



Geneva Centre for the Democratic Control of  
Armed Forces (DCAF)

Policy Paper - №27

**Strengthening Parliamentary “War Powers” in Europe:  
Lessons from 25 National Parliaments**

*Sandra Dieterich, Hartwig Hummel and Stefan Marschall*



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ISBN 978-92-9222-080-8

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# Strengthening Parliamentary “War Powers” in Europe: Lessons from 25 National Parliaments

*Sandra Dieterich, Hartwig Hummel and Stefan Marschall*

## 1. Introduction

Since the end of the Cold War, international politics have been increasingly shaped by what has been called the “new interventionism”<sup>1</sup>. More often than before, member states of the United Nations (UN) are called upon to participate in military missions and to send their soldiers abroad. In addition, beyond the legal and institutional framework of the United Nations established for military operations (i.e. “peace keeping”, “peace enforcement”), another type of the new military interventionism has emerged: military operations conducted by self-appointed, ad-hoc coalitions of states. Most prominently, this ad-hoc type of interventionism could be observed during the Iraq War of 2003, a war which was started by a “Coalition of the Willing”, whose use of force against Iraq was not legitimized by a mandate of the UN Security Council, according to the then UN Secretary General, Kofi Annan.<sup>2</sup>

For democratic states the new and ambiguous interventionism brings up the question of how decisions on the involvement in military conflicts abroad are made and legitimated domestically, and whether and how governments’ policies on the use of military force are checked by democratic procedures. These are fundamental issues for democracies, both because they affect the identity of democratic societies, which includes the rule of (international) law, and because participation in military interventions might result in the loss of citizens’ lives and in substantial financial burdens for the tax payers.

In modern democracies, parliaments directly elected by the citizens are the *key* institutions providing political decisions with democratic legitimacy and checking executive policies. This is widely accepted, except for military security policy-making, which in many countries is treated as part of an “executive prerogative” and not put under full parliamentary control. The incomplete democratization of military security policy-making not only poses normative problems for liberal democracies<sup>3</sup> but also empirically correlates with a more belligerent foreign policy behavior of governments.<sup>4</sup>

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1 Stedman, John: The New Interventionists: A New Foreign Policy Doctrine, in: *Foreign Affairs* 72 (1993) 1, 1-16; Chesterman, Simon: *Just war or just peace? Humanitarian intervention and international law*. Oxford; New York: Oxford University Press, 2001; Chandler, David: The responsibility to protect? Imposing the ‘Liberal Peace’, in: *International Peacekeeping* 11 (2004) 1, 59-81.

2 “Iraq war was illegal and breached UN charter, says Annan”, in: *The Guardian*, Sep. 16, 2004.

3 Cf. Czempiel, Ernst-Otto: Are Democracies Peaceful? Not Quite Yet, in: *PRIF Report* (1995) 37.

4 Cf. Dieterich, Sandra / Hummel, Hartwig / Marschall, Stefan: *From Democratic to Parliamentary Peace? European Parliaments and the Iraq War 2003*. Paper prepared for the Sixth Pan-European International Relations

But national parliaments are not equally weak or strong in terms of what we call “war powers”, i.e. parliamentary capabilities for governing military involvement in armed conflicts associated with the use of force. In the European Union, for example, *national* parliaments differ significantly with respect to their parliamentary war powers. This can hardly be tolerated by a European Union which tries to synchronize national security policies. The remarkable deficiencies in some European states regarding parliamentary war powers challenge Europe’s claim to act as a “civilian power” based on democratic norms and procedures.

The objective of this policy paper is to identify good practices regarding the war powers of national parliaments in Europe as well as practices which need to be improved, in order to strengthen the democratic legitimacy of national and European security policies. In the concluding part of this paper we present a proposal on national minimum standards for the parliamentary control of military security policy in the EU member states.

This policy paper is based on a research project on the EU states’ participation in the 2003 Iraq War and the respective role of national parliaments which has been conducted by the *paks* research team at the University of Düsseldorf in 2006 and 2007.<sup>5</sup> Therefore, in this paper, we usually refer to the war powers of the 25 members and accession states<sup>6</sup> of the European Union as of early 2003, indicating subsequent changes where appropriate.

How did we assess the role of parliaments in military security affairs? Previous concepts for comparing parliaments’ role in the military security policy-making usually covered only peace support operations or were confined to deployment legislation. We find these concepts too narrow for a meaningful discussion about the democratic legitimacy of the new interventionism. We think that a more realistic comparison should focus on the actual use of military force and should take into account no less than five resources of parliamentary war powers, i.e. policy-specific legislative, budgetary, control, communication and, dismissal powers. In what follows we substantiate the relevance of national parliaments regarding the democratic governance of military security policy, and identify parliamentary practices to be improved as well as good practices in terms of parliamentary war powers.

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Conference of the ECPR Standing Group on International Relations, Turin, 12-15 September 2007; Dieterich, Sandra / Hummel, Hartwig / Marschall, Stefan: Parliamentary War Powers and European Participation in the Iraq War 2003. Paper prepared for the 49th ISA Convention, San Francisco, 26 -29 March 2008.

5 Paks is the acronym for the research project’s German name: Parlamentarische Kontrolle der Sicherheitspolitik (“Parliamentary Control of Security Policy”). Details on the project can be found on <http://www.paks.uni-duesseldorf.de>. Funding for the project was provided by the German Research Foundation (DFG).

6 Negotiations on accession to the European Union were concluded with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia in December 2002. The Treaty of Accession of those countries was signed in Athens on 16 April, 2003. They became full members of the European Union on May 1, 2004. We did not include Bulgaria and Romania, because the Treaty of Accession of Bulgaria and Romania was signed later on 25 April 2005 and they became EU members on January 1, 2007, well after the start of the Iraq war.



## 2. The Relevance of National Parliaments for the Democratic Governance of Military Security Policy

### 2.1 Executive Prerogative vs. Parliamentary Sovereignty in Military Security Matters

The concept of foreign policy being part of exclusive executive decision-making is deeply rooted in political theory. The idea that foreign policy is separate from domestic policy originates from early modern thinkers such as Niccolò Machiavelli, Jean Bodin or Thomas Hobbes. Most prominently, John Locke, in his “Two Treatises of Government” (1689), postulated a special “federative power” of foreign policy beyond parliamentary control. Locke argued that in international relations nations have to react flexibly to external challenges, thus excluding a dominant role of parliamentary institutions in foreign affairs. Locke stressed one of the popular arguments challenging the power of parliaments in foreign and security policies, i.e. the assumed incompatibility of lengthy parliamentary debates on the one hand and the necessity for quick action in foreign affairs on the other hand. Another common argument for excluding parliaments from foreign and security policy-making is based on the premise of *realpolitik* that diplomacy and military affairs require secrecy in order to be effective. Thus, granting the government a free hand in foreign affairs would seem essential for maintaining national power and sovereignty. A parliamentary process closely linked to public scrutiny would hardly be compatible with the alleged imperative of confidentiality and governmental discretion. The *realpolitik* tradition of leaving military security policy-making to the governments’ exclusive discretion and judgment beyond parliamentary involvement is deeply rooted in major European countries. For example, in Germany’s imperial tradition German governments justified their monopoly on foreign policy decision-making by the *Primat der Außenpolitik*, in the French Gaullist tradition the Presidents of the Republic still claim sole responsibility for military decisions as part of the presidential *domaine réservé*, and in the United Kingdom prime ministers regularly invoke the royal prerogative for security issues. Traditional prerogative powers in the UK, for example, allow British governments, among other things, to declare war and to deploy armed forces on operations overseas without any need for approval from the British Parliament.<sup>7</sup>

Nevertheless, as absolutist rule subsided and constitutionalization and democratization progressed, parliaments gained power and in military security policy-making they played a more significant part as well, challenging the traditional concept of the executive prerogative. Indeed, there are both normative and empirical reasons to allot greater responsibilities to parliaments. From the normative perspective of democracy, there are good reasons to grant parliaments far-reaching powers with regard to military security issues, in spite of the difficulties of linking the logic of foreign and security policy-making to the logic of parliamentary

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<sup>7</sup> House of Commons, Public Administration Select Committee: “PASC publishes government defence of its sweeping prerogative powers - Move could help bring bigger say for Parliament”, in: Session 2002-03, Press Notice No.19.

procedures. As we have already mentioned in the introduction, decisions in this policy area can have crucial implications for the national budget, for the lives of the people at home and for the fate of people in other countries. Moreover, important normative choices have to be made, e.g. whether and how to employ massive military force or whether or not to comply with international law. These kinds of decisions affect not only national interests, but also the very identity and culture of a nation and the legitimacy of democratically elected governments. Contrary to the argument to leave “high politics” to governmental experts, and not to ordinary people, one should rather argue that because military security policy is so important, it requires maximum consideration of the people’s preferences. This provides a strong argument for the massive involvement of parliaments, because they are the very institutions mandated to represent the identity of the nation and the interests of the citizens.

Moreover, there are striking differences among democracies in their respective institutional arrangements regarding parliamentary participation in foreign and military policy-making. Some parliaments traditionally play a powerful role in military security policy, most prominently the Congress of the United States of America; others, however, seem to be less influential or prominent in military security policy-making. A systematic survey of the degrees and institutional forms of parliamentary involvement in national military security policy-making, besides adding to our empirical knowledge, also has normative implications, because it shows that, and how, it would be possible to further democratize foreign affairs and to involve parliaments more deeply in military security policy-making.

## 2.2 Parliaments’ Contribution to Democratic Governance and to Peace

Parliaments are places of institutionalized transparency. They specifically contribute to the democratization of policy processes, including military security policy-making, by promoting openness and responsiveness to the public. First, parliamentary processes open up exclusive and non-transparent intra-governmental decision-making to public scrutiny and force governments to give reasons for political decisions complying with the fundamental norms of the society and the identity of the nation. Second, democratic parliaments prove to be highly responsive to the public and very sensitive to changing preferences communicated to them by the voters, because the fate of their members ultimately depends on regular parliamentary elections. A popular aversion to a specific war<sup>8</sup>, for example, should find its first expression in parliament, not in government, because members of parliament are so close to the public. Ideally, in parliamentary democracies, where governments depend on parliamentary majorities, dominant public anti-war sentiments would then translate into parliamentary majorities, and parliamentary

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<sup>8</sup> Public opinions polls showed that in early 2003 in all 25 countries a clear majority of citizens opposed national participation in the Iraq intervention without a mandate of the UN Security Council, cf. EOS-Gallup Europe: International Crisis Survey. January 2003. Brussels: EOS Gallup Europe, 2003.

majorities would ultimately result in governmental restraint concerning the war, because even in military security affairs, where governments often enjoy considerable freedom of action, parliamentarily elected governments regularly seek agreement with parliamentary majorities because of the close functional links between them.

However, the role of parliaments cannot be reduced to the relationship between the majority in parliament and the government. Parliamentary control, the precondition as well as one of the main functions of modern parliaments, brings in the parliamentary opposition as well as the individual members of parliament as relevant political players. Parliamentary control has two dimensions. First, it can be thought of as *monitoring* and supervision of government action. Second it can mean *co-governance* in policy-making by parliaments. In parliamentary democracies, control as monitoring is usually the task of the opposition, whereas control as *co-governance* is performed by the parliamentary majority. Individual members of parliaments can join in the monitoring, for example when they exercise their right to question the government or when they dissent from their parliamentary party when casting their votes. Although the final decision rests with parliamentary majorities, parliamentary minorities have many chances to influence ongoing decision-making processes. Minorities usually cannot block majority decisions but they can slow them down and subject the political process to public debate. Thus, parliamentary control can be executed even when the parliamentary majority and the government are in close agreement. Likewise, in the constitutional context of parliamentary democracies, we should expect parliamentary control to be effective even in security policy-making.

Empirically, strong parliamentary war powers restrict governmental freedom of military action significantly. However, high parliamentary war powers do not necessarily translate into low involvement in a specific war, since parliaments will not oppose military involvement in every case. Only in cases of overwhelming public war aversion are parliaments expected to exercise their veto powers in order to prevent the participation in such a military mission. Parliaments should then act as an “emergency brake” – and they should be vested with sufficient war powers in order to be able to veto, to publicly control, and to sanction any governmental decision disregarding public war aversion.

## 2.3 Parliamentary War Powers: Towards a New Typology

### 2.3.1 Measuring parliamentary power

So far, comparative parliamentary research has marginalized foreign and security policy issues and largely ignored parliament's role in military security policy-making – with the exception of the US Congress.<sup>9</sup> Only recently, in the debate on the institutional structures of European Security and Defense Policy (ESDP), have national parliaments re-emerged as important actors providing democratic legitimacy for European military security policy-making.<sup>10</sup> It became clear that in the European Union national parliaments' roles in military security affairs differ vastly, but it proved to be difficult to assess and compare parliamentary war powers more precisely.

In trying to measure the security policy-related power of national parliaments the US Congress has often been regarded as a prototype of a powerful legislature, especially since 1973, when Congress passed the *War Powers Resolution* (WPR). The resolution stipulates

*“[T]hat the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”* (War Powers Resolution Sec 2(a))

Pursuant to the WPR, US Congress claims far-reaching rights to approve deployments of US forces abroad, to order withdrawal of US forces, and to be informed by the President on deployment plans.

However, upon closer examination it does not seem helpful to take the US Congress as a benchmark for the democratic scrutiny of military security policy-making. First, the WPR has been constitutionally disputed from the beginning. US presidents keep on insisting on their constitutional role as commanders-in-chief of the armed forces and tend to evade the stipulations of the WPR. Moreover, the Supreme Court has refrained from deciding on the constitutionality of the WPR so far and US constitutional lawyers continue to disagree on the scope of Congressional authority

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9 For the war powers of the US Congress see for example Boylan, Timothy S.: The Constitutional Understandings of the War Power, in: *Presidential Studies Quarterly* 31 (2001) 3, 514-528; Prins, Brandon C. / Marshall, Bryan W.: The Pendulum of Congressional Power: Agenda Change, Partisanship and the Demise of the Post-World War II Foreign Policy Consensus, in: *Congress and the Presidency* 29 (2002) 2, 195-212; Grimmett, Richard F.: *The War Powers Resolution*, Huntington, NY: Nova Science, 2002; Hendrickson, Ryan C.: *The Clinton Wars: the Constitution, Congress, and War Powers*. Nashville, TN: Vanderbilt University Press, 2002; Howell, William J. / Pevehouse, Jon C.: Presidents, Congress, and the Use of Force, in: *International Organization* 59 (2005) 1, 209-232.

10 Cf. Barbé, Esther / Herranz, Anna (eds.): *The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy*, Barcelona: Oficina d'Informació del Parlament Europeu, 2005; Bono, Giovanna: National Parliaments and EU External Military Operations: Is there any Parliamentary Control? In: *European Security* 14 (2005) 2, 203-229; Wagner, Wolfgang: The democratic control of military power in Europe, in: *Journal of European Public Policy* 13 (2006a) 2, 200-216.

over deployment of armed forces.<sup>11</sup> Second, unlike in most European democracies, in the presidential system of the United States *both* the president *and* the Congress are elected by the people; both can claim the same democratic legitimacy and both should equally be responsive to citizens' aversion against war. Third, because of the unique international status of the United States as the only remaining military superpower the US Congress cannot serve as a benchmark case for other democratic parliaments.

Because of these and other national peculiarities, it seems to be difficult to select one national parliament as a general benchmark for other parliaments. It might be more promising to disaggregate national cases and focus on the different resources of parliamentary war powers identifying good practices, but not one single benchmark case. The "Geneva Centre for the Democratic Control of Armed Forces" (DCAF), for example, has taken up this alternative approach. DCAF researchers Hans Born and Heiner Hänggi examined the *resources of parliamentary control* regarding participation in multilateral peacekeeping operations and studied the constitutional and legal rights as well as the budget and staff capabilities of national parliaments.<sup>12</sup> Wolfgang Wagner focused on *legal provisions* for parliamentary involvement in decisions regarding the deployment of national armed forces abroad.<sup>13</sup> However, the proposals presented so far do not suffice to fully assess parliamentary war powers, because they cover only less violent peacekeeping missions or focus exclusively on deployment legislation.

### 2.3.2 A new typology of parliamentary war powers<sup>14</sup>

We have developed a more sophisticated and, we think, more realistic typology to measure parliamentary war powers: first, we operationalize parliamentary war powers in a more comprehensive way and include supplementary capabilities as well as functional equivalents for the participation in deployment legislation. Second, we focus on the case of massive use of military force and its domestic implications because of its crucial importance in terms of democracy and peace. Third, we use a refined concept of parliamentary control, combining control as restriction of governmental freedom of military action and control as co-governance by parliaments in military security policy-making. Finally, we have developed our definition of parliamentary war powers referring to what parliamentary studies call the "functions" of parliaments, which we conceptualize as "war powers". Accordingly we distinguish the legislative, budgetary, control (in the sense of

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11 Damrosch, Lori Fisler: Constitutional Control Over War Powers: A Common Core of Accountability in Democratic Societies? In: University of Miami Law Review 50 (1995) 1, 192.

12 Born, Hans / Hänggi, Heiner (eds.): The "Double Democratic Deficit": Parliamentary Accountability and the Use of Force Under International Auspices. Aldershot: Ashgate, 2004; Born, Hans / Hänggi, Heiner: Governing the use of force under international auspices: deficits in parliamentary accountability, in: Stockholm International Peace Research Institute (SIPRI) (ed.): Armaments, Disarmament and International Security: SIPRI Yearbook 2005. Oxford: Oxford University Press, 2005, 199-222.

13 Wagner, Wolfgang: Parliamentary Control of Military Missions: Accounting for Pluralism, DCAF Occasional Paper 12, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2006.

14 Cf. Hummel, Hartwig / Marschall, Stefan: How to Measure Parliamentary War Powers. Paks Working Paper 3, Universität Düsseldorf, 2007.

monitoring), communication, and election/dismissal powers of parliaments regarding military security policy-making.

*Legislative war powers* refer to the extent to which parliaments participate in decision-making concerning the deployment and use of military force, i.e. whether and how parliaments are involved when governments decide to send troops into military action. First, we have to determine at which stage governments must consult with parliaments on planned deployments of troops. Ex-ante consultations on the deployment of military forces implicate a higher degree of parliamentary power than ex-post consultations, simply because the crucial decisions have already been made once the government has deployed troops. Usually it is more costly to suspend a deployment decision after the troops have been mobilized than to veto such a decision in advance. Second, we have to ask to what extent parliaments are involved in the decision-making process and whether or not parliamentary participation is mandatory. One can distinguish between different modes of participation, ranging from mere consultation to strong co-decision powers of the parliamentary body. The majorities required have to be taken into account, because quorum provisions determine the capabilities of parliamentary minorities to block decisions. Moreover, it seems important to check whether legislative rights are limited to decisions regarding national troops or whether they also apply to foreign troops using national territory, airspace, bases or facilities or to national participation in multilateral military missions (NATO, United Nations, OSCE, EU). Parliamentary power to decide on deployment matters could also be seriously curtailed by emergency provisions or exception clauses. Neutrality provisions are part of legislative war powers, if they are based on acts of the parliament and if parliament can change these provisions. Neutrality provisions could be regarded as a kind of structural veto of parliaments against war involvement and hence constitute a powerful tool of parliaments. Constitutional provisions on neutrality or disarmament could even supersede legislative action of parliaments on deployment of troops. Therefore, a mere lack of deployment laws does not necessarily indicate weak parliamentary war powers.

*Budgetary war powers* are actually a special case of legislative powers. In addition to co-deciding on the deployment of troops, parliaments can influence military actions by making use of their “power of the purse”. Deploying troops is expensive, and these operating costs, if to be covered by the national budget, usually have to be approved by parliament. If parliament refuses to release the money needed for military activities, the government can hardly deploy troops.

*Control* is one of the core concepts of parliamentary democracy, being part of the complex structure of checks and balances. To *monitor* the activities of other institutions at any stage has become one of the most prominent parliamentary functions. The power of control/monitoring is closely connected to sanctioning powers, since control without the threat of sanctions lacks effectiveness. Resources of control can be linked to other functions of parliament (election/dismissal,

legislation) or can be activated by parliaments by resorting to non-parliamentary institutions like the courts or the mass media. The measurement of control powers has to take into account the many different controlling options of parliaments. We have to investigate the instruments which parliaments can use for controlling the executive. There are traditional procedures by which parliament and parliamentarians can interrogate the government, for example in form of a “question time” or different forms of questions to the government. Special investigation committees seem to be a particularly effective means of control. Standing committees also play an important role in controlling the government. Committee members, being military policy experts, can much more profoundly scrutinize and criticize governmental action than non-specialist members of parliament. Therefore it seems to be especially relevant whether or not the respective parliament has standing committees on foreign affairs and on defense; whether parliaments, either via committees or via plenary assemblies, have the right to summon members of the government; and to what extent they have access to governmental documents. In addition, in some political systems parliaments can resort to judicial review by bringing governmental decisions before courts, although, of course, they cannot be sure about the courts’ final rulings. In order to determine the control powers of parliaments, it is important to ask whether majorities, minorities or individual members of parliament can use particular instruments of control. In parliamentary democracies, it is usually the opposition parties who are the crucial actors to exercise control powers. Finally, the timing of parliamentary control powers is important. One can distinguish between control going along with governmental activities and control taking place after governmental decisions have been implemented (“ex post”). Ex post control seems to be less effective than control carried out “just in time”. Moreover, confidentiality provisions can counterbalance and restrain parliamentary control powers. Especially in military security affairs, governments tend to withhold information for national security reasons.

To *communicate* between those who decide and those who are affected by decisions is one of the core functions and at the same time a key power resource of parliaments, although difficult to operationalize. In early parliamentarism, debating and discussing issues of general interest perhaps constituted the most essential function of parliamentary bodies. Originally parliamentary discourse meant pondering decisions, presenting pro and con arguments and in the end hopefully finding the best solution. Communicative action in this Habermasian sense constitutes parliamentary power, because parliaments can force governments to provide good reasons for military security decisions, thus motivating them to limit military action to those cases which can be justified to the public. But communication power can produce side-effects and may be conditioned by certain functional requirements. On the one hand, parliamentary debates offer the opposition parties in parliament a chance to criticize governmental policy and present policy alternatives. On the other hand, parliamentary debates could also provide an opportunity to the government or

the governing coalition to mobilize public opinion for their deployment plans.<sup>15</sup> Moreover, when parliaments discuss governmental activities, including the deployment of troops, mass media, by transferring parliamentary communication into public debate, prove to be crucial to fully activate parliament's communicative power. The effective use of communications power therefore usually depends on accommodating to the logic of mass media which, however, is not necessarily fully compatible with the intentions of parliamentary actors. In order to assess the communicative powers of parliament we have to determine the opportunities which parliaments have to put governmental plans for deploying troops on the agenda of plenary debate. We have to focus on whether and to what extent parliamentary *minorities* can use the communicative resources of parliament. Effective instruments to put military security decisions on the parliamentary agenda include urgency debates, in which the plenary assembly discusses an urgent topic at short notice.

Election resources of parliaments are primarily important in the form of *dismissal powers*. In parliamentary systems, parliaments cannot always elect the head of government, but always have at least the power to dismiss the prime minister or chancellor, thus forcing the government to resign. Similarly, in "semi-presidential systems" some parliaments have the right to "impeach" the directly elected president. Regarding semi-presidential systems, it must be determined who exactly has the power to decide on military issues within the executive: the president, who is directly elected by the people (and therefore more difficult to dismiss by parliament) or the prime minister depending on the majority support of parliament. The scope of the election/dismissal resources of parliament basically depends on the answer to this question, for a prime minister's dismissal is usually much easier to accomplish than the impeachment of a president in a presidential or semi-presidential system. The power to remove the chief of the executive branch from office is a general source of power for parliament, and is not specific to military policy-making. In terms of specific war powers the parliament's right to demand the dismissal of the ministers of defense and foreign affairs is particularly important. Parliaments who are able to selectively dismiss members of the government are more powerful, because they can target sanctions specifically at individual government members being responsible for security issues without having to use the big stick of forcing the government to resign en masse. On the other hand, the executive can often neutralize the power of parliament to dismiss the government by the executive right to dissolve parliament, either directly or by forcing a vote of confidence.

It is also important to note that parliamentary powers can be counter-balanced by the powers of other institutions. For example, the parliamentary right to control the executive can be neutralized by the executive right to keep sensitive information secret. When parliament threatens to dismiss the government, the government

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<sup>15</sup> Cf. the much documented "rally-around-the-flag-effect": Lai, Brian / Reiter, Dan: Rally 'Round the Union Jack? Public Opinion and the Use of Force in the United Kingdom, 1948-2001, in: *International Studies Quarterly* 49 (2005) 2, 255-272.




often has the right to dissolve the parliament and schedule new elections for parliament in response. And when parliament puts security affairs on its agenda, the government can use the publicity provided by parliamentary debate for advertizing its security policies.

### 2.3.3 A typology of democracies according to parliamentary war powers

In our *paks* project we distinguish five subtypes of democracies according to the scope of parliamentary war powers (table 1). In order to classify specific cases we use a decision tree starting with legislative war powers and successively taking into account the other war powers. We consider the legislative power, i.e. whether and how a parliament is involved in the decision-making process concerning deployment of troops and the use of force, the central resource of parliamentary war power. Parliaments differ significantly in their legislative war powers, and these differences seem to dominate over variations regarding the other resources.

**Table 1: Paks typology of parliamentary war powers**

Degree of parliamentary war powers		
<b>type 1</b>	prior parliamentary approval required for every governmental decision relating to the use of military force; parliament can investigate and debate use of military force	
<b>type 2</b>	prior parliamentary approval required for governmental decisions relating to the use of military force but exceptions for specific cases (foreign troops on national territory, minor deployments, arrangements with international organizations); parliament can investigate and debate use of military force	
<b>type 3</b>	ex post parliamentary approval, i.e. parliament can demand troop withdrawal; parliament can investigate and debate use of military force	
<b>type 4</b>	no parliamentary approval but deployment notification to parliament required; parliament can investigate and debate use of military force	
<b>type 5</b>	no parliament-related action required for use of military force; no specific control or debate initiated by parliament relating to the use of military force	
		<b>high</b>
		<b>low</b>

We attribute the highest grade of democratization (type 1) to political systems in which parliaments participate in each individual decision on the use of military force in foreign relations and have the power to effectively block any war involvement, by deployment law, budgetary powers or neutrality provision. The second-highest grade of democratization (type 2) is attributed to parliaments which in principle have to approve the deployment of armed forces ex ante, but do not decide on each case of war involvement. Therefore, the government can, under certain conditions,

bypass parliamentary decision-making. The third category (type 3) includes parliaments, which cannot veto war involvement ex ante, but can terminate it ex post. The fourth grade (type 4) refers to any national parliament which the respective government is obliged to inform about the deployment of armed forces but which otherwise does not have the powers to veto, or terminate, war involvement. The lowest degree of war powers (type 5) marks parliaments whose governments not even have to inform them about the deployment of armed forces and which hence do not have specific security policy-related powers.

### 3. Identifying Parliamentary War Powers in EU Countries

#### 3.1 Summary of Parliamentary War Powers in the EU-25

Table 2 presents the distribution of the 25 European countries of our sample according to our typology of aggregate parliamentary war powers for spring 2003. The table includes some remarkable details: the largest group of parliaments can be found in the first category, which includes not only the parliaments of smaller European countries like the Baltic states, but also the parliaments of Austria, Germany, Italy, and Hungary. Four national parliaments can be classified as type 2. Here the exceptions to mandatory “ex ante parliamentary approval” differ significantly between parliaments, though they all fall into the second category: the crucial factor can be the minimum number of troops to be deployed (as in the case of Ireland’s parliament), the purpose of deployment of forces (as in the case of the Dutch and Danish parliaments), or both (as in the case of Sweden’s parliament). The smallest group can be found in the fourth category, with only two national parliaments. Among the members belonging to type 5 we find the French National

**Table 2: Typology of national European parliaments according to their aggregated war powers in 2003<sup>16</sup>**

type 1	type 2	type 3	type 4	type 5
AUT	DEN	CZK	BEL	CYP
EST	IRE	SLK	ESP	FRA
FIN	NED		POL	GBR
GER	SWE		POR	GRE
HUN				
ITA				
LAT				
LIT				
LUX				
MAL				
SLO				

<sup>16</sup> The relevant data were collected through (1) an in-depth analysis of the constitutions, legal regulations and standing orders of the then 25 EU member and accession states, (2) an EU-wide survey on parliamentary control of military security policy (a questionnaire was sent to all 25 national parliaments) and (3) a review of existing literature. Detailed information and data references for all 25 parliaments can be found in a forthcoming DCAF Occasional Paper “Parliamentary War Powers: A Survey of European Parliaments” written by the paks team.

Assembly and the Cypriot and Greek Parliaments, but also the British House of Commons, the historical role model of modern parliamentarianism, which might be a quite surprising result.

In the following chapters we will unpack the typology by focusing on the five key dimensions of parliamentary war powers. We will present examples (not an exhaustive list) of good practices as well as of practices to be improved, based on our EU-25 sample. These examples will be instructive for our final discussion about minimum standards for parliamentary war powers. We will specify these examples along the five war power dimensions of our typology: (1) legislative resources, (2) budgetary resources, (3) control resources, (4) communication resources, and (5) dismissal resources.

## 3.2 Unpacking Parliamentary War Powers

### 3.2.1 Legislative resources

With regard to legislative resources, we analyzed whether legal provisions grant a veto power to a parliament in the case that the respective government plans to deploy troops for military conflicts abroad. Assuming that the requirement of a mandatory ex-ante parliamentary approval provides parliamentary bodies with the highest extent of legislative power, we found that eleven of the 25 countries definitely match this case description. This group also includes cases where parliaments are able to exercise a *structural* veto power, i.e. constitutional provisions which prevent the respective governments from any involvement in military missions abroad, provided that these provisions can in principle be revised by parliament in a legislative process. The category of improvable cases in terms of legislative resources applies to countries in which parliaments are not involved in opinion-making and decision-making concerning the deployment of military forces abroad and, in addition to this, do not need (from a legal perspective) to be informed about any governmental plan before or after the actual decision has been taken.

In a middle range between the two categories of good and improvable practices, there are cases where there are major exceptions to the requirement of prior parliamentary authorization of the involvement of military forces abroad or cases where we can identify parliaments which can only approve or veto the deployment of troops abroad after it has taken place, i.e. ex post, which is the case in the Czech Republic and Slovakia.

#### *Good practices*

In some cases the quorum for parliamentary approval were set exceptionally high. For example in Hungary, as for early 2003, the decision to deploy armed forces abroad required the approval of a two-third majority of the members of parliament attending the actual vote, therefore effectively granting solid veto power to the parliamentary opposition (given that the opposition includes more than one third of

the members of parliament). However, this provision was changed in an amendment of the constitution in August 2003, which introduced some significant exceptions to binding parliamentary participation. As a consequence Hungary ceased to figure as a good practice case concerning legislative war powers.

In **Italy**, the deployment of troops to military missions does not only require the prior approval of the first parliamentary chamber, the Chamber of Deputies, but the Senate has to authorize any decision to send military personnel abroad *ex ante* as well.

In **Lithuania**, the Constitution of the Republic grants extensive rights to the parliament concerning the deployment of troops. Article 67 clearly stipulates that the decision “to use the armed forces” lies with the Lithuanian Parliament, the Seimas. This applies for the deployment of troops as well, since – according to article 142 of the constitution – the Seimas must decide on the use of military forces even for the “fulfillment of international obligations”. Additionally, it is up to the Lithuanian Parliament to decide on a mobilization of the armed forces. In cases of emergency, the President can take urgency measures, but must seek the parliamentary approval as soon as possible after such a decision.

**Germany** is another good practice case. Established by a landmark ruling of the Federal Constitutional Court in 1994, the Bundestag since then holds a powerful position in decision-making with respect to the deployment of troops. Any involvement of German military forces abroad has to be authorized by parliament in advance. The obligation of the federal government to seek prior parliamentary approval applies to the participation of armed forces in missions which are based on treaty obligations (e.g. article 5 NATO Treaty) as well as to all other use of military force abroad.

**Malta** can be considered a special good practice case in terms of legislative resources, because parliamentary powers manifest themselves in the provision of the Constitution of Malta that prevents the Maltese government to send troops abroad. The Constitution clearly states: “Malta is a neutral state actively pursuing peace [...] refusing to participate in any military alliance” (article 1 section 3 of the Constitution of Malta). According to the prevailing legal interpretation, this article definitely rules out any participation of Maltese troops in military operations abroad. Parliament could theoretically change this constitutional provision, but would require a two-thirds majority vote.

#### *Practices to be improved*

In **Cyprus**, as for early 2003, the constitution explicitly stated that matters regarding foreign and security policy exclusively belong to the presidential prerogative. A presidential veto relating to these issues can not be overridden by parliament. However, a new law of October 2003 regulating the disposal of the Cypriote armed forces stipulated that parliament must now approve any decision to deploy troops

ex ante. Thus, Cyprus moved from the type 5 category to the good practice group at about the same time as Hungary downgraded legislative war powers of parliament.

With respect to its legislative resources, the National Assembly in **France** ranks amongst the least powerful parliaments in military security policy-making. Based on the concept of *domaine réservé*, the directly elected President together with the Prime Minister plays the predominant role regarding matters of national security and defense. In sharp contrast to our understanding of a good practice, the French Parliament is completely excluded from participation in decision-making on the use of military force abroad. The French government is neither legally obliged to inform nor to consult with parliament prior to or after any decision to deploy armed forces to military missions.

In the **United Kingdom** there is no constitutional requirement for the government to seek any explicit form of parliamentary approval before sending British forces to military action. Due to the tradition of the “royal prerogative” covering, among other things, military deployment decisions, only the prime minister decides on using military force. The British House of Commons has no legislative power to authorize or block any deployment of troops abroad. It is true that the House of Commons voted on March 18, 2003, that it “supports the decision of Her Majesty’s Government that the United Kingdom should use all means necessary to ensure the disarmament of Iraq’s weapons of mass destruction”.<sup>17</sup> However, this vote was not required legally, and even if the government had lost the vote, it could have proceeded with the war effort.

### 3.2.2 Budgetary resources

Concerning budgetary resources there is at least one common denominator among all 25 cases of the sample: all parliaments have the power to adopt the annual budget plan of the government (i.e. the “power of the purse”), which is usually introduced as a draft budget into the parliamentary procedure by the respective government. But in most cases analyzed, parliaments do not vote on single defense budget lines but only on the aggregate annual defense budget, thus leaving little room for exerting policy-specific influence. Moreover, military missions abroad are not necessarily individually and clearly depicted in annual budget documents. However, most of the parliaments have the power to veto explicit additional budget requests by governments. If as a result of major and costly deployments of troops a supplementary budget plan becomes necessary, parliaments, by approving or holding back the required additional money, can either prevent the military deployment or force the government to withdraw troops which have already been engaged in a mission.

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<sup>17</sup> Hansard (House of Commons Debates) Volume 401, 18 March 2003 : Column 911.

### *Good practices*

In the **Netherlands**, parliament is entitled to debate the defense budget draft, which includes a specific item for expenditures related to military missions abroad. In addition, parliament is legally authorized to amend and vote on the proposed defense budget bill separately from the general budget. Regarding additional budget requests which might come up during the fiscal year, financial adjustment bills can be approved by parliament twice a year. Moreover, the governmental proposal on a possible military mission abroad, which is submitted to parliament in the form of a letter, has to provide detailed information on the estimated budget for the particular mission planned. Since parliament has the right to either approve or reject – though not to amend – the governmental deployment plan as a whole, it implicitly approves or vetoes the accompanying budget of the mission at the same time.

**Italy** also qualifies as a good practice case with respect to the budgetary power resources of the parliament. Most importantly, in addition to the adoption of the annual general budget bill and the authorization of any supplementary budget request in the case that the costs incurred by an ongoing or newly-launched military operation cannot be covered by the regular annual defense budget, parliament possesses the power to approve, amend or reject a separate budget bill for any military mission abroad.

In **Denmark**, by deciding on the governmental deployment proposal – which includes detailed information on the number of troops, the mandate as well as the maximum costs of the mission – parliament also implicitly authorizes the budget for each mission. In addition, the Folketing has the right to approve, amend or reject to authorize the defense budget line of the annual budget draft separately – it includes an item on the estimated costs for conducting military missions abroad. Furthermore, should the costs for military operations surpass the expenses provided for in the defense budget, parliament has to approve each additional budget request in advance.

**Latvia** also qualifies as a good practice example. The Latvian Parliament (Saima) has the power to debate and approve the annual budget draft which is submitted to the parliament by government according to article 66 of the Latvian Constitution. Most importantly, at the end of the fiscal year, the government has to present a balance of expenditures that must be approved by the Saima. According to the “National Security Law”, the Saima explicitly holds the power to vote on expenditures for national security purposes.

### *Practices to be improved*

Whereas most of the parliaments of the sample have at least the right to authorize additional budget requests concerning the costs of military missions abroad, the

**United Kingdom** is the only case in which parliament does not have the formal authority to approve or veto supplementary budget requests which may arise during the fiscal year. Although the parliament regularly debates on security-related expenditures, from a legal perspective, the British parliament is not at all involved in the actual decision-making on the deployment of military forces abroad and cannot give or deny its consent regarding the budget of any military mission in particular.

### 3.2.3 Control resources

All parliaments in the sample have the standard instruments of parliamentary control at their disposal such as interrogations, question time and so on. Most of these tools can be used for all policy issues and are not specific to military security matters. However, in most countries secrecy provisions protect military activities of the executive from parliamentary scrutiny to varying degrees. Since in parliamentary democracies, the opposition parties are the key actors in controlling executive actions, special emphasis has been put on minority rights in the context of control resources. Actually, in many cases parliamentary-based control resources, such as for example the right to establish an inquiry committee or the right to access documents, are dominated by the majority, leaving little room for parliamentary initiatives of the opposition. Not all parliaments can execute control via judicial reviews, but in most of the cases where parliaments are entitled to appeal to a court's ruling this power is also granted to a parliamentary minority.

#### *Good practices*

The parliamentary control powers in **Slovenia** qualify as strong, because minority groups in the parliament have a great variety of instruments to scrutinize government's activities, including interpellations or the right to request and receive information from the government and other state authorities. Minorities in parliamentary committees can demand government documents relating to the issue areas covered by the respective committee. On the request of a third of the members of the National Assembly, the parliament must establish a "Commission of Inquiry" to which the Constitution grants competences that are comparable to those of judicial authorities. Finally, one third of the members of the National Assembly can submit a request for the commencement of proceedings to the Constitutional Court, e.g. in the event of a dispute between the National Assembly and the President, the government, or other state authorities.

According to the control resources of the *Bundestag*, **Germany** also qualifies as a good practice case. Every member of parliament can address oral and written questions to particular ministers and request access to documents, including those concerning military security affairs. However, the submission of documents can be denied with reference to secrecy provisions for reasons of national security. Additionally, upon the request of one quarter of the members of the Committee on Defense, the Committee has to investigate into a specific subject matter. For this

purpose, the powers of the Committee on Defense amount to those of a committee of inquiry, including the power to force government to submit all documents relating to the specific issues under investigation. The German constitution assigns this power of inquiry automatically to the Defense Committee, whereas other committees need approval from plenary to start investigations. Vested with judicial powers, the Committee can subpoena members of governmental and public agencies as well as other persons to testify on all subjects of concern. Moreover, a minority of one third of the members of the Bundestag has the right to appeal to the Federal Constitutional Court to request the judicial review of, among others, any decision to deploy armed forces abroad if they deem it unconstitutional.

### *Practices to be improved*

In the **Czech Republic**, the control capacities of parliament, especially of the parliamentary opposition, are considerably restricted. The parliamentary right to demand information and explanation is limited by secrecy provisions. The power to summon, the power to set up an investigation commission or to execute control via judicial review is exclusively given to the parliamentary majority, thereby depriving the opposition of the power to effectively control the government and its ally, the parliamentary majority.

In **Greece**, the parliamentary control resources to supervise governmental action in the field of security and defense policy are remarkably limited. Even though members of parliament in general can address written questions or request documents regarding diplomatic, military or other security and defense issues, documents are not submitted to parliamentarians. Only the Standing Committee on Foreign Affairs and Defense has the power to ask for the submission of documents. However, for reasons of national security ministers can deny providing any kind of information and keep them secret. Thus, government disposes of considerable discretion in granting access to documents. In order to establish a committee of inquiry concerning matters of foreign policy and defense, a resolution has to be adopted by the absolute majority of all members of the Greek Parliament. Compared to other policy areas where a decision of a parliamentary minority suffices to set up a committee of inquiry, the requirement for an absolute majority significantly limits parliamentary control. As regards judicial review powers, members of parliament do not have the right to appeal to a court in order to request a ruling regarding the constitutionality of any governmental decision to deploy troops abroad.

Similarly, in **France**, except for oral and written questions, all other instruments of parliamentary control, including the access to documents, the power to summon members of government to plenary or committee meetings as well as the power to install a committee of inquiry, are subject to a decision of the parliamentary majority.



### 3.2.4 Communication resources

Though all parliaments have communication resources at their disposal and can engage in a public debate, there are striking differences concerning the questions on which parliamentary actors have the right to request a public debate in parliament. If we focus on the question of whether or not the parliamentary opposition has the power to initiate a public parliamentary debate, there are only few cases where minorities (e.g. individual members of the parliament or political groups) have the right to demand that an issue is discussed publicly in the plenary. In most of the cases, the parliamentary majority decides on the plenary agenda, although minorities can introduce motions proposing a debate on a specific topic.

#### *Good practices*

**Hungary** provides a case of strong communication powers that are not at the exclusive disposal of the parliamentary majority, but can be effectively used by minorities, too. For example, on so-called “days of debate” one fifth of the members of Parliament can request a debate on a topic of their choice. Urgency debates can be introduced by one fifth of the members of the National Assembly, or one fifth of the Assembly’s members can demand the convening of Parliament for an extraordinary session in which an urgent topic will be discussed publicly.

In **Sweden**, any member of parliament can call a debate on a specific issue of general or current interest following a written answer by a member of government to an interpellation. In addition, a parliamentary group can request a plenary debate on matters not directly connected to other business under parliamentary consideration. Such a specially arranged topical debate can be put on the agenda at short notice if a subject of urgent interest needs to be discussed.

The communication resources of the *Bundestag* in **Germany** can also be classified as a good case. In connection with the written reply of the Federal Government or one of its members to a written interpellation concerning, for example, issues of security and defense policy, a plenary debate has to take place. Such debates can be triggered by interpellations submitted by each parliamentary group (Fraktion) or at least five percent of the members of parliament. In addition, five percent of the members of parliament or a parliamentary group can request a debate on a specific matter of current interest.

Concerning communication resources, **Poland** also qualifies as a good practice case. Parliamentary requests for information submitted by a political group or a group of at least 15 members of the Sejm as well as the government’s answers to the interpellations can be publicly debated in the plenary session of parliament. The Standing orders of the Sejm stipulate that the agenda of each day of sitting of the parliament must include an item for “questions on current issues”.

### *Practices to be improved*

**Slovakia** classifies as a improvable case regarding communication powers, because the only parliamentary privilege granted to a minority is the participation in the Question Time. Urgency debates cannot be requested by single parliamentarians or a minority group of members of parliament. A group of at least one fifth of the parliamentarians is entitled to request the convening of an extraordinary session of the National Council, while indicating the proposed topic of the debate. However, the majority of the House finally decides whether or not the debate on the matter proposed by the minority actually takes place.

In the **Netherlands**, the communication resources of parliament are rather limited. Though each member of both Houses of Parliament can table a motion for a plenary debate to be held on a specific topic, including issues of security and defense policy, the motion has to be adopted by a simple majority of the House of Representatives or the Senate. With regard to matters of urgency, a short debate may be held after an urgent interpellation has been submitted. However, for an urgency debate to take place, a motion has to be passed by majority vote.

#### 3.2.5 Dismissal resources

In the 24 of the 25 cases of our sample which are parliamentary democracies the government is by definition accountable to parliament and can be dismissed by a parliamentary vote of no confidence. However, there are striking differences concerning the power to remove single members of the government from office. In a few states (beyond the clear-cut “presidential” case of Cyprus) the presidents as well as the heads of government hold a significant role in foreign and security affairs which attributes relevance to parliament’s capacity to impeach the head of state.

#### *Good practices*

In **Lithuania**, the Parliament (“Seimas”) has the power to express no confidence either in the Prime Minister or in any other government minister in a secret ballot. The Lithuanian President must dismiss the Prime Minister “upon approval” of the Seimas, and ministers must resign if Parliament expresses no confidence in them. However, the directly elected President, who holds a rather marginal position in questions of foreign and security affairs, can only be removed from office by a three-fifths majority vote in the Seimas, if the President’s decisions severely violate the Constitution.

With regard to dismissal resources, the parliament in **Denmark** qualifies as a good practice case, too. The Danish Parliament can withdraw its confidence in the government as well as in individual ministers. A motion of no confidence can be introduced by any member of parliament and has to be adopted by a simple majority vote.

In **Italy**, at the request of at least one tenth of the members of the Chamber of Deputies or the Senate, respectively, a motion of no confidence against the government as a whole as well as against individual ministers has to be debated and voted on. In order to be adopted, such a motion requires a simple majority vote.

**Latvia** also qualifies as a good practice case concerning the dismissal resources, as the parliament can not only express no confidence in the Prime-Minister, but also has the power to force individual ministers to resign by a vote of no confidence. At least ten members of the Saeima or a committee can submit such a motion of no confidence. The President of the Republic, who is elected by the Latvian parliament every four years, can be removed from office if a respective motion of at least half of the Members of the Saeima is adopted by no less than two thirds of its members.

#### *Practices to be improved*

**Cyprus** qualifies as improvable case, because the Cypriot Parliament lacks not only the power to dismiss individual ministers, but also the power to remove from office the President as the head of government. The President cannot be impeached and cannot be subjected to any criminal prosecution, except in the unlikely event that the President is charged with high treason.

In **France**, the dismissal power of the National Assembly is rather weak. This weakness is due to the fact that a motion of no confidence can only be introduced against the government and has to be passed by an absolute majority vote of parliament. Regarding the dismissal of the Head of State, the National Assembly has no power to remove the President of the Republic from office.

In **Hungary**, too, the dismissal powers are suboptimal: according to the Constitution, a motion of no confidence in the Prime Minister can be introduced by at least one fifth of the Members of Parliament, and has to be adopted by the majority of the Chamber of Deputies. However, the motion has to include the nomination of a new candidate for the office of Prime Minister, which might turn out to be an obstacle for the use of this resource. A vote of no confidence in individual members of the cabinet has not been established in the Constitution; only the President of the Republic has the power to dismiss individual ministers. The President himself can only be removed from office if he acts against the constitution. An impeachment process that is conducted before the Constitutional Court can only be initiated when two thirds of the Members of the Chamber of Deputies vote in favor of the respective motion.

With regard to dismissal resources, the House of Commons in the **United Kingdom** as well as the Congress of Deputies in **Spain** and the Chamber of Deputies in the **Czech Republic** can only revoke their confidence in the government as a whole.

#### 4. Conclusions: “Civilian Power” Europe and Minimum Standards of Parliamentary War Powers

National parliaments in Europe differ significantly in terms of their war powers. Even among the four major national military actors in the European Union there is a remarkable gap between, on the one hand, those having rather powerful parliamentary bodies to be classified as good practice, such as Germany and Italy, and, on the other hand, rather improvable cases like the United Kingdom and France. There are also striking differences in detail along the five key power dimensions (legislative, budgetary, control, communication, and dismissal resources). Parliaments with strong legislative war powers do not always have similarly strong control powers (as in the case of Austria) or dismissal powers (as in the case of Germany). Parliaments classified as having only little legislative war powers might still score better regarding, for example, dismissal resources (for example Belgium) or communication resources (like Portugal). Thus, it is difficult to identify one country as *the* best case or *the* prototype of parliamentary war powers, although some cases like Germany or Austria do come very close to an ideal type situation.

If Europe wants to be a “civilian power” which is based on democratic norms, prefers peaceful means of conflict resolution and tries to establish a sustainable peace which goes beyond intergovernmental regimes and is firmly rooted in civil societies, there is indeed a need to improve and enhance the power capabilities of parliaments regarding military involvement in armed conflicts associated with the use of force. At the very least, minimum standards for parliamentary war powers have to be established.

Parliamentary war powers do indeed make a difference. An analysis of the involvement of 25 European states in the Iraq War 2003 revealed a significant correlation between parliamentary war powers and war involvement<sup>18</sup>: countries where parliaments had strong war powers tended to be less involved in the conflict than other countries, and those countries which contributed ground forces to the Iraq War had parliaments with weak war powers. The results of this recent research provide evidence for the pacifying effect of parliamentary war powers. If there is a lack of parliamentary war power, government can easily overcome the public opposition as well as normative and legal objections. If parliaments are strong, they can keep the government from acting against the rule of law and the majority will of the people.

What would this minimum level mean in terms of the five dimensions of parliamentary war powers? Most importantly, it would require at least ex-post the approval of the parliament concerning the deployment of troops and the

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18 Cf. Dieterich, Sandra / Hummel, Hartwig / Marschall, Stefan: From Democratic to Parliamentary Peace? European Parliaments and the Iraq War 2003. Paper prepared for the Sixth Pan-European International Relations Conference of the ECPR Standing Group On International Relations, Turin, 12-15 September 2007; Dieterich, Sandra / Hummel, Hartwig / Marschall, Stefan: Parliamentary War Powers and European Participation in the Iraq War 2003. Paper prepared for the 49th ISA Convention, San Francisco, 26 -29 March 2008.

related use of force. Ex-post approval by parliaments could be implemented by establishing either appropriate legislative powers governing the deployment of troops or equivalent budgetary powers such as mandatory parliamentary approval for extraordinary budgets needed to cover the subsequent costs of military deployments. In order to be effective, ex-post approval should be backed by corresponding control, communication, and dismissal powers. Control powers should include access to all relevant information at the request of the parliamentary majority. Secret information should not be withheld by government completely but at least made available to a special committee of the parliament. The parliamentary majority should be encouraged to make use of its information power by a provision granting qualified parliamentary minorities the right to request the setting up of a special investigative committee of the parliament on military missions. Finally, as for dismissal powers there should be a minimum degree of accountability of the defense and foreign ministers to parliament.

Taken together, we propose taking the type 3 as a minimum standard for parliamentary war powers. The type 3 category constitutes the minimum level of war powers parliaments need in order to effectively transform public aversion to war into policy decisions on military deployments and the use of force. Even so, in the type 3 category parliaments cannot *prevent* governments from getting involved in armed conflict, but they can force government to *withdraw* such deployments. Additionally, the parliaments of this category can investigate and debate the use of military force and hold the government effectively accountable for its decisions.

This proposal to establish minimum parliamentary war powers is not an unrealistic one. In most of the cases, it would not require constitutional amendments. Rather, minimum parliamentary war powers could in principle be introduced mainly by revising parliamentary rules of procedure and introducing or upgrading the relevant legal provisions governing military deployments. Since the 2003 Iraq intervention, Spain and Cyprus, originally two cases with little war powers, respectively, have already successfully managed to move the levels of parliamentary war powers well beyond the minimum level, even to the other, best practice extreme. Most certainly, the definition of a minimum standard for parliamentary war power would support ongoing moves to upgrade parliaments with little war powers in other European countries, such as the United Kingdom and France. In these two countries – partly in the wake of the Iraq War – there is a discussion on strengthening the war powers of the national parliaments, the House of Commons and the Assemblée Nationale. Thus, the chances for achieving a minimum level of parliamentary war powers of European states are evident.

It might also be helpful to identify “good practices” concerning parliamentary war powers in order to further improve the democratic governance of security policy. As has already been mentioned before, there is no single parliament scoring equally well on all five dimensions of parliamentary war powers; no country can serve as a prototype. Instead, the good practices identified in chapter 3 along the five power

resources can be summarized here. Most importantly, maximum war powers of parliaments are based on “comprehensive” legislative powers. This means ex-ante approval of military security decisions in any case of potential military involvement in armed conflicts. “Comprehensive” means that this has to be done on a case-by-case basis, with no exceptions regarding the circumstances of planned troop deployments, including the deployment of special forces. Moreover, ex-ante approval by the parliament should also extend to any military transit, any military use of national airspace, territorial waters, and infrastructure, any use of foreign military bases on the national territory in relation to the use of military force. Budgetary war powers would mirror or supplement legislative war powers regarding ex-ante, case-by-case approval of separate budgets for planned military deployments.

In the best practice scenario, legislative and budgetary war powers of the majority parties in parliaments are backed by strong war powers regarding the control and communication dimensions of the parliamentary opposition. As for control powers, this includes regular and detailed government reports on security affairs, minority access to the whole toolbox of parliamentary control, and the strengthening of judicial review capabilities for security policy issues. Communication war powers not only comprise extensive minority rights to put security policy issues on the agenda of parliamentary debates and to demand urgency debates on security issues, but also frequent and regular debates during the involvement in military missions regarding the use of force. In parliamentary systems, dismissal war powers have to provide for the dismissal of single ministers responsible for foreign and security affairs by a parliamentary vote of no confidence. In presidential systems, dismissal of the directly elected president would go beyond the scope of the constitutional framework. Nevertheless, there can be functionally equivalent ways to strengthen the parliamentary accountability of powerful presidents.

However, national parliaments in the European Union are currently under pressure by ongoing processes of Europeanization of national security and defense policies. On the one hand, new decision-making procedures have been established in the framework of European Security and Defense Policy which are neither under national parliamentary control in all member states nor under the control of the European Parliament. This is what is identified as part of the “Double Democratic Deficit” of security policy-making.<sup>19</sup> It seems even more important to strengthen the war powers of national parliaments in Europe, since at this point it is difficult to predict whether, and under which conditions, the European Parliament will ever become a strong player in matters concerning the use of military force abroad. On the other hand, European integration can also help to improve *national* parliamentary war powers, at least in those EU member countries which so far do not grant their parliaments minimum war powers, because one of the core principles and instruments of European integration is the harmonization of national policies. This usually means upgrading rather than downgrading of democracy

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<sup>19</sup> Cf. Born, Hans / Hänggi, Heiner (eds.): The “Double Democratic Deficit”: Parliamentary Accountability and the Use of Force under International Auspices. Aldershot: Ashgate, 2004.

standards. If the member states of the EU have achieved at least the proposed minimum level of parliamentary war powers, Europe can indeed emerge as a case for democratic governance, (international) rule of law and “civilian power” in the era of “new interventionism”.









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