

Herausgeber

Dr. habil. **Michael Brzoska**, Internationales Konversionszentrum Bonn (BICC)

Prof. Dr. **Hans J. Giessmann**, Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg

Dr. **Heiner Hänggi**, Genfer Zentrum für die demokratische Kontrolle der Streitkräfte (DCAF), Genf

Kapitän zur See **Heinz-Dieter Jopp**, Führungsakademie der Bundeswehr, Hamburg

Dr. **Erwin Müller**, Chefredakteur **Andreas Prüfert**, Europäische Organisation der Militärverbände (EUROMIL), Brüssel

Schriftleitung

Prof. Dr. **Hans J. Giessmann**

Redaktion

Dr. **Erwin Müller** (V.i.S.d.P.)

Dr. **Patricia Schneider**

Dr. **Thorsten Stodiek**

Beirat

Dr. **Alyson Bailes**, Stockholm International Peace Research Institute (SIPRI), Stockholm

Dr. **Detlef Bald**, München

Prof. Dr. **Joachim Betz**, Universität, Hamburg

Prof. Dr. **Hans-Peter Dürr**, Träger des Alternativen Nobelpreises, München

Prof. Dr. **Pál Dunay**, Genfer Zentrum für Sicherheitspolitik, Genf

Prof. Dr. **Wolfgang Gessenharter**, Helmut-Schmidt-Universität, Hamburg

Dr. **Sabine Jaberg**, Führungsakademie der Bundeswehr, Hamburg

Prof. Dr. **Charles A. Kupchan**, Georgetown University, Washington, D.C.

Dr. **Martin Kutz**, Führungsakademie der Bundeswehr, Hamburg

Dr. **Krzysztof Ruchniewicz**, Willy-Brandt-Zentrum für Deutschland- und Europastudien, Wrocław

Prof. Dr. **Susanne Feske**, Universität Münster

Dr. **Martina Fischer**, Berghof Forschungszentrum für Konstruktive Konfliktbearbeitung, Berlin

THEMENSCHWERPUNKT

Parliaments and the deployment of troops abroad under UN, NATO and EU auspices: A double democratic deficit?

Hans Born*

Abstract: While the use of force under international auspices has increased substantially, the same does not hold for the parliamentary accountability of troops committed to multinational peace support operations of the UN, NATO and EU. This article argues that a democratic deficit exists both at the international and national level, leading to a 'double democratic deficit'. Analysing the problematic nature of parliamentary accountability as regards the international use of force, the article concludes with recommendations for narrowing the accountability gap.

Keywords: Democratic deficit, peace support operations, parliaments, UN, NATO and EU, Germany.

Introduction

The war in Iraq in Spring 2003 is a clear reminder that the use of force is very much part of current international relations. For many, this war was very disturbing not because of the use of force neither because a brutal dictator was toppled, but because it took place without authorisation by the UN. In spite that the Iraq war was conducted by a coalition of the willing outside international organisations, nevertheless, after the end of the Cold War a great increase in the use of force under international auspices can be witnessed. Two thirds of all peace support operations authorised by the UN took place in the last decade. Moreover, other international organisations started to authorise the use of force outside their territory. For example, NATO authorised the 1999 Kosovo intervention and the 2001 Operation Essential Harvest in Macedonia; EU also

authorised operations outside its borders in Macedonia and Congo.

While the use of force under international auspices has increased substantially, the same cannot be said about its democratic accountability. With decisions on the use of force increasingly being made by international institutions, 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 parliament is particularly essential to ensure the democratic ac-

* Dr. Hans Born is Senior Research Fellow at the Geneva Centre for the Democratic Control of Armed Forces (DCAF). The article is based on: Hans Born and Heiner Hänggi (eds), 2004. 'The Double Democratic Deficit' Parliamentary Accountability of the Use of Force under International Auspices, Ashgate. The author thanks Ingrid Thorburn and Thorsten Wetzling (DCAF Geneva) for their assistance.

countability of national armed forces in peace support operations (PSO) of the UN, NATO and the EU.¹

Most publications on PSOs have so far paid hardly any attention to the democratic legitimacy of PSOs. For example, the well-known Brahimi report, officially launched at the UN's Millennium Summit in September 2000, investigated and recommended improvements concerning the effectiveness, decision-making processes as well as the planning, staffing and management of PSOs. Democratic legitimacy seemed not to be a problematic aspect of PSOs.² Moreover, a closer look into the 10th Anniversary Commemorative Issue of *International Peacekeeping*, containing an overview of 10 years of academic publications on peacekeeping, shows that the democratic deficit of peacekeeping operations is not a well-established item on the academic agenda.

The democratic deficit is not a new concept. In recent years, particularly in the context of anti-globalisation movements, international institutions like the World Bank, the International Monetary Fund (IMF) and the World Trade Organisation (WTO) are criticised for their democratic deficits. Even the EU, the only international organisation in the world with a directly elected parliament, is by many criticised for its democratic deficit caused by excess bureaucracy, low turnout during European Parliament (EP) elections and a parliament with limited powers, especially concerning the foreign, security and defence policy.³ Democratic deficits seem to be the global norm of international cooperation,⁴ in which parliamentarians are lagging behind the ministers, judges, diplomats and other officials.⁵ In this article, it is argued that multinational PSOs are no exception. Parliamentary accountability of the use of international force is problematic both at the international and national level, hence the term, the 'double democratic deficit' may be used to describe the situation which exists both inside and outside the nation state.⁶

The Double Democratic Deficit: International Level

The democratic deficit at the international level (UN, NATO, EU) is caused by at least three factors: absence of representative assemblies with real oversight powers over security pol-

icy and PSOs, the problem of secrecy hindering democratic accountability and the lack of an international *demos*.

Lack of International Parliamentary Assemblies

Since the UN and NATO are intergovernmental organisations, they are accountable to the governments of their member States only. The UN does not have an elected assembly, whereas the members of NATO Parliamentary Assembly (PA) are appointed (consisting of national parliamentarians) and they do not have formal oversight powers over NATO. Therefore, the democratic legitimacy of both the UN and NATO is dependent on whether or not its member states are democratic (which is not always the case in the UN). At best, NATO PA can be described as a dialogue network between parliamentarians of NATO member states, with a view of fostering consensus and assisting parliamentary democracy in Partnership for Peace (PfP) states. In this respect, NATO PA was useful for building up support for the various NATO enlargement waves in the 1990s and 2000s.⁷

As mentioned before, the European Parliament (EP) is the only international assembly in the world that is elected directly by the people. However, concerning the European Security and Defence Policy (ESDP), it has only marginal oversight powers. The lack of a powerful international parliamentary assembly signifies that states are carefully guarding their national monopoly of the use of force. As Weber has defined the nation state as the sole actor in society which has the monopoly of force (*Gewalt*), giving up this monopoly would imply that a state is giving up one of its defining elements.

The Problem of Secrecy

The second element, secrecy, relates to executive decision-making in the UN, NATO and the EU. The UN Security Council, the North Atlantic Council of the NATO and the EU Council of Europe often convene behind closed doors and the proceedings of their meetings are mostly confidential. National parliaments, let alone the general public, face great difficulties in obtaining sufficient information about PSOs. Of course, governments argue convincingly that parliaments should give them some leeway when dealing in international organisations about security policy and PSOs. Yet it is unfortunate that after (secret) decisions were reached in international organisations, national parliaments are often confronted with 'take it or leave it' proposals, granting them too little space for debate or changes.

With regards to the UN decision-making in the UN Security Council creates an additional problem. Many of the major troop contributing countries, e.g. Germany, are not represented in the UN Security Council. Therefore, these troop contributing countries are not able to take part in the formal decision-making about the mandate and the rules of engagement of the PSO, nor are they present if the Security

1 The term peace support operations is used as a generic term for all kinds of peace keeping and enforcing operations.

2 The Brahimi Report, AKA the Report of the Panel on the United Nations Peace Operations (A/55/305-S/2000/809), 21 August 2000. For a critique on the Brahimi report, see Alex Bellamy and Paul Williams, 'Introduction: Thinking Anew about Peace Operations'. In: *International Peacekeeping: Special Issue on Peace Operations and Global Order*. Vol. 11, Nr. 1, Spring 2004: pp. 17-38.

3 See for example: Anthony McGrew, 'Democracy Beyond Borders? In: David Held and Anthony McGrew (eds), 2002. *The Global Transformation Reader: and Introduction to the Globalisation Debate*. Polity Press: Cambridge. For the democratic deficit of the EU, see Carol Harlow, 2002. *Accountability in the European Union*. Oxford University Press: Oxford.

4 Ian Clark, 1999. *Globalization and International Relations Theory*. Oxford: Oxford University Press.

5 Anne-Marie Slaughter, 2004. *A New World Order*. Princeton and Oxford: Princeton University Press.

6 For a more elaborated discussion on democratic deficit and security sector governance, see: Heiner Hänggi, 'The Use of Force under International Auspices: Parliamentary Accountability and 'Democratic Deficit''. In: Born and Hänggi, 2004.

7 Willem van Eekelen, 'Decision-making in the Atlantic Alliance and its Parliamentary Dimension'. In: Born and Hänggi, 2004.

Council changes the initial mandate. These countries may find themselves committed to PSOs which are not (or not any longer) in line with national interest or public opinion. This may cause a rift between the electorate and the representatives on the one hand and the executive on the other hand, which is obliged to follow its international commitments.⁸ In order to alleviate this situation, the Security Council has adopted a resolution in 2001 demanding enhanced communication between troop contributing countries, the Security Council and the UN Secretariat.⁹ Therein the Council obliged itself to conduct public and private consultations, hearings and meetings with troop contributing countries. However, communication strategies are not a substitute for a seat at the table of the UN Security Council.

Global Civil Society: An Emerging Phenomenon

A truly international *demos* or political community does not exist as of yet. Having said this, the growing proliferation of international think tanks and NGOs can be perceived as catalysts of such an emerging international *demos*. The existence of a *demos* is important because without public support, based on demand and feedback from its citizens and civil society organisations, an international assembly can hardly perform its oversight functions. Think tanks are vital facets of a civil society as they provide the general public and specific interested parties with a much-needed second opinion. Most think tanks, however, have a national focus and are not active at the international level concerning the security policy and PSOs of EU, NATO or the EU. Within Europe, only a few think tanks exist which approach security sector governance from a truly international or European point of view, such as SIPRI in Stockholm, BICC in Bonn, DCAF in Geneva, ISS in Paris or IISS in London. The challenge is to develop democratic systems on the international level that involve parliaments, stakeholders and citizens, without infringing on the executive decision-making and the professional autonomy of the armed forces.

The European Security and Defence Policy

The EU is a special case in point as it combines intergovernmental cooperation with supranational integration. PSOs are a new but rapidly increasing field of activity for the EU. Noticing that the European Security and Defence Policy (ESDP) was recently expanded, to include, inter alia, the conduct of PSOs, it must also be pointed out that this did not go along with the strengthening of parliamentary accountability regulations. Currently, parliamentary work at the European level has two dimensions: the interparliamentary cooperation and the exchange of information, dialogue

and consultation with EU decision-makers.¹⁰ However, recent research has revealed several shortcomings.¹¹ The main issues are the following:

Firstly, 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 government on a bilateral basis. The only way a parliament learns directly about the opinions and decisions of other governments is through individual contacts and on an *ad hoc* basis. National parliaments have to assess decisions taken in the EU without being represented at that level, whereas the governments themselves meet and consult with each other frequently in the Council. In contrast, the European Parliament is better informed about CFSP and ESDP policy developments because it can request information either from the Presidency or from the High Representative for the CFSP. But it has no scrutiny powers in this area as regards the sending of troops on PSO outside the territory of the EU.

Secondly, parliamentary accountability, both by the EP and national parliaments is hampered because of the hybrid and complex nature of the EU. While ESDP is first and foremost considered an intergovernmental issue, it could also be subsumed under the community's first (civilian aspects of crisis management) or third (e.g. anti-terrorism cooperation) pillar. Consequently, different decision mechanisms and institutions are in place for different ESDP policy fields. To make it even more complicated, executive control extends not to one organ but to a mixed executive consisting of the Commission, Council and national governments. Last but not least, Europe hosts not one parliamentary body, but 27 parliamentary bodies, including the 25 national parliaments, the European Parliament and the WEU Assembly. Given that a decision to engage in a military operation and deploy force in a PSO must be taken by consensus within the second intergovernmental pillar, the European Parliament has no formal involvement in decision-making on PSOs. Authorisation of committing troops to PSOs is strictly a responsibility of national parliaments (at best – see next section). However, the Council of Europe is taking its obligation to consult and inform the EP about ESDP increasingly more serious.¹² Currently, the Presidency and the High Representative for the Common Foreign and Security Policy (CFSP) as well as the EU Commissioner for External Relations are addressing the EP and its Foreign Affairs Committee regularly. In this respect, they can debate and challenge the EU executive about the new security strategy and PSOs in particular. The case of PSOs illustrates that parliamentary accountability in the EU is fragmented over the EP (scrutiny

8 Assembly of the WEU, 2001. 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 Ms. Troncho, Rapporteur, Document A/1762.

9 See, UN Security Council 1353 (2001).

10 Armand De Decker, President of the WEU Parliamentary Assembly and Chairman of the Belgian Senate, on 'Tackling the Double Democratic Deficit and Improving Accountability of ESDP', 29 April 2004. Available at the website of the Geneva Centre for the Democratic Control of Armed Forces (DCAF), http://www.dcaf.ch/news/Democratic_Deficit/main-page.html.

11 See Giovanna Bono, 'The European Union as an International Security Actor: Challenges for Democratic Accountability'; Catriona Gourlay, 'Parliamentary Accountability and ESDP: The National and European Level'. Both in Born and Hänggi, 2004.

12 Article 21 of the Treaty of the EU, 1992.

of policy) and national parliaments (authorising committing troops and funds to multinational PSOs). This fragmentation severely hampers effective European oversight of PSOs.

Thirdly, national parliaments can hold their executive to account for decisions reached in the Council by unanimity. Yet in practice, oversight is difficult to carry out because the EU member states have examples of both strong and weak parliaments leading to uneven national oversight practice. This point will be discussed in the next section.

In effect, most of the challenges and recommendations for parliamentary oversight of ESDP are dependent on the underlying question: Will the EU eventually become an integrated (federal) EU or remain an intergovernmental organisation with regard to security and defence policy. In the absence of an decisive answer, we conclude that even in the EU, which possesses an elected parliament (unlike the UN and NATO), parliamentary accountability of the ESDP suffers from some major drawbacks. Thus national parliaments are by and large the sole source of democratic legitimacy for PSOs.

The Double Democratic Deficit: National Level

As democratic legitimacy of PSOs is mainly derived from national parliaments, the next question arises: 'Do national parliaments exercise effective oversight of PSOs?' According to the Triple-A criterion of parliamentary oversight effective parliamentary oversight consists of Authority (legal powers), Ability (resources and expertise) and Attitude (willingness, political courage) to keep the government accountable.¹³ This concept provides an adequate framework to analyse the situation at the national level. Together, the three qualities constitute the foundation for maintaining and improving parliamentary oversight.

Authority

Authority refers to the legal powers of parliament, notably the power of prior authorisation of sending troops abroad in PSOs and the power to control the budget of these operations. Prior authorisation is an important power because once the troops are sent abroad it is very difficult for a parliament to undo the government's decision. The reason is that a withdrawal of troops could endanger the on-going peace mission and could also damage the international reputation and credibility of the country. Based on earlier research,¹⁴ three models can be distinguished with regard to parliament's involvement in the authorisation of peace support operations (see Table 1).

1. Parliament can have the right of prior authorisation of peace support operations. This is the case in, for example, the Netherlands, Germany and Denmark.

2. Parliament may have the right of prior authorisation, but not the power to discuss the detailed aspects of peace support operations (rule of engagements, duration of the mission, mandate). Once the authorisation is given, the parliament gives the government a free hand to proceed with the peace support operation. This is the case, for example, in Norway.
3. The third group of parliaments consists of those parliaments who do not have prior authorisation power. The government can decide to send troops abroad on peace missions without consulting parliament. This is the case, for example, in the UK, Canada, US, Poland, Spain, Portugal and France.

In general, looking at the political system of these three groups of countries, it turns out that the countries belonging to the first and second group are characterised by a parliamentary political system whereas countries of the third group are mostly characterised as having a presidential or a Westminster type of political system.

The case of the US and the UK deserves some specific attention. The US is interesting because of the disagreement between the executive and the legislature over the power to deploy troops abroad. Of special interest is the War Powers Resolution, which was enacted by Congress in the wake of the Vietnam war in 1973. In this resolution, the US Congress requires the President to consult with Congress whenever armed forces are involved in hostilities around the world. Moreover, the text bars any continued deployment of troops unless the Congress gives its consent. If Congress does not consent within 60 days, the President must withdraw the troops within 30 days.¹⁵ However, successive democrat and republican presidents have continued to dispute the congressional point of view. They argue that the War Powers Resolution is in breach with President's constitutional authority as Commander-in-Chief.¹⁶

The UK is another case in point. In accordance with its Westminster style political system the powers of the British parliament and government are fused and the government dominates the parliamentary agenda. Owing to the 'Royal Prerogative', the executive can formally decide about most issues of defence and security policy without consulting parliament. The decision to send troops abroad on PSOs is a matter of sovereign authority, which delegates these powers to his/her Cabinet Ministers.

Interestingly, in spite of a legal obligation to consult the legislature, the executive of both the UK and the US have asked the legislature to approve the invasion of Iraq. The main reason is that in liberal democracies, even when the executive is not obliged to consult parliament, they nevertheless do so for reasons of gaining public support and legitimacy. Such support is necessary for sustaining PSOs in case casualties are likely to occur.

As parliaments of all three groups analysed above often possess the 'power of the purse', parliament can decide to fund

¹³ See Hans Born and Marlene Urscheler, 'Parliamentary Accountability of Multinational Peace Support Operations'. In: Born and Hänggi, 2004.

¹⁴ See also Born and Urscheler, 2004. The research was carried out in cooperation with the NATO Parliamentary Assembly Secretariat and the parliamentary defence committees of the 16 selected countries as presented in Table One.

¹⁵ 50 US Congress par. 1542-1544, available at <http://yale.edu/lawweb/avalon/warpower.htm>.

¹⁶ US Constitution, Article II, Section 2.

Table 1: Parliamentary oversight powers concerning PSOs as indicated by the spokesmen of parliamentary defence committees (2002).

Parliamentary Powers and PSOs	Approval of sending troops abroad <i>a priori</i>	Approval of a mission's mandate	Approval of operational issues (Rules of engagement, command/control and risk assessment)	Right to visit troops abroad	Decision on the duration of the mission
Belgium	No	No	No	Yes	No
Canada	No	No	No	Yes	No
Czech Rep.	Yes	Yes	No	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes
France	No	No	No	Yes	No
Germany	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	n/a	n/a	n/a	n/a
Italy	Yes	n/a	n/a	Yes	NA
Netherlands	Yes	Yes	Yes	Yes	Yes
Norway	Yes	No	No	Yes	No
Poland	No	No	No	n/a	No
Portugal	No	No	No	No	No
Spain	No	No	No	Yes	No
Sweden	Yes	Yes	No	Yes	Yes
UK	No	Yes	No	Yes	No
USA	No	No	No	Yes	Yes

Source: Hans Born and Marlene Urscheler, 'Parliamentary Accountability of Multinational Peace Support Operations: A Comparative Perspective'. In: Born and Hänggi, 2004.

or to stop funding PSOs. Parliaments have two opportunities to use the power of the purse: during debates on the yearly defence budget debate and during debates on additional budget request for ongoing PSOs. For example, the US Congress stopped funding for the US troops committed to the UN PSO in Somalia, after the first casualties were incurred in 1993.

Ability

Though all researched parliaments have a parliamentary defence committee with support staff, it appears that some parliaments are far better resourced than others. Some parliaments have hardly any staff or resources whereas other parliaments, e.g. the US Senate, have ample staff and resources. A second issue is that parliaments often lack expertise on PSOs, be it in-depth knowledge about the conflict region where the PSO takes place or profound knowledge about the functioning of international organisations. Moreover, it is hard to obtain sufficient information about international security policy and peace operations. The flow of information between the EU, UN and NATO on the one hand and the international assemblies and national parliaments on the other hand is hampered by restrictive classification and confidentiality procedures. For example, with regards to the EU, its institutions are obliged to send all their documents directly to the national parliaments, except for documents related to foreign and defence policy. Lastly, another problem is linked to the short time frame in which

decision-making on PSOs takes place: In case of emergencies, there is little time for parliamentary involvement.

Attitude

Irrespective of the powers and the resources available to parliament, without the right attitude or willingness to keep the government accountable, parliamentary oversight is doomed to fail. Several factors seem to influence the willingness of parliamentarians to follow the conduct of the government critically. Firstly, party discipline, that is the formal and informal network between government ministers, party leaders and parliamentary faction leaders. This network limits the freedom of an individual Member of Parliament (MP) to vote or to raise critical questions against the government. There are several examples of party discipline hampering effective oversight over PSOs, such as in the Netherlands in the case of committing Dutch troops to UNPROFOR in Srebrenica, in Germany concerning the German contribution to NATO's 1999 Kosovo Intervention and in Canada during the official inquiries into the misbehaviour and scandals related Canadian peacekeepers in Somalia in 1992/1993.¹⁷

¹⁷ Jan Hoekema, 'Srebrenica, Dutchbat and the Role of the Netherlands' Parliament'; Roman Schmidt-Radefeldt, 'Parliamentary Accountability and Military Forces in NATO: the Case of Germany'; and Donna Winslow and Christ Klep, 'The Public Inquiry into the Canadian Peace Mission in Somalia'; all in: Born and Hänggi, 2004.

The media and public opinion is a second factor which pressures parliamentarians and government to be active in peace support operations and “to do something”. This factor played an especial role during the beginning of the 1990s. During the second half of the 1990s, due to lessons learned from previous UN peacekeeping failures, the euphoria of PSOs became more balanced by realism and the feasibility of PSOs.

The Case of Germany

For various reasons, not least because of the weight of history, the control of the German parliament exercised over sending troops abroad is very intense, as compared to other countries.¹⁸ Unlike many other countries, in Germany, parliamentary oversight over PSOs is characterised by prior authorisation, debates over mandate and duration of the mission, strict control over the budget as well as the right to visit troops in the field (see Table 1). Although the German Constitution is not clear about the role of the German parliament in authorising military deployments, in 1994, the German Constitutional Court was in favour of introducing legislation to this effect.¹⁹ Exempted from obligatory prior parliamentary authorisations are military operations falling under Article 5 of the NATO Treaty as well as unarmed military operations (e.g. relief operations).²⁰ The Court held that the parliament decides about war and peace; the government has the supreme command over the military; and parliamentary control, assisted by a parliamentary commissioner, is exercised by a special committee of defence. Additionally, the Court ruled that the Basic Law poses no obstacle against sending troops abroad, provided that parliament had the opportunity to give its prior approval for each deployment. Interestingly, the Court perceived the armed forces not as a tool of the executive, but rather as a ‘parliamentary army’ (*Parlamentsheer*) because parliament has the task of integrating the armed forces into the constitutional order and democracy.²¹ Concluding, the dominant position of the *Bundestag* is based on the core competence being able to decide on each deployment by means of prior constitutive parliamentary decision.

In March 2004, 10 years after the Constitutional Court called for legislation, the governing coalition parties introduced legislation to regulate the parliamentary involvement

in the decision to send troops abroad. Box 1 gives a summary of the proposed (draft) law.²²

Box 1: Draft Law on the Role of Parliament in Military Deployments Abroad (*Parlamentsbeteiligungsgesetz*)¹

The bill attempts to afford the German Parliament with the greatest amount of information to base its decisions to approve the sending of German troops abroad without encroaching the operative decision makers of the executive. The Law:

- (a) introduces a legal definition for ‘armed mission’ (Art. 2);
- (b) provides a detailed content description for the motion that the executive has to make to the legislature (Art. 3);
- (c) foresees a new simplified procedure for obtaining the parliamentary consent in deployment cases with a lower scope of engagement and risks (Art. 4);
- (d) regulates the exceptional procedure for belated parliamentary approval (Art. 5)
- (e) arranges for the different obligations of the executive to keep the parliament informed (Art. 6)
- (f) proposes a procedure for the approval of the parliament with regard to the prolongation of an armed mission (Art. 7)
- (g) stipulates the right of parliament to recall the deployed soldiers and to terminate an armed mission (Art. 8)

¹ The proposed law has been drafted by the governing coalition parties in the German Bundestag. It was first read in parliament on the 25.03.2004.

The draft law specifies, in a clear and binding legal framework, the role of parliament in the decision-making process of sending troops abroad. Clearly, the draft law attempts to adjust parliament’s involvement with emerging global trends. Since 1994, Germany committed troops to approximately 50 PSOs. No longer is the question whether Germany should be involved in PSOs, but how Germany can contribute to PSOs. The law provides clarity about the what, how, and when of political decision-making concerning PSOs, reflecting the interest of parliament, government and the military. For example, Article 3 of the draft law stipulates that the government should inform parliament about the mandate, conflict region, legal justification, maximum amount of soldiers involved, capabilities of the military unit, duration of the mission as well as estimated costs of the PSOs. These provisions guarantee that parliament can base its approval or rejection on all relevant facts. The draft law, however, might also give some cause for concerns, for example:

- Article 8 regulates the right of parliament to recall troops: the question is whether this right extends to those de-

18 For three elaborated analyses on the German case, see: Roman Schmidt-Radefeldt, ‘Parliamentary Accountability and Military Forces in NATO: The Case of Germany’; Lori Fisler Damrosch, ‘The United States Congress, the German Bundestag, and NATO’s intervention in Kosovo. Both in: Born and Hänggi, 2004. Georg Nolte, ‘Germany: ensuring political legitimacy for the use of military forces by requiring constitutional accountability’, in: Charlotte Ku and Harold Jacobson (eds.), 2003. Democratic Accountability and the Use of Force in International Law. Oxford: Oxford University Press.

19 Important to mention that Art 24 (2) of the Basic Law prescribes that no troops can be sent abroad, except under responsibility of international auspices in the context of collective security (the so-called ‘collective security clause’).

20 Georg Nolte, 2004, p. 244.

21 The 1994 International Military Deployment Case, BVerfGE 90, 286; Roman Schmidt Radefeldt, 152.

22 *Parlamentsbeteiligungsgesetz*. Drucksache 15/2742, Deutscher Bundestag, 15. Wahlperiode, 23.03.2004.

ploysments that were not deemed necessary to have prior parliamentary consent.²³

- Since the draft law does not give any provisions about the voting procedure, the question arises whether these matters will be dealt with by a normal or qualified majority rule.²⁴
- Article 4 of the draft law proposes a simplified parliamentary approval procedure in the case of low conflict intensity deployments, minor deployments, as well as deployments with a low scope of engagement and risks. This is understandable from the point of view of enhancing operative decision-making capabilities of the German government. However, the experience of PSOs in the 1990s have shown that unexpectedly low conflict situations can rapidly turn into very violent and deadly conflict scenarios, e.g. UNPROFOR in Srebrenica in 1995. Therefore, doubt can arise about classifying conflicts as low or high intensity, given that one has always to be prepared for the worst case scenario.
- Article 3 (3) of the draft law stipulates that parliament can only agree or disagree with the government's motion in total but cannot amend it. In this way, parliament will be confronted with 'take it or leave it' options only, which diminishes the potential for meaningful debates in parliament.

Conclusions: Strengthening Parliamentary Oversight

It is apparent that elements of the democratic deficit are present at both the national and international level, caused by lack of constitutional or legal powers as well as insufficient abilities or willingness of parliamentarians to hold the executive accountable. In those situations and countries where the parliament does not have the power of prior authorisation of PSOs, one can speak about a 'double democratic deficit'.

What can be done or what has been done in order to make up for the democratic deficit? Some examples can be provided related to both international assemblies and national parliaments. On the international level, the following options for strengthening parliamentary oversight of PSOs could be considered.

- Concerning strengthening democratic accountability of international organisations such as the UN and NATO, some argue that these international organisations need to create international representative assemblies, e.g. a UN People's Chamber (similar to EU's European Parliament). This is a far reaching solution and for the moment it is perhaps not a very realistic option. A more modest option would be to improve the functioning of the existing international assemblies, e.g. by making them more representative through adding national parliamentary delegations to the assemblies (suggested for the UN), or by

improving their procedures, e.g. the NATO Secretary General delivering a yearly 'State of the Alliance' message to the NATO PA.

- The European Parliament's (EP) oversight over ESDP could be enhanced in various ways. The EP should be given authority to scrutinise the ESDP's budget, to enlarge the resources available to the EP Committee on Foreign Affairs and Security Policy (more staff and a larger budget) as well as to increase public access to all ESDP documents and to oblige the Council of Europe to transmit all ESDP documents to national parliaments. Following the US Congress, one could imagine that the EP enacts War Powers legislation, which points out who, under what conditions and when the EU could declare states of war and emergencies, and when the EP could send troops to crises outside the EU territory. In spite of the recent 'Europeanisation' of ESDP, national parliaments have retained important oversight tasks with regards to national defence budgets, authorising to deploy troops abroad as well as procurement. In this grey area, in which neither the European Parliament nor the national parliaments have sufficient powers and abilities to scrutinise ESDP, it is relevant to bridge the double democratic deficit. From this point of view, as long as the ESDP remains an intergovernmental issue over which the European Parliament has only limited powers, it is important that national parliaments play a strong role in its oversight. Armand de Decker, President of the WEU Assembly and Chairman of the Belgian Senate, has argued that national parliaments have to take into account the European aspects of security and defence policy and that they do not confine the debate on defence policy to the national arena.²⁵ Therefore, it is important that the European Parliament and the national parliaments explore together fully the provision on interparliamentary cooperation on ESDP as stipulated in the 'Protocol on the Role of National Parliaments in the EU'.²⁶

On the national level, the following recommendations could strengthen the capacity of national parliaments to oversee multinational peace support operations:

- Interparliamentary cooperation: a major drawback is the uneven national oversight practice in various states. For example, the EU has member states where the parliament acts as a co-government partner (e.g. Netherlands, Germany and Denmark), and in other states the national parliament plays hardly any formal role in this field (e.g. France and the UK). Inter-parliamentary cooperation could be enhanced by guaranteeing that all parliaments have at their disposition the same information, by producing joint annual reports and by having regular conferences of the national Parliamentary Defence Committee's Chairs. With a view to closing the democratic deficit and as long as ESDP remains an intergovernmental affair, one might hope that the interparliamentary cooperation

23 Otfried Nassauer, Entsendegesetz für Bundeswehr-Einsätze – Selbstentmachtung des Parlaments? 12 June 2004. Available at: www.bits.de.

24 Otfried Nassauer, June 2004.

25 Conference Report, "Tackling the 'Double Democratic Deficit' and Improving the Accountability of ESDP", ISIS Europe, 29 April 2004.

26 The Protocol on the Role of national parliaments in the EU is annexed to the draft Constitutional Treaty.

will not occur on an *ad hoc* basis, but will function in an institutionalised manner.

- Adjustment of the legal framework: many countries have constitutions which do not contain any provisions on parliaments and sending troops abroad in peace support operations. Many constitutions were drafted in the 19th or beginning of the 20th century, in which period peace support operations played a limited role, if any. These constitutions only deal with parliamentary consent to the declaration of war. However, nowadays we are faced with undeclared wars only. Therefore some parliaments, for example the Netherlands' parliament, has amended its constitution and strengthened its position in the issue of sending troops abroad on peace support operations.
- Effective rules of procedure: another obstacle is the confidentiality and secrecy which decision-making on peace support operations sometimes requires. Various parliaments have developed simple but practical rules of procedure in order to deal with classified information, e.g. vetting/clearance procedures of defence committee members, convening behind closed doors, making strict distinction between public reports and classified reports or procedures for declassifying documents after the PSOs are finished – which makes post-accountability possible.
- Accountability: concerning the willingness of parliaments to keep the government accountable, the potential negative influence of party discipline on the freedom of MPs to raise critical questions or to vote against the gov-

ernment is difficult to overcome. Government parties often have the majority in parliament and can block any initiative coming from the opposition. In this respect, in some countries, e.g. Hungary, approval of PSOs requires a majority of two-thirds in parliament which implies that government parties have to cooperate with opposition parties. In other countries, the parliamentary rules of procedure require that the chair of the defence committee is given to the opposition.

To conclude, these examples, and there are many others, show that the double democratic deficit can be transformed into a democratic surplus. However, strengthening parliamentary oversight can only be done with a particular role for parliament in mind. Parliament can fulfil a strong role and become an equal partner to the government. Parliaments can also fulfil a weak role which diminishes their role to an institution which rubberstamps government decisions. At the end we have to answer the question how strong parliament should be and where to draw the 'dividing' line of competences between government and parliament. From the point of view of a 'government of the people, by the people and for the people', the bottom line is that parliamentary accountability is indispensable. It is difficult to imagine that such an important issue as sending troops abroad in PSOs is excluded from democratic decision-making processes, since parliaments are the most important provider of democratic legitimacy.

Die Abschaffung der Wehrpflicht – kein Schaden für die Innere Führung

Jürgen Groß*

Abstract: There are no longer any valid reasons to retain compulsory military service in Germany. After years of public debate during which every possible argument has been used in every possible way, a political decision to change the form of Germany's armed forces is long overdue. This would not hinder the necessary expansion of democratisation in the German military (»Innere Führung«) – quite the contrary.

Keywords: Conscription vs. voluntary military service, Democratisation of the armed forces.

I.

Alle sicherheitspolitischen und militärischen Argumente sprechen längst für Freiwilligenstreitkräfte, denn was nützen uns Wehrpflichtige, die mit großem Aufwand eingezogen und ausgebildet werden, aber

dann für die entscheidenden Aufgaben, nämlich Auslandseinsätze, gar nicht zur Verfügung stehen? Wer will es verantworten, unzureichend ausgebildete Grundwehrdienstleistende in höchst riskante Einsätze zu schicken? Unsere wichtigsten Verbündeten sind nicht ohne Grund denn auch längst zu Freiwilligenstreitkräften übergegangen – haben sie etwa alle Unrecht? Und mögen sie dabei in mancherlei Hinsicht nicht nur gute Erfahrungen gemacht haben – man könnte ja daraus lernen und es selbst besser machen.

* Dr. Jürgen Groß, Oberstleutnant i.G., Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg (IFSH).