tasks, i.e. ‘joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.’ (see Art. III-309).

⁴⁷ See Protocol no. 23 on permanent structured cooperation established by Articles I-41(6) and III-312 of the Constitution.

⁴⁸ The thresholds for reaching a decision are raised to 55 per cent of the member states and representing at least 65 per cent of their population.

establishment of European Political Cooperation outside the treaties and the establishment of the Common Foreign and Security Policy as a distinct pillar of a European Union were primarily driven by a desire to keep the supranational institutions' competencies limited. The result has been what Heiner Hänggi has called a 'double democratic deficit' in which 'the "democratic deficits" which exist to a greater or lesser extent on the national level and the prevalence of "democratic deficits" on the international level, appear to reinforce each other in worsening parliamentary accountability of the use of force under international auspices.'⁴⁹

While the EP has established itself as an actor in foreign and security policy, ESDP has remained aloof from the EP's involvement. Article 21 of the Treaty of Nice obliges the presidency to consult the EP 'on the main aspects and the basic choices of the common foreign and security policy' and to 'ensure that the views of the European Parliament are duly taken into consideration.' It does not even mention ESDP explicitly. However, this wording has not prevented the presidency and the Council from informally extending consultations to the realm of ESDP.⁵⁰ One member of the EP's foreign affairs committee even observed that the High Representative, Javier Solana, and the Commissioner for External Affairs, Chris Patten, discussed external affairs with the committee more frequently than their national counterparts did with national parliaments. As these habits underline, the scope of Article 21 should be extended to security and defence policy. Indeed, the constitutional treaty suggests a rewording. According to Article I-41 (8),

The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

Although the European Parliament has been the natural candidate for securing supranational input legitimacy it has had to compete with the Western European Union's Parliamentary Assembly. This rather odd situation resulted from the transfer of operational tasks from WEU to the EU in 2000. Because WEU's mutual defence commitment is more constraining than that of NATO, members of WEU preferred not to dissolve WEU but only to transfer its operational tasks to the EU. The decision not to dissolve WEU's Brussels Treaty also implied that its Article IX, which requires the Council of WEU to submit an annual report to the WEU Parliamentary Assembly, remained valid. At the time, some urged the Parliamentary Assembly to dissolve itself because the Assembly was tasked with supervising WEU politics and had no mandate to scrutinise EU politics. Instead, the parliamentarians, who are not elected directly but nominated from national parliaments, decided to rename it the 'Interim European Security and Defence Assembly' and to continue their work. The Interim Assembly proposed to the European Convention that it should be included in the constitutional treaty as a second chamber with members nominated from national parliaments and responsible for ESDP. The Interim Assembly would then be part of the EU's institutional system.

Adherents to this proposal have pointed to a number of comparative advantages that the Interim Assembly enjoys. First, the Interim Assembly has accrued considerable expertise and experience in monitoring ESDP, not least because it has a permanent secretariat and specialised staff.⁵¹ The committees' reports that are discussed in plenary sessions twice a year give ample evidence of the rapporteurs' expertise. Their publication on the Interim Assembly's homepage⁵² are a welcome resource for a wider audience interested in security and defence poli-

⁴⁹ Hänggi, op. cit., quote from p.16.

⁵⁰ Dimosthenis Mammonas, 'The Parliamentarisation of the ESDP as an Answer to Global Challenges?', paper presented at the meeting of the International Studies Association, Budapest, June 2003, p. 5; Catriona Gourlay, 'Parliamentary Accountability and ESDP: The National and the European Level', in Hans Born and Heiner Hänggi (eds.), op. cit., pp. 183-200, pp. 188 f.

⁵¹ Suzana-Elena Gavrilescu, 'Parliamentary Scrutiny of European Security and Defence Policy: is there Anybody in Charge?', *Perspectives*, no. 22, 2004, pp. 75-93.

⁵² See <http://www.assembly-weu.org>.

tics. Second, it brings together parliamentarians from 28 members of the 'WEU family' (as the Assembly's homepage puts it). In addition to 23 EU members (i.e. all EU states except Malta and Cyprus, which are WEU 'affiliate observers'), this includes Bulgaria, Romania, Turkey, Iceland and Norway, which are members of NATO but not of the EU and whose involvement in ESDP has been heavily contested. Thus, the Interim Assembly could contribute to good relations between the EU and European NATO members on a parliamentary level. Finally, the Interim Assembly can claim that its composition of national deputies is appropriate for ESDP's intergovernmental structure. After all, national governments will retain prime responsibility for the foreseeable future. Thus, it appears appropriate to delegate democratic control of ESDP to national parliamentarians in a transnational institution.

The advantages of giving the Interim Assembly a prominent role in the democratic control of ESDP are balanced by several disadvantages. Firstly, the members of national parliaments currently participating in the WEU/Interim Assembly do not always belong to the defence and foreign affairs committees in their respective parliaments, since they usually also participate in the Council of Europe Assembly. However, most importantly, a second chamber for the democratic control of ESDP would add further complexity to the institutional system of the EU. Such an increase in complexity would conflict with transparent and clear-cut lines of accountability which are a prerequisite of democratic legitimacy. Moreover, an institutional separation of ESDP and other issues of external relations seems artificial and difficult to maintain. At a time when the EU's 'double executive' in external affairs is beginning to merge in order to increase policy coherence, as suggested in the draft Constitutional Treaty, it seems odd to create a 'double legislative' to supervise external policies. What is more, turf battles between the EP and the Interim Assembly are inevitable. Finally, over the last couple of years, the

European Parliament has begun to redress the lack of resources devoted to ESDP.⁵³ Whereas its foreign affairs committee devoted a considerable part of its resources to the enlargement process during the fifth parliamentary term (1999-2004), the current committee has established a subcommittee on security and defence, which is a clear indicator of future priorities. Since 2002, an interinstitutional agreement gives the Council the possibility to share classified documents with a small committee of the EP. As Catriona Gourlay has pointed out, '[this] agreement does not, however, confer rights on the parliament to receive access to classified information but rather gives the Council the right to share classified information "where it is appropriate and possible in the light of the nature and the content of the information".'⁵⁴ Furthermore, the EP has endeavoured to cultivate good relations with NATO's Parliamentary Assembly (PA). Since 2001, the EP has sent a delegation to NATO PA's sessions. Moreover, there have been joint sessions of EP and PA committees. In this way, the EP has demonstrated its ability to foster relations with those NATO countries that are not members of the EU.

Drawing on the three factors determining the effectiveness of parliamentary oversight, one can conclude that the European Parliament has now begun to enhance its ability to use the legal powers it has. Therefore, the EP remains the unrivalled institution for supranational input legitimacy. However, the EP's prime responsibility in ESDP does not preclude a supplementary input from a further institution in which delegates from national parliaments can discuss issues of European security and defence policy. As long as security and defence remains a 'mixed competence' that requires close coordination between EU institutions and member state governments, a system of 'multi-level Parliamentary control' seems most appropriate. At the heart of such a system would be an institutionalised exchange of information and of viewpoints between delegates.

⁵³ For the following, see the contribution of Elmar Brok and Norbert Gresch to Nicole Gnesotto (ed.), *EU Security and Defence Policy. The first five years* (Paris: EU Institute for Security Studies, 2004).

⁵⁴ Gourlay, op. cit., p. 190.

Ultimately, it is the parliaments themselves that have to decide how to organise such an exchange of information and points of view. After all, the success of interparliamentary cooperation depends first of all on delegates' efforts and commitment. Four options can be suggested for discussion.

First, of course, a new institution could be established. The latest proposal in this vein was submitted to the 'Constitutional Convention'. Its President, Valéry Giscard d'Estaing, proposed a 'Congress of European peoples', composed of members of the European and of national parliaments, which would meet on a regular, possibly annual, basis. However, the proposal was suspected of intentionally attempting to weaken the European Parliament. Mainly for this reason, it did not find a majority among the delegates in the Convention and was dropped from the final version of the Treaty.

Second, interparliamentary cooperation in security and defence policy could be organised by the European Parliament.⁵⁵ Such an endeavour could build upon interparliamentary cooperation on first-pillar (i.e. European Community) issues.⁵⁶ Here, joint sessions of EP committees with their national counterparts have served to exchange information and views. Moreover, joint committee sessions have given members of national parliaments the opportunity to address EU officials directly. So far, this instrument has hardly been used in foreign, security and defence policy. However, the new subcommittee on security and defence may choose to make interparliamentary cooperation a priority of its work.

Third, the Conference of the Community and European Affairs Committees of Parliaments of the European Union (COSAC) could

make security and defence policy a new focus of its work. What makes COSAC an interesting institution to build on is that it has not been a creation of the member state governments but an example of parliamentary self-organisation resulting from an initiative by the then President of the French *Assemblée Nationale*, Laurent Fabius. Thus, it has been a successful and visible expression of national parliaments' desire and capacity to strengthen interparliamentary cooperation. Since 1989, national European Affairs committees as well as the European Parliament, have delegated six deputies to the COSAC meetings that take place twice a year before the meeting of the European Council. COSAC has so far focused almost exclusively on institutional questions. In contrast, security and defence issues have played only a marginal role.⁵⁷ COSAC's focus would be easy to change, however, precisely because it has been an exercise in parliamentary self-organisation and does not depend on intergovernmental conferences to change its status. In order to give security and defence policy a more prominent role, COSAC would have to give members of national parliaments' foreign affairs and defence committees access to COSAC. This, of course, requires the members of the European affairs committees to share some of their powers. In addition, two further changes seem necessary if COSAC intends to become the major forum for interparliamentary cooperation. First, member parliaments' delegations should become more representative of the party pluralism in national parliaments.⁵⁸ Second, national parliamentary delegations should no longer sit according to nationality but by political affiliation in order to encourage political dialogue at the European level.⁵⁹ It remains to be seen whether this turns out to be a

⁵⁵ Catriona Gourlay and Malin Tappert, 'Revising the European Parliament's Scrutiny of Foreign Affairs and Defence', *European Security Review*, Issue 21, February 2004.

⁵⁶ For an overview see Andreas Maurer, 'Die Konferenz der Europa-Ausschüsse (COSAC) und der Konvent: Schwächung oder Stärkung der demokratischen Legitimation in der EU', in Rudolf Geiger (ed.), *Neuere Probleme der parlamentarischen Legitimation im Bereich der auswärtigen Gewalt* (Baden-Baden: Nomos, 2003), pp. 187-227.

⁵⁷ Mittag, op. cit. in note 24, p. 97.

⁵⁸ Michael Hilger, 'Défense européenne et contrôle démocratique: une tâche pour la Convention sur l'avenir de l'Europe', *Politique Etrangère*, vol. 67, no. 2, 2002, pp. 455-70.

⁵⁹ Gavrilesco, op. cit., p. 87.

significant obstacle to making COSAC the centre of multilevel parliamentary control in security and defence policy.

Finally, efforts to organise interparliamentary cooperation in security and defence could of course build upon the WEU Interim Assembly, whose merits have been discussed above. As also mentioned above, however, the European Parliament tends to regard the Interim Assembly more as a competitor than a collaborator. The Interim Assembly could, however, seek stronger ties with COSAC. For example, it could aim at becoming a sort of security and defence chamber of COSAC.

Responsibility for democratic legitimacy should thus not be left to national parliaments alone. Because the Europeanisation of security and defence policy tends to weaken national parliaments vis-à-vis their executives, a multi-level system of parliamentary control seems most appropriate. In addition to national parliaments' tasks, such a system would include a strong European Parliament and some form of interparliamentary cooperation comprising both the European and the national parliaments. As regards the European Parliament, the Constitutional Treaty would enhance supranational input legitimacy. Although the EP would not acquire competencies akin to those in single market legislation, its competencies in foreign policy would be explicitly extended to security and defence policy. As regards interparliamentary cooperation, several institutional venues appear possible, and it is up to the members of national parliaments in particular to organise cooperation.

3.4 ESDP and international law

The three 'pillars' of legitimacy discussed so far are not specific to security and defence policy. Congruence with the preferences and expectation of citizens ('government for the people')

and participation and supervision by national and supranational parliaments ('government by the people') are acknowledged standards of democratic legitimacy that apply to the entire range of issue areas in European integration.

This section adds a fourth pillar of legitimacy that is prominent in security and defence policy though of lesser prominence in other issue areas, namely respect for and compliance with international law. In contrast to parliamentary involvement, the importance of international law for the legitimacy of security and defence policy is not limited to democratic states. Strictly speaking, respect for and compliance with international law is not a pillar of *democratic* legitimacy. Defence policies of non-democracies may also gain legitimacy to the extent that they concur with international law. The principle of democratic self-government may even come into conflict with obligations resulting from international law: for example, decisions on the legitimacy of military force under the Charter of the United Nations are made in the Security Council, in which non-democracies have been endowed with veto power. From a democratic public's point of view, it may appear highly problematic that governments that have not been legitimised by free and fair elections may obstruct a military mission that has been supported by majorities in democratic states. This conflict may be further exacerbated if a military mission aims to address humanitarian disasters or excessive human rights violations. In such cases, legal obligations to respect a possible veto in the Security Council clash with moral obligations to help other people in need that are often felt among democratic publics and frequently lead to an expectation of intervention for humanitarian reasons. The most well-known example of such a conflict has been the Kosovo campaign in 1999, when governments and publics in Western democracies had to weigh their legal obligations under the United Nations Charter against their moral obligations to rescue hundreds of thousands of people from

‘ethnic cleansing’.⁶⁰ In most Western democracies, public deliberations resulted in a decision to participate in a NATO-led campaign against Serbian targets.

Notwithstanding these tensions between non-democracies’ influence in international law and democratic self-rule, the respect for international law has generally played a prominent role in democracies. After all, the adherence of government action to the law has been a characteristic feature of liberal democracies. It does not come as a surprise, therefore, that democracies have been major driving forces in the legalisation of world politics.

The importance of international law is reflected in the fact that the congruence of policies with international law impacts on citizens’ attitudes towards their legitimacy. After all, legitimacy refers to *subjective* normative conviction. The impact of international law on the attitudes of citizens can be illustrated by a survey commissioned by the German Marshall Fund in June 2003.⁶¹ Interviewees in the United States,

France, Germany, the United Kingdom, Italy, the Netherlands, Portugal and Poland were confronted with the hypothetical scenarios that Iran or North Korea had acquired weapons of mass destruction. Respondents were asked whether they would support their government’s decision to take part in an attack against North Korea or Iran respectively. The initial decision to attack was presented as having been taken either ‘by the USA’, ‘by NATO’, ‘by the USA and its allies’ or ‘by the United Nations Security Council’. The results (see table below) highlight the prominent role of international law: in five countries, the levels of support were always achieved for missions mandated by the UN Security Council. In two countries, regarding North Korea, and three others, regarding Iran, support was highest for missions mandated by NATO. Poland is the only country in which an attack decided ‘by the United States and its allies’ received the highest support rate in the case of North Korea.

Support for national governments’ decisions to take part in an attack against North Korea (first figure) / Iran (second figure); (highest figure bold)

	by the United States	by NATO	by the United States and its allies	by the United Nations Security Council
United States	58 / 67	68 / 78	53 / 73	72 / 75
United Kingdom	37 / 51	55 / 66	49 / 58	56 / 70
France	41 / 44	47 / 54	43 / 47	45 / 56
Germany	20 / 32	34 / 29	30 / 33	33 / 46
Netherlands	33 / 45	44 / 54	40 / 40	52 / 48
Italy	24 / 26	32 / 34	24 / 38	37 / 44
Poland	37 / 38	38 / 51	41 / 40	31 / 38
Portugal	25 / 28	39 / 47	34 / 38	44 / 48

⁶⁰ In addition, Martin Ortega has argued that NATO’s intervention in Kosovo was legitimate for three reasons: ‘First, the operation was decided upon and undertaken by an alliance of 19 member states, which represents 10 per cent of the total membership of the UN. Second, the intervention was expressly endorsed by all 42 states participating in the Washington NATO summit of April 1999. Third, the intervention was later implicitly legitimised by Security Council Resolution 1244 of 10 June 1999’, Martin Ortega, ‘Military Intervention and the European Union’, *Chaillot Paper* 45 (Paris: Institute for Security Studies of WEU, 2001), p. 35.

⁶¹ TNS Sofres 2003: *Transatlantic Trends*; <http://www.transatlantictrends.org/apps/gmf/ttweb.nsf/sitepages/78A78C5D17AD489D85256D78007A536D?OpenDocument&Start=1&Count=30&Expand=1>.

The data illustrate the importance of a multi-lateral mandate for military action. Moreover, they underline that the UN Security Council has been unrivalled as the institution for conferring legitimacy on military action.⁶²

As a distinct source of legitimacy for military action, international law has gained in importance for two reasons. First, a growing number of military missions are no longer motivated by self-defence. Instead, violations of international law (as in the Gulf War of 1991) human rights violations (as in Kosovo in 1999) or civil war (as in Haiti in 1994) have become frequently cited reasons for military intervention. Because these military interventions deeply penetrate into the 'internal' affairs of sovereign states, they require a higher level of legitimacy than the defence of a country's own territory after an attack.

Second, the emergence of an international system of collective security increases tensions with parliamentary control at the national level. As Charlotte Ku and Harold Jacobsen have argued, '[a] collective security system assumes that states that have committed themselves to use military forces will do so automatically in specific situations without further debate.'⁶³ Thus, there is 'an inherent tension between the expectations of collective security and the demand for democratic accountability with respect to decisions to deploy and use military force.'⁶⁴

Thus, adherence to international law seems to be suitable compensation for a loss of democratic control over the use of force. Indeed, the concept of such compensation can be found in member state law: for example, the Swedish *Riksdag* must generally approve of military missions. In the case of missions under Article 43 of the

UN Charter,⁶⁵ however, parliamentary approval is not considered necessary. The same holds true for other international agreements endorsed by the *Riksdag* – including the European security and defence policy.

Several of ESDP's core documents have referred to the importance of the United Nations Charter. The Treaty on European Union (Nice version) spells out as the objective of the common foreign and security policy 'to safeguard the common values, fundamental interests, independence and integrity of the Union *in conformity with the principles of the United Nations Charter*' (Article 11, emphasis added). In a similar way, the draft Constitutional Treaty refers to ESDP missions 'in accordance with the principles of the UN Charter'.⁶⁶ Moreover, the 1999 Helsinki European Council, which announced the military headline goal for ESDP, 'recognises the primary responsibility of the United Nations Security Council for the maintenance of international peace and security.'⁶⁷ Finally, the European Security Strategy, which was drafted by the High Representative and adopted by member states, repeats the UN Security Council's 'primary responsibility for the maintenance of international peace and security', adds a general commitment 'to upholding and developing International Law' and announces a Strengthening of the United Nations as 'a European priority'.⁶⁸

However, the EU has so far abstained from an explicit statement that EU-led military missions would require a UN Security Council mandate because a consensus among member states has not been attainable. Whereas some member states, including Finland, France, Ireland and Sweden, attach great importance to obtaining

⁶² For similar empirical results on the United States, see also Terrence L. Chapman and Dan Reiter, 'The United Nations Security Council and the Rally Round the Flag Effect', *Journal of Conflict Resolution*, vol. 48, no. 6, 2004, pp. 886-909.

⁶³ Charlotte Ku and Harold Jacobson, 'Breaching the Issues', in Hans Born and Heiner Hänggi (eds.), op. cit., pp. 3-35, p. 13.

⁶⁴ *Ibid.*, p. 14.

⁶⁵ According to Article 43, the 'Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.'

⁶⁶ Art. I-41.

⁶⁷ Conclusions of the Helsinki European Council 1999, digit 26.

⁶⁸ Javier Solana, 'A secure Europe in a better world. European Security Strategy', document adopted at the European Council, Brussels, 12 December 2003.

such a mandate, others, particularly the United Kingdom, hold a different view.⁶⁹ These differences are likely to persist, mainly because they reflect deep-seated convictions about the relationship between obligations under international law and humanitarian concerns.⁷⁰ ESDP's core documents reflect this impasse in frequent references to the importance of the UN, yet without specifying that a UNSC mandate is a prerequisite for EU-led military operations. Neither the European Convention nor the

Intergovernmental Conference devoted much time to this issue, because member states seemed unlikely to change their respective positions. Because of its importance for many states, however, the question of a Security Council mandate will resurface whenever the Council is considering an EU-led military operation. All in all, the ambivalence of ESDP regarding a UNSC mandate has weakened this fourth pillar of (democratic) legitimacy.

⁶⁹ See Isabelle Ioannides, 'The European Rapid Reaction Force: Implications for Democratic Accountability', *BICC Paper 24* (Bonn: Bonn International Center For Conversion, 2002), p. 34. See also Albrecht Schnabel, 'The European Union, ESDP and the United Nations: Competitors or Partners?', in Hans-Georg Ehrhart (ed.), *Die Europäische Sicherheits- und Verteidigungspolitik. Positionen, Perzeptionen, Probleme, Perspektiven* (Baden-Baden: Nomos, 2002), pp. 304-18, p. 313.

⁷⁰ Of course, adherence to international law is only required for peace-keeping and peace-enforcement missions. Missions at the low end of the range of Petersberg tasks (disaster relief or police missions) would not require a UN mandate.

Conclusion

As in other areas of European integration, the democratic legitimacy of security and defence policy rests on the consent of European citizens ('output legitimacy') and on the participation and supervision of national and supranational parliaments (intergovernmental and supranational 'input legitimacy'). In contrast to other issue areas in the European Union, adherence to international law constitutes a fourth pillar of legitimacy.

The previous sections have argued that none of the four pillars on which the legitimacy of ESDP rests is very robust. In particular, none of them appears sufficiently stable to hold in the event of military missions involving large numbers of casualties. To be sure, European citizens have great sympathy for the project of a European security and defence policy. As experiences from other states demonstrate, however, this sympathy for the *project* of a ESDP does not necessarily extend to an ESDP *in practice*. Moreover, there are still large differences in support between member states.

As regards intergovernmental input legitimacy, the involvement of national parliaments differs widely across member states. From this perspective, a European security and defence policy appears democratically legitimate to the extent that national standards are adhered to in every single member state. However, those member states with traditionally high levels of parliamentary involvement in particular have been put under mounting pressure to adapt their decision-making processes to the requirements of multinational out-of-area operations. To the extent that military structures have been inte-

grated internationally, a single member state's decision not to participate in a joint mission may block the entire endeavour. This problem is familiar to students of European integration, because national self-government has been weakened by the transfer of decision-making to a European level in many issue areas.

Adherents of supranational input legitimacy have argued that the democratic deficit that results from a weakening of democratic control at the national level has to be addressed at the supranational level. The European Parliament must certainly be the centre of supranational input legitimacy. The Draft Treaty on a European Constitution makes an important contribution to strengthening and clarifying the European Parliament's role in ESDP. Moreover, the European Parliament has begun to devote more resources to ESDP. What is more, by cultivating relations with NATO's Parliamentary Assembly, it has taken over an important function that was previously exercised by the WEU Parliamentary Assembly. However, the Council has retained important prerogatives, for example the right to determine whether to share classified information. As a consequence, the European Parliament still lacks the powers to compensate for the loss of powers of the national parliaments. Another important way to redress the deficit of parliamentary legitimacy would be to strengthen cooperation between the European and the national parliaments. Whether interparliamentary cooperation centres on the European Parliament, COSAC or the WEU Interim Assembly seems to be of secondary importance.

The weaknesses of these classical pillars of democratic legitimacy could be balanced by the fourth pillar of legitimacy in ESDP, i.e. adherence to international law. The EU has remained ambiguous as regards the requirement to have a UN Security Council mandate and – given the strongly held views among both proponents and critics of such a requirement – is likely to remain so.

As in other areas of European politics, output and input legitimacy come easily into conflict.

For example, the integration of military structures may increase the efficiency of ESDP but may weaken its legitimacy in those member states whose parliaments as a result face mounting difficulties to participate in decision-making. From the discussion of the various pillars of democratic legitimacy, one important conclusion can be drawn: any attempt to increase output legitimacy by making ESDP more efficient at the expense of intergovernmental input legitimacy involves high risks.

Annexes

Table 1

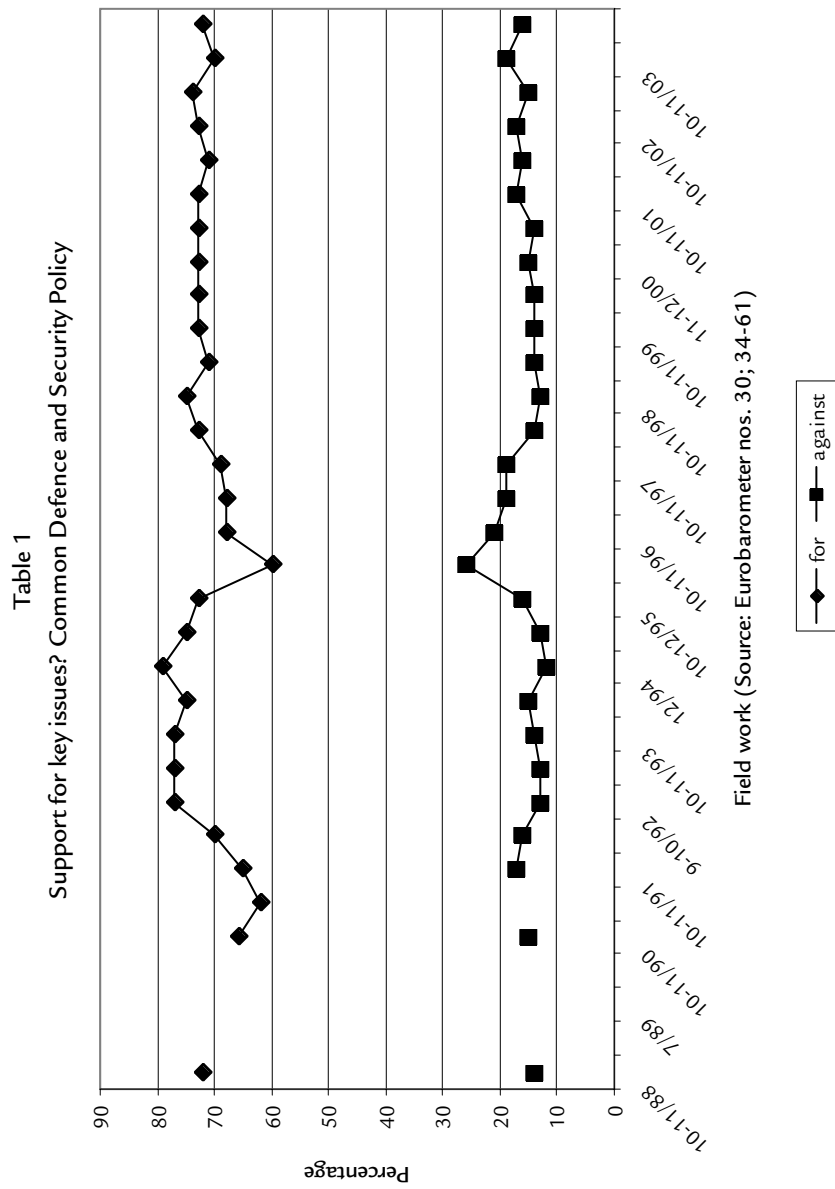


Table 2

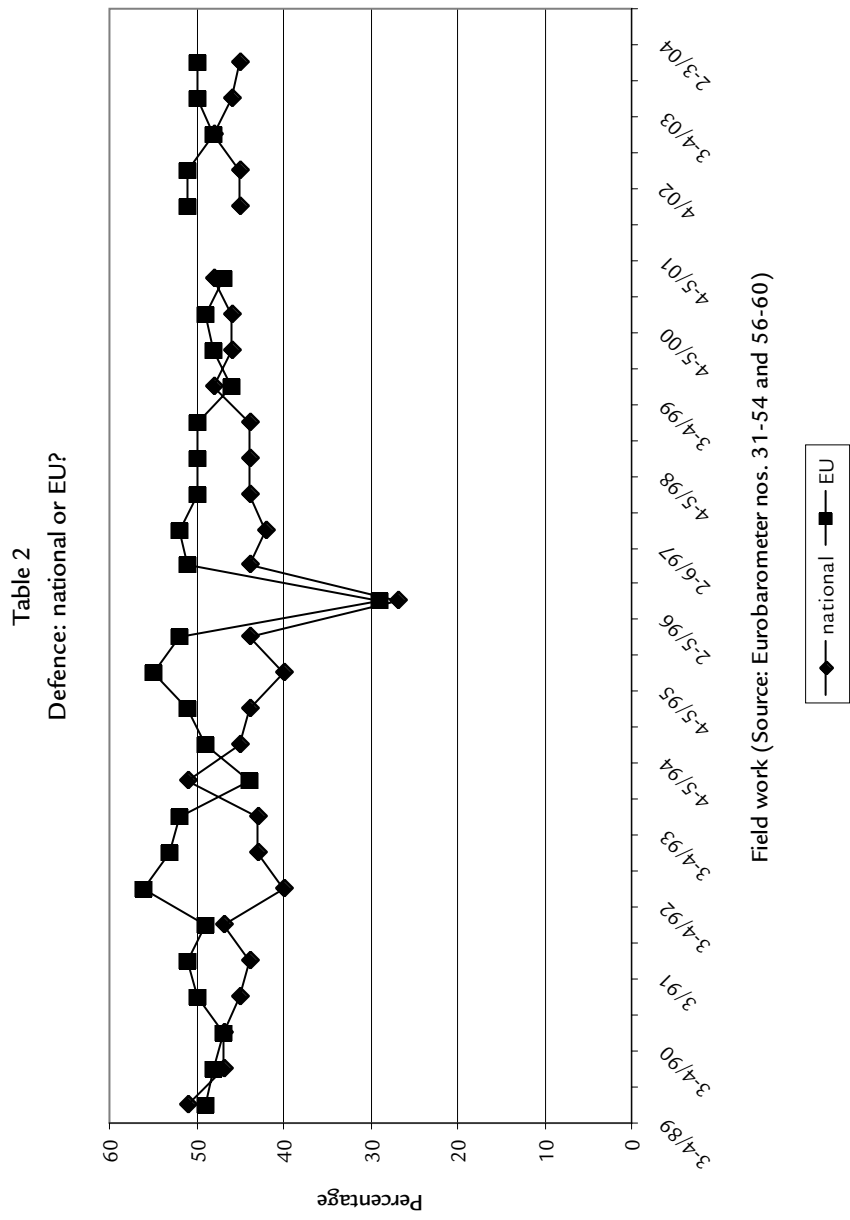
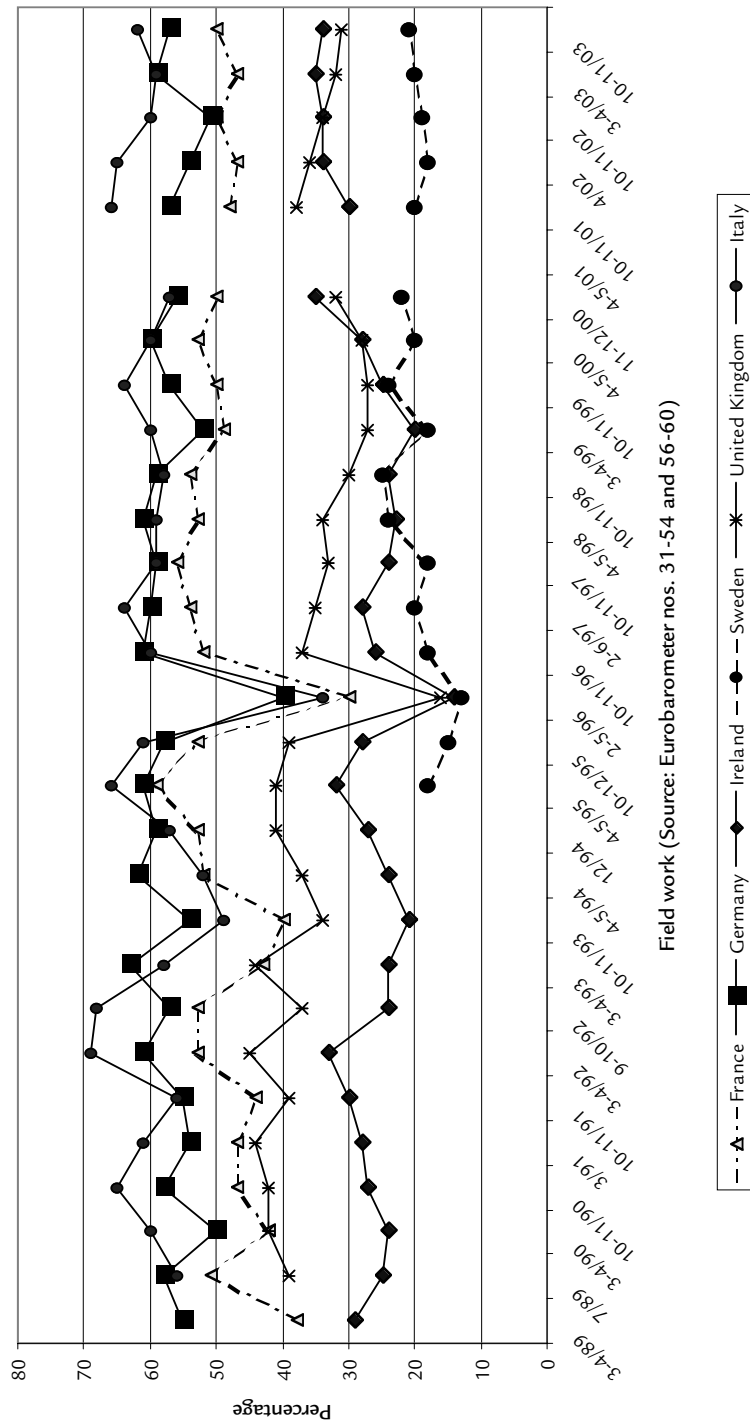


Table 3

Table 3
Differences in support rates for European security policy between member states



Field work (Source: Eurobarometer nos. 31-54 and 56-60)

Table 4

Table 4
 EU level decision-making in defence:
 no convergence of support level across member states

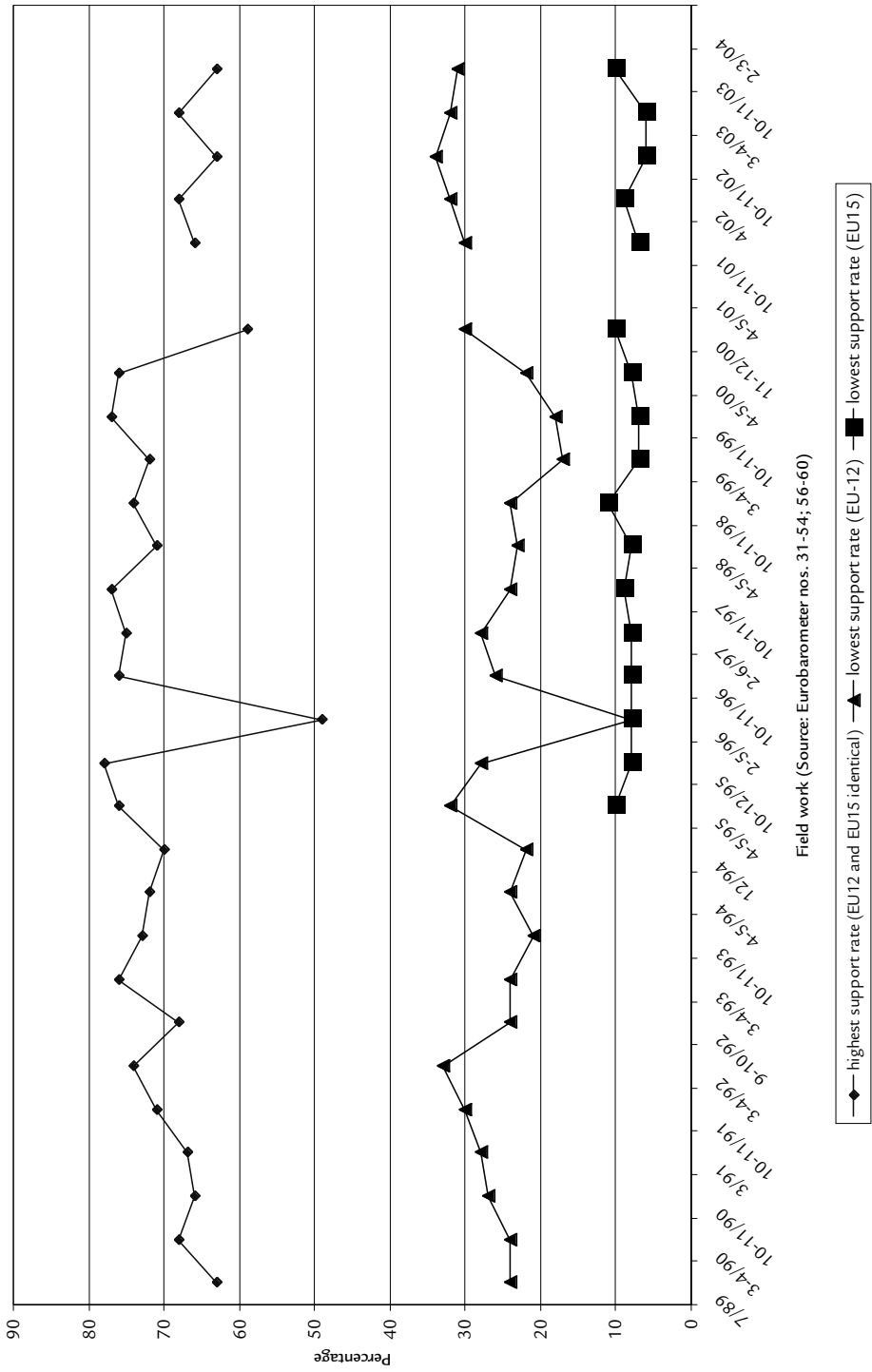
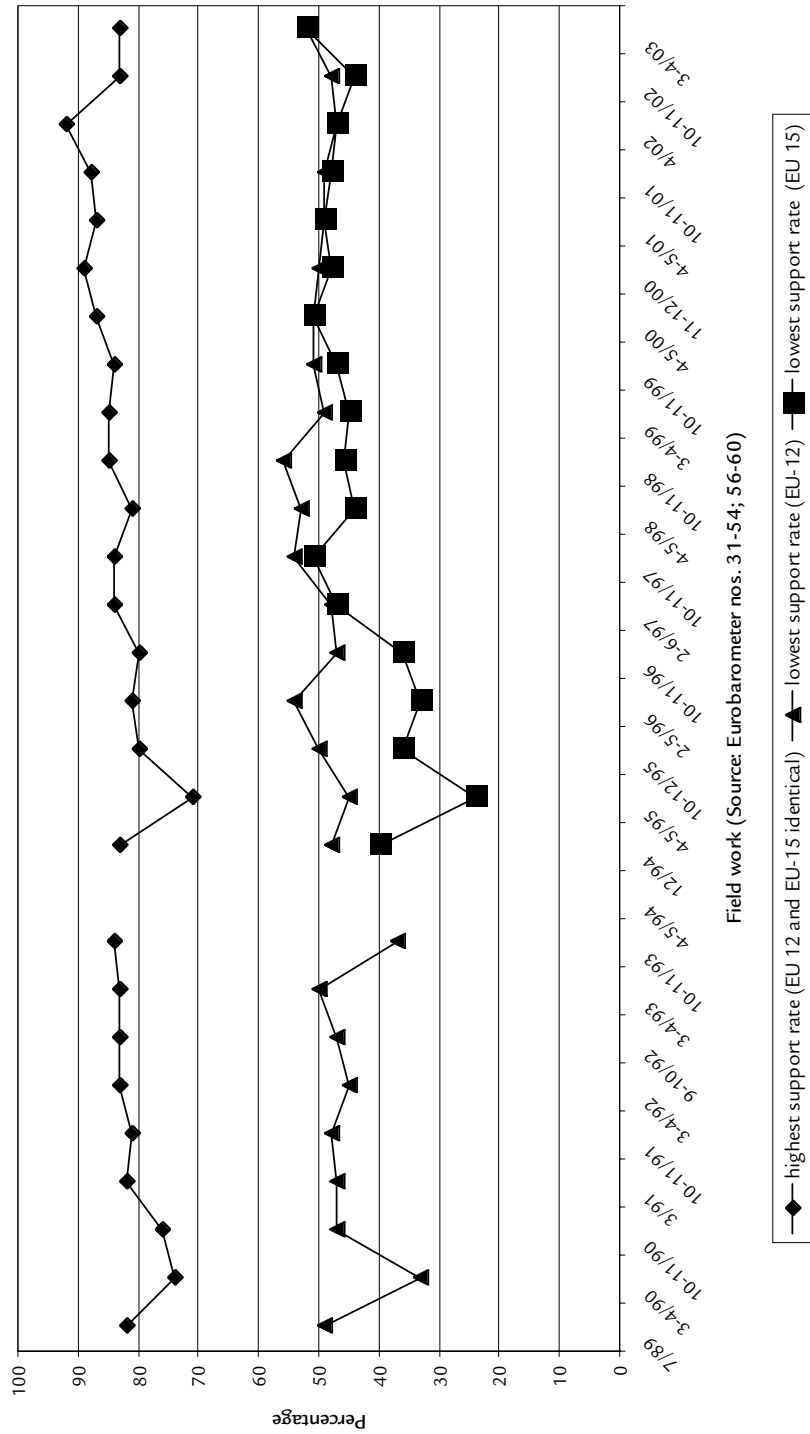


Table 5

Table 5
Support for European defence:
no convergence of support levels across member states



Field work (Source: Eurobarometer nos. 31-54; 56-60)

- n° 56 From America's protégé to constructive European. Polish security policy in the twenty-first century
Marcin Zaborowski **December 2004**
- n° 55 La gestion des crises en Afrique subsaharienne. Le rôle de l'Union européenne (*traduction et actualisation du n° 51*)
Fernanda Faria **Novembre 2004**
- n° 54 EU enlargement and armaments. Defence industries and markets of the Visegrad countries
Timo Behr and Albane Stwiecki; edited by Burkard Schmitt **September 2004**
- n° 53 Europe's next shore: the Black Sea region after EU enlargement
Mustafa Aydin **June 2004**
- n° 52 Rethinking the Euro-Mediterranean political and security dialogue
Rosa Balfour **May 2004**
- n° 51 Crisis management in sub-Saharan Africa. The role of the European Union
Fernanda Faria **April 2004**
- n° 50 For our eyes only? Shaping an intelligence community within the EU
Björn Müller-Wille **January 2004**
- n° 49 EU cohesion in the UN General Assembly
Paul Luif **December 2003**
- n° 48 Space and security policy in Europe: Executive summary
Stefano Silvestri, Rapporteur **December 2003**
- n° 47 EU and Ukraine: a turning point in 2004?
Taras Kuzio **November 2003**
- n° 46 EU-Russian security dimensions
Edited by Dov Lynch **July 2003**
- n° 45 Euros for ESDP: financing EU operations
Antonio Missiroli **June 2003**
- n° 44 The Galileo satellite system and its security implications
Gustav Lindström with Giovanni Gasparini **April 2003**
- n° 43 La question du Cachemire. Après le 11 septembre et la nouvelle donne au Jammu et Cachemire
Christophe Jaffrelot et Jasmine Zérinini-Brotel **Mars 2003**
- n° 42 L'Union en action : la mission de police en Bosnie
Agnieszka Nowak **Janvier 2003**
- n° 41 La Bulgarie et la Roumanie dans le Pacte de stabilité
Ralitzia Dimtcheva **Janvier 2002**
- n° 40 Iraq: a European point of view
Martin Ortega **December 2002**