CHAPTER THREE

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THE DEMOCRATIC CONTROL OF ARMED FORCES: THE NATIONAL AND INTERNATIONAL PARLIAMENTARY DIMENSION

Wim F. van Eekelen[5]

1.   Introduction

Democracy takes many forms. The basic notion that governments derive their legitimacy from the freely expressed votes of their citizens is translated in many different parliamentary practices. Even the conceptual distinction of the three main functions of government - legislative, executive and judicial - as defined in Montesquieu's *Trias Politica,* seldom resulted in a complete separation of powers. In many countries the members of the executive also sit in parliament. In the US, the separation between legislature and executive is the most complete. The President has wide-ranging authority; his ministers are not responsible to Congress. Nevertheless, it works because of a complicated system of checks and balances affecting both legislation and budget appropriations. In France, the President of the Republic regards foreign affairs and defence as his special domain in which the cabinet, let alone parliament, has little influence. A common characteristic of Western democracy, however, is its pluralistic character in which the people elect their representatives and have a choice between different political parties. In some cases the decisions reached in parliamentary assemblies are subject to a referendum as a form of direct democracy.

Democracy is more than just democratic institutions. A democratic culture assumes a degree of common identity, tolerance and trust which makes it possible to accept that the opposition might win the next election. In a democracy individuals and minorities feel secure because their fundamental rights are respected and protected by the rule

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[5] Vice President of the NATO Parliamentary Assembly

of law. Democracy is a system in which lawmaking and governance are transparent, maximising opportunities for every citizen and subject to quality control - ultimately through elections in which real and viable alternatives exist. Without opposition the perspective of self-improvement would be lost. Democracy functions best when society is not overly polarised and a healthy middle class exists. It should not be limited to parliamentary elections every three or four years, but attempt to reach the citizens at all levels of governmental activities of interest to them. Thus, some form of decentralisation of the functions of government is essential, to provinces, *Länder* or regions and, below them, to municipalities. For foreign affairs and defence this poses a problem, for these concern the national interest as a whole and override local considerations. Central government therefore plays a dominant role in these fields and democratic control can be exercised only by the national parliament. Inevitably, this creates a certain distance between parliamentarian and voter.

This paper consists of two parts. The first deals with parliamentary control and practice in general and moves on to the changing European security environment. The goals of modern security policy have become much wider than the traditional tasks of protecting independence and territorial integrity and increasingly focus on multilateral action in support of crisis management, the promotion of stability and most recently combating terrorism. Parliamentary scrutiny has to adapt to these changing circumstances in several ways. Security policy should be comprehensive and integrated in a coherent foreign policy. Despatching soldiers on missions of intervention abroad, including the separation of hostile forces in ethnic or religious conflicts, puts heavier political and moral burdens on parliamentarians than the patriotic task of defence of the homeland against aggression. Nevertheless, even under changing circumstances some general guidelines can be drawn for parliamentary control over the defence budget and equipment decisions.

The second part of the paper analyses the major international organisations dealing with European security and their parliamentary dimension. The thesis of this chapter is that the multilateral work of parliamentarians in consensus-building plays an important role even if, in most cases, control as such remains with national parliaments. Each of these organisations has a role to play, although some streamlining might be welcome. The European Parliament has real powers in the budget process and co-decision on many legislative matters on which the Council of Ministers decides by qualified majority. The other organisations normally take decisions by consensus at the governmental level, but take majority votes on reports

and resolutions in their parliamentary bodies. Two of them - the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) - have a particular role in setting norms and standards for the respect of human rights and the conduct of relations among states.

2.   The National Parliamentary Dimension

2.1.   Parliamentary Control

In principle, parliamentary control should extend to all sectors of government activity, particularly in terms of budget allocations. Nevertheless, it has to be admitted that security and defence have special characteristics. Ever since Plato the question has been raised of how to control the custodians. The army was a source of power for the sovereign, but also a potential threat. In feudal days the King himself was the field commander and his vassals came to his aid with their contingents. When armies came to rely on mercenaries their loyalty depended on the extent to which their leaders were able to finance the campaign. All that changed with the advent of conscript armies, which involved every citizen but also led to an officers' corps with its own professionalism, traditions and culture. The army became integrated into society, but the growing complexity in training, equipment and logistics caused a gap between political aims and military needs. The military, by and large, accepted the primacy of politics, but felt that their governments did not provide them with the means to carry out the tasks allotted to them. Conversely, politicians became increasingly concerned about the use of military power, both in terms of their control over the budget and on moral and legal grounds. The increase in the destructive power of new technologies raised issues of deterrence, defence and protection of the civilian population. Recently, the pendulum came swinging back from conscript armies to volunteer forces in view of the difficulty of dispatching conscripts on missions of peace support and intervention. This problem could be circumvented by forming volunteer units among the conscripts, but even then questions remained. Would their time of service be sufficient to master the technological skills required? And, more importantly, was it fair to call up only some of the eligible young men when the army no longer needed all of them?

This paper expresses the view that one should speak of democratic control of the armed forces rather than civilian control. Of course, politicians should be civilians. After Stalin and Tito only president Tudjman of Croatia wore a uniform as head of

state and even then only occasionally. The point is that civilian leadership is not necessarily democratic. Which brings us to the next question: how deeply should democratic control be applied? Intelligence and military planning often do not lend themselves to full disclosure. In a crisis, rapid decision-making is of the essence and the actual conduct of operations should be left as much as possible to the military commanders, once their terms of reference and rules of engagement have been clearly defined. In this respect, the dictum attributed to Clemenceau that 'war is too serious a matter to be left to the generals' requires some refinement. One should not construct an adversarial relationship between military and civilian, it is the primacy of politics that matters. While it is true that the military have to be under democratic control - for such as overall security policy, security requirements and the decision to use force - micromanagement is not a task for politicians. In particular, generals should be held accountable for their conduct within their terms of reference and accept the primacy of democratic politics. A successful defence policy relies heavily on a climate of mutual respect, recognition of professional competence and transparent decision-making procedures which reflect military as well as political inputs. Ultimately politics will prevail, but the military must feel confident that their views have been taken into consideration.

The borderline between delegation of authority on the one hand and responsibility and accountability on the other is one of the crucial questions in modern democracy, accentuated by the flood of information coming from all sides: government, media, non-governmental organisations and pressure groups. It is a constant challenge to every parliamentarian to steer a steady course amid the daily temptation to intervene on the basis of headlines in the morning papers. This challenge is even greater in security affairs where human emotions are easily aroused, often on the basis of incomplete information, but the decision to despatch soldiers into possible danger is a matter of life and death.

In a parliamentary democracy, the government - i.e. the Head of State and the Cabinet - functions under the control of parliament. Over the centuries parliamentary powers have greatly increased. Originally their function was to allow the princely ruler to levy taxes, which later developed into a balance - often uneasy - between the rights and duties of the sovereign and his citizens. Today, they cover a wide spectrum which varies considerably among European countries, but can nevertheless be outlined as follows:

- To provide support for the government on the basis of electoral party platforms or the agreement on which a coalition is formed. When a new government takes office and makes a policy statement (which includes defence issues), usually a vote of confidence is called or a motion of no-confidence debated

- Legislative authority on bills introduced by the government or individual members and accompanied by an explanatory memorandum. Drafts are considered in standing committees and written questions asked. Sometimes hearings are organised. Approval is granted after a debate in plenary where amendments and motions are considered and concluded by a vote. Sometimes it is allowed for oral explanations of the votes cast to be given.

- Controlling authority over the executive which can be divided into political control (does the government still enjoy the confidence of the majority of parliament), policy control (through oral and written questions or the more substantial means of interpellation to question a specific act of policy), budgetary scrutiny and finally accountability on the basis of reports from the Board of Auditors about the implementation of the budget. In cases where serious misconduct might have occurred, Parliament has the authority to hold a formal inquiry. A parliamentary inquiry resembles a court of law in so far as it can call witnesses and interrogate them under oath, seize documentation and so forth.

Policy control through the right to request information via written and oral questions and in debates, if used extensively, brings parliaments close to the executive function of government. In most Western parliaments there is a tendency to move beyond control *ex post facto* to participation in the governmental decision-making process even before the cabinet has tabled a formal proposal. In some cases, a pending governmental decision is even forestalled by anticipatory parliamentary action.

2.2.   Parliamentary Practice in the Field of Security Policy

In the field of foreign affairs and defence, parliamentary practice varies even more than in the other domains of government activity. All Western parliaments have Standing Committees on Foreign Affairs and Defence, many also on European Affairs and Intelligence. Germany probably has the closest scrutiny of the defence budget. France works with a *rapporteur* whose findings are subject to a general debate. The Netherlands' legislative process contains several rounds of written

comments and questions from all parties to which the government responds extensively before an oral debate can take place.

The challenge is to devise a method by which the constitutional role of the legislature can be exercised in a purposeful and professional manner. If a rigorous method is not formalised, parliamentary control is in danger of becoming political rhetoric, leaving too many opportunities for the bureaucracy and the military to go their own way. A model for a policy-making and review cycle could be as follows:[6]

1. Research on and assessment of problems and policy options
    a) determining the entire range of external security problems facing a country; determining the need to define a policy to address those problems; and devising methods to identify priorities among the problems so defined;
    b) identifying methods, frameworks and processes for policy implementation, monitoring, review and scrutiny, and adjusting policy;
    c) building up information and data on policy options; and
    d) building up information and data on alternative methods of policy implementation.

2. Examining policy alternatives
    a) forecasts of alternative scenarios and assessment of the methods of implementing alternative policies;
    b) advanced research to examine the impact of alternative policies on each of the alternative scenarios; and
    c) analysis of the strengths and weaknesses of each policy and the opportunities they offer in advancing national security and society.

3. Decision-making and implementation
    a) deciding on policy and defining responsibilities, resources and timeframes for implementation;

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[6] This model is taken from Ravinder Pal Singh (ed.), *Arms Procurement Decision Making, Volume II: China, India, Israel, Japan, South Korea and Thailand,* (Oxford: Oxford University Press for SIPRI, 2000), pp. 4-5.

b) selecting methods for policy monitoring and review and for carrying through a change or adjustments in policy; and

c) defining decisions that would need to be taken in order to implement the policy, and setting objectives.

4. Policy evaluation and review

a) periodical scrutiny of the objectives and results; monitoring of effectiveness in terms of costs and benefits; and evaluation of the implementation;

b) review of policy implementation, methods, resources and priorities, and assessment of the impact of policy on problems; and

c) meta-evaluation - examining the evaluation process itself, to validate the objectives of policy, methods, assumptions and supporting data and processes.

5. Policy reassessment, adjustment or termination

a) decision on continuation of policy; corrections by the executive;

b) decision on policy modification - major corrections and adjustments; and

c) decision on termination of policy. A decision to stop the policy means initiating a new policy, which involves going back to stage 2.

2.3. The Changing Environment of Security

During the Cold War, the West saw collective defence as the overriding priority of foreign and security policy. Fear of a communist take-over inspired the Marshall Plan and later the birth of NATO. American involvement in European security was a powerful deterrent against any attack the Soviet Union and the Warsaw Pact might have contemplated. Western defence policy focused on a massive surprise attack from the East with a warning time counted in days if not hours. In these circumstances the layer-cake defences in Germany, containing army corps sections involving seven countries, had to be able to respond quickly. This was organised through an alert system governing the transfer of command from the national level to the Supreme Headquarters Allied Powers Europe (SHAPE) and its American Supreme Allied Commander (SACEUR). Once command had been transferred, the conduct of the war would be left to him, probably without much subsequent multinational consultation. The best illustration of the role of the permanent North Atlantic Council at Evere near Brussels was the fact that its headquarters was not

designed to survive a conflict and no wartime relocation was planned. In fact, the direction of the war would be determined in Washington and communications would take place through military channels.

As long as war had not actually begun, the situation was entirely different. Consultations in the Council were lively, sometimes even acrimonious. Alliance decision-making was never easy, particularly after France had left the integrated military structures in 1966; afterwards foreign and defence ministers no longer met in joint session. The most difficult debates centred on the role of nuclear weapons in allied defence to offset the conventional superiority of the Warsaw Pact, reaching its climax in the deployment of cruise missiles and Pershing II as a response to mounting numbers of Soviet SS-20 missiles targeted on Europe. In those days, most parliaments devoted much time to strategic questions, but also to arms control negotiations such as the talks on Mutual Balanced Force Reductions in Vienna and the Conference, later Organisation, on Security and Cooperation in Europe based on the Helsinki Final Act of 1975. With the appointment of Gorbachev as Secretary-General of the CPSU (after the death in rapid succession of Andropov and Chernenko) much progress was made with a zero option on Intermediate Nuclear Forces (INF) and an agreement on Conventional Forces in Europe (CFE).

After the fall of the Berlin Wall and the demise of the Warsaw Pact, the Soviet Union and communism as a governing principle, the security situation changed dramatically. The unification of Germany also ended the tragic division of Europe. A spectacular process of contacts, cooperation and enlargement followed which is continuing in the 21st century. As a result, the perception of security also changed. The existing members of NATO regarded collective defence as less of a priority because the Soviet Union had disappeared, taking the expansionist ideology of communism with it. Events in former Yugoslavia drew attention to new 'risks and responsibilities', particularly ethnic intra-state conflict leading to ethnic cleansing and even genocide and, in a wider context, to organised crime, drugs, illegal immigration and religious fundamentalism. These new concerns had less of a military dimension and required responses from society as a whole. Consequently, security policy in the West became more comprehensive and paid much attention to crisis prevention and peace support missions. Ministers of foreign affairs and defence had to cooperate closely in formulating a coherent policy which matched policy goals with concrete action.

The situation in the new democracies was different. Their release from Soviet hegemony left a heritage of concern with Russian power, even though most admitted that there was no immediate threat, neither militarily, nor geo-politically, in view of the changes in Russia and the interposition of independent states like Ukraine and Belarus. More serious was the situation in the Balkans where Serbian attempts to integrate all areas where Serbs were living led to outright war. There, defence still had the old connotation of preserving independence and territorial integrity. With only a little exaggeration it could be said that the old members of the Alliance were focusing on a new NATO, while the candidates were more interested in the old NATO with its collective defence and American leadership. This conclusion does not detract from the constructive cooperation of many countries in Central and Eastern Europe in the peace missions in Bosnia and Kosovo and, more recently, in Afghanistan.

The newly-acquired freedom and independence also had an impact on attitudes towards European integration. Eastern and Western Europe were in different phases of political development. While in the West people gradually consented to the transfer of sovereignty to the European Union, they were much more reluctant to do so in the East. Abandoning key parts of national sovereignty will only be acceptable there after a sense of identity has been re-established. For the same reason, the negotiations with the EU and NATO are parallel processes which, in most cases, take precedence over regional cooperation. Fortunately, the willingness to demonstrate solidarity in peace support operations enhances possibilities for working together. Military efficiency and the political imperative of multinational forces have militated in favour of joint ventures like the Baltic battalion (BALTBAT) and a combined defence college.

2.4.   The Goals of Modern Security Policy

In a no-threat environment, the organisation of the military establishment focuses on capabilities and quality. New yardsticks are mobility, flexibility and 'jointness', i.e. the ability of the armed services to operate together in a number of contingencies affecting the interests of the state. Depending on the situation of a particular country, its ability to add value to multinational or regional force packages will be of particular interest.

In the European theatre, the main aim of the international community is the creation of a climate of stability in which economic development and cooperation can prosper.

Stability is not an easy concept to define; it is much easier to recognise instability. Nevertheless, some essential characteristics can be extracted from the criteria both NATO and EU apply in their enlargement processes. In any case, stability is not a static quality but rather an ongoing process. Elements are:

1. The rule of law and its application in fact.
2. A functioning pluralistic democracy at all levels of government, state, province and municipality.
3. A market economy able to withstand competition.
4. Good neighbourly relations, including a constructive effort to resolve minority issues.
5. Democratic control of the armed forces, including parliamentary oversight of the defence policy, transparency of the budget and accountability for its implementation.

The widening field of security policy had a profound impact on the composition and training of military forces, but also added considerably to the complexities of policy formulation. In the Balkans, soldiers had to be jacks-of-all-trades. In addition to their traditional military skills, particularly for dealing with escalation of the conflict and self-defence, they had to be mediators, diplomats, mayors and restorers of infrastructure all at once. The Swiss author Gustav Däniker described this new role as the 'guardian soldier'. Recent experience of the grey zone between military and civilian roles, for instance for crowd control or the pursuit of war criminals, has shown the need for special units. Only a few countries possess them, like the French *Gendarmerie*, the Italian *Carabinieri*, the Spanish *Guardia Civil* and the Netherlands' *Marechaussee*. Yet, after peace has been restored, often the need for police, judges and prisons is greater than for the military, who can do little more than provide the security umbrella under which civil society has a chance of emerging.

Both NATO and EU have responded to this challenge. In NATO, a new emphasis is put on Civil-Military Cooperation (CIMIC) units containing experts in civil-military cooperation. In the EU, a parallel development is taking place with a headline goal of 50-60,000 military and 5,000 police. The EU has the additional advantage of being able to provide economic and financial assistance under its crisis management programmes as well as under its pre-accession support for candidate countries and its stabilisation and association agreements with others. The Stability Pact for the Balkans is a case in point. Obviously, all this requires close coordination - which still

is far from perfect - both multi-nationally and in capitals, in which parliaments and their committees have their role to play.

Politically, the change from defence - either individually or collectively - to intervention-type missions raises many questions for parliamentary debate. What is the legal basis and who provides the mandate? Are the risks involved commensurate with the interests at stake? Do parliaments apply a checklist before authorising participation? What limits will be set to casualties as a condition for continued involvement? To what extent will there be reliance on volunteers (especially important for conscript armies)? Is there a preference for non-combat tasks? How long will the commitment last and will it depend on participation of other (larger) countries?

For the individual parliamentarian charged with defence issues, the shift towards a comprehensive security policy has made the work more interesting. There used to be few votes in being spokesman for defence. There normally is little legislation, the intricacies of defence issues require much specialist knowledge and asking for a larger budget is not popular with the voter. This may change when the parliamentarian is closely involved with the replies to the questions in the previous paragraph, because they involve the role his country is able to play in a multinational context. Its standing in Europe is affected by the responsibilities it is willing to accept. Thus, security and stability may rise on the public agenda.

In his book 'Cooperating for Peace' the former Australian Foreign Minister Gareth Evans wrote in 1993 about the requirements for a policy of cooperative security in the post-Cold War environment and defined it as follows:

> a broad approach to security which is multidimensional in scope; emphasises reassurance rather than deterrence; is inclusive rather than exclusive; is not restrictive in membership; favours multilateralism over bilateralism; does not privilege military solutions over non-military ones; assumes that states are the principal actors in the security system, but accepts that non-state actors may have an important role to play; does not require the creation of formal security

institutions, but does not reject them either; and which, above all, stresses the value of creating 'habits of dialogue' on a multilateral basis.[7]

2.5.   Democratic Control of Security Policy

The ministries of foreign affairs and defence have in common their global view of the national interest. All other departments have responsibilities of a more sectoral character. Consequently foreign affairs and defence have to interact closely. Defence policy should be an integral part of foreign policy, but depending on the circumstances also has close links with the ministries of justice, home affairs, environment, transport and communications. In a crisis involving national independence and territorial integrity, the defence department acquires special powers, through the declaration of a state of emergency or a state of siege, which allow it to bypass most of the parliamentary procedures. Usually parliamentary authorisation is required to declare war, but today war is seldom declared, even if it occurs in practice. In any case, the special powers should be of limited duration and lapse, or be revoked when normality returns.

Most governments periodically present white papers or defence reviews to set out policy for the next ten years or so. In the US, a Quadrennial Defence Review is obligatory. On the basis of a threat assessment, these papers determine the priority tasks and define a programme to meet them in quantitative and qualitative terms. It is important to watch how the threat assessment is produced and to what extent it presents a coordinated foreign policy-defence picture. Obviously the intelligence services have an important input to make, but the overall assessment should contain political considerations as well. In any case, the responsibilities of the head of state, the minister of defence, the chief of defence and the service commanders should be clearly defined, for intelligence and planning as well as for command functions. Equally important is that decisions are based on technical, strategic and economic considerations rather than on personal or political considerations. The candidates for NATO membership all face the necessity of reducing manpower and achieving compatibility in terms of systems integration, the adaptation of infrastructure and interoperability in command and control, operations and logistics.

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[7] Gareth Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, (Sydney: Allen and Unwin, 1993).

Defence reviews indicate the level of defence spending as a percentage of Gross Domestic Product and specify the plans for personnel policy and arms acquisition. Today they also include the levels of possible participation in peace support operations. Once the review has been debated in parliament and approved, either with or without motions to change its direction, it forms the basis upon which the following yearly defence budgets will be presented and scrutinised. As defence is always a question of the long haul, long-term planning is of the essence, allowing for gradual adaptation but avoiding rapid twists and turns. In this respect, defence is much more sensitive to budget cuts than other government departments, because a structural cut in a yearly budget has a multiplier effect over a decade. For this reason, acquisition plans for the second part of a ten-year period have a tendency to shift into the future if the financial framework changes. In order to avoid upsetting the continuity of defence planning, several countries conclude political agreements for stabilising defence spending during the period up to the next parliamentary elections. For the candidate countries for NATO membership, a figure of 2% of GDP is generally mentioned as an acceptable effort provided it is maintained during the coming years. The current members of NATO provide figures and other details in their replies to the Defence Planning Questionnaire (DPQ) which covers five years but is binding only for the first year. Their strategic rationale is based on NATO's Strategic Concept (revised at the Washington summit in 1999); the composition of their forces is guided by the Force Proposals from the Major NATO Commanders, turned into Force Goals by the Defence Review Committee at NATO Headquarters and approved by ministers.

Parliamentary scrutiny involves an assessment of whether the funds available will be sufficient for the projects proposed and whether the priorities are right for realising coherent armed forces. The determination of the overall sum of money available for defence is a question for the Cabinet as a whole on the basis of a proposal from the minister of finance and subsequently subject to the debate on the general budget; the detailed composition of the defence budget is a matter for the standing committees for defence. Today, the emphasis is on 'joint-ness', cooperation among the services, and on 'combined' operations with other countries.

2.6. How Much is Enough?

The terrorist attacks on 11th September 2001 will undoubtedly have an impact on defence planning. The link between internal and external security has become more explicit, which will require close cooperation between the military, the police and the intelligence services. Disaster relief and the protection of vital objects will be strengthened and the military will consider increasing their special services capability. In the past they dealt with terrorism on a domestic basis and only a few countries possessed capabilities for action abroad in a hostile environment. Now such operations will also acquire a multinational dimension. The attacks also demonstrated the need for flexible forces, for it is no longer enough to argue that defence planning should be 'capability-driven' instead of the 'threat-driven' approach from the Cold War years. Capabilities, yes, but the capabilities needed are constantly changing, which poses a special problem for long-term defence planning. Moreover, in a no-threat environment it is very difficult to quantify military requirements, as the yardstick of potential opponents seldom lends itself to numerical conclusions. The question 'how much is enough?' is harder to answer than ever before. Unmanned aerial vehicles proved even more useful in Afghanistan than in the Kosovo campaign and are likely to become more important, not only in reconnaissance but also in delivering weapons on target. This is only an example, but it shows that opinions on likely future developments are bound to vary. Only a transparent debate on future trends can avoid miscalculations in force planning.

Parliamentary control cannot function properly without adequate internal mechanisms of inspection and of dealing with complaints within the defence establishment. Public reports by an inspector general and an ombudsman greatly assist the parliamentary committee in judging the overall situation in the services and the morale of their personnel. The same goes for reports from independent think-tanks and the media. Full transparency is the best way to build a public consensus behind the armed services by showing that taxpayers' money is well spent and that the defence department is a good employer for its personnel. If soldiers, sailors and airmen are to risk their lives, they are entitled to good equipment and support. In that respect, democratic oversight of the military sector addresses only a part of the larger problem - building up awareness in society of citizens' fundamental right to know how the state is planning and applying policies for their security.

Such transparency and the ensuing public discussion will, to a certain extent, make up for the lack of expertise available in most parliaments. With the present flood of information on all conceivable issues, a small staff of a parliamentary committee possessing an adequate database and Internet facilities should be able to cope. If necessary, hearings should be organised, either in public or behind closed doors. The obstacle of secrecy becomes increasingly irrelevant in our information age. Only very few things deserve to remain secret. Not all governments have realised this.

2.7.   Secrecy

Intelligence briefings are usually restricted to the parliamentary leaders of the main parties and do not cover the entire political spectrum. Shocked by several murderous attacks and the discovery of extreme right-wing organisations, Belgium adopted a law in April 1999 to regulate the supervision of police and intelligence services. Standing Committees I (for Intelligence) and P (for Police), often meeting jointly, complemented the existing parliamentary and hierarchical supervision by adding an external examination of the activities and methods of these services, their internal regulations as well as documents determining the conduct of their members.

Secrecy can broadly be justified for the following reasons:
   a) a need for secrecy of military holdings and stocks;
   b) a need to withhold technical information which reveals the strengths and weaknesses of a weapon system;
   c) a need to withhold operational information related to the employment and deployment of weapons; and
   d) urgency, if rapid procurement is needed.

Among the indicators given by the Chief of Defence Intelligence in the British Ministry of Defence are:
   a) imminent aggressive action against or threat to the state;
   b) activities of near neighbours pursuing a course prejudicial to the state's independence or security;
   c) disruptive forces within the society;
   d) terrorism; and

e) 'exceptional circumstances'.[8]

Arguments based on commercial sensitivity need to be handled with care. Companies must be fairly treated, but the argument of commercial sensitivity can be abused. A catch-all determination that no commercial information can be disclosed without companies' consent could also open up opportunities for lobbying and corruption. The criticism sometimes advanced that civilian members of parliament do not sufficiently understand security rationales and technical requirements should be dismissed. At best, it is an argument for providing better information. The elected representatives are not necessarily better decision-makers than the military but they possess the mandate from the people.

2.8.   Parliamentary Defence Committees

The Parliament as a whole is too unwieldy a body to make full inquiries into matters of interest to it and to consider issues in detail. This is why parliamentary committees have become one of the most powerful tools for efficient parliamentary business. As a body involving a limited number of members of parliament, parliamentary committees can – depending on the level of means (information and research capacity more especially) and expert support they enjoy – perform in some depth the vast and complex task of overseeing the security sector.

Nearly all parliaments have a specialised standing committee on defence or security issues. The main areas they cover are usually the following, depending on the provisions of the constitution and the standing orders of the parliament:

– Military doctrines and strategies;
– Long-term planning of the security sector, including high-level documents such as the regional and national security concept, or defence planning;
– Missions, tasks and objectives of the military;
– General organisation of the defence sector, including defence reform issues;
– International cooperation and treaties in the military/security/international humanitarian law realm;

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[8] See Scilla Elworthy, 'Balancing the Need for Secrecy with the Need for Accountability', *RUSI Journal*, February 1998, p. 5, and Pal Singh, *Arms Procurement*, p. 242.

- Peace missions: decision to participate in, or accept on national territory, international peace missions (peace-making, peace-keeping or peace enforcement), mandate, rules of engagement, type of troops and equipment (armament);
- Disaster relief operations of the armed forces;
- Control of the execution of the defence budget;
- Industries involved and employment aspects;
- National service and military recruitment policy (civil and military staff);
- Gendarmerie and Paramilitary organisations, sometimes only during exceptional circumstances;
- Military justice;

Parliamentary committees vary in their powers to collect and receive evidence from external sources. Some parliamentary committees, such as the *ad hoc* standing committees of the British House of Commons, are not entitled to collect evidence themselves whereas other committees, such as those in the US Congress, have nearly unlimited power to take evidence from external sources.

Some parliamentary committees enjoy the capacity to legislate (e.g. the committees on defence of Canada, Belgium, Germany, Italy, Luxembourg, Norway, Poland and Turkey) - adopting or even drafting new laws or proposing amendments to existing legislation - while other committees are only entitled to scrutinise action by the Executive and the budgetary appropriations without being able to legislate (e.g. Hungary and the United Kingdom).

In some countries, the parliamentary committee of defence/security has to present an annual report to parliament on the activities of the defence sector. This report can be followed by a vote, and even sometimes by a vote of confidence.

Finally, the level of means and expertise available to a committee will be crucial to whether it can perform its mandate effectively: the number, capacity level and stability of the staff servicing the committee; the research capacity and its nature (specialised versus general; separate versus part of the broader parliamentary research unit); access to data and relevant support documentation (the capacity to obtain and copy it); the capacity to call on experts; the capacity to holds hearing and to carry out inquiries.

Key functions that may be performed by a committee on defence or security issues:

Security policy

- To examine and report on any major policy initiative announced by the ministry of defence;

- To report annually on the ministry of defence's performance against the objectives of the national military/security strategy;

- To periodically examine the defence minister on his discharge of policy responsibilities;

- To keep under scrutiny the ministry of defence's compliance with freedom of information legislation, and the quality of its provision of information to parliament by whatever means;

- To conduct inquiries and report to the parliament on any issues raising special concern (as can happen in Belgium, Canada, Germany, Hungary, Italy, Norway, and others, though it is not in the authority of the committee in countries such as Poland and Turkey);

- To examine petitions and complaints from military personnel and civilians concerning the security sector.

Legislation

- To consider, and report on, any draft legislation proposed by the government and referred to it by the parliament (as with the committees on defence of Canada, Belgium, Germany, Italy, Luxembourg, Norway, Poland, Turkey and others);

- To consider international or regional treaties and arrangements falling within the area of responsibility of the ministry of defence, and to draw the attention of the parliament to those which raise particular questions of policy requiring debate or other consideration: ratification or adhesion, corresponding policy and legislation, budgetary appropriations;

- If appropriate, to initiate new legislation by asking the minister to propose a new law or by drafting a law itself (as with the committees on defence or national security of Belgium, Canada, Hungary, Italy, Norway, Poland, Turkey and others)

Expenditure

− To examine, and report on, the main estimates and annual expenditure of the ministry of defence;

− To consider each supplementary estimate presented by the ministry of defence and to report to the parliament whenever this requires further consideration;

− To report periodically on the impact of efficiency savings on the running cost of the ministry of defence;

− If necessary, to order the competent authorities to carry out an audit.

Management and Administration

− To consider the reports and accounts of each branch of the armed forces and to report periodically on whether any matters of particular concern are raised;

− To consider and, if appropriate, to take evidence and report on each major appointment made by the relevant executive authority (leading military commanders, top civil servants);

− To consider the internal organisation of the defence sector, eventually through external bodies relating to the parliament (e.g. ombudsman), and to draw the attention of the parliament to its possible malfunctioning.

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) Working Group on Parliamentary Control of Armed Forces made a study on the powers of committees on defence of lower chambers of parliaments of NATO countries. This research was carried on through a questionnaire distributed among members of parliament of these countries. The results are in Annex I of this Vademecum.

2.9. Parliamentary Control Over the Budget

Most parliamentary democracies have standing committees to cover each government department. Their size and attributions vary considerably. In Germany, the Basic Law provides for standing committees for Foreign Affairs, Defence, European Union Affairs and Petitions. The Bundestag is free to establish other committees. Currently, the Defence Committee comprises thirty-eight members, reflecting the relative strengths of the parliamentary groups in parliament, and an equal number of substitutes. In the UK, the select committees are much smaller and number at around twelve members.

In Germany, the traditional task of the Defence Committee is to deliberate on bills and motions for resolutions referred to it by the plenary of the Bundestag. It can also consider issues on its own initiative, mostly to discuss reports the Committee has requested from the Federal Ministry of Defence. It has the right to summon a member of the government to a committee meeting at any time. The Defence Committee is the only committee which may declare itself to be a committee of inquiry. On the budget the committee has an indirect role in reporting its examination (taking several days each year) to the Budget Committee.

All procurement projects over € 25 million have to pass the Committee. The German Bundestag also appoints a Parliamentary Commissioner for the Armed Forces, who works closely with the Defence Committee and regularly attends its meetings. His primary task is to protect the basic rights of service personnel and to ensure compliance with the principles of 'Innere Führung', the concept of leadership, dignity and civic education.

In 1994, the Federal Constitutional Court in Karlsruhe ruled that the prior consent of the Bundestag was required for all missions of the Bundeswehr except in cases of imminent danger. The manner in which parliament would handle these matters could be regulated by law. Parliament does not have the right to demand on its own initiative that a mission should take place.

In the Netherlands, every draft law, including the budget, is subject to a written phase in which the relevant committee asks questions and obtains written answers before an oral debate takes place, usually in plenary. Policy questions are discussed in committee and, when sufficiently controversial, also in plenary.

Looking at NATO countries generally, the manner of detailed scrutiny of the budget varies considerably. In principle, it should be possible to examine it line by line. In its most extensive mode it concerns both authorisation of expenditure as proposed and amendment of the figures. The latter can take the form of increasing or decreasing the line item, but usually this is done in connection with another article to effect a change in priorities. Depending on the constitutional possibilities for doing so, pluri-annual budgeting for defence projects is recommended, because it facilitates smooth implementation. Such authorisation, however, should be accompanied by reliable

reporting arrangements to ascertain whether a project is on track and the money made available for it is not diverted to other purposes.

As mentioned before, the DCAF Working Group on Parliamentary Control of Armed Forces drew up a questionnaire on the role of defence committees in all states participating in the NATO Parliamentary Assembly, the results of which are summarised in Annex I of this Vademecum.

Parliamentary scrutiny is at its most effective when policy control is combined with accountability for past and current performance. Most countries possess a Planning, Programming, Budgeting and Evaluation System (PPBES), but, in many cases, the evaluation aspect remains underdeveloped. That is not surprising, as it is labour-intensive and politically sensitive. The Netherlands government introduced an overall system of 'policy accountability' in 2001 giving more information about policy objectives, the performance required and the resources made available. It aims at the ability to measure not only input and output, but also outcome. In the field of defence the new system is combined with the ongoing programme of costing the various units and tasks, which is a precondition for judging their cost-effectiveness.

2.10. *Parliamentary Control Over Equipment Decisions*

The role of parliaments in equipment decisions requires a separate chapter. Public interest is aroused because these procurement decisions have a direct impact on defence capabilities for a long time to come and normally involve jobs at home. Development and production require long lead-times and therefore decisions have to be based on assumptions of future threats and alternative options. Cooperative arrangements in building multinational units and force packages provide a stimulus for standardisation or, as a minimum, interoperability. Industrial interests are served by cooperative development, co-production and offset programmes. No other field of government activity and public procurement attaches such importance to work-sharing, as is common practice in the defence sector. One of the causes is a general concern to channel taxpayers money back into the national economy, but oddly enough that argument is not heard when trains, power stations or civilian aircraft are bought abroad. Defence is different inasmuch as its procurement is exempt from the competition rules of the European common market and thus national protectionism goes unchecked. This is also true outside the EU.

A distinction has to be made between the larger countries, which possess a wide industrial base including defence equipment, smaller countries which have only a few defence industries, and countries which possess hardly any. In the latter case, compensation for defence procurement is sought in other sectors. Ideally, free competition should also govern defence equipment, but this particular market is differentiated from others by the small number of suppliers and the fact that there is only one buyer - the government, represented by the ministry of defence, a 'monophonic' equation. If a country produces qualitatively acceptable equipment, foreign suppliers have little chance of success. In the US the 'Buy American' act is a case in point, and even industries in allied countries have little option but to team up with an American company.

Several attempts have been made to enhance European defence equipment cooperation. In the early 1970s, the Euro-group was created partly for this purpose, partly also to show the US that the European allies were making an adequate defence contribution. It contained all European allies except Luxembourg and Ireland and was transformed first into the Independent European Programme Group to include France and, in the 1990's, into the Western European Armaments Group as part of the revitalisation of WEU (Western European Union). In addition, a French initiative to pool pre-competitive defence research in EUCLID (European Cooperation for the Long Term in Defence), as a corollary to the civilian programme Eureka, was turned into the Western European Armaments Organisation with the authority to conclude research contracts as the first element of a future European Armaments Agency. When and how this aim will be realised has become doubtful as the main defence producers - France, Germany, Italy and the UK - have formed the OCCAR (Organisation for Joint Armament Cooperation/Organisation Conjoint de Cooperation en matiere d'Armement) group to spread work-sharing arrangements over the entire number of cooperative projects instead of the project-by-project arrangements of the past. The Netherlands has applied to join this group. In addition a larger group of six countries engaged in the aeronautical industry - including Spain and Sweden - has concluded a Letter of Intent and became known as the LOI group.

European industry did not wait for governmental action and over the years undertook an impressive effort at rationalisation and consolidation. During a first phase the emphasis was on national champions, followed by a second phase of trans-border mergers and capital-sharing arrangements. Successful examples are EADS and Thales as industrial groups and Airbus with a military transport version of its A400

design. Inasmuch as European industry remains able to be both competent and competitive, a third phase of transatlantic cooperation might follow. A contributing factor will be the degree to which European research money could be coordinated or better still, commonly funded.

The involvement of parliamentary defence committees is particularly strong in cases of purchases abroad. In France and the UK, which cover most of the industrial spectrum themselves, equipment decisions are usually left to the government and provoke little parliamentary discussion. There the emphasis of the debate is on the overall composition of the armed forces rather than on individual procurement issues. In Belgium and the Netherlands, the minister of defence has to follow a prescribed procedure of first including the requirement for a weapon system in a ten year programme and subsequently explaining it, then analysing the alternatives, reporting on the negotiations and the co-production and compensation aspects (handled by the ministry of economic affairs), and finally making the decision. Belgium established an ad hoc committee for military purchases of the House of Representatives on 9th May 1996. The Netherlands follows a convention that parliament has sufficient time to consider contracts above € 50 million before the contract is signed[9]. This normally results in a green light from the Defence Committee, but members have the right to put the item on the agenda of the Second Chamber for plenary discussion and vote. In other NATO countries practice is very uneven, ranging from close scrutiny in Germany to hardly any monitoring of arms procurement in Greece. In the latter case, important decisions are made by the prime minister in a meeting with his close personal advisers. In Turkey the minister of defence ranks below the Chief of Defence and concentrates on procurement policy. In many countries cabinet decisions are prepared by ministerial subcommittees before they obtain formal governmental endorsement.

2.11. Terrorism

The terrorist attacks of 11th September 2001 on the World Trade Centre and the Pentagon - the symbols of the Western way of living and US power - have had a

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[9] The Netherlands' procurement decision process includes five phases, each embodied in a document: A. the military requirement, B. preparatory study, C. detailed study, D. preparation of the contract, E. evaluation (for contracts exceeding € 250 million). Parliament is informed about contracts exceeding € 12 million, but these are not subject to the full documentation process.

profound impact on security policy. For the first time since its inception in 1949, NATO invoked Article V with its collective defence guarantee. Previously, terrorism had been described in NATO's Strategic Concept as a new threat, but most saw it more as an Article IV subject for consultation than an Article V issue with its connotation of military action organised and commanded by the integrated military structure. In fact, the operations in Afghanistan were predominantly American, with only a few countries being invited to contribute resources. Some measures were taken to replace US forces engaged in or around Afghanistan ('back-fill'). The coalition against terrorism, assembled remarkably quickly by Secretary of State Colin Powell, was primarily political in character in supporting these operations, or at least not impeding them, and assumed a worldwide character. The fight against terrorism will remain on the agenda of all international security organisations, but it remains to be seen whether they will take action as such, or 'coalitions of the able and willing' will continue to take the lead. During the Yugoslav crises, NATO overcame its old inhibition to act 'out of area', but that region bordered on member countries and had an immediate impact on European stability. Farther away, NATO never intervened in the Arab-Israeli conflict nor in humanitarian crises in Africa. Now the fight against terrorism has been defined as collective defence, and American evidence convinced the Allies of collusion between the Taliban regime and Bin Laden's terrorist organisation Al-Qaida. Many Americans wanted NATO to go global before 11th September, but European opinion was, and still is, reticent about putting a NATO label on operations which were not immediately connected with action to restore and maintain the security of 'the North Atlantic area' as stipulated in Article V.

Terrorism is on the agenda of all organisations. Even before 11th September 2001, the UN had taken the initiative in concluding treaties on the protection of UN personnel (9-12-1994), against terrorist bomb-attacks (15-12-1997) and the financing of terrorism (9-12-1999). The OSCE Code of Conduct on political-military aspects of security of 1994 contained in §6 the following clause:

> The participating States will not support terrorist acts in any way and will take appropriate measures to prevent and combat terrorism in all its forms. They will cooperate fully in combating the threat of terrorist activities through implementation of international instruments and commitments they agree upon in this respect. They will, in particular, take steps to fulfil the requirements of international agreements by which they are bound to prosecute or extradite terrorists.

The ministerial OSCE session in Bucharest on 3rd-4th December 2001 agreed an Action Plan for Combating Terrorism. The Forum for Security Cooperation should put the Code of Conduct and the document on small weapons high on the agenda.

The EU convened a special session of the European Council on 21st September 2001, which drew up a plan of action dealing with strengthening police and justice cooperation (a European arrest warrant, a definition of terrorism, drawing up a list of terrorist organisations, establishing an anti-terrorist team in Europol and concluding an agreement on cooperation between US authorities and Europol), combating the financing of terrorism and money-laundering and improving airline security. Long debates of previous years were concluded and decisions were taken expeditiously.

The Council of Europe ministerial conference decided on 8th November 2001 to base its activities on three elements:

1. Strengthening juridical cooperation including a review of the existing Convention against terrorism;
2. Protection of fundamental values: the fight against terrorism should be consistent with the requirements of democracy, the rule of law and human rights. Ministers asked the Steering Committee on Human Rights to draft guidelines;
3. Investing in democracy and social cohesion to combat intolerance and discrimination and to promote intercultural and inter-religious dialogue.

The upshot of all these activities is that, at last, Europe is showing a fairly coherent picture, with mutually reinforcing organisations. In the midst of this flurry of action, it important to remember that the fight against terrorism requires more than military measures only and that in a democracy the balance between increased vigilance and individual freedom needs constant attention.

2.12. Conclusion

The foregoing analyses can be summed up as thirteen elements[10] that ensure the military play their proper role in a democratic society:

a)   the existence of proper constitutional and legislative structures with clearly defined responsibilities for the executive and legislative branches and a system of checks and balances;

b)   coordination between foreign and security policy-making structures and processes, the primary role being played by the former in formulating a country's external policies;

c)   a clear political primacy in the ministry of defence, the military being ultimately accountable to the democratically-elected representatives of the public;

d)   substantive parliamentary oversight involving members of parliament trained in the techniques for and the responsibilities of holding the military authority accountable;

e)   the presence of expert professional staff in national parliaments to keep the members fully informed on key security issues and related data;

f)   the development of a cadre of security policy experts in the public domain, specialising in a range of security issues in order to generate public debate;

g)   statutory audit structures to prevent corruption, fraud and abuse of public resources by the military, which remain unknown to the public because of military confidentiality;

h)   transparency in the defence budget-making process in order to prevent the military's threat perceptions being driven by interest groups;

i)   training and education in the armed forces about the role of the military in democratic society, including respect for human and civil rights;

j)   a fair and effective military justice system that enforces established standards of conduct and discipline and allows complaint procedures;

k)   an open and informed national debate preceding major decisions on national security and military matters;

l)   the commitment of armed force outside national borders should require broad endorsement by the elected representatives of the population;

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[10] This list is an amended form of the points raised in Pal Singh, *Arms Procurement*.

m)   de-politicisation of the army's role in society but also minimum political interference in professional military matters.

3.   The International Parliamentary Dimension

3.1.   *International Organisations and their Parliamentary Dimension*

The debate on the parliamentary dimension of European integration is as old as the European institutions themselves. Ever since the creation of the Council of Europe in 1949, emanating from The Hague Conference of 1948 and endowed with a Consultative Assembly, problems of competence, membership and relations with other emerging parliamentary bodies have been on the agenda. Parliamentarians complained about the lack of attention paid by ministers to their recommendations. Governments hesitatingly agreed to extend the scope of parliamentary involvement. Three aspects have to be distinguished. The first particularly applies to the European Union where nations have transferred competencies to the EU and decision-making increasingly takes place with qualified majority voting. In those cases a clear 'democratic deficit' arises if control by the European Parliament (EP) does not replace the scrutiny by national parliaments. The second deals with unanimous decisions in the EU where ministers can be held responsible in their national parliaments but the EP has a role in the budget procedure. The third is the subject of this chapter: the parliamentary dimension of intergovernmental cooperation as a necessary element of consensus-building and multinational underpinning of debates in national parliaments[11]. Parliamentary control, in the proper sense of the word, rests with national parliaments, but these cannot function properly without adequate information and a multinational backdrop.

Europe is blessed with a plethora of international organisations with overlapping competencies and activities. If one were to start from scratch, the present picture would not be repeated. Nevertheless, all organisations have a role to play and perform some functions which are not carried out by others. In comparison with other continents, Europe might be over-organised, but Asia and Africa lack comprehensive regional organisations which facilitate dialogue, crisis prevention and, where

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[5] An earlier version of this chapter, covering only the parliamentary organisations mentioned, was used at a seminar in The Hague on May 2001 and later published in the *European Business Journal*, Vol. 14 , No. 1, 2002.

possible, common action. The players on the European scene, who are analysed below in their main functions and parliamentary dimension, admit the need for mutual reinforcement, but do not always practice what they preach. Interlocking but occasionally inter-blocking!

The United Nations Security Council (UNSC) has the primary responsibility for worldwide peace and security and a monopoly in authorising the use of force. The UN Charter in Art. 51 makes an exception for the inherent right of individual or collective self-defence against an armed attack until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken in exercising this right shall be immediately reported to the Security Council.

NATO and WEU started as collective defence organisations, but later acquired crisis management and peace support functions. The Organisation for Security and Cooperation in Europe (OSCE) focuses on principles among states and prevention of conflict, the monitoring of elections and the status of national minorities. It aims at promoting stability through the strengthening of good governance and civil society in a multicultural context. The Council of Europe plays a leading role in the legal protection of the individual through its European Treaty on Human Rights and Court of Human Rights in Strasbourg. The OSCE and Council of Europe differ in membership, as the latter does not include the US, Canada and the Central Asian republics of the former Soviet Union.

The European Union with its ambition of 'ever closer Union' possesses a unique set of instruments in its three 'pillars': the European community with the supranational characteristics of its communitarian method (initiative of the European Commission, co-decision and majority voting of the Council of Ministers and European Parliament, uniform application of the law by the Court of Justice in Luxembourg), the intergovernmental Common Foreign and Security Policy (CFSP) with its High Representative who is at the same time Secretary-General of the Council, and its equally intergovernmental third pillar of cooperation in the field of justice and home affairs. The combined use of these instruments is of particular importance in the process of enlargement with now thirteen candidates and the Stabilisation and Accession Agreements with others.

3.2.   The Council of Europe

The Statute of the Council of Europe was signed in London on 5 May 1949 by ten European states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom. Its preamble expressed the aim 'to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress'. Yet the only matter which was excluded from the scope of the Council was national defence. The creation of a two-tier structure with a Committee of Ministers and a Consultative Assembly (later becoming the Parliamentary Assembly) represented a new political concept - ensuring for the first time the participation of parliamentarians of an international organisation, but also an uneasy compromise between opposing political forces.

The Assembly was the driving force envisaged by the 'Europeans' at The Hague in 1948, the Committee being the check inserted by the anti-federalists. The two bodies pursued largely independent lives, the Committee of Ministers concentrating on technical matters, the Assembly conducting wide-ranging political debates. The chief source of information is the reports of the Committee of Ministers on its activities and on the action taken regarding the recommendations of the Assembly. The Committee, however, is under no obligation to give reasons for its decisions or to explain why it has not accepted a recommendation. As a result, the Assembly's Working Party in Parliamentary and Public Relations worked hard to persuade members of the Assembly to ask questions in their national parliaments. The Assembly succeeded in intensifying the dialogue with a ministerial Chairman-in-Office at each of the four part-sessions to present the report and answer questions.

The Assembly had no power to make laws, to devote money or to control governments. Yet, its 'parliamentary diplomacy' indirectly contributed to a corpus of 'European law' by initiating and helping to draft over 170 international conventions, starting as early as 1950 with the European Convention on Human Rights. It established the European Court of Human Rights, which any individual residing in one of the states party to the Convention can petition directly if he believes his rights have been violated at the national level. Thus the Council of Europe developed as a 'standard-setting' institution, membership being regarded as a first step towards participation in the processes of European integration

In October 1993, the Council of Europe's first Summit of Heads of State and Government was held in Vienna and solemnly proclaimed the organisation's pan-European vocation. It also laid down the basic conditions for membership:

> Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights. The people's representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership. An undertaking to sign the European Convention on Human Rights and accept the Convention's supervisory machinery in its entirety within a short period is also fundamental. We are resolved to ensure full compliance with the commitments accepted by all member States within the Council of Europe.

In the course of considering membership applications, the Assembly invented the concept of monitoring of commitments. Specific undertakings were spelled out with precise deadlines. A common requirement was ratification within one year of the convention on human rights. The scope of other undertakings varied, depending on the problems remaining to be solved after accession in consolidating democracy (separation of powers, electoral law, functioning of parliament, local authorities) securing the rule of law (legislative reform, independence of the judiciary, organisation of the prison system), the observance of human rights and protection of minorities.

In spite of the exclusion of defence from the competencies of the Council, the Assembly obtained an amendment of the Statute as early as 1951. After Sir Winston Churchill's advocacy of a European army a year earlier, the ministers recognised the right of the Assembly to discuss the political aspects of defence, though not having the competence to address recommendations on this matter. The Assembly did not hesitate to visit trouble spots such as Albania in 1997 and the North Caucasus in 2001 and again in 2002.

3.3.   The European Coal and Steel Community

The European Coal and Steel Community (ECSC), created on 18th April 1951 for a period of 50 years, had supranational characteristics but its Common Assembly had only limited powers. Its 'representatives of the peoples of the states' should preferably be nominated from the Consultative Assembly of the Council of Europe, but the numbers of seats allotted were not identical. Minister Schuman, the initiator of the ECSC, favoured increasing the Benelux representation in the ECSC. In the end Belgium and the Netherlands got ten seats each and Luxembourg four, while Germany, France and Italy had eighteen each. In the Council of Europe, Belgium and the Netherlands had six each and Luxembourg three, together less than one of the larger countries; in the ECSC they had more than a larger member.

On substance, the Common Assembly, which held its inaugural meeting in September 1952, had real power only through a vote of censure, which could be passed during the annual discussion of the High Authority's annual report. To force the resignation of the entire High Authority a two-thirds majority of the members present was needed, representing an absolute majority of all members. The President of the High Authority or his appointee had to be given a hearing upon his request and, in turn, the High Authority was obliged to reply to written or oral questions put by the Assembly. Although the Assembly maintained a watching brief, mainly through its committees, and thus had some influence over the High Authority, it had none at all over the Council of Ministers; the most the Assembly could do was through the indirect means of attacking the High Authority when that body had the Council's backing[12]. It usually pushed the High Authority to extend its activities. The Assembly also played a role in deciding the budget through the participation of its president in the Committee of Four Presidents (High Authority, Council, Assembly and Council).

3.4.   The Eden Plan

With the entry into force of the ECSC and the signature of the treaty of the European Defence Community in 1952, the United Kingdom contemplated links with both

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[6] See Dirk Spierenburg and Raymond Poidevin, *The History of the High Authority of the European Coal and Steel Community*, (London: Weidenfeld and Nicolson, 1994), p. 61.

organisations. The 'Eden Plan' proposed to remodel the Council of Europe to serve the ECSC, the EDC and any future organisation of its kind there might be. The Consultative Assembly supported this approach and suggested an agreement enabling non-ECSC representatives to take part in the work of the Community with the right to speak but not to vote. The High Authority was wary about losing its supranational characteristics in an intergovernmental setting and was not keen on admitting observers. A committee of legal experts conformed that the ECSC treaty would have to be revised before observers could be admitted with the right to speak. Instead the Monnet-Layton agreement of January 1953 provided for joint meetings of members of both assemblies to be held on a yearly basis for an exchange of views, without a vote, on the general report on ECSC activities. Members of the High Authority would be present and answer questions. They would also be prepared to appear before committees of the Consultative Assembly. A suggestion to have joint meetings of committees also came to nothing.

The treaty of the unsuccessful European Defence Community (EDC) continued on the same line as the Eden Plan in enlarging the Common Assembly of the ECSC to become the Assembly of the EDC. It would meet once a year for a session lasting not longer than one month to discuss the annual report of the EDC Commissariat. A motion of censure adopted by two-thirds of the members voting could force the Commissariat to resign. This Assembly was also tasked with studying the formation and tasks of a new assembly elected on a democratic basis as well as possible changes in the Treaty with regard to the other institutions, particularly in order 'to safeguard an appropriate representation of member states'. Ultimately the EDC should be able to constitute one of the elements of a federal or confederal structure based on the separation of powers and including 'a representative bicameral system'. Finally the Assembly should study the problems resulting from the existence of different organs of European cooperation in order to ensure coordination in the framework of the federal or confederal structure.

3.5.   The Western European Union (WEU)

The Brussels Treaty, signed on 17th March 1948 between Belgium, France, Luxembourg, the Netherlands and the United Kingdom was the first demonstration of intensified cooperation in Western Europe. In its preamble the parties resolved to:

reaffirm their faith in fundamental human rights …, to fortify and preserve the principles of democracy … to strengthen the economic, social and cultural ties… to cooperate loyally and to coordinate their efforts to create in Western Europe a firm basis for European economic recovery; to afford assistance to each other, in accordance with the Charter of the United Nations, in maintaining international peace and security and in resisting any policy of aggression… to conclude a treaty for collaboration in economic, social and cultural matters and for collective self-defence.

Over time, the economic and social matters were taken over by other institutions and defence became the focus. Article V read:

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

This article provided a unique automatic military assistance guarantee, unmatched in scope by any other treaty, including NATO. It was completed by a procedure for consultation in Article VIII sub 3:

At the request of any of the High Contracting parties the Council shall be immediately convened in order to permit them to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability.

After the failure of the European Defence Community the draft for a European Political Union equally fell. In 1954 the Brussels Treaty was modified to include Germany and Italy in a Western European Union. A new paragraph in the preamble stated the purpose 'to promote the unity and to encourage the progressive integration of Europe'. A new Article IX created the WEU Assembly:

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

The brevity of the text was caused by a difficult negotiation: most members did not want to give the Assembly significant powers. As a result the mandate seemed limited: consideration of the annual report, with emphasis on the control of armaments. The Assembly, however, made good use of the lack of further precision and drafted its own charter and rules of procedure. These stressed the 'parliamentary' dimension (going beyond the 'consultative' function of the Council of Europe) deriving from the application of the Brussels Treaty and extended its competence to any question relating to this treaty and to any question referred to it by the Council for an opinion. In addition the Assembly could address recommendations and opinions to the Council and would adopt a motion of disapproval, tabled by at least 10 representatives, by an absolute majority of its members. Such a motion has been introduced several times, but was approved only once: on 15th June 1967 when the 12th Annual Report was rejected by forty-six votes to nil with three abstentions.

The WEU Assembly developed into a fully-fledged parliamentary body with its independent secretariat in Paris and separate budget, two plenary sessions a year with addresses by ministers from the country holding the presidency as well as others and by the secretary-general; active committees paying visits to member countries, NATO members and trouble spots; political groups, written questions to the Council; extensive and informative reports on a variety of security issues resulting in recommendations. As a result the position of the WEU Assembly can be placed between the Council of Europe, (which lacks the same juxtaposition with the Council of Ministers), and the European Parliament, which has legislative and budgetary powers. Obviously it is not able to change the policies of the Council of Ministers except through the mobilisation of parliamentary opinion in member countries. In this respect, it suffered from the combination of membership with the Council of Europe, which focuses on different expertise of its representatives[13]. In spite of these limitations there were several instances in which the Council was influenced by Assembly recommendations:

–   the ministerial decision of 13th November 1989 concerning the setting up of the WEU institute for security studies recalled Assembly recommendation

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[7] For a detailed analysis see André Dumoulin, Eric Remacle, Erik Derycke, *l'Union de l'Europe Occidentale, Phénix de la défense européenne*, (Paris: Bruylant, 1998), pp. 52-54.

467. It also stated that the Assembly might, with the Council's approval, assign to the institute studies relating to the Assembly's own activities;

–   the ministerial communiqué of 23rd April 1990 recognised that, by virtue of its activities, the Parliamentary Assembly of WEU had an important role to play in opening up contacts with the countries of Central and Eastern Europe;

–   on 19th May 1993 ministers welcomed the increased contacts between the WEU Assembly and the parliaments of what were then called the Consultative Partners. Similarly, with the Kirchberg Declaration of 9th May 1994, the Assembly was invited (while recognising its autonomy) to further examine the present arrangements for the participation of parliamentarians from associate member countries (at that time Iceland, Norway and Turkey) and after NATO's enlargement in 1999 also the Czech Republic, Hungary and Poland).

3.6.1. NATO

In the course of 1948, East-West relations deteriorated. The communist take-over in Czechoslovakia and the Berlin blockade led the signatories of the Brussels Treaty (transformed into the Western European Union in 1954) to seek security guarantees and mutual commitments in a transatlantic framework. Denmark, Ireland, Italy, Norway and Portugal were invited to become participants in this process, which culminated in the signature of the Treaty of Washington on 4th April 1949 with Canada and the United States. Greece and Turkey joined in 1952, the Federal Republic of Germany in 1955 and Spain in 1982. The Czech Republic, Hungary and Poland became members in 1999.

In the preamble the parties to the treaty reaffirmed their faith in the purposes and principles of the Charter of the United Nations and their determination to:

safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and well-being in the North Atlantic area. They are resolved to unite their efforts for collective defence and for the preservation of peace and security.

Like its predecessor in Brussels, the Washington treaty was short, only fourteen articles long. Article 4 dealt with consultation 'whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened'. The commitment was embodied in Article 5, not as binding as in the

Brussels treaty but coming close to it. In 1949, the US Senate was not prepared to accept an obligation to render military assistance automatically and inserted an element of discretion. It reads in full:

> The parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all, and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the party or parties so attacked by taking forthwith, individually, and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
>
> Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Spurred on by the Korean War, the Allies decided to create a military headquarters, SHAPE, which became operational on 2nd April 1951 at Rocquencourt near Paris. For many years NATO's main concern was to build a credible defence against a possible massive surprise attack by the Soviet Union and the Warsaw Pact. In 1967, after France had left the integrated military system, the Alliance reflected on its future and adopted the Harmel report which defined the double tasks of defence and detente. At the same time a revised strategic concept - of flexible response - was adopted, replacing the strategy of massive retaliation.

The fall of the Berlin Wall was the beginning of a major transformation of the international security environment. The strategic concept was revised in 1991 and no longer talked about 'threats', but instead, of 'risks and responsibilities'. In view of what happened on 11th September 2001, it is interesting to note that the Declaration on peace and cooperation issued at NATO's summit meeting in Rome on 8th November 1991 had already pointed out 'the risks of a wider nature, including proliferation of weapons of mass destruction, disruption of the flow of vital resources and action of terrorism and sabotage, which can affect Alliance security interests'.

3.6.2. Drawing in Eastern Europe

NATO rapidly engaged in a process of cooperation and subsequently enlargement with the new democracies of Central and Eastern Europe. In June 1990 the foreign ministers extended to them 'the hand of friendship and cooperation' and issued an invitation to establish liaison arrangements at NATO headquarters. A month later the London 'Declaration on a Transformed North Atlantic Alliance' assured the Soviet Union that the withdrawal of their forces from Eastern Europe would lead NATO to field smaller and restructured forces and reduce its reliance on nuclear forces. In June 1991 in Copenhagen the NATO ministers issued a statement on partnership with the countries of Central and Eastern Europe, to be followed in November at the Summit in Rome by a proposal to start a North Atlantic Cooperation Council (NACC) at ministerial, ambassadorial and committee levels[14]. The next step came in January 1994 at the summit in Brussels which launched the Partnership for Peace, open not only to all NACC partner countries but also to other OSCE states able and willing to participate. A Framework Document was issued in which NATO undertook to consult with any active partner which perceived a direct threat to its territorial integrity, political independence or security. Each partner was committed to fulfilling the objectives of the programme as a whole which were specified as follows:

–   to facilitate transparency in national defence planning and budgeting processes;
–   to ensure democratic control of defence forces;
–   to maintain the capability and readiness to contribute to operations under the authority of the United Nations and/or the responsibility of the OSCE;
–   to develop cooperative military relations with NATO, for the purpose of joint planning, training and exercises, in order to strengthen the ability of PfP participants to undertake missions in the field of peacekeeping, search and rescue, humanitarian operations, and others as may subsequently be agreed;
–   to develop, over the longer term, forces that are better able to operate with those of the members of the North Atlantic Alliance.

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[14] In 1997 the NACC was superceded by the Euro – Atlantic Partnership Council (EAPC) to stress its links with the Partnership for Peace programme.

The Framework Document also stated that active participation in the Partnership for Peace would play an important role in the evolutionary process of including new members in NATO.

After signing the Framework Document, the next step is the submission of a Presentation Document by each partner, indicating the steps it will take to achieve the political goals of the Partnership, the military and other assets it intends to make available for Partnership purposes and the specific areas of cooperation it wishes to pursue jointly with NATO. Subsequently, an Individual Partnership Programme is agreed, covering a two-year period, and based on the principle of self-differentiation, i.e. the selection of areas of cooperation from a wide spectrum of possibilities contained in the Partnership Work Programme. The 2001-2002 PWP listed twenty-three areas, including as item 6 democratic controls of forces and defence structures.

At SHAPE in Mons, Belgium, the Partnership Coordination Cell carries out the military planning of the PWP, notably with respect to exercises in such fields as peacekeeping, humanitarian operations and search and rescue. Finally, the Partnership for Peace Planning and Review Process (PARP) is offered on an optional basis in order to facilitate combined operations. It resembles the defence planning cycle followed by the full members of NATO.

The process of admitting new members started in January 1994 when the NATO Summit reaffirmed that the Alliance was open to the membership of other European states which were in a position to further the principles of the Washington Treaty and to contribute to security in the North Atlantic area. The criteria and time-line for expansion were left vague. Active participation in the PfP was seen as a necessary - but in itself not sufficient - condition for joining NATO. By the end of 1994, twenty-three countries had joined the partnership and three PfP exercises had been held. At the ministerial level, in December 1994 the North Atlantic Council described enlargement as an 'evolutionary process, taking into account political and security developments in the whole of Europe' that would complement the parallel process of EU enlargement. A study was commissioned 'to determine how NATO will enlarge, the principles to guide this process, and the implications of membership'. Ministers agreed that enlargement would be decided on a case-by-case basis and that some nations might attain membership before others.

3.6.3. Criteria for Democratic Oversight

The discussion about criteria for democratic oversight was complex. Enlargement should be possible for the new democracies to the East and contribute to stability, but it should also strengthen the effectiveness of the Alliance in performing its core missions. An evaluation of the state of civil-military relations within the candidate-countries was an important issue from the outset. Among the first to analyse this aspect was Jeffrey Simon. In his study 'Central European Civil-Military Relations and NATO Expansion'[15], he posited four conditions as being necessary for effective civilian oversight of the military:

1. It is necessary either through the Constitution and/or Amendments to establish a clearly-defined division of authority between the president and government (prime minister and defence minister). The law must be clear for peacetime authority (e.g. command and control of the military, promotions of senior military officers, and appointment of civilian defence officials), and for a crisis (e.g., emergency powers), including the transition to war.

2. It is necessary that Parliament exert oversight of the military by exercising effective control of the defence budget; and also its role in deploying armed forces must be clear in emergency and war.

3. Government control of the military (General Staff and military commanders) must be exercised through its civilian defence ministry, to include effective peacetime oversight of the defence budget, intelligence, strategic planning, force structure and deployments, arms acquisitions and military promotions.

4. Military prestige must be restored in order for the armed forces to be an effective institution. Having come from the communist period when the military was often used as an instrument of external or internal oppression, society must perceive the military as being under effective national control. Also military training levels and equipment must be sufficient to protect the state.

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[15] Jeffrey Simon, 'Central European Civil-Military Relations and NATO Expansion', *McNair Papers*, No. 39, April 1995 (Institute for National Strategic Studies in the National Defence University, Washington D.C.), p.157. Simon emphasises civilian oversight, but the term democratic oversight would be better.

In the spring of 1995 Simon reached the sobering conclusion that most of the Visegrad countries would not currently qualify. Though Central Europe had already made enormous progress since the 1989 revolutions, clearly much work remained to be done. That sentiment also seemed to be prevalent in Western Europe and only the German minister of defence publicly advocated rapid enlargement.

3.6.4. Towards a Membership Action Plan

In September 1995 a study was adopted that described factors to be taken into account in the enlargement process. An important point made was that ethnic disputes or external territorial disputes, including irredentist claims, or internal jurisdictional disputes, must be settled by peaceful means in accordance with OSCE principles, before a state involved in them could become a member. The deciding voice, however, came from President Clinton who named three countries as suitable for entry during a campaign speech in Detroit in 1996. The Madrid Summit of 8th July 1997 invited the Czech Republic, Hungary and Poland to start accession talks and reaffirmed that NATO would remain open to new members. These countries acceded to NATO in March 1999 and participated in the Washington Summit of 23rd-25th April. To the disappointment of the other candidates no new invitations were issued.

Instead, an elaborated Membership Action Plan was adopted for countries wishing to join. It was not very different from the PfP documents but was more precise and gave further substance to the procedure of the '19 + 1' format of Council meetings with the individual candidates aiming at a 'focused and candid feedback mechanism on aspirant countries' programmes'. The Plan had chapters on political and economic issues, defence/military issues and their implementation, resources, security and legal issues. On the political and economic issues the aspirants would be expected:

a) to settle their international disputes by peaceful means;
b) to demonstrate commitment to the rule of law and human rights;
c) to settle ethnic disputes or external territorial disputes, including irredentist claims or internal jurisdictional disputes, by peaceful means in accordance with OSCE principles and pursue good neighbourly relations;
d) to establish appropriate democratic and civilian control of their armed forces;
e) to refrain from the threat or use of force in any manner inconsistent with the purposes of the UN;

f) to contribute to the development of peaceful and friendly international relations by strengthening their free institutions and by promoting stability and well-being;

g) to continue fully to support and be engaged in the Euro-Atlantic Partnership Council and the Partnership for Peace;

h) to show a commitment to promoting stability and well-being by economic liberty, social justice and environmental responsibility.

Moreover, aspirants would be expected upon accession:

a) to unite their efforts for collective defence and for the preservation of peace and security;

b) to maintain the effectiveness of the Alliance through the sharing of responsibilities, costs and benefits;

c) to commit themselves to good faith efforts to build consensus on all issues;

d) to undertake to participate fully in the Alliance consultation and decision-making process on political and security issues of concern to the Alliance;

e) to commit themselves to the continued openness of the Alliance in accordance with the Washington Treaty and the Madrid and Washington Summit Declarations.

3.6.5. The Washington Summit

The Washington Summit produced an extraordinarily long communiqué on the occasion of NATO's 50th anniversary and a new strategic concept. Like its predecessor of 1991, the latter was more political in character than military, defining NATO's tasks in the new environment and its relationship with other international organisations. It provided little guidance for military planning and emphasised the need for flexibility and mobility. Large-scale conventional aggression against the Alliance was highly unlikely, but the possibility existed of such a threat arising over the longer term. The security of the Alliance remained subject to a wide variety of military and non-military risks which were multi-directional and often difficult to predict (§20). The achievement of the Alliance's aims depended critically on the equitable sharing of the roles, risks and responsibilities, as well as the benefits, of common defence (§42). A coherent response to all possible contingencies was made possible by a set of practical arrangements: procedures for consultation; an integrated military structure; collective force planning; common funding; operational planning; multinational formations, headquarters and command arrangements; an integrated

air defence system; the stationing and deployment of forces outside home territory when required; arrangements for crisis management and reinforcement; common standards and procedures for equipment, training and logistics; joint and combined doctrines and exercises when appropriate; and infrastructure, armaments and logistics cooperation (§43).

Both the communiqué and the strategic concept stated the fundamental security tasks. In comparison with 1991 there were two changes: the core task of preserving the strategic balance within Europe was omitted and crisis management and partnership were added. The new formulation read as follows:

– Security: To provide one of the indispensable foundations for a stable Euro-Atlantic security environment, based on the growth of democratic institutions and commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any other through the threat or use of force.

– Consultation: To serve, as provided for in Article 4 of the Washington Treaty, as an essential transatlantic forum for Allied consultations on any issues that affect their vital interests, including possible developments posing risks for members' security, and for appropriate coordination of their efforts in fields of common concern.

– Deterrence and Defence: To deter and defend against any threat of aggression against any NATO member state as provided for in Articles 5 and 6 of the Washington Treaty.

And in order to enhance the security and stability of the Euro-Atlantic area:

– Crisis Management: To stand ready, case-by-case and by consensus, in conformity with Article 7 of the Washington Treaty, to contribute to effective conflict prevention and to engage actively in crisis management, including crisis response operations.

– Partnership: To promote wide-ranging partnership, cooperation and dialogue with other countries in the Euro-Atlantic area, with the aim of increasing transparency, mutual confidence and the capacity for joint action with the Alliance.

In fulfilling its purpose and fundamental security tasks, the Alliance will continue to respect the legitimate security interests of others and seek the peaceful resolution of disputes as set out in the Charter of the United Nations. The Alliance will promote peaceful and friendly international relations and support democratic institutions. The Alliance does not consider itself to be any country's adversary.[16]

3.6.6. The NATO Parliamentary Assembly

In 1955, the North Atlantic Assembly was created. Although it was not based on the Washington Treaty, it developed into a complete Assembly structure with committees, a secretary-general with a competent staff drafting reports and resolutions, to which the Secretary-General of NATO replies with substantive comments. The following description is taken from the report of the present Secretary-General, Simon Lunn, on the activities of the Assembly and the agenda for 2001:

The aims of the NATO PA can be defined as including the following:

- to foster dialogue among parliamentarians on major security issues;
- to facilitate parliamentary awareness and understanding of key security issues and Alliance policies;
- to provide NATO and its member governments with an indication of collective parliamentary opinion;
- to provide greater transparency of NATO policies, and thereby a degree of collective accountability;
- to strengthen the transatlantic relationship.

These have been long-standing goals of the Assembly. Since 1989, the following have been added:

- to assist the development of parliamentary democracy throughout the Euro-Atlantic area by integrating parliamentarians from non-member nations into the Assembly's work;
- to assist directly those parliaments actively seeking Alliance membership;

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[16] See http://www.nato.int/docu/pr/1999/p99-065e.htm

- to increase cooperation with countries that seek cooperation rather than membership, including those of the Caucasus and Mediterranean regions;
- to assist the development of parliamentary mechanisms and practices essential for the effective democratic control of armed forces.

In addition, the important aspect of direct contacts between parliamentarians from Europe and North America should be stressed. Moreover the NPA now has seventeen associate members and maintains contacts with Cyprus, Malta and ten countries of North Africa and the Middle East.

3.7.1. European Political Cooperation

European Political Cooperation (EPC) among the members of the EEC started in 1970 after their summit meeting in The Hague had cleared the way for British entry into the Community. Public debate grew and came to an early climax during the oil crisis of 1973. A common policy on the Middle East proved hard to formulate, but in the OSCE the EPC became a major player. Equally much attention was paid to voting in the UN. The London report on European Political Cooperation adopted on 19th October 1981, contained the following paragraph 11 formalising relations with the European Parliament:

> In accordance with the Luxembourg and Copenhagen reports, which underline the importance of associating the European Parliament with Political Cooperation, there are frequent contacts between European Parliament and the Presidency. These take the form of four annual colloquies with the Political Affairs Committee, answers to questions on Political Cooperation, the Annual Report on Political Cooperation, and the Presidency speeches at the beginning and end of its term of office, which now usually include Political Cooperation subjects.

> The contacts between the Council of Ministers and the European Parliament have been extended to include informal meetings between Ministers and the leaders of the different political groups represented in the Parliament; these informal meetings provide a further opportunity for informal exchanges on Political Cooperation.

Taking account of the need further to strengthen ties with the directly-elected Parliament, the Ten envisage the possibility of more frequent reference to resolutions adopted by the Parliament in the deliberations, communiqués and declarations of the Ten, and in Ministers' opening statements at colloquies with Political Affairs Committee of the Parliament.

The Ten note that after a meeting of the European Council the President of the European Council will make a statement to the Parliament. This statement will include Political Cooperation subjects discussed at the meeting.

3.7.2. Stuttgart Declaration

The Solemn Declaration on European Union adopted in Stuttgart on 19th June 1983 was the outcome of the Genscher-Colombo initiative to enlarge the scope of European Political Cooperation and to cover security issues as well. Mainly on account of opposition to a military dimension by Denmark, Greece and Ireland, the declaration only referred to the 'political and economic aspects of security' which henceforth would be dealt with. It also took a further step in improving relations with the European Parliament. It stated the following in paragraph 2.3:

The Parliament

2.3.1. The Assembly of the European Communities has an essential role to play in the development of the European Union.

2.3.2. The European Parliament debates all matters relating to European Union, including European Political Cooperation. In matters relating to the European Communities, it deliberates in accordance with the provisions and procedures laid down in the Treaties establishing the European Communities and in agreements supplementing them.

2.3.3. In addition to the consultation procedures provided for in the Treaties, the Council, its members and the Commission will, in keeping with their respective powers, respond to
- oral or written questions from Parliament;
- resolutions concerning matters of major importance and general concern, on which Parliament seeks their comments.

2.3.4. The Presidency will address the European Parliament at the beginning of its term of office and present its programme. It will report to the European Parliament at the end of its term on the progress achieved. The Presidency keeps the European Parliament regularly informed through the Political Affairs Committee of the Subjects of foreign policy examined in the context of European Political Cooperation.

Once a year the Presidency reports to the European Parliament in plenary session on progress in the field of Political Cooperation.

3.7.3. *Revitalisation of WEU*

Since the Stuttgart Declaration did not deal with the military dimension of European security, the WEU was relaunched with the Rome Declaration of 27th October 1984. Section II of the Declaration dealt with relations between Council and Assembly:

The Ministers supported the idea of greater contact between the Council and the Assembly. Recalling that, under Article IX of the treaty, the Assembly is expressly required to discuss the reports submitted to it by the Council of Ministers on matters concerning the security and defence of the member states, and considering that the practice adopted has enabled the Assembly to widen the topics of its discussions, the Ministers wish to see the Assembly playing an increasing role, particularly by contributing even more in associating public opinion in the member states with the policy statements of the Council, which expresses the political will of the individual governments. Accordingly, the Ministers submit the following proposals to the Assembly:

1. In order to improve the contacts between the Council and the Assembly, the Ministers believe there are a number of options, noteworthy among which are:

- A substantial improvement in the existing procedures for giving written replies to Assembly recommendations and questions. On this point, the Ministers consider that a leading role should be given to the presidency, making the best use of the services of the Secretariat-General.

- The development of informal contacts between government representatives and the representatives of the Assembly.

- If appropriate, a colloquium involving the presidency of the Council and the Committees of the Assembly.

- The improvement of the contacts that traditionally take place after the ministerial meeting of the Council, and more generally, the improvement of the procedures under which the Assembly is kept informed by the presidency, whose representatives could – between the Assembly sessions – keep the various committees up to date with the work of the Council and even take part in their discussions.

- The possibility that the Assembly might make use of contributions from the technical institutions of WEU.

2. Convinced that greater cooperation between the Council and the Assembly is a key factor in the enhanced utilisation of WEU, the Ministers underscored the importance they attach to the recommendations and the work of the Assembly.

3. Without wishing to pre-empt the decision of the members of the Assembly, the Ministers also stress the value, in their eyes, of developing a dialogue between the Assembly and other parliaments or parliamentary institutions.

4. The Ministers also stated that the member states were always ready to inform their national delegations of their governments' attitude to questions dealt with in Assembly reports and were prepared to offer information to their rapporteurs.

3.8.1. The Organisation of Security and Cooperation in Europe (OSCE)

The OSCE (formerly the Conference of Security and Cooperation in Europe (CSCE) but referred to as the OSCE after 1994) started a political consultative process incorporating all European states and the US and Canada. It is based upon the Helsinki Final Act of 1975 which took three years to negotiate and formulated important principles for the conduct among states. In addition, it developed

confidence-building measures, especially in the politico-military field, in the midst of the Cold War and contributed to respect for human rights and fundamental freedoms. Initiated by the Soviet Union as an attempt to freeze the status quo in Europe, including the division of Germany, the provisions of the Final Act became a support for all those who wanted change and a return to democratic principles. The communist countries could no longer object to a discussion of the treatment of their own citizens on the grounds that this constituted interference in their internal affairs. Equally important was the admission by Moscow that all peoples had the right freely to decide their political status, both internally and externally.

On 21st November 1990 the CSCE summit adopted the Charter of Paris for a new Europe, establishing the Council of Foreign Ministers as the central body for regular political consultations, a preparatory Committee of Senior Officials (in 1994 renamed Senior Council), a Conflict Prevention Centre in Vienna and the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. In June 1991 the first meeting of the Council took place in Berlin and agreed a mechanism for consultation and cooperation with regard to emergency situations in the CSCE area, which was used in respect to former Yugoslavia and Nagorno-Karabakh[17]. Subsequently, all independent states emerging from the former Soviet Union were invited to join. The Helsinki Follow-up Meeting of July 1992 strengthened the CSCE institutions by establishing a High Commissioner on National Minorities (first Max van der Stoel from the Netherlands and currently Rolf Ekeus from Sweden) and developing a structure for early warning, conflict prevention and crisis management including fact-finding and rapporteur missions. A few months later, in December 1992 in Stockholm, the Council of Foreign Ministers adopted a Convention on Conciliation and Arbitration. In 1994 the Budapest Summit turned the CSCE from a conference into an organisation, to be known as OSCE. A Permanent Council was established, meeting in Vienna, as the regular body for political consultation and decision-making. Finally, in Istanbul in 1999 a Preparatory Committee and an Operations Centre were created to plan and deploy OSCE field operations.

The OSCE continued its important work on arms control and Confidence and Security Building Measures. At the opening of the CSCE Summit in Paris in

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[17] The CSCE came close to peacekeeping in Nagorno-Karabakh. At the Budapest summit of 1994, member states declared their political will to provide a multinational peacekeeping force following agreement among the parties for the cessation of armed conflict.

November 1990, twenty-two members of NATO and the (then) Warsaw Pact signed the Conventional Forces in Europe Treaty (CFE) limiting conventional armaments from the Atlantic Ocean to the Urals. Two years later in Helsinki CFE-1A was signed, which introduced limitations on personnel and additional stabilising measures. At the same time it was decided to establish, the Forum for Security Cooperation in Vienna under whose auspices a security dialogue would be promoted and negotiations on arms control and Conference on Security Building Measures (CSBM) now take place. In 1999 in Istanbul the Adapted CFE Treaty was concluded, which now has thirty signatories. In the meantime in 1994 the Budapest summit had agreed a Code of Conduct on Politico-Military Aspects of Security.

3.8.2. Code of Conduct

The OSCE Code of Conduct deserves more attention than it usually gets, because it embodies the progress made since the Final Act of Helsinki. In 1975 a battle of wits was raging between two incompatible systems and there was little factual cooperation. In 1994 the OSCE made good its objective of encouraging 'norms of responsible and cooperative behaviour in the field of security'. It confirmed the comprehensive concept of security, relating the maintenance of peace to the respect for human rights and fundamental freedoms. It also linked economic and environmental cooperation with peaceful inter-state relations (§2). The signatories expressed their conviction that security is indivisible and that the security of each of them is inseparably linked with the security of all others; they would not strengthen their security at the expense of the security of other states (§3). They would consult promptly with a state seeking assistance in individual or collective self-defence (§5), but at the same time recognised the sovereign right of every participating state to determine its own security interest (§10) and to belong or not to belong to international organisations or to maintain neutrality (§11). Each state would maintain only such military capabilities as were commensurate with its security needs (§12) and determine them on the basis of national democratic procedures (§13). Stationing of armed forces on the territory of another participating state would be allowed in accordance with their freely-negotiated agreement as well as in accordance with international law (§14).

The Code of Conduct devoted an entire section (VII, §§20-33) to the democratic control of military, paramilitary and security forces, deeming it 'an indispensable element of stability and security'. States would clearly define the roles and missions

of such forces (§21), provide for legislative approval of defence expenditures (§22), ensure that its armed forces were politically neutral (§23), guard against accidental or unauthorised use of military means (§24), ensure that recruitment was consistent with human rights and fundamental freedoms(§27), reflect in their laws the rights and duties of aimed forces personnel (§28) make widely available the international humanitarian law of war (§29) and instruct its personnel that they were individually accountable for their actions (§30) and that the responsibility of superiors did not exempt subordinates from any of their individual responsibilities (§31).

The next section, VIII, stated the obligation to command, train and equip armed forces in ways consistent with the Conventions of The Hague and Geneva and the 1980 Convention in the Use of Certain Conventional Weapons (§34), to ensure that defence policy and doctrine were consistent with international law (§35) and that internal security missions were assigned in conformity with constitutional procedures (§36). Participating states would not use their armed forces to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.

The Code of Conduct came into force on 1st January 1995 as a politically binding document. Each state would provide appropriate clarification regarding its implementation. In was noted in the section on terrorism in the previous chapter that this 1994 OSCE document already contained a commitment not to support terrorist acts in any way and to take appropriate measures to prevent and combat terrorism in all its forms.

The OSCE operates by consensus, but mitigated the strict application of this by agreeing during the Yugoslav crisis that it could suspend a member country in cases of flagrant violations of human rights. This came to be known as 'consensus minus one'. The potentially paralysing effects of consensus have been circumvented further by intelligent use of the authority of the Chairman-in-Office. Currently it operates a large number of field missions, including in the Former Republic of Yugoslavia. Following the Dayton peace agreement the OSCE organised the 1996 general elections in Bosnia and Herzegovina and the municipal elections a year later. The same happened in Albania after the personal representative of the Chairman-in-Office had assisted in finding a political solution to the internal crisis. In 1998 the

OSCE mounted a Kosovo Verification Mission until it was forced to withdraw from the region in March 1999.

3.8.3. The Parliamentary Assembly of OSCE

After the end of the Cold War the CSCE was endowed with a parliamentary dimension. Previously the Inter-Parliamentary Union (IPU) had organised inter-parliamentary conferences on cooperation and European security. The NATO summit of July 1990 in London envisaged the creation of an assembly to be based on the existing Parliamentary Assembly of the Council of Europe. The US Congress objected because it had not been consulted about this objective by the Bush administration. As a result, the Paris Charter of 1990 did not go further than advocating a parliamentary assembly of the CSCE bringing together members of parliament of all participating states. In April 1991 a meeting of parliamentarians in Madrid adopted a final resolution envisaging a distinct entity next to the existing assemblies. Later the site of its secretariat was fixed at Copenhagen.

The OSCE Assembly, now bringing together 317 parliamentarians from fifty-five states, has three General Committees, which correspond to the three 'baskets' of the Helsinki Final Act: on Political Affairs and Security, on Economic Affairs, Science, Technology and Environment and on Democracy, Human Rights and Humanitarian Questions. Its own rules of procedure differ from the intergovernmental organisation in composition and voting procedure: each country is given a number of seats according to population and resolutions are adopted by majority voting. Only the Standing Committee of Heads of Delegation, which carries out the work between plenary sessions, decides according to the principle of consensus minus one.

Since 1993 the Chairman-in-Office has reported to the Assembly's annual session and answered direct questions from the floor. The Assembly has consistently voiced criticism that the OSCE decision-making process lacks transparency, openness and accountability. As early as its second annual session in 1993 the Assembly advocated abandoning the consensus principle, for it would allow a single state to paralyse the organisation and to prevent collective action in times of crisis. A year later the Assembly proposed a procedure of 'approximate consensus' based on ninety per cent of both membership and financial contributions. And in 1999 it called for the option of decision-making without the approval of the parties to a conflict. The Assembly also argued in favour of opening the meetings of the Forum for Security

Cooperation and of the Permanent Council to the public and publishing a detailed record of their deliberations.

The ministerial meeting in Bucharest in December 2001 demonstrated the differences of approach between the EU, the USA and the Russian Federation. For many years Russia was the main advocate for turning the OSCE into a security council for Europe. The West opposed this out of fear of subjecting its own policies to the paralysis of consensus. The US pressed for the human dimension, especially in the countries of the former Soviet Union and in the Balkans, but was averse to building up a large bureaucracy at the headquarters in Vienna. Ever since the beginning of the Helsinki process in 1972, the EU has been a driving force behind the organisation and, over the years, managed to strengthen its operational effectiveness. In Bucharest the role patterns changed. The US was less activist, Russia resented that in practice the OSCE focused primarily on Eastern Europe, and the countries which were not engaged in the enlargement processes of EU and NATO felt that the organisations did not do enough for them. As a result, the discussion about further reform lost momentum, particularly because Moscow wanted to limit the role of the Chairman-in-Office and the Secretary-General.

In 2002 the OSCE Chairman-in-Office is Portugal, preceded by Romania and to be followed in 2003 by the Netherlands.

3.9.1. The European Union and the European Parliament

The Treaty on European Union concluded at Maastricht in December 1991 defined the three-pillar structure of European Community + Economic and Monetary Union; the Common Foreign and Security Policy (CFSP), replacing the former European Political Cooperation; and cooperation in the fields of justice and home affairs. They are capped like the tympanum in a Roman temple by the European Council of heads of state and government, with a problem-solving role but an unclear and opaque relationship with the pillars. The security component did not include defence and military cooperation and consequently lacked transparency. Instead, the WEU would be developed 'as the defence component of the EU and as a means to strengthen the European pillar of the Atlantic Alliance'. Other key phrases in the declarations issued as annexes to the Maastricht treaty stated:

The CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence … The Union requests the WEU, which is an integral part of the development of the Union to elaborate and implement decisions and actions of the Union which have defence implications.

In practice, this provision was never implemented, as the EU rarely asked the WEU to do anything, and, when it did, the actions had little to do with defence but dealt with operations outside the EU such as embargo enforcement in the Gulf, the Adriatic and on the Danube and police activities in Mostar and Albania.

In 1997 in Amsterdam the post of High Representative for the CFSP was created and twinned with that of Secretary-General of the Council of Ministers. This meant an uneasy triangular relationship between the High Representative (who had no budget), the six-monthly Presidency (which he had to serve as Secretary-General) and the European Commissioner for external relations (who could use the EU budget, but only for non-military purposes, subject to the approval of the European Parliament).

The personal qualities of High Representative Solana and Commissioner Patten have prevented the triangle from getting unstuck, but the arrangement is far from ideal as it does not allow the EU to use all its instruments in a coherent manner. The basic problem is that some member countries, including France and the United Kingdom, do not wish to grant the Commission and the European Parliament any competence in military matters, and want to maintain the intergovernmental character of the Second Pillar. Apart from the conceptual point about sovereignty, these countries find it difficult to give the European Parliament powers which are not exercised by their own national governments. In this respect the so-called democratic deficit lies as much in national capitals as in the European Union.

The Maastricht Treaty contained Article J.11 on the role of the European Parliament in the CFSP. In the Treaty of Amsterdam this became Article 21:

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by

the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

The European Parliament gave an extensive interpretation to these provisions and initiated a great number of reports and recommendations. The High Representative for the CFSP appeared frequently before the Commission for external affairs of the European Parliament.

The Maastricht Declaration of 10th December 1991, in its paragraph 3, included an encouragement of closer cooperation between the Parliamentary Assembly of the WEU and the European Parliament. Subsequently, in an inter-institutional agreement between the EU Council and the European Parliament, a lump sum was provided in the EU budget to cover CFSP expenditure.

The Maastricht Treaty also included a declaration on the role of national parliaments in the EU: governments were called upon to ensure 'that national parliaments receive Commission proposals for legislation in good time for information or possible examination'. This declaration constituted a discretionary provision without any legal binding effect. However, it became a source for political debate and conflict between governments and parliaments, between national parliaments and the European Parliament on the effectiveness of parliamentary accountability in EU affairs.

During the IGC leading up to the Amsterdam Treaty several proposals were made under the headings of 'democratisation' and 'parliamentarisation'. The first option – based on the assumption that the European Parliament performs as the organ of general feedback of EU citizens in European governance – focused on its policy-making, institution-building and interaction functions.

A second strategy for democratisation of EC/EU decision-making procedures was discussed with regard to the roles of the national parliaments. During the IGC negotiations, the national delegations of France, the United Kingdom and Denmark tabled concrete proposals arguing for a strengthened role for national parliaments in the EC/EU decisionmaking process. Proposals varied between:

1. those who opted for the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU,
2. the introduction of a provision within the EC/EU Treaty framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments, and
3. the formal upgrading of existing multilateral scrutiny regimes bringing together members from both the European Parliament and the national parliaments.

The negotiations on these proposals led to the insertion of the 'Protocol on the Role of National Parliaments in the European Union' (PNP) into the Amsterdam Treaty. It addressed both the problems of scope and timing of unilateral parliamentary scrutiny and the issue of locking inter-parliamentary cooperation into the inter-institutional framework of the EU. Following the proposal made by the Dublin Conference of Community and European Affairs Committees (COSAC) meeting of 16th October 1996, the PNP stated firstly that:

> national parliaments shall receive all Commission consultation documents such as green and white papers or communications. These documents shall promptly be forwarded to national parliaments.

The Protocol however, left the question open as to whether the governments of the Member States, the European Commission or any other European institution would provide the parliaments with these documents. Instead, the PNP simply stipulated that each Member State might ensure that its own parliament received the proposals 'as appropriate'. Thus it remains unclear whether the governments are obliged to send all legislative proposals to their parliaments or the PNP implicitly delegates these tasks to another body, institution or network.

Secondly, the PNP implicitly excluded the following types of documents from the general provision for the transmission of legislative proposals to national parliaments:

1. All documents falling under the CFSP pillar and all documents concerning the entry into closer cooperation,
2. All documents prepared by Member States for the European Council, and
3. All documents falling under the procedure of the 'Protocol on integration of the Schengen acquis into the framework of the European Union'. However, once

the Schengen acquis is integrated into the EC or EU pillar, the appropriate legislative and scrutiny procedures for both the EP and the national parliaments will apply.

The PNP also includes a commitment of timing addressed to the Commission and the Council. Firstly, the Commission shall ensure that the legislative proposal is 'made available in good time'. Secondly, a six-week period between issuing a legislative proposal and its discussion or adoption by the Council has to elapse. These two provisions on timing allow governments to inform their parliaments of the proposal and leave parliaments time for discussion. However, as has been said, the protocol does not impel governments to really use the time provided by the Community institutions for informing their parliaments. Thus, it remains up to the parliaments and their governments to negotiate on the content and the procedures to be applied for the implementation of the PNP.

The Nice Treaty added little to the competence of the European Parliament. In the second pillar, the EP will merely be informed about cases of closer cooperation among members. The European Security and Defence Policy (ESDP) will henceforth be part of the CFSP, but will remain excluded from forms of closer cooperation. In the third pillar the EP will be consulted. In Article 7 the EP obtained the right to make a reasoned proposal that there is a clear risk of a serious breach by a member state of the fundamental principles contained in Article 6.

In Article 300 (6) the EP was given the right to request an opinion from the Court of Justice as to whether an international agreement was compatible with the treaty. In Declaration 3 of Article 10 the possibility is mentioned of the conclusion of institutional agreements. Finally, the agenda for the new IGC of 2004 includes the role of national parliaments in the European architecture. Today their role is to make ministers accountable for their conduct in European affairs, to ratify fundamental amendments to the treaties, to approve legal acts in the EU framework and the transposition of Community legislation into their national legal framework.

3.9.2. *Which Way Ahead?*

From the preceding description of the various forms of parliamentary oversight, its many gradations have become clear. It varies from simple *ex-post facto* information rules to mandatory procedures. Its essential characteristic is the juxtaposition of a parliamentary body and a ministerial and/or executive organ. The relationship between the two varies from co-decision and budgetary control to advisory functions such as resolutions, recommendations, opinions and reports. If these advisory functions do not result in an obligation of the other side to respond, it seems difficult to regard them as parliamentary oversight or scrutiny. In that case they will only have some significance in providing information to and from parliamentarians, which might be of importance to them for their national debates.

The reports of the Consultative Assembly of the Council of Europe undoubtedly are of a high quality and contribute to some general consensus-building in Europe. Nevertheless, their impact is small because the Committee of Ministers does not define a precise policy, which could provide a common basis for a reply to the reports and their recommendations. An even worse situation presents itself in the Inter-Parliamentary Union where resolutions are not addressed to anybody in particular. In the COSAC, the twice-yearly meetings of chairmen and a few members of national parliamentary committees on European affairs, the other extreme is visible: ministers of the country holding the Presidency provide information on items selected by them and answer questions, but there is little possibility for the parliamentarians to develop common or even majority positions. There is no agreed method of making up representative delegations, which would be essential for arriving at democratic decisions.

The number of procedures involving the European Parliament has been reduced by the Treaty of Amsterdam and its right of co-decision was considerably extended. Other procedures include information, consultation, cooperation, assent and the budget procedure. In discussing the activities in the second pillar it should be remembered that they include little legislation and focus on the machinery for and action in crisis management.

The present problem with parliamentary oversight of the second pillar of the EU seems to be the result of a number of developments:

1. Several governments do not wish to give the European Parliament more say in CFSP matters than is foreseen in Article 21 of the TEU and question the need

to extend those provisions to the emerging ESDP. Fortunately, High Representative Solana has been prepared to address committees of the EP frequently, without an obligation to do so.

2. Recently it has been suggested that a Senate should be created to represent the member states in addition to the directly-elected European Parliament. Objections to this suggestion include the arguments that the Council of Ministers represents the national interests in the communitarian process, that the decision-making process in the 'first pillar' would become more complicated and that a double mandate would become an unbearable workload (and without a double mandate it would not provide the desired link with national parliaments). The new body would provide a multinational input into national debates rather than national inputs into areas where the European Parliament has its own task and legitimacy.

3. The WEU has not been transferred *in toto* to the European Union and therefore its treaty remains valid. Its automatic military assistance obligation of Article V WEU continues to bind its members, although since 1954 it has never resulted in an organisational form of collective defence; that task was given to NATO. With the continued validity of the WEU Treaty, its Assembly will demand annual reports from the WEU Council. As this Council will probably not meet more than once every six months and has little business to conduct, those reports will not cover the topical issues of European security and defence.

4. Common actions in the field of ESDP will require funding beyond nations financing their own force contributions. These funds can only come from the EU budget, which requires the consent of the European Parliament. As a minimum the inter-institutional agreement providing a total sum for CFSP activities would have to be extended to cover some military expenditure. This is likely to militate in favour of extending the scope of Art. 21 TEU to the ESDP. The European Parliament already has a role in the funding of civilian crisis management.

5. Both the European Parliament and WEU Assembly formulate their resolutions and recommendations on the basis of extensive reports debated both in committee and in plenary sessions. These documents are essential tools in a process of information, transparency, consensus-building and legitimacy. Without this process both CFSP and ESDP would lack an international

parliamentary dimension, which has become the backdrop against which national parliaments conduct the scrutiny of their own governments. Without it, popular support for EU operations would inevitably shrink.

6. The WEU Assembly adopted a policy of inclusiveness of all members of the EU, its candidates and all European members of NATO. It operates with twenty-eight countries and provides a link with other countries involved in European security. In addition it has made innovative arrangements with other countries from the Mediterranean and Eastern Europe, including Russia and Ukraine. Similar arrangements for associating non-members have been developed by the NATO Assembly. Both are seen as important instruments for furthering stability and democracy throughout Europe and for preparing candidates for membership. These should not be lost with the transfer of WEU functions to the EU.

7. Conceptually there is no reason why a directly-elected European Parliament could not cover the intergovernmental aspects of European integration as well. As ministers are most effectively scrutinised in national parliaments on their acts in intergovernmental cooperation, and as national parliaments will require a say in decisions to despatch personnel on military operations, leaving the international debate entirely with the European Parliament would not resolve the problem of informing national parliamentarians. Nor would it provide an opportunity for building consensus among them. This would be an argument for a mixed body composed of both national parliamentarians and members of the European Parliament in a manner representative of the European citizens.

8. The way national parliaments deal with foreign and defence policy varies greatly among member states. National debate is not merely a matter of adequate information being provided. It also depends on the willingness of parliamentarians and governments to engage in in-depth discussion on these issues.

9. In addition to parliamentary debates, much more will be required to enhance public awareness of the new realities of foreign, security and defence policies, for example through open fora, symposia and hearings. This also raises the question of openness of the proceedings in the Council: effective scrutiny is not

possible without minutes of the meetings, including as a minimum the way members voted on the issues discussed.

3.9.3. Options for Parliamentary Oversight of the Second Pillar of the EU

In May 2001 the Netherlands presidency of the WEU organised a seminar to discuss the options available for the parliamentary dimension of the Second Pillar. An introductory paper by the present author listed them as follows:

1. Full competence for the European Parliament in the second as well as in the first pillar of the EU with reports, resolutions, budgetary power and written and oral questions to the Presidency and the High Representative. A lesser variant would be to bring the ESDP formally under Article 21.

2. Creation of a mixed Assembly, with the fifteen EU states as full members but with twenty-eight countries represented and including both national parliamentarians and a sufficient number of members of the European Parliament to allow representation of the political groups and of the committees dealing with all CFSP and/or ESDP matters.

3. Continuation of the present practice of the European Parliament under Article 21 with the ESDP left entirely to the WEU Assembly in its present form, possibly with some division of labour to avoid duplication. The status of the fifteen EU states would have to be synchronised.

4. Meetings of national delegations to be informed by the country holding the Presidency (the COSAC model but consisting of members of standing committees for defence and foreign affairs).

5. No multinational oversight at all.

The Hague seminar provided support for the second option but several problems remained. WEU parliamentarians stressed their mandate from the modified Brussels Treaty but failed to convince their colleagues of its concrete significance, as WEU was being emptied of its functions. Members of the European Parliament opposed the creation of a new body and tended to be satisfied with a COSAC-type model of chairmen of defence committees in national parliaments; they apparently feared an institutional arrangement which, although presented as temporary until the

conclusion of the 2004 intergovernmental conference, might become permanent, thereby preventing the development of the powers of the European Parliament in the second and third pillars. The immediate effect, however, was a step back in the security sector, where the transfer of the WEU functions to the EU was not matched by a parliamentary dimension and the link with the candidate countries was lost. The process of 'security through participation', developed in the WEU, suffered a setback.

The Belgian presidency did its utmost to salvage a positive outcome. A parliamentary conference was organised in July and again in November 2001. A preliminary draft declaration was circulated which recommended that:

> for an interim period pending the institutional changes in the EU that will result from the 2004 IGC there should be a European collective, that is to say trans-national, parliamentary dimension and system of supervision that will enable national parliamentarians to form a common view on the needs of the European Security and Defence Policy, in association with the European Parliament, which has an obvious and central role to play in the development of the EU.

Accordingly, an *ad hoc* security and defence assembly should be set up within the European Union comprising members of the European Parliament's committees for Foreign Affairs, Human Rights, and Common Security on Defence Policy and national parliamentarians from EU countries. The national parliamentarians sitting in the new Assembly would preferably also be appointed to the WEU Assembly which would continue functioning. In addition, a pan-European forum should be created, which might either be the WEU Assembly or formed by associating the non-EU countries concerned directly with the new assembly.

The members of the European Parliament referred to a resolution of 15th June 2000 proposing in the context of CFSP and ESDP the regular holding of a meeting bringing together representatives of the competent committees of national parliaments and the European Parliament with a view to examining the development of the two policies, jointly with the Council presidency, the High Representative for the CFSP and the Commissioner responsible for external relations. It would be desirable, subject to certain conditions, to involve the parliaments of the applicant countries and those of non-EU countries that are members of NATO. The problems with this formulation were that meetings could not be a substitute for normal

parliamentary activities and that the participants were not representatives for their Assemblies. In most parliaments the chairmen of committees have no mandate to represent them abroad. If the meetings are to be more substantial than mere information exchanges, the membership should be more representative. On the other side of the argument, the WEU Assembly should clarify what its remaining functions could still be. In any case, it seemed superfluous to have committees in both the WEU and the *ad hoc* Assemblies.

Before the November meeting the Belgian rapporteur Armand De Decker, president of the Senate, changed his proposal and suggested a parliamentary conference on the ESDP to be held twice a year at the invitation of the parliament of the country holding the EU presidency and of the European Parliament and involving six members per country including the chairmen of the committees of foreign affairs and defence. The European Parliament would have one-third of the total membership and the WEU Assembly could send six members. The Conference would examine reports jointly drawn up by co-rapporteurs from national parliaments and the EP and adopt recommendations and opinions. The EU Presidency, the High Representative for the CFSP and possibly the European Commissioner responsible for External Relations would be asked to present reports.

On November 7th, the second day of the conference, Mr De Decker again changed his proposal but without success. He now envisaged a parliamentary conference at three levels:

1. a broad session including, next to the EU level, representatives from the EU candidate countries, the non-EU European members of NATO, the WEU and NATO Parliamentary Assembly;
2. the EU level involving up to five members per country, the European Parliament being entitled to one-third of the number of national parliamentarians;
3. a Committee of Chairmen of the Conference, consisting of the chairmen of the foreign affairs and defence committees, for approving the agenda and work programme as proposed jointly by the parliament of the country holding the EU presidency and the European Parliament.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy of the European Parliament elaborated an opinion recommending a formula very similar to the November 7th proposal by Mr De Decker and was in favour of

convening a conference of this type as early as the first half of 2002. In the meantime the Spanish EU presidency has organised meetings of chairpersons of the parliamentary committees of the EU member states in the areas of defence, foreign affairs and development assistance respectively.

There the matter rests for the time being. The problem with the Belgian formula and the Spanish practice is their insufficiently representative nature. Chairmen of committees usually have no mandate to speak on behalf of their members. Equal numbers of delegates per country pose no difficulty when the purpose of the meeting is only the provision of information. When reports are discussed and resolutions voted on, an Assembly needs a more representative composition and the possibility to form political groups. Otherwise the main function of consensus-building at international level cannot materialise.

The same considerations played a role in the third pillar of justice and home affairs. How could parliamentary oversight be organised, especially with regard to Europol? Again seminars were held in The Hague and Brussels during 2001, which came to the conclusion that the reinforcement of police and intelligence cooperation in the European Union following the tragic events of September 11th as well as cooperation over arrest warrants, prosecution and punishment required a system of control by national parliaments and/or the European Parliament. No formal resolution was adopted by these 'Parlopol' meetings, as the representatives could not yet bind their parliaments, but stress was laid on the timeliness of these measures as the Europol Convention was coming up for review. The incoming presidencies of the EU were asked to call further meetings.

The European Convention, consisting of government representative members of national parliaments and of the European Parliament, was instituted by the European Council at Laeken to deliberate on the future of the Union and met for the first time in February 2002. The members have been designated by their governments and parliaments, but function in a personal capacity. Clearly, their report will only have an impact if it shows a reasonable degree of consensus. It should be ready before the summer of 2003, well before the next intergovernmental conference. This will be convened in 2004. The parliamentary dimension is on the agenda, as well as the strengthening of the CFSP, but for the next two years no governmental decisions are to be expected. A positive aspect lies in the presence of the thirteen candidate countries (including Turkey), who elected a representative to the Bureau of the

Convention. In fact their participation is most valuable because it induces the candidate members to express their views on the future of the European Union and go beyond the ongoing negotiations for entry.

In the meantime, relations between the European Parliament and the WEU Assembly remain strained. Relations between the EP and the NATO Parliamentary Assembly are much better, with a delegation of MEP's attending the plenary and committee sessions twice a year. Paradoxically, the transatlantic forum thereby gains in significance even for the security debate among Europeans. This gain might be further extended if the increased role of Russia in NATO is also reflected at the parliamentary level. However, the NPA will not be able to move to real parliamentary control. Most, if not all, members prefer to maintain NATO as an intergovernmental body. In practice US leadership is pre-eminent.

The European Union is different. It is engaged in a process of ever closer Union, with a communication method of the right of initiative in the Commission and an expanding area of majority voting. As powers are being transferred from national capitals to Brussels, European parliamentary co-decision becomes necessary in order to avoid gaps in scrutiny. Inasmuch as foreign, security and defence issues become the subject of majority decisions parliamentary control can only be exercised at a European level.

4. Final Remarks

The first chapter reached some conclusions on the proper role of the military in a democratic society. It also described the changing European security environment and the need for a comprehensive security policy in which the modern soldier has many tasks to perform. The emphasis on peace support needs a 'guardian soldier' who functions internationally very much like the police function nationally: he is at the scene of instability, deters by his presence, but, when necessary, is able to apply force. In addition, he has to do so in multinational formations which underline solidarity of the international community, reduce the risks involved for participating countries and provide security through cooperation.

By the end of 2002 both NATO and EU will take decisions on enlargement. So far the two processes have moved on separate tracks but both seem to aim for a 'big bang' which will determine the shape of the Euro-Atlantic security zone for several

decades. While enhancing stability within this area, enlargement obviously creates new problems in relations with those countries which are not - or not yet - eligible for membership. Here the maxim should be applied of doing more with everybody, although not necessarily the same thing. NATO should continue the method of the Membership Action Plan, now entering its fourth year, and enhance it where possible. The EU will have to draw in more closely the remaining countries of former Yugoslavia and Albania and develop a strategy for Moldova, Russia and Ukraine, as well as for North Africa. The notion of concentric circles with different forms of cooperation might appear Brussels-centric, but remains essential for moving forward.

Obviously the processes of enlargement of NATO and EU will have an impact on the other organisations. Ideally, the parliamentary assemblies of the OSCE and the Council of Europe should merge, with the necessary adjustment to enable North American participation. Every body should continually examine its own output and relevance. All this requires a great deal from national parliamentarians, who have their main duties at home. Yet every inch of consensus reached among them is progress in the building of stability and security throughout our continent.

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