

## 4. Governing the use of force under international auspices: deficits in parliamentary accountability

HANS BORN and HEINER HÄNGGI\*

### I. Introduction<sup>1</sup>

The war in Iraq in March–May 2003 is a clear reminder that the use of force still plays a part in current international relations. While this particular action was controversial *inter alia* because it lacked a United Nations (UN) mandate, more frequent resort to military intervention has become a trend in several international organizations. Two-thirds of all peace support operations (PSOs)<sup>2</sup> authorized by the UN took place in the past decade, and the North Atlantic Treaty Organization (NATO), the European Union (EU) and other regional institutions, notably in Africa, have all placed an increasing emphasis on using collective military tools for crisis management.<sup>3</sup>

While the use of force under international auspices has increased substantially, the same cannot be said of its democratic accountability. With decisions on the use of force increasingly being made by international organizations, even established democracies—where the control of armed forces is taken for granted—are struggling to adapt their national control mechanisms to the new situation. The role of parliamentary institutions is particularly essential to ensure the democratic accountability of national armed forces in PSOs undertaken by the EU, NATO, the UN, other organizations and ad hoc coalitions.

The discussion of PSOs by academics and practitioners has, however, so far paid little attention to the issue of democratic accountability. For example, the 2000 Brahimi Report<sup>4</sup> made recommendations to improve the effectiveness,

<sup>1</sup> This chapter draws on Born, H., 'Parliaments and the deployment of troops abroad under UN, NATO and EU auspices: a double democratic deficit?', *Sicherheit und Frieden/Security and Peace*, vol. 3 (2004), pp. 109–16; Born, H., 'The use of force under international auspices: strengthening parliamentary accountability', eds H. Born and H. Hänggi, *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* (Ashgate: Aldershot, 2004), pp. 203–15; and Hänggi, H., 'The use of force under international auspices: parliamentary accountability and "democratic deficits"', eds Born and Hänggi, pp. 3–16.

<sup>2</sup> The term 'peace support operations' is used here as a generic term for the full range of peacekeeping through to peace enforcement operations.

<sup>3</sup> For the latest statistics on EU, NATO, UN and other peace support operations see table 3.2 in this volume.

<sup>4</sup> United Nations, Report of the Panel on United Nations Peace Operations, UN document A/55/305, 21 Aug. 2000, known as the Brahimi Report, is available at URL <[http://www.un.org/peace/reports/peace\\_operations/](http://www.un.org/peace/reports/peace_operations/)>; for a full discussion of the report see Dwan, R., 'Armed conflict prevention, management and resolution', *SIPRI Yearbook 2001: Armaments, Disarmament and International Security*

\* Ingrid Beutler assisted in the preparation of this chapter.

decision-making processes, planning, staffing and management of PSOs, but democratic accountability was not taken up as a major concern in the report. The December 2004 report of the UN Secretary-General's High-level Panel on Threats, Challenges and Change devotes considerable attention to the guidelines for and legitimacy of intervention but not explicitly to making it more democratically accountable.<sup>5</sup> Moreover, the commemorative issue of *International Peacekeeping*, an overview of 10 years of academic publications on peacekeeping published in 2004, shows a similar lack of attention by analysts to the challenge of democratic accountability.<sup>6</sup>

This chapter addresses one important but under-researched aspect of security (sector) governance:<sup>7</sup> the role parliaments play in ensuring democratic accountability for the use of national armed forces under the aegis of international institutions. Parliamentary accountability for the use of force under international auspices is a good case in point for illuminating the internal (or national) and external (or international) dimensions of what could be termed the 'double democratic deficit' in this connection.<sup>8</sup>

The democratic deficit is not a new concept. In recent years, particularly in the context of anti-globalization movements, international institutions like the World Bank, the International Monetary Fund and the World Trade Organization have been criticized for their lack of accountability, representativeness and transparency. Even the EU, the only international organization in the world with a directly elected parliament, is criticized by many for its democratic deficit caused by *inter alia* the low turnout for elections to the European Parliament (EP), and the EP's limited powers especially in relation to EU foreign, security and defence policy.<sup>9</sup> Democratic deficits seem to be the global norm of international cooperation,<sup>10</sup> in which the role of parliamentarians lags well behind that of ministers, judges, diplomats and other officials.<sup>11</sup>

On the national level, according to Damrosch, in the past decades there has been a trend in democracies towards greater parliamentary control over 'war-

(Oxford University Press: Oxford, 2001), pp. 71–74; and Bellamy, A. and Williams, P., 'Introduction: thinking anew about peace operations', *International Peacekeeping, Special Issue on Peace Operations and Global Order*, vol. 11, no. 1 (spring 2004), pp. 17–38.

<sup>5</sup> United Nations, 'A more secure world: our shared responsibility', Report of the High-level Panel on Threats, Challenges and Change, UN documents A/59/565, 4 Dec. 2004, and A/59/565/Corr.1, 6 Dec. 2004, URL <<http://www.un.org/ga/59/documentation/list5.html>>. The synopsis and summary of recommendations of the report are reproduced in the appendix to the Introduction in this volume.

<sup>6</sup> Bellamy and Williams (note 4), pp. 1–15.

<sup>7</sup> On security sector governance see, e.g., Hänggi, H., 'Making sense of security sector governance', eds H. Hänggi and T. Winkler, *Challenges of Security Sector Governance* (LIT: Münster, 2003), pp. 3–22.

<sup>8</sup> For a more detailed discussion of democratic deficit and security sector governance see Hänggi (note 1), pp. 5–8.

<sup>9</sup> See, e.g., McGrew, A., 'Democracy beyond borders?', eds D. Held and A. McGrew, *The Global Transformation Reader: An Introduction to the Globalisation Debate* (Polity Press: Cambridge, 2002). On the democratic deficit of the EU see Harlow, C., *Accountability in the European Union* (Oxford University Press: Oxford, 2002).

<sup>10</sup> Clark, I., *Globalization and International Relations Theory* (Oxford University Press: Oxford, 1999), p. 147.

<sup>11</sup> Slaughter, A. M., *A New World Order* (Princeton University Press: Princeton, N.J., 2004).

and-peace decisions'.<sup>12</sup> Even so, this chapter shows that the extent of actual parliamentary accountability regarding security affairs, and more specifically international security affairs, should not be overestimated. Parliamentary oversight appears weakest as regards foreign and security policy—functions which even in the most democratic states have traditionally been reserved to the executive. This creates the first component in the double, national and international, democratic deficit in the conduct of security policy. It fits with Ian Clark's general observation on 'the reciprocal manner in which democratic deficits on the inside have been necessary accomplices of globalization'.<sup>13</sup>

This chapter argues that multinational PSOs are no exception. Parliamentary accountability for the use of international force is problematic at both the international and national levels—hence the expression 'double democratic deficit'. This chapter analyses the problems and offers recommendations for how this deficit could be reduced. Section II deals with accountability at the national level; section III addresses the situation in selected international institutions; and section IV suggests possible improvements at both national and international levels. The conclusions are presented in section V.

## II. Deficits in parliamentary accountability at the national level

States may exercise military force abroad unilaterally, in ad hoc coalitions or in the framework of multilateral security institutions acting on their own authority or with the mandate of another institution (normally the UN). Nations and institutions that have adopted normative rules (in constitutions, treaties, etc.) for the kind of operations they are prepared to engage in have normally devoted most attention to the need for an adequate international legal mandate, followed in some cases by limits on the degree of military force they would contemplate using in a non-self-defence context. This reflects a widespread judgement that the problems of legality and legitimacy of any multilateral use of force are likely to be greater, the higher the degree of violence or coercion required and the weaker (or less explicit) the international legal authority.<sup>14</sup> The legitimacy gap in such cases makes the application of democratic, including parliamentary, accountability of especial interest.

In a democratic polity, the parliament is the central locus of accountability for governmental decision making concerning the use of force, whether under national or international auspices. In the current state of security governance, these parliamentary powers are exercised more or less exclusively at the national level and they vary widely from country to country, particularly in

<sup>12</sup> Damrosch, L. F., 'Is there a general trend in constitutional democracies toward parliamentary control over war-and-peace decisions?', *Proceedings of the 90th Annual Meeting of the American Society of International Law* (American Society of International Law: Washington, DC, 1996), pp. 36–40.

<sup>13</sup> Clark (note 10), p. 166.

<sup>14</sup> Ku, C., 'Using military force under international auspices: a mixed system of accountability', eds Born and Hänggi (note 1), pp. 33–50.

terms of the relationship between parliament and government.<sup>15</sup> The role of parliament is quite different in presidential, parliamentary or mixed systems of government. Beyond these constitutional differences, the role played by a parliament is contingent upon its powers, capacity and willingness to hold the government to account for its actions.<sup>16</sup> Bruce George, a member of the British House of Commons and former President of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE), referred in this context to a triad of ‘authority’, ‘ability’ and ‘attitude’.<sup>17</sup>

### **‘Authority’: the formal power to hold the government accountable**

Parliaments derive their powers from their constitutional and legal frameworks as well as from customary practices. Parliamentary powers can be categorized according to their standard functions, which—despite national variations—typically include legislative, budgetary, elective, representative, and scrutiny and oversight functions.<sup>18</sup> These functions also apply, to a greater or lesser extent, to decision making on and execution of the use of force under the auspices of international institutions (see table 4.1).

The legislative function is parliament’s most traditional role but in practice may either be shared with government or eclipsed by other parliamentary powers. In the context of the use of force under international auspices, there are instances in which the parliament is asked to enact a generic law on multinational PSOs (e.g., Germany) or, as in the case of the Netherlands, succeeds in obtaining the right to authorize such operations case by case. By and large, however, the legislative function is marginal in this area.

Authorizing expenditure is one of the oldest functions of parliament, but in many democracies the ‘power of the purse’ has become purely nominal. More often than not, parliament can approve or reject spending proposed by the government but can neither modify it nor initiate its own expenditure proposal. In

<sup>15</sup> In this chapter, the term ‘parliament’ is preferred to ‘legislature’, and ‘government’ to (political) ‘executive’ because the traditional division of ‘government’ into legislative, executive and judicial institutions under the doctrine of ‘separation of powers’ is misleading. In most modern democracies, the parliament is not the only legislative power nor is it a legislative power only. Governments possess some ability to make law through devices such as decrees and orders; the enactment of law is only one of the functions of parliaments, and not necessarily their most important one. See Heywood, A., *Politics* (Palgrave Macmillan: Houndmills, 1997), pp. 294, 297–98.

<sup>16</sup> See Born, H. (ed.), *Parliamentary Oversight of the Security Sector: Principles, Practices and Mechanisms*, Handbook for Parliamentarians no. 5 (Geneva Centre for the Democratic Control of Armed Forces (DCAF)/Inter-Parliamentary Union (IPU): Geneva, 2003); George, B. and Morgan, J., ‘A concept paper on legislatures and good governance’, based on a paper prepared by Johnson, J. K. and Nakamura, R. T. for the UN Development Programme, July 1999, URL <<http://magnet.undp.org/Docs/parliaments/Concept%20Paper%20Revised%20MAGNET.htm>>.

<sup>17</sup> George, B. and Morgan, J., ‘Parliament and national security’, Paper presented at the Conference on Redefining Society–Military Relations from Vancouver to Vladivostok, Birmingham, 16–18 Apr. 1999.

<sup>18</sup> This categorization and the description of the respective functions draw on Hague, R., Harrop, M. and Breslin, S. (eds), *Comparative Government and Politics: An Introduction*, 4th edn (Palgrave Macmillan: Houndmills, 1998), pp. 190–96; Heywood (note 15), pp. 297–300; and Brunner, G., *Vergleichende Regierungslehre* [Comparative politics], vol. 1 (UTB Schöningh: Paderborn, 1979), pp. 236–58.

the context of the use of force under international auspices, one of the strongest tools of parliament is the power to approve or reject the budgets of PSOs. Where this power does not exist, parliament may have some indirect control by way of approbation or rejection of supplementary defence budget requests, which are often triggered by unexpected PSOs.

The elective function refers to the fact that, in parliamentary systems at least, parliament makes, and sometimes breaks, governments. This applies more strongly in those systems where elections are held under proportional representation, mostly resulting in coalition governments, than in those using other electoral systems that tend to produce a one-party majority. In the context of the use of force under international auspices, this function has minimal application. It may work in a negative manner (i.e., through a no-confidence vote against the government's decision to deploy forces under international auspices or on the government's handling of the deployment). The fall of the Dutch Government as a consequence of a parliamentary report on the 1995 Srebrenica massacre presents a relatively rare example of this contingency.<sup>19</sup>

The representative function of parliament refers to its ideal role as a link between government and the people. In most cases, the ideal is tempered in practice by party discipline. The representative function is often limited to parliament's plenary debates on national issues, which, in the Westminster style of political systems,<sup>20</sup> have become one of the parliament's main, if not most important, functions. Questions of war and peace in particular lend themselves to emotional public debates; and while, in modern conditions, other vectors of influence such as non-governmental organizations and media campaigns can impact strongly on the government, the parliamentary mode of representation also remains important in such situations. Deliberations in parliament may echo popular concerns on, or disagreement with, the government's decision to deploy PSOs; they may also provide an opportunity for consensus building, particularly in instances where the level of force used is high and international authorization is lacking. Finally, they may or may not provide a means for coming to terms with a national crisis related to the use of force under international auspices.

Scrutiny or oversight of the government is one of the most important functions of parliament in modern democracies, allowing parliament to hold the government accountable for its activities. Effective scrutiny is often viewed as a means to compensate for the sidelining of parliament's traditional legislative and budgetary functions. However, most parliaments are still struggling to develop their oversight role—in competition with other societal actors and the

<sup>19</sup> Hoekema, J., 'Srebrenica, Dutchbat and the role of the Netherlands' Parliament', eds Born and Hänggi (note 1), pp. 73–89.

<sup>20</sup> In the 'Westminster-style' parliaments the powers of parliament and government are fused and government business dominates the parliamentary agenda. Norton, P. (ed.), *Parliaments and Governments in Western Europe* (Frank Cass: London, 1998), pp. 2–3; and Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press: New Haven, Ct., 1999), pp. 10–30.

**Table 4.1.** The range of possible powers of parliaments in overseeing international use of force

Function	Instruments
Legislative	Codification of new legal powers (e.g., authorization of the use of force)
Budgetary	Approval of expenditure on military missions ('power of the purse')
Elective	No-confidence vote in case of disagreement with government's decision to deploy forces
Representative	Facilitation of political consensus on or channelling popular disagreement with government's decision to deploy forces
Scrutiny and oversight	Information and monitoring (e.g., through the main techniques of oversight such as questioning, interpellation, emergency debates, hearings, inquiry and visits to troops abroad); consultation by government on the use of force (without binding vote); co-decision on (i.e., authorization of) the use of force (legally required or politically required; prior or <i>post hoc</i> decision)

*Source:* Hänggi, H., 'The use of force under international auspices: parliamentary accountability and "democratic deficits"', eds H. Born and H. Hänggi, *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* (Ashgate: Aldershot, 2004), p. 12.

investigative media—and they face particular challenges in fields that have traditionally been, or remain, the prerogative of the government such as foreign and security policy. In the context of the use of force under international auspices, parliament may seek to hold the government accountable through all the main techniques of oversight such as questioning, interpellation, emergency debates, hearings and inquiries. The techniques are all designed to extract information from the government, without which effective oversight is impossible. *Post hoc* parliamentary inquiries may also offer a major device for holding governments accountable for the use of force under international auspices. Beyond these legal means or customary practices to extract information, parliaments may also have the right to be consulted by government on its decisions regarding the use of force.

The strongest tool of parliamentary oversight by far is the constitutional or legal right to approve or reject the use of force. *Prior* authorization is an especially valuable right because once the troops are sent abroad it is difficult for a parliament to undo the government's decision—withdrawal could endanger the ongoing mission and damage the international reputation and credibility of the country. Research in a selection of 16 'old' and 'new' EU or NATO member states taking part in PSOs shows that wide variation exists between countries regarding the constitutional and legal powers of parliament to oversee PSOs (see table 4.2).<sup>21</sup>

<sup>21</sup> See also Born, H. and Urscheler, M., 'Parliamentary accountability of multinational peace support operations: a comparative perspective', eds Born and Hänggi (note 1), pp. 53–72. The research was carried out in cooperation with the NATO Parliamentary Assembly Secretariat and the parliamentary defence committees of the 16 selected countries.

The parliaments of Belgium, Canada, France, Poland, Portugal, Spain and the United Kingdom and the Congress of the United States do not have the power of prior authorization. The majority of these countries are either presidential–parliamentary democracies or parliamentary Westminster-style democracies. In presidential–parliamentary democracies such as France, Poland, Portugal and the USA,<sup>22</sup> the president is the commander-in-chief and has special prerogatives concerning foreign and security policy. Some of these countries are discussed in more detail below.

As far as the USA is concerned, the division of powers between the president and the Congress is unclear and continues to produce tensions. On the one hand, the US Congress has the power ‘to declare war’,<sup>23</sup> but deploying troops abroad in the context of PSOs is not the same as waging war. In 1973, after the Viet Nam War (an ‘undeclared’ war), Congress passed the War Powers Resolution requiring the president to consult with Congress whenever military action is contemplated and to report to Congress whenever armed forces are involved in hostilities abroad. The resolution bars any continued deployment of troops unless Congress gives its consent: if Congress does not consent within 60 days, the president must withdraw the troops within 30 days.<sup>24</sup> On the other hand, Article II, section 2 of the US Constitution states that the president is ‘Commander in Chief of the Army and Navy of the United States’, and various presidents have continued to dispute the view that the Congress is empowered to approve in advance the dispatch of troops abroad. Lori F. Damrosch shows that, in various deployments of troops abroad, the president has sometimes sought the consent of Congress (e.g., the 1991 Gulf War and in Bosnia and Herzegovina), and sometimes not (e.g., in Somalia and in Haiti), implying that it is up to the president whether prior congressional authorization for a PSO is sought or not.<sup>25</sup>

The French Constitution of 1958, for example, provides no procedure for prior parliamentary authorization for the deployment of forces outside France.<sup>26</sup> Nevertheless, international agreements, among them those involving the deployment of troops abroad, have to be submitted to the parliament.<sup>27</sup>

<sup>22</sup> Karatnycky, A. and Piano, A. (eds), *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties, 2001–2002* (Rowman and Littlefield: Lanham, Md., 2002), pp. 736–37.

<sup>23</sup> US Constitution, Article I, section 8, clause 11.

<sup>24</sup> US Congress, ‘Joint Resolution: Concerning the war powers of Congress and the President’, Public Law 93-148, 93rd Congress, House Joint Resolution 542, 7 Nov. 1973, paras 1542–44, available at URL <<http://www.yale.edu/lawweb/avalon/warpower.htm>>.

<sup>25</sup> Damrosch, L. F., ‘The interface of national constitutional systems with international law and institutions on using military forces: changing trends in executive and legislative powers’, eds C. Ku and H. Jacobsen, *Democratic Accountability and the Use of Force in International Law* (Cambridge University Press: Cambridge, 2003), pp. 48–51.

<sup>26</sup> Lamy, F., *Le Contrôle Parlementaire des Opérations Extérieures* [Parliamentary control of external operations], Report 2237, French Parliament (Deputies), Paris, 2000.

<sup>27</sup> French Constitution, 1958, article 53, cited in Assembly of the WEU, *National Parliamentary Scrutiny of Intervention Abroad by Armed Forces Engaged in International Missions: The Current Position in Law*, Report submitted on behalf of the Committee for Parliamentary and Public Relations by Mrs Troncho, Rapporteur, Document A/1762, 4 Dec. 2001, p. 11.

**Table 4.2.** Parliamentary oversight powers concerning peace support operations

Country	Prior approval to send troops abroad	Approval of a mission's mandate	Approval of operational issues <sup>a</sup>	Right to visit troops abroad	Decision on the duration of the mission
Belgium	o	o	o	x	o
Canada	o	o	o	x	o
Czech Republic	x	x	o	x	x
Denmark	x	x	x	x	x
France	o	o	o	x	o
Germany	x	x	x	x	x
Hungary	x	..	..	..	..
Italy	x	..	..	x	..
Netherlands	x	x	x	x	x
Norway	x	o	o	x	o
Poland	o	o	o	..	o
Portugal	o	o	o	o	o
Spain	o	o	o	x	o
Sweden	x	x	o	x	x
UK	o	x	o	x	o
USA	o	o	o	x	x

o = no, x = yes.

<sup>a</sup> Operational issues include rules of engagement, command and control, and risk assessment.

Source: Born, H. and Urscheler, M., 'Parliamentary accountability of multinational peace support operations: a comparative perspective', eds H. Born and H. Hänggi, *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* (Ashgate: Aldershot, 2004).

According to a report by the French Parliamentary Defence Committee, in the 1990s, with the exception of the Gulf War, the French President did not seek prior parliamentary authorization for the deployment of troops. The French contributions in Yugoslavia—the UN Protection Force (UNPROFOR), the Implementation Force (IFOR) and the Stabilization Force (SFOR)—in Albania (Operation Alba in 1997), and in Kosovo (the Allied Force and the Kosovo Force, KFOR, since 1999) were all determined by the government without parliament having any say in the decisions.<sup>28</sup>

In addition to these examples of presidential-parliamentary democracies, neither the British nor the Canadian parliaments, both Westminster-type parliamentary democracies, have the power of prior authorization for PSOs. Winslow and Klep refer to the Canadian political system as an 'elected

<sup>28</sup> Lamy (note 26).



dictatorship'.<sup>29</sup> The other two countries whose parliaments lack the power of prior authorization are Belgium and Spain. It is unclear why this is the case.<sup>30</sup>

The parliaments of the Czech Republic, Denmark, Germany, Hungary, Italy, the Netherlands, Norway and Sweden have the power to approve or reject PSOs in advance. All these states are parliamentary democracies.<sup>31</sup> The Danish Constitution, for example, obliges the government to seek consent from parliament for deployments 'against a foreign state'.<sup>32</sup> Although formally this provision applies to the use of force against a state, in practice the government also needs approval from parliament before making any commitments concerning PSOs.<sup>33</sup> Under Sweden's Constitution the armed forces can only be sent abroad in accordance with a special law that sets out the grounds for such action and in accordance with Sweden's international treaties and commitments.<sup>34</sup> Hungary is an interesting case because its constitution requires a majority of two-thirds of the votes of the members of parliament before troops may be sent abroad, one of the few decisions requiring a qualified majority.<sup>35</sup> The parliamentary opposition has the opportunity to influence policy because its cooperation is necessary to reach the two-thirds majority, and in the past such votes have sometimes been swayed by domestic issues rather than the merits of the case. However, after pressure from NATO, Hungary has changed this procedure. In November 2003, the responsibility of sending troops abroad shifted from the parliament to the government in the case of consensual NATO operations. Other missions (EU, UN and ad hoc coalitions) remain in the hands of parliament and still require approval by a qualified majority.<sup>36</sup>

In Italy and the Netherlands, the constitution does not explicitly mention that the government has to acquire prior approval for deploying troops abroad, but it is regarded as a matter of customary practice.<sup>37</sup> Among all the 16 parliaments which have the power of prior authorization of PSOs, only those of Denmark, Germany and the Netherlands—and to a lesser extent the Czech Republic and Sweden—have the subsequent powers to discuss and approve the mandate, operational guidelines, budget and duration of the mission (see table 4.2). The parliaments of Italy and Norway lack these detailed

<sup>29</sup> Winslow, D. and Klep, C., 'The public inquiry into the Canadian peace mission in Somalia', eds Born and Hänggi (note 1).

<sup>30</sup> Both Spain and Belgium are monarchies and former colonial powers. The WEU Assembly suggests that parliamentary oversight of PSOs is less strict in countries with this type of political system and history. Assembly of the WEU (note 27), p. 6.

<sup>31</sup> Karatnycky and Piano (note 22).

<sup>32</sup> Constitution of the Kingdom of Denmark, 1992, Article 19.2. The Danish Constitution is available in English at URL <<http://www.folketinget.dk/pdf/constitution.pdf>>.

<sup>33</sup> Assembly of the WEU (note 27), pp. 8–9.

<sup>34</sup> Instrument of Government, Constitution of the Kingdom of Sweden, 1974, Chapter 10, Article 9, paras 1–3. The Swedish Constitution is available in English at URL <<http://www.riksdagen.se/english/work/constitution.asp>>.

<sup>35</sup> Constitution of the Republic of Hungary, 1949, Article 19 [3] and [6]. The Hungarian Constitution is available in English at URL <<http://www.mkab.hu/en/enpage5.htm>>.

<sup>36</sup> The authors are grateful for the information provided by Dr Ferenc Molnar, Deputy Director of the Institute for Strategic and Defence Studies, Budapest, Hungary.

<sup>37</sup> Assembly of the WEU (note 27), p. 13.

oversight powers and might be said to be in a position to give the government a 'blank cheque' once the decision is taken to deploy troops abroad.

On the basis of this analysis, four models can be distinguished with regard to parliament's involvement in the authorization of PSOs:

1. Parliament has the right of prior authorization of PSOs, including the right to discuss and influence the details of the PSO (e.g., as in Denmark, Germany and the Netherlands).

2. Parliament has the right of prior authorization but not the power to influence the detailed aspects of PSOs (including rules of engagement, duration of the mission and mandate), giving government full authority once parliament has authorized the mission (e.g., as in Italy and Norway).

3. The third group of parliaments does not have prior authorization power. Government can decide to send troops abroad on peace missions without the legal obligation to consult parliament. Nevertheless, parliament is informed about the deployments. This is the case, for example, in Canada, France, Poland, Portugal, Spain, the UK and the USA.

4. A fourth type of parliament is those parliaments which have no authorization power or right to information about future or pending PSOs. This type of parliament was not represented in those studied.

Aside from the extent to which parliaments have the power to authorize PSOs, the parliaments of all three groups often possess the power of the purse over funding for PSOs. Parliaments can use this power during debates on the annual defence budgets and debates on any additional budget requests for ongoing PSOs.<sup>38</sup> For example, the US Congress stopped funding for the US troops committed to the UN PSOs in Somalia in 1992–93 after the first casualties were incurred in 1993.<sup>39</sup> However, generally speaking, the power of the purse does not compensate for the lack of a constitutional power of prior authorization, given the difficulty of pulling back troops in mid-mission. It is also not impossible (although less common for rich Western countries) for the government to have access to alternative, non-national sources of funds to continue the deployment.

### **'Ability': resources, staff and expertise needed**

In order to make full use of their opportunities to hold government accountable, parliamentary representatives must possess sufficient resources (and be given sufficient opportunity) to develop their own expertise. In order to be able to pass legislation, to scrutinize the budget, to engage in informed debates and to oversee governmental activities, parliaments need to work through

<sup>38</sup> Eekelen, W. F. van, *Democratic Control of Armed Forces: the National and International Parliamentary Dimension*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper no. 2 (DCAF: Geneva, Oct. 2002), URL <[http://www.dcaf.ch/publications/Occasional\\_Papers/2.pdf](http://www.dcaf.ch/publications/Occasional_Papers/2.pdf)>.

<sup>39</sup> Damrosch (note 25), p. 49.

specialized committees which have their own budget, expert and support staff as well as access to research and documentation services and external expertise provided for by civil society organizations. These needs are particularly acute in the security sector because of its closed nature. In most cases, parliaments have only small support staffs and infrastructure while the government can rely on large ministerial bureaucracies. In the context of the use of force under international auspices, lack of resources may prevent parliaments from collecting first-hand information on their own (e.g., by holding hearings and inquiries, requesting expertise from international experts or visiting troops abroad). Research on the resources at the disposal of parliaments in 16 states shows that some parliaments are well endowed, whereas others have hardly any staff or budget (see table 4.3).<sup>40</sup>

All 16 countries' parliaments possess a defence committee: a prerequisite for exercising effective oversight in that policy field, and a manifestation of the institutionalized way of dealing with parliamentary oversight.<sup>41</sup> All these defence committees make use of external expertise provided by civil society organizations, but they differ in terms of number of members and staff as well as in the scale of the committee's budget. Of the countries examined in this chapter, the smallest committee on defence is that of Norway (10 members) and the largest committee is that of France (72 members).

The size of the committee does not have a linear impact on the effectiveness of parliamentary oversight on defence and PSOs. Too many members may transform the committee into a debating club. On the other hand, having too few members impedes the task specialization that is important for covering the security sector. In addition, party rivalry inside the committee may detract from a constructive working climate.<sup>42</sup>

The size of the committee staff varies from 1 staff member serving the Norwegian parliamentary defence committee to 50 staff members working for the US Senate Committee on Armed Services. Staff members usually prepare and organize committee meetings, hearings, maintain contacts with government and defence officials, collect information and help interpret government information. They are vital for effective committee work, and more staff can generally be assumed to mean more effective oversight of defence issues, including PSOs. The same is true of the size of the defence committee's budget. The larger it is, the more possibilities are available for undertaking parliamentary inquiries, organizing hearings and visits, and hiring both staff and outside expertise. The US Senate has access to the largest financial resources (€5.8 million per annum) whereas the Hungarian parliamentary defence committee has an annual budget of just €4000. Remarkably, the French Defence Committee has a lower budget than the Swedish Defence Committee, despite France's larger military forces. Of all the parliaments studied, the US

<sup>40</sup> Born and Urscheler (note 21).

<sup>41</sup> Norton (note 20), p. 196.

<sup>42</sup> Beyme, K. von, *Parliamentary Democracy: Democratization, Destabilization, Reconsolidation, 1789–1999* (Palgrave Macmillan: Houndmills, 2000), p. 60.

**Table 4.3.** Resources of national parliamentary defence committees

	Members of parliamentary defence committee	Parliamentary defence committee staff	Budget defence committee (€)	Use outside expertise
Belgium	17	1	0	x
Canada	16	3	..	x
Czech Republic	19	4	0	x
Denmark	17	3	33 333	x
France	72	11	130 000	x
Germany	38	8	..	x
Hungary	15	2	4 000	x
Italy	43	4	0	x
Netherlands	27	5	25 000	x
Norway	10	1	..	x
Poland	19	4	0	x
Portugal	26	3	..	x
Spain	40	4	0	x
Sweden	19	5	500 000	x
USA	25	50	5 800 000	x
UK	11	7	..	x

0 = These parliamentary defence committees lack their own budget but make use of the general budget of the parliament; x = parliament is able to use outside expertise.

*Source:* Born, H. and Urscheler, M., 'Parliamentary accountability of multinational peace support operations: a comparative perspective', eds H. Born and H. Hänggi, *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* (Ashgate: Aldershot, 2004), p. 63.

Senate Committee on Armed Services seems to be the best resourced in terms both of committee staff and budget.<sup>43</sup>

### **'Attitude': the willingness to hold the government accountable**

Legal rights, resources and expertise alone do not guarantee effective parliamentary oversight of PSOs. The political willingness of parliamentarians to use the tools and mechanisms at their disposal is also a crucial prerequisite. Readiness to endorse a PSO and to accept the use of force can depend not only on the merits of the issue but also on outside pressures, such as the demand by public opinion and the media 'to do something' when civil wars occur. The conflict in the former Yugoslavia was one such example where successive levels of Western intervention were not just supported but partly driven by popular concern.<sup>44</sup> Parliamentarians' attitudes are also influenced by pressure

<sup>43</sup> The data presented on the US case do not take into account the fact that the US Senate Committee on Armed Services can avail itself of the Congressional Research Service, which employs c. 800 staff members, as well as the Library of Congress staff and resources.

<sup>44</sup> Jan Hoekema, former vice-chairman of the Dutch Parliamentary Committee on Foreign Affairs, has written that Dutch parliamentarians and government leaders were under heavy pressure from public

exerted by government. By imposing party discipline, governments may seek to limit the freedom of individual parliamentarians of the parliamentary majority to vote against proposed troop deployments. In this sense a public vote on any given PSO is not only about the PSO itself, but also a domestic political test of whether the government still enjoys broad support in parliament.

In addition to these outside pressures, the context and content of the PSO are also relevant. After the end of the cold war a 'new debate' took place on PSOs, in which support could also be found on the left and centre of the political spectrum for forceful intervention in cases with a 'humanitarian' rationale.<sup>45</sup> More centre-right politicians tend to favour PSOs if they serve national interests. However, after the initial enthusiasm for PSOs at the beginning of the 1990s, there has been some reaction in terms both of controversy over individual missions and of greater realism in general about the merits of military intervention as a vehicle for tackling civil wars and failed states.<sup>46</sup> The type of PSO also affects parliamentarians' attitudes: the larger and riskier the operation, or the more lengthy and costly it risks becoming, the deeper and more intense the debate will be.<sup>47</sup> Parliamentarians are more careful and perhaps even reluctant to approve 'enforcement' operations (undertaken with some coercive intent or without the consent of all the local parties) because of the greater risks of casualties among the peacekeepers.

Further research into the willingness of parliaments would need in-depth and qualitative analysis of political processes in each country, and thus falls beyond the scope of this chapter. Currently, no comparative data are available on this subject. It is assumed that among parliamentarians who support PSOs the extent of their acceptance is influenced by pressures from government, media and public opinion as well as the specificities of each PSO.

To conclude, national parliamentary accountability for the use of force under international auspices depends to a great extent on the formal and informal oversight powers vested in parliament. Timely and accurate information on the international deployment of military forces and the power to debate, authorize and review such missions appear to be the most powerful instruments of parliamentary accountability in this area. The relevance of these powers, like all parliamentary powers, is contingent on the resources and expertise at the disposal of parliaments and, last but not least, on the political will of parliamentarians to hold government accountable. Among the countries studied here, some parliaments have strong legal powers and sufficient resources at their disposal, and others do not. It is this uneven oversight practice among the parliaments of EU and NATO countries that creates the risk of a double democratic deficit.

opinion and the media to restore peace and order in Bosnia particularly in the period 1992–95. Hoekema (note 19).

<sup>45</sup> Everts, P., *Democracy and Military Force* (Palgrave Macmillan: Houndmills, 2002), p. 7.

<sup>46</sup> Jett, D. C., *Why Peacekeeping Fails?* (St Martins Press: New York, 2000).

<sup>47</sup> Ku (note 14), pp. 44–45.

### III. Deficits in parliamentary accountability and general 'democratic' control at the international level

In examining the possible democratic deficit above the national level of decision making on PSOs, this section focuses on four of the most frequently used frameworks for mandating or launching such missions: the UN; NATO, which since the end of the cold war has increasingly shifted its focus towards mounting crisis-management operations first in Europe and now globally; the EU, which has built up a capacity for military and civilian crisis intervention since 1999; and ad hoc coalitions such as that which intervened in 2003 in Iraq.<sup>48</sup> The EU and NATO perhaps deserve special scrutiny since they consist entirely of states that claim democratic credentials (and in the case of new members have had to meet specific democratic criteria for accession).

#### **Parliamentary accountability and UN-led PSOs**

In the past 15 years, twice as many PSOs have been carried out as during the cold war, and the largest single number of such missions has been executed by the UN. In 2004, 16 UN PSOs were carried out, in which 64 701 military personnel, civilian police and staff were involved at a total cost of \$3.87 billion.<sup>49</sup> UN PSOs have also become more varied in kind, ranging from monitoring missions to peace enforcement operations.

Since the UN is an intergovernmental organization, it does not have a government or parliament which is directly elected by the people. The UN derives its democratic legitimacy only via its member states, whose representatives are democratically elected at the national level, at least if those member states are democratic themselves.

The central role of the UN Security Council in decisions regarding the use of military forces—both under the UN's own direct command and in missions delegated to other organizations under a UN mandate—makes its decision-making processes important both for democratic oversight and for accountability. The design of the Security Council was influenced by League of Nations experience and to some extent aimed deliberately to achieve a concentration of power rather than true representativeness: it thus entailed, from the first, a certain loss of transparency and the exclusion from the process of many interested states. The decision-making process of the Security Council often takes place in camera, posing problems for oversight by non-participating governments, the general public and national parliaments. Article 32 of the UN Charter requires that parties to a dispute be represented and participate in the

<sup>48</sup> Hippel, K. von, 'NATO, EU and ad hoc coalitions-led peace support operations: the end of UN peacekeeping or pragmatic subcontracting?', *Sicherheit und Frieden/Peace and Security*, vol. 22, no. 1 (2004), pp. 7–11.

<sup>49</sup> United Nations, UN Peacekeeping Operations, 'Background note', 31 Dec. 2004, URL <<http://www.un.org/Depts/dpko/dpko/bnote.htm>>; and Dwan, R. and Wiharta, S., 'Multilateral peace missions', *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2004), pp. 149–90. See also table 3.2 in this volume.

debate (without vote) in the Security Council, but troop-contributing countries do not have a similar privilege. Unless it happens to be a Security Council member, a country that contributes forces or financial resources to UN operations thus has no vote in deciding how to use them, and this issue has been of particular concern to such major troop contributors as Canada, Germany and India.<sup>50</sup> In 2004 over three-quarters of the military personnel involved in operations under UN command came from countries that were not Security Council members (see table 4.4). By contrast, the five permanent members (P5) of the Security Council contributed only 4.6 per cent of all civilian and military personnel of UN PSOs in 2004,<sup>51</sup> leading to a situation in which states contributing a tiny minority of troops have a veto power over the mandates and ensuing rules of engagement of PSOs.

Contributors that are not members of the Security Council have no say in the initial mandate and rules of engagement nor are they present if the Security Council modifies the mandate in the course of a military operation.<sup>52</sup> In such cases, contributor nations outside the Security Council may find themselves committed to PSOs which are not (or are no longer) in line with their own national interests or public opinion, creating the danger of a rift between the people, parliament and government of an affected country. As a partial solution to this problem, in 2001 the Security Council adopted a resolution to strengthen cooperation between troop-contributing states, the Security Council and the UN Secretariat. Among other things, the Security Council obliged itself to conduct public and private consultations, hearings and meetings with troop-contributing states.<sup>53</sup>

The issue of transparency also arises in cases where the Security Council authorizes the use of force by another international organization or a coalition of willing individual states. The Security Council asks states conducting the operations to report on their actions, but the frequency and detail of such reports has been variable and often perfunctory, leaving much to the discretion of the organization or states concerned.<sup>54</sup>

<sup>50</sup> Ku (note 14), p. 38. For Germany and India, being among the UN major troop contributing states is a reason for becoming a permanent member of the UN Security Council. German Embassy London, 'Permanent seat on the UN Security Council', 27 Sep. 2004, URL <[http://www.german-embassy.org.uk/permanent\\_seat\\_on\\_the\\_un\\_secur.html](http://www.german-embassy.org.uk/permanent_seat_on_the_un_secur.html)>; and Sri Raman, J., 'Promising seat for India', Global Policy Forum, 23 Sep. 2004, URL <<http://www.globalpolicy.org/security/reform/cluster1/2004/0923promising.htm>>.

<sup>51</sup> United Nations, 'Contributors to United Nations peacekeeping operations: monthly summary of contributors (military observers, civilian police and troops)', Dec. 2004, available at URL <<http://www.un.org/Depts/dpko/dpko/contributors/>>.

<sup>52</sup> This is not a rare occurrence. E.g., the Security Council changed the initial mandate of the UN PSOs for the UN Operation in the Congo (ONUC) in Feb. 1961, the UN Protective Force (UNPROFOR) in June 1992 and the UN PSOs in Somalia in 1992–93 (UNOSOM I, UNITAF, UNOSOM II). However, the Security Council refused to adapt the mandate of the UN Observer Mission Uganda–Rwanda (UNOMUR) in the light of the increased killing in Apr. 1994 and instead reduced the mission. Ku (note 14), pp. 38–39.

<sup>53</sup> UN Security Council Resolution 1353, 13 June 2001; and Born and Urscheler (note 21), p. 58.

<sup>54</sup> Sarooshi, D., *The United Nations and the Development of Collective Security: the Delegation by the UN Security Council of its Chapter VII Powers* (Oxford University Press: Oxford, 1999).

**Table 4.4.** UN Security Council and non-Security Council troop-contributing states, as of 31 December 2004

States contributing troops to UN PSOs	Number of troops contributed to UN PSOs (civilian police, military observers and troops)	Number of troops contributed to UN PSOs as % of total
Permanent Security Council member states	2 975	4.6
Other Security Council member states	11 768	18.2
Non-Security Council member states	49 977	77.2
<b>Total</b>	<b>64 720</b>	<b>100.0</b>

*Source:* Data derived from United Nations, 'Contributors to United Nations peacekeeping operations: monthly summary of contributors (military observers, civilian police and troops)', Dec. 2004, available at URL <<http://www.un.org/Depts/dpko/dpko/contributors/>>.

The UN General Assembly is not a parliament but an intergovernmental body of appointed officials. It normally only plays a limited role in respect to PSOs, but it has the right to call for a PSO as it did in its 1950 'Uniting for Peace' Resolution in the Korean War,<sup>55</sup> and it also adopts the general budget of the UN from which PSOs are financed. The General Assembly also often adopts declaratory statements on peacekeeping issues. Since 1965 it has had a Special Committee on Peacekeeping Operations, with membership consisting of appointed officials from as many as 100 UN member states. The Special Committee submits annual reports on peacekeeping operation issues to the General Assembly through the Special Political and Decolonization (Fourth) Committee.<sup>56</sup> Its size, however, makes it unwieldy and, as one of its latest reports shows, it indulges in deliberation on all imaginable aspects of peacekeeping, from the strategic to the trivial, with little prospect of enforcing its conclusions. At least, it may offer troop-contributing nations outside the Security Council some opening to reiterate their concerns and wishes.<sup>57</sup>

The intergovernmental nature of the UN (whose member states are not all democracies), the absence of a controlling parliamentary body and the UN's large expert staff working without democratic oversight are all factors that have led some scholars to conclude that UN decision making suffers from a major democratic deficit.<sup>58</sup> The UN High-level Panel did not touch on the issue of democratic deficits in global security governance, except to pay lip

<sup>55</sup> UN General Assembly Resolution 377, 3 Nov. 1950.

<sup>56</sup> United Nations, 'UN General Assembly and peacekeeping: Special Political and Decolonization (Fourth) Committee', URL <<http://www.un.org/Depts/dpko/dpko/ctte/CTTEE.htm>>.

<sup>57</sup> United Nations, Report of the Special Committee on Peacekeeping Operation and its Working Group at the 2004 Substantive Session, UN General Assembly document A/58/19, 26 Apr. 2004, available at URL <<http://www.un.org/Depts/dpko/dpko/ctte/CTTEE.htm>>.

<sup>58</sup> Scholte, J. A., 'The globalization of world politics', eds J. Baylis and S. Smith, *The Globalization of World Politics: An Introduction to International Relations* (Oxford University Press: Oxford, 2001), pp. 28–30.



service to making the Security Council more democratically accountable.<sup>59</sup> Genuine democratic accountability would, in fact, imply changing the UN's nature from an intergovernmental to a supranational organization composed of democratic states, a goal which is for some not desirable and for others totally unrealistic.

### **Democratic control of NATO-led PSOs**

Recent NATO 'out of area' PSOs have been conducted in Bosnia and Herzegovina (IFOR and SFOR), Kosovo (KFOR), the Former Yugoslav Republic of Macedonia (Operations Essential Harvest and Amber Fox) and Afghanistan (International Security Assistance Force, ISAF).<sup>60</sup> The Kosovo intervention has attracted particular notice in debates over the legality of the use of force, given its robust nature and the absence of a direct UN mandate.<sup>61</sup> Such NATO actions raise questions of oversight and accountability of a quite different order from that which might have attached to the allies' use of force in their own defence under cold war circumstances.

Decision making in NATO is an intergovernmental negotiating process with special characteristics. It is regular and frequent; the Secretary General and the Secretariat have a strong position, but the USA exercises an undeniable political leadership role; it is consensus-based, requiring much effort to find a compromise between different national views and interests; it is politico-military in nature, with both parallel lines of authority and cross links between the political and military bodies; it does not depend on meetings of ministers, as the Permanent Council possesses full decision-making authority between ministerial sessions; and, finally, it has a parliamentary dimension.<sup>62</sup>

Decisions in NATO about PSOs have to be regarded as complex and interdependent sequences with no single key moment of decision on a given intervention. For example, with regard to the Kosovo intervention, between the autumn of 1998 and 1999 the NATO member states had to decide: whether there would be a military operation in Kosovo; which states would participate in the action; what would be the triggering conditions for military action; which state would contribute what; which state would exercise command and control over the whole operation and its specific aspects (including targeting and choice of weapons); and how to link military with diplomatic action.<sup>63</sup>

<sup>59</sup> United Nations (note 5), Point 249(d), p. 80.

<sup>60</sup> For a full overview of NATO PSOs see table 3.2 in this volume. See also NATO, 'NATO Handbook', chapter 5, URL <<http://www.nato.int/docu/handbook/2001/>>. NATO is now also conducting a military training operation in and for Iraq.

<sup>61</sup> For an interesting comparative study on the involvement of the US Congress and the German Bundestag in NATO's intervention in Kosovo see Damrosch L. F., 'The United States Congress, the German Bundestag and NATO's intervention in Kosovo', eds Born and Hänggi (note 1), pp. 131–46.

<sup>62</sup> For a further elaboration of the characteristics of NATO's decision making see Eekelen, W. van, 'Decision-making in the Atlantic Alliance and its parliamentary dimension', eds Born and Hänggi (note 1), pp. 112–15; and Gallis, P., *NATO's Decision-Making Procedure*, Congressional Research Service (CRS) Report for Congress RS 215/0 (CRS/Library of Congress: Washington, DC, 2003).

<sup>63</sup> See also Damrosch (note 61), p. 131.

US leadership is omnipresent and, while consensus remains necessary, the US representatives' interventions in the North Atlantic Council (NAC) generally provide the starting point and ground for debate—reflecting, not least, the large financial contribution and preponderant military contribution of the USA to NATO.<sup>64</sup> Among other states in the NAC, a practice has grown of not using a veto when a state is a minority of one, although there have been exceptions involving *inter alia* France, Greece and Turkey.<sup>65</sup> The rift between the US-led coalition and states such as France and Germany on the other hand, when NATO was called on in early 2003 to take decisions related to the imminent war in Iraq, constituted a serious breach of this consensus approach.<sup>66</sup>

In NATO, like any other intergovernmental organization, ultimate parliamentary control rests with national parliaments and with the extent to which they can hold national ministers to account for their collective decisions. Nevertheless, NATO decision making has an international parliamentary dimension. The NATO Parliamentary Assembly (NATO PA), created in 1955, has gradually grown in stature, thanks to the quality of its frequent reports and debates and the attention they have drawn in member countries.<sup>67</sup> Unlike the UN General Assembly, the NATO PA consists exclusively of delegations appointed or elected by their national parliaments in a representative manner and thus offers a fairly good reflection of public opinion in the NATO member states. After each national election, the national delegations to the NATO PA change, so the assembly's membership is continually in flux.

The NATO PA does not have co-decision powers and has no financial powers beyond its own budget.<sup>68</sup> Rather, it contributes to consensus building among parliamentarians of the participating countries and to the expertise they can bring to bear on decisions at home. Concerning NATO PSOs, the NATO PA can at best provide an opportunity to air and compare the views of its national members at its meetings. Since decisions about PSOs, as all others in NATO, are elaborated and taken by the NAC after strictly confidential inter-governmental negotiations, neither the NATO PA nor national parliaments can play a substantive role.

Only national parliaments can oversee the governments of the NATO member states, offering at best a degree of indirect parliamentary accountability. In contrast to the UN Security Council, all troop-contributing states that are members of NATO have the same formal opportunity to influence decision making about PSOs, even if some member states are 'more equal' than others. The way in which the NAC works behind closed doors and the confidential nature of its negotiations, however, create particular problems of transparency both for parliamentary bodies and for the public in general. Since national

<sup>64</sup> See Eekelen (note 62), p. 113

<sup>65</sup> Other countries have inserted a dissenting footnote in communiqués, without preventing their adoption, mainly in cases where their parliaments would have difficulty to approve the agreed policy.

<sup>66</sup> See Eekelen (note 62), p. 114

<sup>67</sup> See the Internet site of the NATO PA at URL <<http://www.nato-pa.int/>>.

<sup>68</sup> See Eekelen (note 62), p. 116

arrangements are so variable and the NATO PA does not have oversight powers, democratic deficits exist at both the national and the international levels.

### **Parliamentary accountability and EU-led PSOs**

The EU is a unique institution combining intergovernmental cooperation with supranational integration. PSOs are a new but rapidly increasing field of activity for the EU, as shown by a series of military deployments from 2003 onwards. The founding documents of the European Security and Defence Policy (ESDP) making provision *inter alia* for PSOs did not, however—and probably not by accident—make any new provision for parliamentary accountability. Currently, parliamentary work at the EU level has two dimensions: the work of national parliaments and inter-parliamentary cooperation between them; and the role of the directly elected European Parliament which interacts with EU decision makers both in the European Commission and the Council of Ministers.<sup>69</sup> Recent research has highlighted several shortcomings in this system,<sup>70</sup> raising three main issues.

First, national parliaments of the EU member states have difficulty in obtaining information about the ESDP decision-making process at the European level. They have no direct access to the European institutions and must therefore rely almost exclusively on their own governments. They can only find out what other governments are doing or other parliaments are thinking by voluntary and ad hoc contacts, while the governments themselves meet and consult with each other frequently in the Council of the European Union. The EP is better informed about ESDP policy developments because it can request information either from the Presidency, the Council of Ministers or the High Representative for the Common Foreign and Security Policy (CFSP). However, it has no scrutiny powers in this area, nor power over the sending of troops on missions outside the territory of the EU.

Second, the exercise of parliamentary oversight both by the EP and by national parliaments is hampered by the hybrid and complex nature of the EU. While the ESDP is first and foremost considered an intergovernmental issue, its execution may also involve actions under the EU's 'first pillar' (e.g. civilian aspects of crisis management) or 'third pillar' (e.g. anti-terrorism cooperation).<sup>71</sup> Different decision-making mechanisms and institutions exist for these different ESDP instruments and the role of the executive is played variously in different contexts by the Commission, the Council and national governments. There is also scope for confusion of roles and competition on the parliamentary side between the 25 national parliaments, the European Parliament and the interim European Security and Defence Assembly (the former

<sup>69</sup> Gourlay, C., 'Parliamentary accountability and ESDP: the national and European level', eds. Born and Hänggi (note 1), pp. 183–202.

<sup>70</sup> Bono, G., 'The European Union as an international security actor: challenges for democratic accountability', eds Born and Hänggi (note 1), pp. 163–81; and Gourlay (note 69).

<sup>71</sup> Gourlay (note 69), p. 185–87

Western European Union (WEU) Assembly).<sup>72</sup> Specific decisions to engage in a military operation and deploy force in a PSO are, at all events, invariably taken by consensus in the intergovernmental ‘second pillar’ where the EP has no involvement in operational decision making (although it does have power to approve the CFSP budget). Authorization for governments to commit troops to PSOs is strictly the responsibility of national parliaments where they may have or may not have the relevant powers (see above). However, the EU organs do at least seem to be making more serious efforts to consult and inform the EP about ESDP generally. Currently, the Presidency and the High Representative for the CFSP as well as the Commissioner for External Relations address the EP and its Committee on Foreign Affairs (AFET) regularly, giving members of the European Parliament a chance to debate and challenge the EU executive about the EU’s 2003 European Security Strategy<sup>73</sup> and PSOs in particular.

Third, while national parliaments can in principle hold their governments to account for decisions reached in the Council by unanimity, such oversight cannot solve the democratic deficit because of the unequal and often weak powers of different national parliaments in this area.

Ultimately, the basic challenge for parliamentary oversight here arises from the uncertainties and ambiguities of the ESDP’s future. If its methods become gradually more supranational this would open up a wider role for the EP; but if it remains a permanent ‘island’ of intergovernmentalism in the EU, it can offer no greater opening to representative institutions than in NATO. In the meantime, national parliaments remain by and large the sole source of democratic legitimacy for EU PSOs.

### **Parliamentary accountability and ad hoc coalition-led PSOs**

The 2003 US-led war against Iraq has, in many quarters, given ad hoc coalitions a bad name, but such coalitions can take many different forms. In contrast to the war in Iraq, various previous ad hoc coalitions operated under an explicit UN mandate.<sup>74</sup> Operation Desert Storm, the US-led operation to liberate Kuwait in the 1991 Gulf War, was authorized by the UN Security Council,<sup>75</sup> and the UN sanctioned the two Australian-led ad hoc coalitions to provide peace support for post-conflict arrangements in Papua New Guinea

<sup>72</sup> Wagner, W., *Für Europa sterben? Die demokratische Legitimität der Europäischen Sicherheits- und Verteidigungspolitik* [To die for Europe? The democratic legitimacy of the European Security and Defence Policy], Hessische Stiftung Friedens- und Konfliktforschung (HSFK) Report 3/2004 (HSFK: Frankfurt, 2004). pp. 22–24. The WEU Assembly chose to continue operating as an assembly for European security and defence questions after intergovernmental activity in the WEU effectively ceased in 2000. It has no formal role recognized by the organs of the EU.

<sup>73</sup> Council of the European Union, ‘A Secure Europe in a Better World: European Security Strategy’, Brussels, 12 Dec. 2003, URL <[http://ue.eu.int/uedocs/cms\\_data/docs/2004/4/29/European%20Security%20Strategy.pdf](http://ue.eu.int/uedocs/cms_data/docs/2004/4/29/European%20Security%20Strategy.pdf)>.

<sup>74</sup> Wilson, G., ‘UN authorized enforcement: regional organizations versus “coalitions of the willing”’, *International Peacekeeping*, vol. 10, no. 2 (summer 2003), pp. 89–106.

<sup>75</sup> UN Security Council Resolution 678, 29 Nov. 1990

and the Solomon Islands in 2003.<sup>76</sup> These examples show the possible functional range of coalition operations from traditional peace support to robust enforcement and war.

From the point of view of parliamentary accountability and democratic oversight, however, all ad hoc coalitions have serious drawbacks. First, coalitions acting outside a set institutional framework cannot by definition have an international parliamentary dimension. Parliamentary oversight or dialogue thus depends completely on the ability of national parliaments, which is a variable commodity. Second, ad hoc coalitions do not have a formalized and transparent intergovernmental layer of decision making. The mandate and command and control structures are most likely defined by the leading troop contributor, with limited or no negotiating space for the smaller troop-contributing states. Where the governments involved have little say, the role of their parliaments is bound to be even weaker. Great weight is thus laid on the mechanisms of national parliamentary accountability in the leading troop-contributing state. If these are weak or absent, the mandate and the strategy of the ad hoc coalition will be solely decided upon by that state's government. These are circumstances that can both provoke and aggravate the consequences of behaviour during operations that diverges from international norms and ignores (at least temporarily) international laws.

#### IV. Strengthening parliamentary accountability at the national and international levels

No consensus exists in the relevant policy and academic discourses on how to tackle the democratic deficit at the global and regional levels of governance. Robert Dahl supplies the sceptical view. He considers it unlikely that international organizations could be democratized: '[i]f democratic institutions are largely ineffective in governing the European Union, the prospects for democratizing other international systems seem even more remote'.<sup>77</sup> On a more optimistic note, a number of scholars and practitioners are looking for ways to address the 'democratic deficit' suffered by international institutions. From a normative perspective, three theoretical approaches or 'models' can be distinguished: liberal-democratic internationalism, which aims at reforming the current international institutions; radical communitarism, which promotes the creation of alternative structures based on transnational participatory governance according to functionalist rather than geographical patterns; and cosmopolitanism, which posits the reconstruction of global governance at all levels based on a cosmopolitan democratic law transcending national and

<sup>76</sup> For details of these ad hoc coalitions see Dwan and Wiharta (note 49).

<sup>77</sup> Dahl, R. A., *On Democracy* (Yale University Press: New Haven, Ct., 1998), p. 115. However, since Dahl made his statement, the role of the EP has been strengthened (although not necessarily in the field of security and defence policy). Adoption of the European Constitution would bring about a number of additional modest improvements in the parliamentary accountability of the EU.

other sovereignties.<sup>78</sup> These normative models have generated ideas on how to improve the democratic credentials of global and regional security arrangements, which may be gathered under two general headings: proposals for the gradual ‘democratization’ of international institutions, on the one hand; and the call for greater pluralism in terms of actors involved, on the other. The former proposals tend to focus on increasing representation, transparency and accountability in the decision making of intergovernmental bodies. Calls for greater pluralism tend to emphasize the importance of non-state actors and civil society in influencing policy and holding international bodies accountable.<sup>79</sup> In terms of practical reforms, the participation of civil society actors in international institutions seems to be the standard prescription for narrowing the participatory gap in global governance.<sup>80</sup>

The discourse on the subject of reducing the democratic deficits in international institutions tends to neglect the parliamentary dimension, although there have been some more specific proposals (e.g., for the creation of a parliamentary dimension of the UN, a strengthening of the EP and a greater involvement of national parliaments). This is striking given that parliaments are the central locus of accountability and legitimacy in democracies. In principle and despite national variations, they should oversee every element of public policy, including decisions on the deployment and use of force. What can be done or what has been done in order to reduce this deficit? Some examples can be provided that are applicable to both international assemblies and national parliaments.

On the national level, the following recommendations could strengthen the capacity of parliaments to oversee multinational PSOs.

1. *Inter-parliamentary cooperation as a step towards greater standardization of oversight practices.* Within a given group of states, parliaments could cooperate to ensure that they all have at their disposition the same information, for example, by producing joint annual reports and by having regular conferences of the chairs of the national parliamentary defence committees.

2. *Adjustment of the legal framework.* Many countries have constitutions which do not contain any provisions on parliament’s role vis-à-vis sending troops abroad on PSOs. Many constitutions were drafted in the 19th or early 20th century, when such operations played a limited role, if any, and therefore deal only with parliamentary consent to the declaration of war. For example, the Dutch Parliament has recently amended the national constitution so as to strengthen its own position on the issue of sending troops abroad on PSOs.

3. *Effective rules of procedure.* Another obstacle is the confidentiality and secrecy which decision making on PSOs sometimes requires. Various parlia-

<sup>78</sup> McGrew, A. (note 9), pp. 405–19.

<sup>79</sup> See, e.g., United Nations Development Programme, *Human Development Report 2002: Deepening Democracy in a Fragmented World* (Oxford University Press: Oxford, 2002), pp. 101–22.

<sup>80</sup> Brühl, T. and Rittberger, V., ‘From international to global governance: actors, collective decision-making, and the United Nations in the world of the twenty-first century’, ed. V. Rittberger, *Global Governance and the United Nations System* (UN University: Tokyo, 2001), pp. 34–35.

ments have developed simple but practical rules of procedure in order to have access to classified information (e.g., vetting and clearance procedures for defence committee members, convening behind closed doors, making a strict distinction between public reports and classified reports, and procedures for declassifying documents after the PSOs are finished) which makes *post hoc* accountability possible.

4. *Cross-party responsibility.* Party discipline is identified as one of the major obstacles to holding government accountable. One way to overcome this obstacle might be to give the opposition parties in parliament a clear voice in the debate about deploying troops abroad. Various countries have acknowledged opposition parties' importance for a healthy and critical political climate in parliament by having a parliamentary defence committee that reflects the political diversity in parliament, by appointing a senior member of the opposition as chair of the parliamentary defence committee and by requiring a two-third's majority in parliament if troops are to be sent abroad.

At the international level, a number of options for strengthening parliamentary oversight of PSOs could be considered.

Some have proposed to tackle the problem in NATO and the UN by creating new international representative assemblies.<sup>81</sup> This is a far-reaching solution and for the moment perhaps not realistic. A more modest option would be to improve the functioning of the existing international assemblies by making them more representative through adding national parliamentary delegations to the assemblies (suggested for the UN), or by improving their procedures—for example, by the NATO Secretary General delivering a yearly State of the Alliance message to the NATO PA.

The EP's oversight of the ESDP could be enhanced in various ways. It should be given greater authority to scrutinize ESDP spending, to enlarge the resources available to the EP Committee on Foreign Affairs (more staff and a larger budget), to increase public access to ESDP documents and to oblige the Council of Ministers to transmit all ESDP documents to national parliaments. Following the US Congress, the EP could in theory enact 'war powers' legislation that would define the conditions and authority under which the EU could declare states of war and emergency and when troops could be sent to crises outside the EU's territory.<sup>82</sup> Despite the recent 'Europeanization' of the ESDP, national parliaments have retained important oversight tasks with

<sup>81</sup> A number of proposals have been made to create a parliamentary dimension of the UN by way of establishing a second 'People's' Assembly. Bienen, D., Rittberger, V. and Wagner, W., 'Democracy in the United Nations system: cosmopolitan and communitarian principles', eds D. Archibugi, D. Held and M. Köhler, *Re-Imaging Political Community: Studies in Cosmopolitan Democracy* (Polity Press: Cambridge, 1998), p. 297; and Held, D., *Models of Democracy*, 2nd edn (Polity Press, Cambridge, 1996), p. 358. It has also been proposed that parliamentarians be included in national delegations to the General Assembly and other UN organs. Parliamentary Assembly of the Council of Europe (PACE), 'Parliamentary scrutiny of international institutions', Resolution 1289, 25 June 2002, para. 8, URL <<http://assembly.coe.int/Documents/AdoptedText/ta02/ERES1289.htm>>. Apart from numerous proposals for strengthening the EP itself, there is also the idea put forward by PACE of introducing a body of representatives of national parliaments as a second chamber of the EP. PACE, Resolution 1289, para. 10.

<sup>82</sup> Houben, M., 'Time has come for "European War Powers' Act"', *European Voice*, 23 June 2003.

regard to national defence budgets, authority to deploy troops abroad and procurement, and in the present essentially intergovernmental phase of decision making on PSOs it is important to use these national powers to the full. Armand de Decker, former President of the WEU Assembly and former Chairman of the Belgian Senate, has urged national parliaments to take into account the European aspects of security and defence policy in their debates. The EP and the national parliaments should explore together how to make best use of the provision on inter-parliamentary cooperation on the ESDP as stipulated in the 'Protocol on the Role of National Parliaments in the EU' annexed to the EU's Constitutional Treaty.<sup>83</sup>

## V. Conclusions

Parliamentary accountability regarding foreign and security affairs tends to be weak in most political systems. Among widely differing national practices, the lowest common denominator is apt to be at a point short of there being no parliamentary accountability at all. Even in the EU there is no 'minimum standard' of parliamentary accountability. This leads to something of a cumulative 'democratic deficit' at the national level, despite a growing number of instances in which parliaments effectively hold governments accountable for the deployment and management of national armed forces abroad.

At the international level, parliamentary accountability is largely absent when it comes to the use of force under the aegis of international organizations and ad hoc coalitions. This should not come as a surprise given the fact that, except for the EU, all relevant international organizations and ad hoc coalitions are of a purely intergovernmental character. The UN lacks a parliamentary or even an inter-parliamentary dimension. Inter-parliamentary assemblies such as the NATO PA and the interim European Security and Defence Assembly lack any of the functions that are characteristic of national parliaments. Even the role of the EP, despite its considerable resources and strong political will to check and balance the other EU organs, is at best marginal when it comes to foreign and security affairs: hence the second, international component of the 'double' democratic deficit.

Many recommendations can be made to reduce the double democratic deficit, but the primary question is how strong parliament should be and where to draw the line dividing the competences of government and parliament. From the point of view of a 'government of the people, by the people, for the people', the bottom line is that parliamentary accountability is indispensable since parliaments are the most important provider of democratic legitimacy. It is difficult to imagine that such an important—and, literally, life-and-death—issue as sending troops abroad in PSOs can be indefinitely excluded from parliamentary accountability, at both the national and international levels of security governance.

<sup>83</sup> de Decker, A., 'Tackling the double democratic deficit and improving accountability of ESDP', 29 Apr. 2004, available at URL <[http://www.dcaf.ch/news/Democratic\\_Deficit/mainpage.html](http://www.dcaf.ch/news/Democratic_Deficit/mainpage.html)>.