



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

WORKING PAPER NO. 102

**BETWEEN EFFICIENCY AND LEGITIMACY:
DEMOCRATIC ACCOUNTABILITY OF THE MILITARY
IN THE US, FRANCE, SWEDEN AND SWITZERLAND**

Dr. Hans Born

*Fellow, Geneva Centre for the Democratic Control of Armed
Forces (DCAF), Geneva, Switzerland*

[*h.born@dcaf.ch*](mailto:h.born@dcaf.ch)

Geneva, November 2002

**GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)**

WORKING PAPER NO. 102

**BETWEEN EFFICIENCY AND LEGITIMACY:
DEMOCRATIC ACCOUNTABILITY OF THE MILITARY
IN THE US, FRANCE, SWEDEN AND SWITZERLAND**

Dr. Hans Born

*Fellow, Geneva Centre for the Democratic Control of Armed
Forces (DCAF), Geneva, Switzerland*

[*h.born@dcaf.ch*](mailto:h.born@dcaf.ch)

Geneva, November 2002

DCAF Working Papers

DCAF Working Papers constitute studies designed to promote reflection and discussion on civil-military relations and issues of democratic control over defence and security sector. These studies are preliminary and subject to further revisions. The publication of these documents is in an **unedited** and **unreviewed format**.

The views and opinions expressed are those of the author(s) and do not necessarily reflect those of the Geneva Centre for the Democratic Control of Armed Forces.

DCAF Working Papers are **not for quotation** without permission from the author(s) and the Geneva Centre for the Democratic Control of Armed Forces.

About the author

Hans Born (Netherlands) has been working for the Geneva Centre for the Democratic Control of Armed Forces (DCAF) since 2000. He is the Coordinator of the DCAF working group on parliamentary oversight of the security sector (PCAF - in short) which is a world wide platform for parliamentarians, parliamentary staff, academics, NGO representatives and government officials in the area of security sector reform. He is the editor of PCAF's newsletter and publishes frequently on democracy and security issues, among others, he co-edited "*Democracy and Security Sector Reform in Transitional Societies*" (NOMOS Publishers, 2002). Within DCAF's activities, he is a Member of the Legal-Political Assistance Group on Security Legislation of the Russian State Duma and Ukrainian Verkhovna Rada. In addition, he is a Fellow of the Inter University Seminar of Armed Forces & Society, the International Political Science Association and a Board Member of ERGOMAS - The European Research Group On Military And Society.

Geneva Centre for the Democratic Control of Armed Forces
P O Box 1360
Geneva 1
CH-1211 Geneva 1
Switzerland
Phone 00 41 22 741 77 25/--00
Fax 00 41 22 741 77 05
Email h.born@dcaf.ch

BETWEEN EFFICIENCY AND LEGITIMACY DEMOCRATIC ACCOUNTABILITY OF THE MILITARY IN THE US, FRANCE, SWEDEN AND SWITZERLAND¹

Hans Born

Introduction

During situations of national emergencies, natural disasters, conflict and war, state institutions have to act quickly and decisively in order to divert dangers. Every state and its society need to have a competent political leadership and government agencies that are able to act efficiently. From a democratic governance point of view, however, it is equally important that the decision-making process and the resulting outcome is both accepted and valued by the people. In other words, it is essential that the processes and outcomes of the state institutions are legitimate within a democracy.

The relationship between efficiency and legitimacy in democratic societies is complex. At first sight, it appears to be a straightforward relationship. Efficiency means that the political system is working in the right way, i.e. in a quick and effective manner. Legitimacy means that the political system is achieving the right policy goals, i.e. policy goals that are perceived as valuable and worthwhile. Yet at the second sight, the relationship between efficiency and legitimacy in democracies may be problematic. In times of crisis, sufficient time is not always available for a public and in depth debate on the actions needed to avert the dangers. In times of emergencies in particular, a contradiction can arise between the need for quick decision-making and the citizens' right to a transparent decision-making process, as well as parliamentary oversight. Thirdly, in spite of this contradiction, a democratic political system has to be both efficient and legitimate. A political system which is efficient but not legitimate, can hardly be called a democracy. Only dictators need not bother about the population's level of satisfaction and acceptance. Ineffective democratic political systems, run the risk of becoming illegitimate in the long term, as population experiences difficulties in accepting and giving support to a political

¹ Published in Karl von Wogau, ed. (2003 – forthcoming). *European Defence for the 21st Century*. Freiburg i. Breisgau: Herder Verlag. Presented at the ESDP Working Group meeting of the Kangaroo Group, at the European Parliament, November 13, 2002, Brussels.

leadership that is ineffective. Fourthly, democracy and efficiency are not seen as two opposing concepts. Democracy is viewed as a type of political system whereas efficiency is seen as criteria which can be applied to any sort of political systems.

The questions of efficiency and legitimacy are especially relevant when it comes to the security of the state and its citizens given that:

- Security involves the protection of the territory and the democratic way of life
- Efficiency also comes with a financial price: the security sector at large and the military in particular absorb a substantial fraction of the state's budget;
- The life of servicemen, servicewomen and civilians are at risk during operations and therefore the goals of the security policy and specific military operations have to be entirely accepted by the society;
- A military which is efficient but not accepted by the people may become a threat to security.

In this chapter we focus on how democratic societies try to reach a balance between the imperatives of efficient and legitimate decision-making on security. More precisely, we address the question of how democratic accountability of the military is undertaken in the US, France, Sweden and Switzerland. These countries are chosen as they are mature democracies and have different political systems i.e. France and the US have presidential system, whereas Switzerland and Sweden have a parliamentary system. In covering each country, special attention is given to the role of parliament vis-à-vis the government, as parliamentary involvement and parliamentary debates play a crucial role in giving legitimacy to security policy in general and to military operations in particular. This contribution ends with some ideas for strengthening the European Parliament's (EP) oversight of the European Security and Defence Policy (ESDP).

Main Elements of Democratic Accountability of the Military

A person is accountable if he is responsible for his actions. In order to be accountable, this person must be able to give a satisfactory reason for his behaviour. We can speak of democratic accountability when the population are either directly or indirectly involved in the accountability process. In this context, *democratic accountability means that those who have the responsibility or authority to decide*

upon and to implement security policy, are accountable to the elected representatives or directly to the people. Accountability deals with three issues: money, activities and results². The former two concern the process of governmental activity and the latter with its outcome.

Adding democracy to accountability is essential. Democratic accountability is deeply rooted in democracy. It deals with the issue of how people can be involved in government. Government without democratic accountability can be at best described as a form of government of technocrats burdened by a democratic deficit as the people do not have a say in it, neither directly via referendum nor indirectly via their elected representatives.

Democratic accountability has to be distinguished from other forms of accountability, such as public accountability (e.g. via the media), administrative accountability (via government institutions such as audit offices) and judicial accountability (national and international courts judging the constitutionality or legality of government policy).

The main elements of the democratic accountability of the military are:

1. A constitution and laws, defining the primacy of the political leadership over the military, as well as the responsibilities of the government and parliament in times of war and peace³;
2. A system of checks and balances, as defined by the constitution, between the three branches of state, avoiding the executive acquiring unchecked power over the military and other important security services, such as the intelligence services and paramilitary units;
3. A civilian minister of defence, who has both top military and civilian advisors at his disposal;
4. Parliamentary oversight, as the elected representatives are able to offer or withhold democratic legitimacy to the government's security policy and the military
5. Maximum transparency and openness of the military, allowing media, research institutes and other NGOs to do their work;

²² For an example, see: Behn, R.D. (2001). *Rethinking Democratic Accountability*. Washington DC: The Brookings Institutions.

³³ Unclear or overlapping responsibilities of the head of state, cabinet and the minister of defence can lead to numerous frictions and tensed political atmosphere, as happened in many post-socialist countries, which constitutions equivocally defined the responsibilities of the main political actors involved

6. A military that is at ease with itself⁴, in terms of tasks assigned and its image in society.

These six points show that democratic accountability is a broad issue, involving societal, political and legal issues and that parliament is an important issue in democratic accountability, but by no means the only one.

Parliamentary Oversight Powers

Parliament plays a central role in any representative democracy, though this role may vary greatly across political systems. While parliaments can range from ornamental to significant co-governing partners, they have some common characteristics, which include the three basic functions that they perform, i.e. representing the people, making (or: shaping) laws and exercising oversight. Parliaments articulate the wishes of the people by drafting new laws and overseeing the proper execution of these policies by the government. In short: the parliament is the mediator between the government and the people.

Although we take it for granted that modern government must be democratic in the sense that it derives its authority either directly or indirectly from the people, states differ in their ability to shape legislative-executive relations. There are no universal standards or best practices for parliamentary oversight. Moreover, accepted practices, legal procedures and parliamentary structures in one established democracy may be unthinkable in another one. Although there is no single set of norms for civil-military relations, there is a general agreement that democracies should adhere to the principles of democratic civil-military relations. Parliamentary oversight of the security sector is a '*sine qua non*' condition for democracy.

Parliamentary oversight is primarily dependant on the parliament's power to hold the government to account. The parliament's ultimate power is the ability to send the government home (no-confidence mechanism)⁵. All other powers vis-à-vis the government are derived from this power (and the credibility for its use). The military's powers of parliamentary oversight can be grouped into the following issues:

⁴ Simon Lunn, *The Democratic Control of Armed Forces in Principle and Practice*, DCAF Working Paper, Geneva, 2002 (www.dcaf.ch).

⁵ Laver, M. and Shepsle, K., *Government Accountability in Parliamentary Democracy*. In: Przeworski, A., Stokes, S., Manin, B. (1999), op. cit. p. 281.

1. General Powers: these include powers which are, in principle, applicable to all fields of government. In most countries, these powers include: the right to initiate or amend laws, to raise questions, to summon members of the executive and their staff to testify, to summon members of civil society, to obtain desired information from the executive, to carry out parliamentary inquiries and the right to hold public hearings;

2. Budget control: the right to allocate and amend defence budget funds – at the level of programmes, projects and separate line-items; the right to approve or disapprove any supplementary defence budget proposals (during the fiscal year) and having access to all relevant defence budget documents;

3. Peace support operations: the right to dis/approve of sending troops abroad, the mandate, the budget, risks to military personnel involved, rules of engagement, command/control, duration of the mission and the right to visit troops on missions abroad.

4. Defence procurement: involvement of the parliament in the government's decision concerning contracts, specifying needs for new equipment, selection of manufacturer and assessing offers for compensation and off-set;

5. Security Policy and planning documents: the right to amend or to dis/approve the security policy concept, defence concept, crisis management concept, force structure/planning and the military strategy;

6. Military personnel: the power of the parliament to dis/approve the defence human resources management plan, maximum number of personnel employed by the MoD and military, approval of high ranking military commanders and the right to be consulted by the defence minister about high ranking appointments.

Together, these control instruments cover the most important aspects of any military, which is planning, operations, money, people, equipment and policy.

In addition to these powers, parliamentary oversight is also dependant on the willingness and the ability to hold the executive to account. The 'willingness' refers to the duty of parliaments to hold governments accountable, in spite of partisan/coalition politics. Parliament's 'ability' concerns parliamentary staff, budget, library and infrastructure – in short, the parliamentary resources. These three aspects of parliaments, that is, powers, political will and resources are all relevant for enhancing the parliamentary oversight of the military. Assuming that parliaments are willing to

hold the government to account, four types of parliaments can be distinguished, based on their powers and resources⁶:

	Resources	Few resources	Many resources
Powers			
Few oversight powers		Rubberstamp parliament	Arena Parliament
Many oversight powers		Emerging parliament	Transformative parliament

Table 1: Classification of parliament's capacity to exert oversight

1. Rubber stamp: in this case the parliament only applauds the policies of the government. These parliaments neither have the power nor the resources to hold the government accountable. This was typically the case in the parliaments of the USSR and its former satellite states.
2. Emerging Parliaments: these parliaments have most relevant powers, but lack the capacities, such as staff and library and therefore the information to hold the government accountable. These parliaments are mostly found in transitional states
3. Arena parliaments: these parliaments do possess the relevant information but they are lack real powers to hold the government accountable in an effective manner. They are, nevertheless, capable of organising debates and raising questions and thus influencing the legitimacy of the government's decision to act. This is an important aspect of the representative function of the parliament. An example is the UK parliament, where the government dominates the (informed) parliament.
4. Transformative parliaments have both extensive powers and the resources for holding the government accountable. These parliaments are capable of scrutinising and altering governments proposals and laws. Examples of this are the German Bundestag and the US Congress.

In the next sections we focus on the powers and resources of the parliaments of the US, France, Sweden and Switzerland in overseeing the military.

⁶ For relevant classifications of parliament, see: Polsby, N., "Legislatures". In: Greenstein, F., Polsbly, N. (1975). *Governmental Institutions and Processes: Handbook of Political Science*, vol. 5. Reading, Mass.: Addison-Wesley.

Parliamentary Oversight in the US, France, Sweden and Switzerland

The data are derived from comprehensive research on parliamentary oversight in all NATO members and associated states. This research is a joint activity of DCAF in Geneva and the NATO Parliamentary Assembly in Brussels⁷. The data were provided either by the Members of Parliament or the staff of the parliamentary defence committee (or the equivalent). The data show how parliamentarians perceive their powers of oversight. The data concern the US Congress (Senate)⁸, the Swedish *Riksdagen*⁹, the French *Assemblée Nationale*¹⁰ and the Swiss *Nationalrat*¹¹ (National Assembly). In cases of a bicameral system, the most powerful chamber of the legislative was chosen. Additionally, an analysis of the constitutions of the four countries was carried out, with respect to the democratic control of armed forces.

General characteristics of political system and parliament

	United States	France	Sweden	Switzerland
Political System	Presidential	Presidential	Parliamentary	Parliamentary
Commander in chief	President	President	Cabinet (collective responsibility)	Only in war time, elected by parliament
Members of parliamentary defence committee	25	72	17	25
Staff of the Parliamentary Defence Committee	50	11	5	2
Budget defence committee (Euro)	5,800,000	130,000	500,000	NA

Table 2: Characteristics of political system and parliament (source: DCAF/NATO PA research 2002)

⁷ Special thanks to Dr. Wim F. van Eekelen, Member of the Netherlands' Senate and Vice-President of NATO PA and the excellent support of NATO PA staff as well as Members of Parliament and Staff of the parliamentary committees of the US Congress, French, Swiss and Swedish Parliament.

⁸ www.senate.gov

⁹ www.riksdagen.se

¹⁰ www.assemblee-nat.fr

¹¹ www.parlament.ch

The parliaments are embedded in either a presidential or a parliamentary system. The basic feature of parliamentary systems is that the head of government (be it prime-minister or chancellor) and his cabinet are responsible to the parliament. They are depending on the parliament's confidence and can be dismissed from office by a legislative vote of no-confidence. In a presidential system, the head of state is elected separately by the people and cannot – although some rare exceptions exist – be sent home by parliament¹². This is the main reason why parliaments are so strong in parliamentary systems, as they have the ultimate power to send the cabinet home.

Presidential systems do not necessarily have weak parliaments. Due to the system of the separation of powers, the US Congress has a strong position vis-à-vis the executive. This is particularly true when the opposition holds a majority in one or in both houses, in which case presidential policy may be substantially obstructed. Additionally, in France, where the President traditionally holds considerable authority on defence and security issues, he is only powerful when his party is also the ruling party. In the case of 'co-habitation', the parliament can limit the president's powers. In Sweden the parliament holds a fairly strong position, having experienced minority governments during twenty-six years of the last three decades. As minority cabinets are by the nature at the mercy of the legislature in parliament, the executive cannot be expected to dominate parliament¹³. Due to a strict system of separation of powers in Switzerland, the Swiss National Assembly has a strong position vis-à-vis the executive. In short, we can conclude that the parliament has a strong position in the US, Sweden and Switzerland, whereas it has a weaker position in France.

Another feature strengthening the position of the head of state in presidential systems is that the president is the Commander-in-Chief. This is the case in France and in the US, and contrasts with other countries such as Switzerland, where there is no commander-in-chief during peace time¹⁴. The Swiss military commander in chief is elected by parliament when the need of significant mobilization arises. In times of war, this elected General is granted far reaching powers¹⁵. Moreover, Article 16 of the Swiss Constitution prohibits for any central ruling power from holding a regular (professional) army (at the Federal level), while at the same time the Constitution

¹² Arend Lijphart (1999). *Patterns of Democracy: Government Forms and Performance in thirty-six Countries*. New Haven: Yale University Press. P. 117.

¹³ Arend Lijphart. Op. cit. p. 136

¹⁴ Furthermore, Switzerland has neither a head of state nor prime minister, but a ceremonial position of an annually rotating president

¹⁵ Kar Haltiner (1999). *Civil-Military Relations: Separation or Concordance? The Case of Switzerland*. Paper presented at the conference on "Redefining Society-Military Relations from Vancouver to Vladivostok", University of Birmingham, UK. P. 4-5.

allows cantons to do just that (up to three hundred men, especially for police matters). Article 19 of the Constitution, stipulates that the federal army consists of “troops of the cantons”. Therefore, each canton has a minister and ministry of defence¹⁶. In addition, referenda influence and limit the role of the executive and the legislative in Switzerland¹⁷.

The resources available within a parliament affect the power it holds vis-à-vis the executive. The four parliaments possessing a parliamentary committee on defence and parliamentary staff that were examined, also possess a parliamentary staff and do have budget to carry out their operations. The champion is the US, with a budget of USD 5,8 million, that does not even take into account the Congressional Research Service which employs approximately eight hundred staff, nor the Library of Congress. Remarkably, the French Defence Committee has a lower budget than the Swedish parliamentary defence committee, though one might expect that the French Committee has to oversee a larger military.

General Powers of parliament

The parliaments of all four countries possess the general powers to hold the government accountable for its security policy as well as the military’s activities. These activities range from initiating defence legislation, parliamentary inquiries, public hearings and the right to summon ministers, military officers, civil servants and experts from external institutes. With the exception of the US Congress, the other three parliaments made no use of their right to initiate defence laws during the previous year. However, all parliaments amended proposed defence laws. All parliaments frequently summon the minister to testify at defence committee meetings - in US this occurred ‘many’ times, in France an average of fifteen, in Switzerland approximately twenty times and in Sweden just nine times during the past year. In addition, during the same period of time, civil servants and military officers from the countries in question were obliged to appear in parliament.

¹⁶ Karl Haltiner. Op. cit. p. 4

¹⁷ Referenda dealt with issues such as the purchase of F/A 18 fighters (1993), explicit refusal of Swiss Nuclear armament, abolishment of the army (1993), allowing peacekeepers to bear arms (2001) etc.

Budget control

All parliaments possess the 'power of the purse'. Parliaments have the right to allocate or re-allocate defence funds. Only the US Congress, however, holds the 'power of the purse' at the level of budget programmes, projects and line items. The other three parliaments do not have the right to change the defence budget in this comprehensive way. All four parliaments have the right to disapprove supplementary defence budget proposals during the fiscal year.

Peace support operations

More differences exist concerning oversight powers of peace support operations (see table 3).

	United States	France	Sweden	Switzerland
Approval of sending troops abroad	Yes	No	Yes	Yes
Mandate of the mission	Yes	No	Yes	No
Budget of the mission	Yes	No, only <i>a posteriori</i>	Yes	Yes
Operational issues: Rules of engagement, command/control and risks assessment	Yes	No	No	No
Duration of the mission	Yes	No	Yes	Yes
Visiting troops abroad	Yes, frequently	Yes, 7x	Yes, 10x	Yes, 1x

Table 3: Parliamentary oversight powers over peace support operations (the number mentioned under 'visiting troops abroad' indicates how many times the parliament visited the troops during the previous year).

It appears that only the US Senate can become involved in all operational issues of peace support operations. The powers of the US Senate regarding any issues concerning peace support operations are not so much based on special regulations, but on the power of the purse. United States Congressmen can exercise the power of

the purse to prevent, condition or indeed to stop US participation in peace missions. However, the US Congress only very rarely uses this power.

In the United States, Sweden and Switzerland the parliament must authorise the deployment of troops abroad. In Sweden, for example, in order to comply with the regulations of the Constitution the armed forces can only be sent abroad in accordance with a (special) law that sets out the grounds for such action and with international treaties and commitments¹⁸. In the wake of the Vietnam (an ‘undeclared’ war), in 1973, the US Congress passed the War Powers Act which requires the President to consult with Congress whenever military action is contemplated, to report to Congress whenever armed forces are involved in hostilities abroad and, most important, the Act bars continued deployment of troops unless the Congress gives its consent. If Congress does not consent within 60 days, the President must withdraw the troops within 30 days¹⁹. Though American presidents complied with this Act, they have refused to recognise any formal obligation to obtain Congressional authorisation for deployment of troops abroad²⁰. In France, the peace support operations are clearly a matter of the executive, in which the parliament plays only a marginal role.

Defence procurement

	United States	France	Sweden	Switzerland
MoD obliged to give information	Yes	No	No	Yes
Right to disapprove contracts	Yes	No	No	NA
Involved in specifying needs for new equipment	Yes	Yes	Yes	Yes
Involved in selecting producer	Yes	No	No	No
Assessing offers for compensation and off-set	Yes	No	No	No

Table 4: Parliamentary powers to influence government’s procurement decisions

¹⁸ Swedish Constitution, Chapter 10, Art 9, paras. 1-3.

¹⁹ 50 U.S.C par. 1542-1544. Available at <http://www.yale.edu/lawweb/avalon/warpower.htm>

²⁰ For further information, see the American Civil Liberties Union website: <http://www.aclu.org>

All parliaments are involved in specifying the needs for new equipment. This is an important power, as it is the starting point of the procurement process. The US Congress appears to be the most powerful parliament, probably because the US Congress has, according to the US Constitution, “the power to raise armies”; it is the US congress (both chambers) that has to approve all procurement. Though they have these powers, often these powers are delegated to the MoD, but if desired the “US Congress could tell the military exactly how many pencils to buy each year”²¹. Though the four parliaments have different powers, one should bear in mind that they have all the power of the purse, enabling them to influence the government’s procurement policy

Security policy concepts and documents

	United States	France	Sweden	Switzerland
Security policy concept	No	Yes	Yes	No
Defence concept	No	Yes	Yes	No
Crisis management concept	No	No	Yes	Yes
Force structure and planning	No	No	Yes	No
Military strategy	No	No	No	No

Table 5: Parliamentary powers to influence government’s procurement decisions

With regard to security and defence policy formulation, we see some interesting differences between the four parliaments. One might assume that the US Congress would be a strong parliament regarding policy formulation. The contrary appears to be the case, as opposed to especially Sweden, which parliament plays a bigger role in policy formulation. One reason might be that the oversight power of the US Congress is mostly based on law making and the power of the purse. A security concept has in most countries not the status of a law and has perhaps not direct financial consequences. Therefore, the classical oversight powers (law making and the budget control) does not apply to policy formulation. In France and Sweden we see that the parliaments influence the general policy documents, but not the military-technical documents. It is not really clear why in Switzerland the parliament has only

²¹ According to a former staff member of the US Senate committee on armed services

the right to discuss and influence the crisis management concept, but not the more general or the more concrete plans.

Military personnel

	United States	France	Sweden	Switzerland
Approving military manpower plans	Yes	No	Yes	No
Approving ceilings of max. number of military personnel	Yes	No	Yes	Yes
Approving high ranking military appointments	Yes	No	No	No

Table 6: Parliamentary powers to influence military personnel plans and high appointments

The US Congress (Senate) appears to have strong involvement in military personnel issues. In contrast to the other parliaments, the Congress has the power to confirm civilian appointments (Assistant Secretary and higher) as well as high ranking military promotions (by majority vote)²². The French parliament seems to be the weakest of the four parliaments, with no power to influence military promotions or military personnel planning.

Efficiency and Legitimacy Revisited

With regards to parliamentary oversight, the essence is to grasp the ‘dividing line’ between the parliament and government in answering the question: ‘To what extent are the parliaments of the four countries that were examined, involved in military affairs?’ The four parliaments possess three relevant powers to counter-balance the power of the executive:

1. The right to initiate and amend new legislation; here we can see that, in practise, only the US Congress used this right during the last year. As a general trend, legislatures all over the world do not initiate new laws, but leave this to the executive, given the complexity of lawmaking,

²² This power is only granted to the US Senate, not the US House of Representatives

2. The right to obtain all relevant information, and, should executive give unsatisfactory explanations, to carry out inquiries.
3. The power of the purse. Via this instrument, parliaments can influence all aspects of the military. However, from our research it is apparent that this right can be limited. For example, in the case of sending troops abroad, the French parliament can only exercise budget control *a posteriori*. Secondly, as is the case in Switzerland, Sweden and France, the parliament does not have the power to control down to the lowest level of budget, that is, line items.

These three classic parliamentary powers are based on an underlying source of power. In parliamentary systems the parliament can, if desired, send the cabinet or a minister home. In a presidential system the parliament does not have this power, as the president is directly elected by the people. The ultimate power of the parliament in a presidential system is that the parliament can obstruct the lawmaking or budgeting process if it does not agree with the executive.

By having full oversight powers regarding the budget (*a priori* and in detail), the US Congress seems to be the strongest parliament. The US Congress is a 'transformative' parliament, meaning that they are able to transform their own ideas into policy or to transform government's proposals in such a way that they suit the ideas of the parliament. None of the other three parliaments seems to be a rubberstamp parliament, i.e. leaving the executive unchecked. Additionally, regardless their oversight powers, all parliaments maintain the possibility to debate in parliament the policy of the government. This 'arena' function of parliament enables parliamentarians to generate or to withhold public support and legitimacy to government's policy, which might be of crucial importance when troops are sent abroad.

In terms of efficiency and legitimacy, it is important to realise that parliament and government are not regarded as adversaries with antagonistic goals, but have a shared responsibility regarding the foreign and security policy. The idea of "shared responsibility"²³ implies that the communication between parliament, government and the top military leaders is characterised by trust, open lines of communication, mutual inclusion and inviting each other to express each other's opinion. In *concreto*, this means that the government respect the parliament as the ultimate source of

²³ Bland, Douglas. 1999. "A unified theory of civil-military relations". *Armed Forces and Society* 26 (1)

legitimacy. Moreover, parliament respects the government's responsibility to lead the military and that the security sector has some special functional requirements (secrecy and quick decision-making in military operations). In sum, parliament, government and military leaders need each other in order to achieve an effective security policy that meets both the military and societal requirements. Therefore, democratic oversight not only means commands and orders, but also incorporates dialogue and communication between political leaders and generals.

Implications for the European Parliament

So far we have carried out research on the parliaments of nation-states. The European Union, however, is not a nation-state. Though the European Union is busy acquiring certain features of nation-states, it is maybe creating something which is newer and more complicated than the nation-state, but for which we do not have a proper name yet. It is not easy and according to some also not desirable to implement features of national parliamentary oversight to the European level, as it means to transfer power from the national level to the European level.

Currently, the parliamentary oversight of ESDP and CFSP is complex, problematic and in need of strengthening. In the European Union, fifteen national parliaments and the EP oversee the ESDP. The national parliaments oversee their national government's contribution to ESDP in terms troops and money. The EP, based on the Inter-Institutional Agreement between the Presidency, Commission and EP, oversees the financial consequences of CFSP/ESDP for the community budget²⁴. Additionally based on the Article 21 of TEU, the Presidency and the Commission keep the EP informed about "the development of the Union's foreign and security policy". This power enables the EP to influence the policy and strategy of ESDP. Thirdly, the EP has the right to call the High Representative for CFSP and other EU special representatives to appear before the EP parliamentary committee on Foreign Affairs, Security, Defence and Human Rights.

The complexity of parliamentary oversight of ESDP, lies in the fact that the national parliaments have to oversee national contribution of funds and troops to ESDP, but not the development of security concepts and strategy behind it. The EP, on the

²⁴ Catriona Gourlay 2002. *Parliamentary Oversight of ESDP: the Role of European Parliament and National Parliament*. DCAF Conference Paper, DCAF, Geneva (www.dcaf.ch/pcaf)

other hand, only oversees the policy development and has no say in the funding nor the contribution of troops to military operations. Therefore, not only is parliamentary oversight fragmented over 15 +1 parliamentary bodies, also the policy and strategy is disconnected from funding and troops.

Bearing in mind the specific problematic of the parliamentary oversight of ESDP, the following issues may be relevant for the European Parliament:

1. EP's oversight power should be based on real powers. Either the EP should have the ultimate power to send home the responsible members of the Executive from the Presidency or Commission (like in parliamentary systems) or it should have real powers to obstruct the implementation of ESDP policies (as is the case in presidential systems). Without the threat to use these underlying powers, the members of the executive in the Presidency or the Commission will not take EP oversight seriously.
2. Having sufficient staff and an adequate budget to oversee security policy is essential. An example is the US Senate, whose Committee on Armed Services has a budget of USD 5.8 million and a Committee Staff of fifty (not counting the resources of Congressional Research Service and the Library of Congress).
3. The parliaments in our sample all have specialised committees on defence. Regarding the required expertise and workload, it might be wise for the EP to split its present committee into a committee on foreign policy and another separate committee on defence.
4. The EP oversight needs to cover all aspects of the security policy and military. This implies powers concerning budget control, procurement, deployment of troops, policy/planning and military personnel.
5. Though the EP does not hold all of the formal oversight powers which are possessed by national parliament. However, as an elected body it has the *de facto* power to give or to withhold legitimacy to EU security policy. The EP can influence the public opinion and support via public debates, hearings and press releases. In this respect, it is important that the EP has access to relevant documents and has the power to summon members and staff from the Commission and Presidency, as well as experts of civil society, to testify in committee meetings.
6. Concerning the specific fields of parliamentary oversight of the military, we believe that the following powers and parliamentary involvements are crucial:

- a. Procurement: involvement in specifying the need for new equipment;
- b. Peace support operations: a debate and authorisation before the troops are deployed abroad
- c. Concepts and policy: debate in parliament about the security concept of ESDP
- d. Military personnel: debate and authorisation of ceilings of maximum number of military personnel as well as involvement in the appointments of the highest commander(s).
- e. Budget control: authorisation of budget (including line budget items) as well as authorisation of supplementary budgets during the fiscal year.

It is clear that the European Parliament, ESDP and the European Union are embarking in a fascinating and important direction. The future direction of the EU will determine the position of the EP. Will the EP be a 'rubber stamp' parliament, without real involvement in ESDP? Or will the EP be an 'arena' parliament which is able, without large formal oversight powers, to give or to withhold legitimacy to ESDP? Or will the EP become a 'transformative' parliament, which is really able to transform its ideas into policy, laws and practices? The answers to these question will depend on whether the EU will grow into a federalised state or will remain a collection of sovereign states working together, for this matter, in the field of defence and security. The situation resembles the state of affairs in the US in the 18th Century, when the American founding fathers had to find a consensus between state and federal sovereignty. The consensus was found in the formulation "We, the people..."; the constitution did not start with claiming that sovereignty resides within the federal government or with the state government, but with "the people". And exactly what that expression meant, became only clear over in time²⁵.

²⁵ Joseph J. Ellis, 2001. *The founding brothers: the revolutionary generation*. New York: Alfred A. Knopf, p. 9-10.



Established in 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) encourages and supports States and non-State institutions in their efforts to strengthen democratic and civilian control of armed and security forces and promotes international cooperation in this field, with an initial focus on the Euro-Atlantic area.

The Centre collects information, undertakes research and engages in networking activities in order to identify problems, establish lessons learned and propose best practices in the field of democratic control of armed forces and civil-military relations. The Centre provides its expertise and support to all interested groups, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, academic circles.

Geneva Centre for the Democratic Control of Armed Forces (DCAF):
Rue de Chantepoulet 11, P.O.Box 1360, CH-1211 Geneva 1, Switzerland
Tel: ++41 22 741 77 00; Fax: ++41 22 741 77 05
E-mail: info@dcaf.ch
Website: <http://www.dcaf.ch>