

Integration and democracy in the EU's foreign and security policy

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I. INTRODUCTION

Calls for more powers to the European Parliament (EP) in the European Union's (EU) foreign and security policy (CFSP/ESDP) are becoming increasingly common. How can this be? Even with the Lisbon Treaty, foreign and security policy is said to remain intergovernmental, with state territory as the core organising principle for its institutions.¹ In such a context, sustaining national democratic procedures that enable the accountability of executives should not be a problem. Why then the allegation of a democratic deficit and the demand for increased powers to the EP? Is it not rather the case that the CFSP represents a democratic surplus?

In this paper I seek to discuss the claim of an emerging democratic deficit in the field of foreign and security policy. In order to do so, it is necessary to have a clearer picture of the degree and form of integration in this domain. It is only when this is clarified that we can establish whether or not the CFSP should be considered to give rise to new democratic problems or if it has rather has enhanced the democratic credentials of European foreign policy. In this preliminary draft the main focus is on identifying the key elements of the reconfiguration of European foreign and security policy in the context of the EU. The analysis of democratic implications is so far tentative and not fully developed neither theoretically nor empirically.

In the first part of the paper I develop a preliminary discussion of what kinds of criteria might be appropriate for assessing the democratic quality of foreign and security policy. In the

¹ Federal Constitutional Court's Judgment (GCC) (30 June 2009), 2 BvE 2/08 vom 30.6.2009, para 211, available at http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html.

second part I suggest that the EU's system of policy making in the domain of foreign and security policy may actually have a number of features that suggest a democratic surplus is in place, rather than a democratic deficit as is usually argued. In the third part, before the conclusion, I revisit the findings in light of democratic requirements. I suggest that it may be that rather than a democratic surplus we may talk of an enhancement of "output oriented" legitimacy, combined with a weakening of the democratic chain of legitimation. The analysis draws on secondary literature: it does not aim to present new data, but to reinterpret existing knowledge in order to better understand what might be the underlying normativity of EU foreign and security policy.

II. DEMOCRACY AND FOREIGN POLICY

In recent years, authors have highlighted what has been termed a process of 'Brusselsisation' of European foreign and security policy (Allen 1998). There has been a shift in the locus of national decision-making to Brussels-based institutional structures. This might mean that, in spite of formally safeguarding the sovereign right of member states to veto any decision that they disagree with, the member states have in practice entered a slippery slope of integration with decision-making competence 'creeping' to Brussels. If the Brussels-based institutions are seen to 'gain the advantage' due for example to easy and daily access to information and dialogue with partner states, this might point towards a more autonomous foreign and security policy for the EU. Such developments may have implications for democracy – as there would be something at the EU level that requires legitimation. However, although there are notable exceptions, institutions and decision-making in the CFSP are rarely analysed from the perspective of democracy. Rather the focus tends to be on the potential of the institutional set up for contributing to coherence between the policies of the different actors involved, and to ensure efficiency in decision-making.²

More research is therefore required in order to assess the implications of the ongoing transformation of institutions and decision-making procedures for our understanding of the "nature of the beast" and implications for democratic principles. To be sure, there is a considerable body of literature on the role and powers of the European Parliament (Crum 2006; Thym 2006; Wagner 2006). However, this literature must be complemented by

² See for example Tonra 2003; Duke and Vanhoonacker 2006; Juncos and Reynolds 2007; Christiansen and Vanhoonacker 2008; Howorth 2010.

analyses of the institutional system seen as a whole, and the entire chain of decision-making in foreign and security policy. There is a need to ascertain the authority of those who make decisions, identify their location within the overall system of European foreign and security policy, and find out to whom they render account. Research might also aim to uncover possible processes, pathways, points of access or meeting places that may allow for input from citizens or their representatives, for public deliberation or accountability at the EU level in this domain. Such research does not prejudge the question of efficiency, or presume that the EU's global influence is on par with existing or emerging superpowers. It does however rest on an acknowledgement of the EU as a relevant actor at the global scene whose foreign policy affects citizens both within and beyond its borders.

The nature of the EU polity, as well as its democratic status, is contested. To some, democratic control and accountability are well taken care of through the traditional nation state channels, as the EU is essentially intergovernmental (Moravcsik 1998; Keohane *et al.* 2009). Others, while not necessarily questioning the intergovernmental core of the Union, consider that such indirect legitimation cannot bear the burden of democratic authorisation (Lord 2011). They link this to the complexity of the (intergovernmental) institutional networks. Others again argue that Europe has been transformed to such an extent that democracy must be anchored beyond the nation state (Bohman 2007; Eriksen 2009).

The literature on foreign and security policy has to a large extent developed in isolation from this broader debate. However, due to its particularities, foreign and security policy actually constitutes an important test case. Foreign and security policy is considered alien to supranationalism, as its ultimate purpose is conventionally seen to be the protection of the 'national interest'. It is in a sense 'the ultimate bastion' of state sovereignty, and expectations that the EU's member states will move beyond intergovernmental processes of decision-making in this field have always been low. If a move beyond intergovernmentalism has taken place also here, this would be a strong indication of the EU becoming a polity in its own right. Yet, if foreign policy functions are simply 'uploaded' to the EU level without democratic control, the result might be a multi-level process of self-reinforcing executive dominance. In turn this would raise questions regarding the democratic anchoring of the polity as a whole. The hope is that the, so far very preliminary(!), discussion in this paper may contribute to the general debate regarding the conditions for democracy in Europe through its particular focus

on foreign and security policy. Further, it should contribute to the more general debate in International Relations regarding democracy and international organisations. But first, what is meant by democracy? What are core democratic requirements, and what should we look for in order to find out if European foreign and security policy satisfies these requirements?

At a principled level, democracy implies that citizens should be able to govern themselves through law and politics; that is, a democratic system must be consistent with the requirements of *autonomy* and *accountability*. These principles, which are at the core of modern ideas of democracy, are identifiable in most theories, and may thus be seen to constitute a ‘democratic minimum’ (Eriksen 2009; cp. Dahl 1989; Rawls 1993; Pettit 1997). They are an explicit part of Habermas’ discourse-theoretical model of deliberative democracy (Habermas 1996). From this perspective it is the democratic procedure that is conceived of as key. This perspective may be seen to seek to bridge republican and liberal conceptions of democracy. The autonomy requirement pertains to the ability of those affected by laws also to be their authors: ‘[i]ntrinsic to this criterion is the possibility of the authorised bodies of decision-making to react adequately on public support to determine the development of the political community in such a way that the citizens can be seen to act upon themselves’ (Eriksen 2009: 36). When investigating to what extent this principle is properly respected, key questions then are: ‘who decides – and on what issues?’ In order to find out if it is possible to trace decisions back to the authorisation given by citizens, we need to map where and how decisions are made. Further important questions pertain to whether or not, and in what ways, there are institutions and procedures in place that allow for the openness, access to information and debate that would make it possible for citizens to have an informed opinion (Held 2006: 262-3).

As for accountability, the issue is whether those who decide can be held responsible for their decisions. The key, in other words, is whether citizens can (or cannot) impose sanctions on those in power: Accountability ‘... designates a relationship wherein obligatory questions are posed and qualified answers required. It speaks to a justificatory process that rests on a reason-giving practice, wherein the decision-makers can be held responsible to the citizenry, and by which, in the last resort, it is possible to dismiss incompetent rulers’ (Eriksen 2009: 36; Bovens *et al.* 2010). In this context we must ask not only *who* is held responsible, but also to whom, and regarding which issues? What rights and resources do citizens have in this regard?

One might claim, however, that these principles of autonomy and accountability are too demanding for the domain of foreign and security policy. Foreign policy is different from domestic politics as law making is less central, and the ultimate aim is often seen to be to protect the “interests of the state” in the face of external threats. This ‘structural difference’ may suggest other, less demanding, critical standards as more appropriate. The requirements of secrecy as well as of speed of decision-making that arise in this domain arguably point in the same direction. Further, given that foreign and security policy is only to varying degrees subject to democratic scrutiny at the national level, why should we expect, or even discuss, if the CFSP delivers well in democratic terms? One might even ask if there really is anything at stake if CFSP does not live up to core democratic principles. After all, citizens have mostly been happy to leave foreign and security policy to the executives, assuming that they possess the required knowledge to act in the best interest of all. Foreign and security policy is seen mainly as an issue that interests the elites. It is only occasionally subject to great controversy, and rarely determines the outcome of elections. In the EU, the permissive consensus appears to persist with regard to this issue as public opinion is favourable to the idea of a common foreign policy for the EU (Peters 2011).

A key question is however if we really can leave these matters in the hands of specialists and elites? References to the common good as well as to the “national interest” are seductive, yet, without openness and public debate they may simply cover up for particular interests and values. If, as many observers seem to suggest, the CFSP is evidence of an expanding ‘transnational bureaucracy’, where decisions are made outside the public view and beyond the reach of national (and the European) parliaments, how can we be sure that they are in line with common interests?

In the following section I discuss the ongoing reconfiguration of European foreign policy and seek to identify characteristics of the CFSP that may be seen as conducive to a democratic surplus in this domain.

III. A DEMOCRATIC SURPLUS IN EUROPEAN FOREIGN AND SECURITY POLICY?

In this part I point to four characteristics of the EU's system of foreign and security policy that may imply a democratic surplus.³ These concern: i) the nature of the actors involved in making decisions and their potential ability to represent common interests, ii) the procedures through which decisions are made, and the requirement on member states to justify their positions in manner that may be considered acceptable by all involved; iii) the particular form of delegation of power, which may contribute to ensure a stable system of cooperation and iv) the interests and values of the Union that may constrain the substance of its foreign and security policy.⁴

New actors: representing the common interest?

As part of the ongoing process of reconfiguration of national and European foreign policy making, the range of actors involved in the making of policy has expanded. The decision-making process includes not only member states and their foreign ministries. Both supranational and intergovernmental actors play important roles and these may be expected to represent the common good in the face of particular interests. In turn this might be seen to contribute to an enhancement of output oriented legitimacy.

Permanent intergovernmental institutions

The most influential institutions are the permanent intergovernmental institutions that are located in Brussels. Although they were established in order to facilitate decision-making in the FAC and the European Council, they have gained considerable autonomy. This suggests that they may be able to constrain the tendency of foreign policy to be the instrument of particular interests (and of the interests of Great Powers) at thus protect the common good.

At the centre of the intergovernmental institutional nexus is the Political and Security Committee (PSC). Composed of national ambassadors permanently based in Brussels, it has been described as the 'linchpin' of the system of foreign and security policy (Duke 2004) and as the 'executive board' of the CFSP (Thym 2011). Its mandate is to 'monitor the international situation and contribute to the definition of policies' (Art. 38.1 TEU). The PSC also delivers opinions to the Council and exercises political control over and strategic direction of crisis-management operations. Also of importance are the various working groups

³ This draws on Sjurson (2011).

⁴ This draws on Sjurson (2011).

(Juncos and Pomorska 2011), as well as the EU Military Committee (EUMC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM) (Cross 2011).

Research suggests that, over time, these institutions have gained considerable autonomy from the governments that they are meant to serve (Tonra 2000, 2003; Howorth 2003; Meyer 2006; Vanhoonacker *et al.* 2010). They do not merely fulfil support functions for the FAC or act as coordinating mechanisms for the member states. Already in 2006, Duke and Vanhoonacker found that the ‘question of whether the administrative level matters in the foreign policy field should definitely be answered affirmatively’ (2006: 380). As noted, the PSC is particularly important in this regard. It is here that common positions are identified and the methods to realize them are developed. Juncos and Reynolds (2007) have described the PSC as ‘governing in the shadow’, while Howorth (2010) refers to the PSC as the ‘script writer’ for the CFSP, in the sense that its members ‘come up with policies, missions and operations for the EU which will allow it to demonstrate both its usefulness and its importance’ (Howorth 2010: 18).

These observations of a shift in decision-making power from national capitals to the institutional machinery in Brussels suggest a fragmentation of the executive power of national governments. The agents of national governments in Brussels have a hand on the steering wheel. They have a degree of autonomy and may thus reasonably be expected to challenge a foreign and security policy that promotes particular interests. From a perspective of legitimacy this may be positive, on the condition that these institutions are able to actually make binding decisions and implement them.

Supranational institutions

The supranational institutions have however also gained considerable influence on foreign policy making. Formally, the Commission is ‘fully associated’ with the work carried out. It is represented in all the intergovernmental CFSP institutions, and it also has the right of initiative, although this is not an exclusive right. In the Maastricht Treaty, the European Parliament (EP) was granted the right to be consulted on the primary aspects and basic choices of the CFSP. It also has the right to ask questions and to make recommendations to the Council in this domain. Under the Lisbon Treaty, the interactions between the Council and

the EP have intensified; however, the nature of the relationship remains unchanged. The European Court of Justice has no jurisdiction over the CFSP.⁵

However, the boundaries between external economic relations and external political relations are not always self-evident. Furthermore, it is not always possible to separate, for example, ‘foreign policy’ or ‘security’ issues from ‘development’, which is controlled by the Commission. A number of issues fall under so-called ‘mixed competence’. This has led to double-headed missions and *ad-hoc* solutions in which the Commission and representatives of the Council have both been involved. In addition, the implementation of CFSP decisions often requires the use of EC instruments or financing through the EU budget. In such situations, the Commission and the EP are able to flex their muscles. Due to this fuzziness, the supranational institutions have successfully encroached on what might originally have been considered realm of national governments. We see this, for example, in the inter-institutional agreements between the EP and the Council in foreign and security policy (Rosén 2014). Similarly, in the area of defence procurement, the Commission has successfully introduced common legislation in a domain formally controlled by the intergovernmental EDA (Blauberger and Weiss 2013).

While (in principle) foreign and security policy is supposed to be under the control of national governments (through the CFSP), other aspects of the EU’s global activities (trade, development policy, climate policy) are subject to supranational procedures. It is often difficult to establish clear distinctions between the two, and the result appears to be that the supranational institutions gain more influence on foreign and security policy than what the Treaties may suggest (Smith 2001, 2004: 7–8). This may represent if not a democratic gain then at least enhanced legitimacy, as the supranational institutions are meant to serve the common interest. To the extent that this also strengthens the role of the European Parliament, it may also enhance democratic legitimacy.

The High Representative

In order to ensure greater coherence in all aspects of the EU’s external activities, the Lisbon Treaty introduced the double-hatted post of the High Representative for Foreign Affairs and Security Policy and Vice President of the Commission. Catherine Ashton was the first HR to

⁵ However, see Christophe Hillion (2014).

take over from the Presidency the responsibility of chairing the meetings of the CFSP, including those of the Foreign Affairs Council (FAC). The HR also has the right to put forward policy proposals and serves as head of the European Defence Agency (EDA). This reinforced HR is thus a key institutional position within the CFSP (Vanhoonaeker and Pomorska 2013). While the HR may also pull in the direction of ensuring that the common interest of all is taken into account, this new actor does at the same time perpetuate the unresolved tension between the protection of national sovereignty and the aim of a single policy. This is so as the authority of the High Representative is derived from the member states, while she is also part of the Commission. This is even more visible with the newly appointed HR Isabella Mogherini, who has chosen to locate her office in the Commission, thus emphasising the importance and relevance of the supranational aspects of the EU's external policies.

The establishment of a ministry of foreign affairs – the European External Action Service (EEAS) – constituted the second major institutional innovation in the Lisbon Treaty. This institution, a merger of various branches of the Commission and the General Secretariat with an additional influx of new staff, was set up to assist the HR. Consequently, in the EEAS, supranationalism and intergovernmentalism live together under the same roof. Its logic of recruitment contrasts with intergovernmental principles: Sixty per cent of the EEAS's staff is permanent, and all staff is appointed 'on merit' rather than with reference to their geographical/national origin. As an institution, it is intended to address issues that must be decided according to the procedures of the CFSP, as well as some of the issues that are still subject to the Community method (previously dealt with by Commission officials).

The permanent intergovernmental institutions have considerably more autonomy than what one would expect within an intergovernmental system. However, there is also increased evidence of a mixity of supranational and intergovernmental actors influencing policy through the new HR and the EEAS. The second aspect of the ongoing configuration of European foreign policy that may affect legitimacy and democracy is linked to the procedures through which decisions are made. One might consider if there is a potential for a deliberative decision-making process in which there is an expectation that positions are justified with reference to a common good or to mutually acceptable norms or principles.

A requirement of justification

Many studies have pointed to significant changes in the way in which policy is made within the institutions dealing with foreign and security policy (Tonra 2003; Meyer 2006; Vanhoonacker *et al.* 2010). Juncos and Pomorska (2006) and Juncos and Reynolds (2007) find strong evidence of compliance with specific codes of conduct referred to as ‘consensus building’, as well as with the oft-cited ‘reflex of coordination’, thus echoing much of what Simon Nuttall argued in 2000 (Nuttall 2000). Howorth similarly finds that ‘a significant measure of socialisation ensures that the dominant mode of interaction is consensus-seeking rather than bargaining around fixed national positions’ (Howorth 2010: 16). This literature does not directly address the question of whether or not this putative socialisation process has come about as a result of an exchange of arguments where member states are expected to justify their position with reference to mutually acceptable norms rather than merely threaten to veto a collective decision. However, it may indirectly provide insights into this question. If such a process of mutual justification is taking place, this might be indicative of a democratic surplus due to the CFSP.

One important observation supporting the claim of socialization is that the positions of the member states are becoming more similar over time. However, the fact that the perspectives or policy-positions of member states are converging does not necessarily signify that this has happened through a process of deliberation. These transformations of national perspectives may decrease the likelihood of the use of the veto and hence facilitate policy-making, but this does not necessarily mean that the decision-making process is characterised by an exchange of arguments rather than by threats and promises (which would be the logic connected to the veto). Likewise, observations characterizing actors as ‘consensus-seeking’ may still be compatible with the right to veto. Because consensus-seeking implies that all parties must agree to a decision (or at least agree not to overtly disagree), such consensus-seeking may well take place ‘in the shadow of the veto’. This would reduce the likelihood of a process of justification, which might temper policy initiatives that promote only the interests of the strongest. It would be less likely that policy would be in line with principles that might be acceptable to all parties involved.

On the other hand, insofar as this literature represents a critique of rational-choice, intergovernmentalist assumptions of actors’ preferences as exogenous and of the outcome of decisions as the lowest common denominator of such predefined preferences, it does indirectly suggest that policy decisions are preceded by a process of justification. The

argument in the literature is that, rather than being exogenous to the process of decision-making, preferences are shaped through a collective, cross-border decision-making process. If, as the reflex of coordination suggests, member states routinely postpone defining their preferences on foreign-policy issues until they have spoken with their European partners, or if they define their position in a process of exchange with their partners, this does point to an expectation on member states to justify their position, and to change their perspective if justifications are not acceptable to others.

The idea of a decreasing centrality of the veto, and of a decision-making process that is characterised by threats and promises is disappearing, also emerges from the fact that member states often do not have clearly defined preferences. In such cases, they often simply go along with the collective position (Juncos and Reynolds 2007; Howorth 2010: 17–18). However, as these are not examples of member states *changing* positions but rather of *going along with established* positions without reflecting on how they are justified, these observations are perhaps not that central to our concern. The question of whether or not there is a requirement of mutual justification is addressed more directly in a study of the EU's preparation of its positions and policies during the negotiations over the International Labour Organization's (ILO) Maritime Convention. In this case, member states were willing to forego their right to veto when they failed to convince their colleagues of the acceptability of their position (Riddervold and Sjursten 2012). This was also true for states with strong economic interests that would be negatively impacted by the proposed common positions (which entailed a strengthening of the labour rights of seafarers). While this is not a classic CFSP issue, it is an example of EU member states making policy through an exchange of arguments and changing position when failing to present justifications that are acceptable to others. As such, it constitutes a challenge to the assumption that a change in the norms that guide decision-making – a shift away from a practice in which the threat of a veto is a constant presence – is unrealistic. It points towards the possibility that one might expect an exchange of arguments, a process of justification that may lead states to drop policies that appear unacceptable to others, or that are not considered in line with mutually acceptable norms.

Several observations of interactions within the PSC point in this same direction. Participants describe processes in which they routinely succeed in convincing state representatives to alter

their initial position: ‘If we have a wave of consensus and you are the only obstacle, then you have to have exceptionally good arguments to turn the tide. Sometimes, colleagues have to say: “Yes I understand everybody else, and I would love to agree but I simply have to call home.” Then everybody will agree to let him/her call home. Very, very often, I would say, it is also the case that the colleague will come back and say: “Yes, OK, we agree!”’ (quoted in Howorth 2010: 16). Likewise, Christoph Meyer finds that agreement has been achieved ‘even in areas where national strategic norms would initially indicate incompatibility’ (Meyer 2006: 136).

Member states tend to form their position on foreign policy issues in cooperation with their European partners, rather than in isolation from them. Further, contrary to conventional wisdom, there are several examples of situations in which, for the sake of the ‘common good’, member states have changed their initial position rather than veto a decision. Although we lack sufficient systematic empirical studies to verify that this represents a trend, these examples are significant enough to suggest that the change of position may be due to an expectation that positions are justified with reference to mutually acceptable arguments. This in turn could perhaps be seen as evidence of a democratising of relations amongst member states in European foreign policy.

Establishing a stable system of cooperation

The third feature of the ongoing reconfiguration of European foreign policy concerns the delegation of power (and the question of member states right or ability to revoke it – or to renegotiate its terms). Delegation of power to international organisations is usually assumed to be temporary, and clearly delimited. The delegation of powers may be revoked or renegotiated by the member states. These characteristics are important in order to ensure democratic accountability in a system of global cooperation. If powers are permanently delegated to a supranational authority the national chain of democratic control is broken. The citizens’ elected representatives no longer have a say in defining policy. At the same time, the very temporariness of such delegation may lead to instability and less predictability. This may also have certain costs in terms of output.

What kind of delegation of power do we find in the EU’s foreign and security policy? First, rather than delegating a limited set of tasks, the Treaties indicate a general delegation of competence in all matters related to foreign policy and the Union’s security, as well as

identifying the aim of a common defence. Certainly, this general delegation is limited by the fact that within this overall frame, each decision to act is made by the member states 'acting unanimously' (Art.11.1–2). Nevertheless, this generalized delegation introduces some doubts with regard to the reality of the right to revoke powers that have been delegated. Presumably, it would be easier to 'take back' into the national fold specific tasks that are limited in time. There is a sense of permanence to the delegation of general competence, which is reinforced by the establishment of instruments and capabilities at the EU level. The EU has established its own apparatus of external representation (via the EEAS). It may also deploy troops (using the concept of the battle group, for example) and it may sign treaties, as it has obtained legal personality in the Lisbon Treaty. This permanent ability to act within what may be seen as core dimensions of foreign and security policy seems to be at odds with the temporariness associated with delegation.

While doubts are often expressed with regard to the prospects for further expansion of tasks at the EU level (for example in the military domain), there are no expectations of a reduction, even in the context of the financial crisis. The assumption seems to be that a decision to delegate is fairly definitive. In fact, observers even point to a 'ratchet effect' in the way the CFSP has been designed in the Treaties: 'Right from the beginning, each constitutive report contained within it the seeds of its successor' (Hill 1993a: 275). Daily decision-making processes are also often considered to have a cumulative effect as well. As Nuttall argues, the accumulation of previous stances on foreign-policy issues provides a common framework for action and decision (Nuttall 2000; also Smith 2004: 141). These observations not only underline the definitive nature of the act of delegation but also suggest that each such act of delegation carries with it the potential for further commitments. This practice substantially diverges from the idea of powers that are delegated and that may subsequently be withdrawn. Incidentally, on this issue, the right to veto might actually have adverse effects: If a state wanted to dismantle the system, it would in all likelihood require the support of all the member states, or else the state in question would have to leave the EU altogether.

Finally, and perhaps most importantly, this generalized delegation opens zones (or pockets) of discretion for the institutions at the EU level. Amongst other effects, a generalised delegation widens the scope of initiatives that may be taken by the now semi-autonomous institutions and bodies in Brussels, such as the HR and the PSC. In their search for possible common policies, they are authorized to consider the entire spectrum from foreign policy to defence.

Furthermore, within the scope of a particular task, there may be considerable room for discretion. This is particularly the case with regard to the CSDP and military missions where the powers delegated to the PSC are considerable, although in foreign policy more generally there is also room for autonomous action (Art. 38(2) TEU).

It may then be that what we have is a more binding form of delegation than what is generally assumed. To the extent that this system is not held in check by supranational procedures for democratic authorisation and control, it may signify a democratic deficit. On the other hand, it may contribute to enhance the likelihood of a stable system of cooperation, and as such contribute, from an output perspective, to ensure the well being of citizens.

Bound by common principles and values

The fourth and final feature of the CFSP, concerns the purpose, or *raison d'être*, of the intergovernmental endeavour. To the extent that the participation in the CFSP binds the member states to common values and principles, this may also point to increased output oriented legitimacy.

An intergovernmental entity exists to serve the member states, to assist them in solving concrete problems, to ensure the protection of their interests and values and allow them to more effectively enforce their preferences. However, in the case of the EU's foreign and security policy, there has been a conscious effort to go beyond this – to define *European* interests as well as *European* values. The most coherent definition of these interests and values may be found in the European Security Strategy, adopted by the European Council in December 2003. The Security Strategy 'established principles and set clear objectives for advancing the EU's security interests based on our core values' (Council of the European Union 2008). It set out three strategic objectives for European security: 'tackling key threats, building security in our neighbourhood and promoting an international order based on effective multilateralism' (Council of the European Union 2003). The conception of the EU as an actor with a purpose of its own beyond that of serving the interests and preferences of the member states can also be identified in the Treaty texts. In the Lisbon Treaty, we find: '*the Union shall [...] assert its identity on the international scene*' (Title I, Art. 2). This seems to constitute a definite departure from the fourth feature of intergovernmentalism, and bind member states to a cooperative endeavour aiming for a greater common good and to an overarching normative frame.

Through these definitions of the interests and values of the EU, constraints are also placed on the actions of individual member states. These limitations are partly of a legal nature: The member states are, according to Article 11(2) of the Treaty of Lisbon, legally bound to support the Union's external and security policy 'actively and unreservedly in a spirit of loyalty and mutual solidarity'. In fact, according to Cremona, 'the most important element of the Treaty of Lisbon from the perspective of foreign policy coherence is the clear external mandate given to the Union as a whole in both substantive and instrumental terms' (Cremona 2008: 35). However, equally important is the binding force of norms and institutions established prior to the Lisbon Treaty. In fact, despite the well-known solo initiatives of some of the EU's member states in situations of crisis, it is increasingly difficult for member states to escape expectations of consistency between national foreign policy and the foreign-policy positions of the EU (Sjursen 2003).

The development of an overarching normative frame, in turn, constrains the member states' ability to freely define national foreign and security policy. Participation in the CFSP has led to a re-orientation of the foreign policies of member states. Already in 1996, Alfred Pijpers (1996: 252) noted this trend, as did Torreblanca a few years later with regard to Spain (Torreblanca 2001:11–12). In addition, there is evidence that the largest member states (France, Germany and the UK) have undergone such a transformation as a result of their membership in the CFSP (Aggestam 2004). The requirement to consult, under which national positions must be justified in a manner that makes them acceptable to all, might contribute to a situation in which member states seek a certain consistency between their claims and the underlying constitutive principles of the EU (Sjursen 2003).

The definition of a common purpose beyond the individual preferences and values of the member states is reinforced through the unity of the legal order, which was established with the Treaty of Lisbon. Generally, discussion of the abolition of the pillar structure has focused on the limitations of this change, stemming from the fact that the CFSP is still subject to specific rules and procedures (House of Commons 2008). However, with regard to the overall purpose of the CFSP and the principles to which it is bound, the unity of the legal order does make a significant difference. With the abolition of the pillar structure, the CFSP became subject to the same constitutional control standards as the rest of the EU. The Charter of Rights is binding for the EU as a whole, hence also for foreign, security and defence policy. This raises the stakes to some extent with regard to expectations of consistency, as it

introduces an element of legal accountability. However, it is still the case that the EU lacks formal mechanisms to sanction those who do not comply with collectively agreed-upon policy, or indeed with any of the constraints introduced in the Treaties.

A specific conception of European interests and values has been developed. Thus, the EU has already taken a step towards the establishment of institutions devoted to the Union itself, rather than to the member states. This suggests that when the EU acts, it does so for purposes that extend beyond the delegated authority of the member states. What the EU does must be consistent with the Treaties and the overarching normative framework of the EU, not only with the interests of the member states. Furthermore, the identification of the EU's values impacts the formulation of the member states' own foreign policies. This would suggest that the CFSP may enhance output oriented legitimacy – as it binds national foreign policies to certain generally accepted principles and rights.

In sum, there are a number of features of the ongoing reconfiguration of European Foreign and Security Policy that may suggest that output oriented legitimacy may be enhanced. The question is if we may go as far as claiming that this means the CFSP carries with it a democratic surplus?

IV. IMPLICATIONS FOR DEMOCRACY

Arguably, there is a democratising and 'civilising' element to the development of the CFSP. This may particularly be so as the requirement for national executives to justify their positions and actions is much more intense than in the traditional international setting (Keohane *et al.* 2009). The expectation that national governments justify their policies is probably fortified by the legal obligations resulting from the unified legal framework established by the Lisbon Treaty. There are now some formal legal obligations, such as the Charter of Rights, to which governments must refer when justifying their policies, in addition to the overall normative ethos of CFSP. However, already prior to the Lisbon Treaty there is evidence of such a normative ethos impacting on the substance of European foreign policy. Observers often highlight the EU's policy of democracy promotion, its introduction of human rights clauses in all trade agreements, its emphasis on encouraging regional cooperation and its focus on

building international institutions as representative examples of the normative ethos of the EU's foreign and security policy.

Policy is shaped with reference to values and principles that are seen as particular to the Union, and not with exclusive reference to the interests and values of the member states. Often, states refrain from vetoing decisions, or change their position, in order to facilitate common policies in line with such principles. Although member states maintain their legal competences in all matters of foreign and security policy, these competences are not exclusive to them. Thus, two parallel but interwoven systems of foreign policy are emerging – that of the nation states and that of the EU. These bind and constrain member states and may contribute to tame self interested power politics.

Nevertheless, questions of legitimacy are not only linked to policy content. From the perspective of democratic legitimacy, a key question is to what extent procedures that may ensure that the viewpoints of all those affected by decisions may be heard are in place. Ultimately, those that abide by the law should also be seen as its authors. Further, it should be possible for citizens to hear the justifications for policies made and to hold those that make them to account. The ability of the CFSP/CSDP system to live up to these requirements of autonomy and accountability is under pressure.

A key challenge is to identify 'who decides'. It is often difficult to know, or predict, where responsibility for decisions actually lies. Foreign and security policy is made through interactions and exchanges between the executive branches of the member states. This makes it difficult to disaggregate decisions and trace them back to individual ministers or governments. Key actors are the representatives of the member states in Brussels, whose autonomy and room for discretion is considerable. Other actors, such as the supranational institutions and NGOs, also in some cases wield influence. Yet these actors operate without explicit mandate from the citizens and are not accountable to them.

The justifications of foreign policies take place between and among executives. To the extent that accountability plays a part, it is a matter of legal accountability (through national courts) and not accountability to elected representatives. Also, as mechanisms for ensuring compliance are not in place, those in power may simply 'talk the talk' and act regardless.

Consequently, this form of collective, cross-national decision making seems difficult to reconcile with the principle that it should be possible to trace decisions back to a form of authorisation by the citizens. Such authorisation would probably require institutions and procedures beyond the individual nation states that would allow citizens access to information about what goes on amongst the executives and to have an informed opinion. Given that developments so far are the result mainly of informal practice, however, it is difficult to establish procedures that may compensate for their effects on citizens' status as authors of the policies. Also, there is a sense of contingency or haphazardness about which issues are brought outside the intergovernmental mode of decision making, which makes it difficult to ensure proper channels and mechanisms of authorisation. To the extent that there is a general pattern, it might be that of segmented policy making and the coexistence and overlapping of parallel systems of foreign policy. The institutions established in Brussels are part of the national executives, but their semi-autonomy contributes to a fragmentation of these same executives. The fragmentation of European foreign and security policy is also notable in that although member states maintain their legal competences in all matters of foreign and security policy, it is not exclusive to them.

There are of course exceptions. In the most dramatic international events or crises, it is much easier to trace the lines of authority back to national executives. Also, when it comes to implementation the EU must rely mostly on the national system. However, this does not solve the challenges involved in tracing those responsible and holding them to account.

As it is difficult to find out where decisions are actually made, it is also unclear who should be accountable. The EP has, through active pressure, gradually extended its influence (Barbé 2004; Maurer *et al.* 2005; Crum 2009). The general rule is, however, that it is only consulted on the main aspects and basic choices made in the field of foreign and security policy and is kept informed of how those policies evolve. With the establishment of the EEAS it has succeeded in strengthening its position a little further, as the High Representative is subject to Parliamentary questioning on the same basis as the Commissioners. Further, its role in deciding on the budget of the EEAS is important. And finally, its active involvement in the discussion on the entire set-up of the EEAS suggests that it may in future be a more influential actor. However, it is widely acknowledged that it neither authorises decisions, nor is able to hold those that make decisions accountable (Bono 2006; Peters *et al.* 2008; Crum 2009).

Moreover, the powers of national parliaments are limited due to these very departures from the core premises of intergovernmentalism.

V. CONCLUDING REMARKS

In this paper I have addressed the general question of what might be the normative added value of establishing a common European foreign and security policy. What might be the normativity of CFSP? This question is alluded to in several strands of the literature on the EU's foreign and security policy. We find echoes of such debates in the literature on what the EU "does" in foreign policy, as well as in the literature examining the powers of the European and national parliaments in this policy domain. However, in this paper I have sought to discuss the question through an analysis of the norms and principles that govern the practice of policy making in foreign and security policy, and through an effort to discuss the main features of this distinct system of decision-making.

On the one hand, one may argue that the CFSP has contributed to tame power politics not only in relations between member states but also in their collective relations with third countries. Arguably it has also enhanced transparency and access to information, amongst others due to the persistent calls by the EP for more power, influence and information. However, at the same time this suggests that something beyond intergovernmentalism appears to have developed at the EU level and requires legitimation. It is difficult to see that this can be ensured through national procedures for accountability and authorization, and the question then is to what extent the output oriented legitimation may compensate for this lack of influence of national parliaments.

The CFSP does not simply perpetuate the traditions established at the national level through intergovernmental arrangements. It contributes to remove foreign and security policy further from citizens' influence. Executive dominance in this field has been reinforced to the detriment of the legislative branch; yet equally striking is the fragmentation of the (executive) foreign-policy apparatus. National foreign and security policies are integrated in a semi-autonomous institutional structure, which has developed a 'higher order' conception of *European* interests and values.

The CFSP does not develop in a vacuum; it may be seen as part of a more general trend in global politics. New forms of governance emerge beyond the bounds of the (democratic) national state. Problems and their solutions are defined and solved in a transnational and global context (Zürn 2005; Eriksen 2006). From the perspective of citizens, developments are ambivalent. On the one hand, the strengthening of international law and international institutions enhance citizens' scope of action. Developments in the direction of a civil society at the international level, involving transnational movements and non-governmental organisations, allow for transnational solidarity and common action (Bohman 1999; Held and Koenig–Archibugi 2005). Most importantly, they enhance citizens' rights at the expense of the sovereign state. According to Hauke Brunkhorst (2011) a legal revolution has taken place since the end of the Second World War: 'The old rule of equal sovereignty of states became the "sovereign equality" under international law. Individual human beings became subject to international law, democracy became an emerging right or legal principle that is valid also against sovereign states, and the right to have rights, which Arendt missed in the 1940s, is now a legal norm that binds the international community.' (Brunkhorst 2011: 12). The point is not that these are always respected, but rather that when they are not over held actors break the law. However, the rise of a global regime of rights also gives rise to a fundamental dilemma. Although rights have been strengthened, the question is if these are rights that citizens have given to themselves.

The European Union is often described as an engine of such global transformations. According to its Security Strategy it aims to develop a rule based international order, stronger international society and well-functioning international institutions (Council of the European Union 2003). The United Nations is identified as the cornerstone of global order and the EU includes a human rights clause in all its international agreements. In so far as the CFSP has acted as an agent for transformation of the international order, in favour of stronger cosmopolitan law, it may be seen as part of the wave of post national 'good' governance (Brunkhorst 2011: 13. Also Eriksen 2006; Sjørusen 2006). However, even 'good governance' is not democratic.

Without solid grounding in democratic procedures we have less tools at our disposal to ensure that post national governance does not turn from 'good' to 'bad' (Brunkhorst 2011). Against the backdrop of the 'war against terror' and the global financial crisis, as well as the rise of

new powers – some with scant consideration for human rights, this may be a particular source of concern.

On the other hand, foreign and security policy is perhaps no longer an issue that citizens and parliaments are willing to blindly put in the hands of the executive. The permissive consensus may become less so. This may also be the case with regard to the CFSP, if it bows to the considerable structural pressure for it to abandon its Kantian stance and position itself in accordance with what many consider the emergence of a new balance of power. Thus in the long run there might be increasing pressures for a reconstitutionalisation also of foreign and security policy.

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