# INTRODUCTION

How can EU defence policy best be grounded in democratic consent and what are the implications for policy makers of alternative models available? This question has to rest at the heart of any consideration of the democratic legitimacy of the European Union’s evolving ‘common’ foreign, security and defence policies – bearing on the 'internal input legitimacy' of this special issue. The Union’s defence policy, developed in earnest from the 1999 Anglo-French St Malo meeting and subsequent 2000 Helsinki EU Summit, came of age in 2003-2004 with military deployments to Macedonia, the Democratic Republic of Congo and Bosnia. There have been a total of 35 CSDP missions and operations, ranging from less than a handful of officers at the Rafa (Gaza) border crossing to a military operation of 3,700 troops in Chad and the Central African Republic. Since the heady days of the early 2000s, the Union has witnessed – with the travails of the euro, the migration crisis, Russian revanchism and the UK's withdrawal from the EU – a political crisis of confidence which has impacted on the level of ambition behind the pursuit of a common defence policy.

At the same time, the Union’s member states, even following UK withdrawal, will be the world's third-largest spender on defence, only behind the US and China. Even with defence spending below notional NATO targets of 2 percent of GDP, the Union’s member states (excluding the UK) will account for approximately 10-15 percent of all global military expenditure. The Union's member states will also have a deployable military establishment of nearly 350,000 troops from a total military of approximately 1.25 million troops. These gross figures suggest that the Union potentially has access to a significant military capacity if its member states have the will to wield such a capacity in the pursuit of shared interests and common values. Moreover, several commentators have recently argued that, absent the UK, the potential for the development of that political will is all the greater – with the UK presented as a long-standing obstacle to deeper European cooperation (Leitz, 2016; van Ham 2016). This is reinforced by advances made in 2017 and 2018 towards further defence cooperation (Foreign Affairs Council, 2017). In her 2016 launch of the Union's new global strategy, the HRVP clearly signalled that she saw common defence as an area in which early and substantive progress could be made in pursuit of greater security for European citizens (Mogherini 2016).

This, however, leaves us with a puzzle. If we assume that the member states have such a will (even if at a rhetorical level), and assuming further that the Union has the institutional capacity to facilitate the appropriate planning, decision making and operational direction of such a capacity: where does the democratic legitimacy of such a policy rest and is such legitimation a necessary condition of developing such a policy? Furthermore, what are the implications for policy making and policy makers, arising from such legitimisation?

In general, studies about defence and democratic legitimacy focus on how effectively civilian authorities govern military structures, both formally and informally (Huntington 1957, Abrahamsson 1972 and Bland 1999). Defence is a critical public policy area for most states in the international system, speaking as it does to a core existential rationale of the state itself: ensuring its own security and that of its citizens. Typically, this leads to a bifurcated scholarship. The first set of analyses looks at states where basic civilian control over the military is at issue. This may be the case where military force is wielded inappropriately by domestic political actors or where military forces themselves pose a threat to civilian and/or democratic rule. The second category of study occupies itself with analysing established democracies. Here the role of military forces is universally agreed and well defined. Its role is understood to encompass the defence of territorial borders, support to civilian authorities in times of domestic security crisis and international deployment in pursuit of foreign policy interests or values (including peacekeeping). Here, scholarly analysis usually considers the role of ‘politics’ within military and defence decision making and the role of the military and other defence-related interests as sectoral interest groups within larger 'democratic' political and bureaucratic policy making structures.

The above has been described as representing a ‘first generation’ analysis of civilian-military relations (Cottey, Edmunds, and Fortster 2002). This conceptualisation argues persuasively for the development of a ‘second generation’ analysis. This would apply more explicitly normative considerations of democratic governance to defence and civil-military relations. Here, the fact that civilian authorities reign supreme and that military capacity is separated from political authority is deemed to be a necessary but not sufficient condition. Two other issues are raised for analysis: that there must be "democratic control of defence *policy* and democratic control of the military dimensions of *foreign policy*” (original italics) (Cottey et al 2002 p.38).

According to Cottey, Edmunds and Fortster (2002) this entails more than simply the effective control of military capacity by a political executive. It must also evidence democratic control of that very political executive in its design and implementation of defence policy and it must assess how that defence policy and associated military capacity is then applied in the pursuit of foreign policy goals. Much of this assessment is made by reference to both the formal role and policy input from legislative sources as well as wider civil society engagement in policy development and implementation. Thus, constraints on executive action become the analytical focus for assessments of the democratic nature of defence policy. The object of this analysis is also frequently extended to encompass not only the standing armed forces of the state, but also paramilitary forces, such as gendarmeries, interior ministry forces and special armed police units.

Applying this model of democratic legitimation to the defence policy of the European Union immediately raises fascinating questions. First and foremost, of course, the Union does not possess its own military forces. The Union has no defence ministry or minister and the Union is not wholly committed to its own security and defence since it lacks a substantive commitment to the defence of its own territorial borders or those of its constituent member states. As a result, conversations surrounding the democratic legitimacy of defence policy rest largely at member state level. Indeed, there has been extensive scholarly analysis of how – and to what effect – national parliamentary control is exercised over national defence policy pursued at EU level within the CSDP. This well developed body of literature has generally concluded that this control is highly variable between member states.

# THE EU AND DEMOCRATIC LEGITIMACY IN DEFENCE POLICY

Of course there are even more fundamental arguments about the European Union as a democratic project. Earlier benign satisfaction with a 'permissive consensus' that centred on effective European governance has ended. This kind of 'output legitimacy' rested on the shoulders of public support for – or at least acquiescence in – competent EU policy outputs (Scharpf, 1997). The European project was thus deemed legitimate to the extent that it contributed to the effective provision of public goods. In foreign policy terms, it this is “instrumental efficiency” (Batora 2010: 2) rather than democratic participation (Keukeleire and Delreux 2014: 88) that becomes the leitmotiv.

This approach has since been supplanted by an ongoing and now acute concern (post Brexit and with the rise of other euro-skeptic forces) with the extent to which European publics are actually plugged into that policy process and the degree to which there is 'Input legitimacy' to EU policy. Using this yard stick, EU policy is legitimate to the extent that the Union's decision making process is open and responsive to public will whether directly or indirectly through parliamentary contribution and wider civil society engagement.

In the wider sphere of EU policy making, the argument has revolved around the degree to which EU policies are grounded in national parliamentary review and consent or the engagement of the directly elected European Parliament. The key dynamic here – the one which determines the appropriate kind of legislative input (national and/or European) – is understood to be whether that policy area is directed by intergovernmental or supranational decision-making. If intergovernmental, so the assumption runs, ministers are responsible to their home parliaments and thereby held directly and immediately accountable for their decisions. If supranational (such that a national minister can be – at least in theory – outvoted) then only the European Parliament can supply the necessary input legitimacy to policy making. Of course this is a gross simplification – not least where the link between citizens and parliamentarians is as problematic as in the case of the European Parliament (Blondel et al, 1998).

Defence policy, however, is considerably more complex. Ostensibly, decision making is strictly intergovernmental thereby ensuring that national defence ministers remain wholly accountable to national parliaments. Moreover, the Union does not make authoritative decisions in the field of defence which have the effect of binding citizens. As noted above, the Union does not possess a common defence and its defence policy is limited to formal intergovernmental decision, with multiple veto points, a tightly circumscribed role for supranational institutions (European Parliament and Court of Justice), a powerful culture of national interest and weak institutional design. This model, however, is under some pressure with proposals – most notably from senior figures in the German foreign ministry - to reassess the role of unanimity in foreign and security policy.

To date, the EU and its member states have approached the issue very much in terms of creating a civil-military structure at EU level that mimics those among the member states. The Union's military staff reports to the military Director General of the EUMS who reports directly to the civilian HR/VP. Meanwhile, political responsibility for military operations is vested in the Political and Security Committee, reporting directly to national ministers while being chaired by the HRVP's nominee. Interestingly, defence ministers continue to be kept at arm's length from the CSDP, lacking their own formal council formation, meeting instead within the Foreign Affairs Council or as a non-decision making informal council formation.

CSDP does, however, continue to develop in interesting ways, thereby placing even these 'first generation' structures under pressure. The initiation of permanent structured defence cooperation (PESCO), the creation of new multinational military formations, and the CSDP-linked deployment of different sets of military and security actors (police forces, prison officers, etc.), increases the complexity of basic operational management. In addition to these operational challenges, institutional structures such as the European Defence Agency, raise issues surrounding the transparency of military planning, access to information and the appropriate treatment of diverse military interests within a large trans-national decision making system. In addition, the Commission’s ambitious programme for increases in EU funding of defence-related research and development, and new transnational joint procurement programmes raises enormous questions surrounding the intersection of corporate interests, public money and effective defence planning. Indeed, if the Commission’s well-documented (over) reliance upon industrial/sectoral stakeholders in civilian policy planning and regulatory governance were to be reproduced in the defence realm, the scope for abuse would be enormous.

It must immediately be said that – to date – there have been no substantive claims that military interests have bypassed or undermined effective civilian control. Indeed some have argued that in this realm there is evidence of best practice (Chelotti and Gul 2015). However, it is clear that a significant shift in the locus of defence policy making and planning to Brussels – arising from intensified defence cooperation and direct funding of defence projects through PESCO – has raised concerns regarding the extent to which effective oversight of national and EU-level executives is being lost. Scholarly analysts have already identified this shift in terms of 'de-parliamentarisation' (O'Brennan and Raunio 2007; Peters and Wagner 2011) and the 'double-insulation' (Tonra 2011) of executives from democratic control. As has been argued: “incremental changes towards more effective (EU) military capabilities have moved CSDP beyond pure intergovernmentalism and have given rise to questions of democratic legitimacy beyond the nation-state" (Sjursen 2012).

Even more problematic than considerations of basic, democratic functional controls over defence and military matters, is the wider normative question of good governance in this area. To what extent are effective checks and balances operational as regards the latitude being given to executive power? It is this 'second generation' analysis where the greatest concern exists. This is exacerbated by the fact that security and defence does not naturally lend itself to effective parliamentary oversight – the normal mechanism by which executive action is held to account. Security and defence is usually seen as an area in which flexibility and secrecy are critical to the effective pursuit of national security interests (Peters et al. 2008; Böcker 2012). Moreover – and again because the existential stakes are so high – party political gamesmanship (which often underpins effective parliamentary scrutiny of executive action) is often deemed to be inappropriate. Normal party politics, according to Daniel Webster (1903), has to stop at the water's edge, lost as they should be "in attachment to the national character.” Paradoxically therefore; the need for effective scrutiny of executive power is greatest where the capacity of liberal democratic governments to deliver such scrutiny is weakest. How might the Union serve to address such a paradox and what might be its implications?

# Oversight of Executive Power in CSDP

CSDP offers an intergovernmental decision making structure which is at the disposal of member state governments when they wish to pursue collective defence policy and actions. While the Lisbon treaty and its antecedents have created a bureaucratic infrastructure to manage and operationalize that policy (the HR/VP, External Action Service in concert with the EDA, PSC, Military Committee etc.), these structures operate within a mandate agreed unanimously by the member states (with some provision for 'opt-outs', abstentions and now intensified cooperation among an overwhelming subset of EU members). As earlier noted, parliaments have varied access and control of this policy at national level – and the absence of consistency and inter-parliamentary consultations obviates effective collective oversight at the EU level. The European Parliament fares even worse. While others of its powers were reinforced under the Lisbon Treaty, its remit within both CFSP and CSDP remains limited, leaving the Council peculiarly unfettered as both executive and legislative authority.

Parliament's capacity is limited to treaty-based rights to information and consultation. The High Representative's annual report, for example, is an opportunity for the assembly to be consulted “on the main aspects and basic choices” of foreign, security and defence policy while its biannual parliamentary debates and regular committee discussions give members an opportunity to engage with senior EU officials and policy makers. Through parliamentary questions, members can also address themselves to the Council of Ministers, although this carries with it no right of full and frank engagement.

Parliament has sought – with some creativity and success – to seek to shape EU-level policy making indirectly. The EP-Council inter-institutional agreement of 2002 allows up to six MEPs (five plus one substitute) to access confidential Council briefing documents and official papers – although the Council retains the right to withhold sensitive materials (Rosen 2011). While parliament has secured regular engagement with the Political and Security Committee on financial matters arising from CFSP expenditures, the Parliament is nonetheless cut out of consultation on military operations themselves as it has only a marginal role in military operational funding (Bajtay 2015). This leaves the European Parliament in an arguably weaker oversight position vis a vis 'EU' military operations than at least some national parliaments who hold the power of the purse over respective national contributions to collective EU military operations.

In effect, outside some formal engagement with the HR/VP and the Council, the parliament is largely left to talk to itself regarding EU military operations and wider associated policy development. According to Bajtay (2015) this amounts to "informal practices and tools" designed to "provide some sort of democratic scrutiny." These are said to include questions directed to the Council and HRVP, plenary debates, committee hearings, associated non-binding own-initiative reports and ad hoc field missions. The Committee on Foreign Affairs has also established its own sub-committee on Security and Defence which acts as a forum and catalyst for much of the above activity – all of which is absent any formal powers or responsibility to exercise effective parliamentary oversight such as frequently exists at national parliamentary level. Although the European Parliament has sought to fight its way into CSDP (Raube 2014) there is, in practice, no pan European parliamentary authorisation for EU military crisis-management (Wouters and Raube 2012). To place this in its starkest possible terms, there are no effective *European-level* constraints to executive power in the military/defence realm of the EU.

# DEMO(I)CRACY and DEFENCE

Having set out the case above, what is the potential of the Union to address these 'second generation' concerns over civil military relations and the normative ambition for effective democratic governance of defence policy? How can the Union best address deficits as regards its internal input legitimacy? As suggested, there are usually two avenues proposed: the effective federalisation of EU security and defence policy such that the European Parliament exercises full and complete oversight or that national parliaments, individually and/or in concert can and should do so. Both of these avenues are being actively explored in a burgeoning and increasingly sophisticated scholarship (Wouters and Raube 2012; Wills and Vermeulen 2011; Huff 2015; Herranz-Surrallés 2014)

What does have to be faced, however, is the very unique circumstances of the European Union. The Union is a new form of polity. It is neither a state (nor state-in-the-making) nor a complex multilateral IGO within which classical intergovernmental rules apply. If we start from this assumption, the possibility of seeing the Union as a potentially transformatory polity arises. Rather than chase the simulacrum of state-like structures, it is then possible to envisage other models of supervision and scrutiny which may be more effective and possess greater legitimating capacity. Perhaps indeed we are witnessing a second great ‘transformation of democracy’ (Dahl 1989, 1994) in which we moved first from direct city-state democracy to a territorial representative democracy and now to some post national cosmopolitan demo(i)cracy. (Cheneval p.336)

The notion of a 'demoicracy' has been with us for some time. The idea entails the possibility that political power (kratos) may be legitimated by more than one 'demos' or people. It suggests that the Union might – indefinitely (?) – operate within a liminal space between supranational/statist/federal and inter-governmental/veto-structured systems. The question then arises, how best to legitimate the liminal?

This is made all the more challenging as parliaments and parliamentarians face their own crisis of legitimacy, rooted in increasing disillusionment and public apathy (Beetham 2006: 1) and the rise of populist nationalism (Judis 2016). As public confidence falls, these same policy makers are challenged to exercise ever-more specialised and finely tuned expert judgements – and are themselves judged on the results. As Peter Bajtay puts it in his study for the European Parliament, legislators "are increasingly challenged by the need to strike a balance between legitimacy (the sense of common identity creating reciprocity and solidarity) and efficiency (rapid decisions, clear control, good feedback etc.). More succinctly he asks "Can foreign policy be democratic and efficient at the same time?"

The answer to the latter question must be that it should, but if it can't, we must privilege democracy over efficiency. The deployment or threatened deployment of violence by the state is one of the gravest discretionary authorities that the state possesses. On a matter of such high political salience there can be no acceptable alternative than the highest level of democratic accountability in the exercise of such a grave political act (Scharpf, 2014 p.10).

But are the traditional state-based models of democratic accountability; encompassing input, throughput and output legitimacy, appropriate to the EU (Bekkers et al. 2007, Wimmel 2007 and Schmidt 2012)? Can we, as Nicolaides insists that we must, "break free" of the imprisoning mind set which can see the EU only as either an intergovernmental agency or state-in the making? Moreover, if we can embrace the liminal nature of the Union – if we can cease our pursuit of the chimera of a simulacrum – what then are the implications for the construction of a common defence policy? Certain doors – such as those which enticingly promise a clear, hierarchical and decisive decision making capacity – are obviously closed. But others – some of which we have ignored to date – may open new possibilities in the construction of a military capacity which underpins the Union as an anti-hegemonic project (Nicolaides 2012 358) but which remain true to the democratic foundations of the Union itself.

At the same time, we are curiously witnessing a partial shift of (some) EU member state governments away from existing formal EU structures for defence cooperation – where transnational oversight and governance remains uncontestably weak – into even more informal pathways of cooperation and joint action (Drent 2018). The creation and development of the French-proposed European intervention initiative (E2I) operates in a non-institutionalised space between NATO and the EU. While it might be argued to be simply yet another multilateral vehicle subject to national parliamentary oversight, it is at the same time presented as a means to avoid the perceived obstruction of less ambitious EU member states and their unconscionably difficult electorates. It is also argued as being necessary to (re)invigorate European global ambitions and defence capacity at a time when the US is seen as a less reliable ally. This development is given even further salience as the UK’s withdrawal from CSDP stimulates British thinking on ways and means of reconnecting the UK to ‘European but not EU’ defence cooperation.

One point of departure to begin to manage these metastasizing developments (Winzen et al. 2014) is to consider a multilevel EU parliamentary system incorporating the simultaneous engagement of national and EU-level parliamentarians within a shared structure. This ‘third house’ concept offers some attraction as a means by which participating demoi can pursue nationally differentiated sovereign interests within a shared sovereign space alongside parliamentarians representing the core of that very same sovereignty-sharing project. The downside of such complex institutionalisation is precisely its innovation and originality. If we are to take Beetz (2014) and Hurrelmann (2014) seriously, then we have to interrogate the capacity of the media and the wider European public space. How can we expect European and/or national publics to appreciate and to engage with such institutional legerdemain when they already clearly struggle to break free of the dyadic mind-set of the Union as an over-reaching and intrusive international organisation or as an inadequate/incompetent state? An option here may be to start with praxis, and the development of extra-constitutional fora. A transnational European parliamentary committee or forum on security and defence might well be the kind of structure that would underpin the recognition that – especially in the field of defence – the EU is “a union of peoples who govern together but not as one” (Nicolaıdis 2015 p.152).

A second possibility is the further development and strengthening of a European public space and direct engagement with civil society. There is clear evidence that the engagement of European civil society enhances transparency and democratic accountability in many areas of domestic EU policy (Beyers, Eising and Maloney 2010). In addition, many civil society actors in the security and defence field are already themselves transnational actors with some understanding of communicating with multiple demoi. With that in hand, there is at least some scope to see active EU policy engagement with European civil society as opening avenues of communication and policy consultation which would serve significantly to strengthen the European public space, underpinning CSDP, and thereby contributing to its democratic legitimacy (Dembinski and Joachim 2014).

Based on an analysis of existing practice, however, it is clear that much yet needs to be accomplished in relations between CSDP and relevant civil society actors. There are clearly parameters within which civil society and CSDP can interact and these are defined by both formal rules and informal practices. Critically, Shapalova's study of crisis management in Georgia and Palestine (2016) highlights that civil society access is greatest 'in theatre' and in support of policy implementation on the ground but is weakest where it arguably needs to be strongest – in policy design and planning. While formal rules on civilian-military interaction exist at Council level they are judged to be "largely ineffective...incomplete and in conflict with the culture of secrecy and non-disclosure of information in CSDP" (Shapalova: 341). Informal practice, by contrast, appears vibrant if variegated, relying heavily on individual personality as well as on institutional, national and bureaucratic cultures. The cultural realm appears here to be most significant. While the creation of a strong epistemic community and shared culture can deliver effective decision making within EU military structures (Cross 2011) shared perceptions of secrecy, security and specialisation militate against engagement with non-military actors outside the formal political and command structures. Again, this is mitigated in the field; with extensive civil-military cooperation on the ground (Tonra 2018), but it fails to capture inputs at policy planning and decision making stages – when it may be critical to ensuring both greater effectiveness and democratic accountability.

In the face of such developments, the challenge is to design models in which civil society can play a vibrant and public role without being based on either intergovernmental or supranational models of democracy. To date, civil society groups have successfully acted to offer expertise, information and alternative policy prescriptions to policy makers in the security and defence realm. They have also played a role in maximising transparency, reporting effectively on CSDP and calling attention to critical issues with proposed solutions. They have been far less successful in creating affective bonds between citizens and CSDP policy making. In the words of Dembinski and Joachim (2014) these civil society organisations manage only to "represent imagined interests or political views" rather than those of affected citizen stakeholders (Dembinski and Joachim 2014: 462).

# Conclusions

This analysis is seeking to open a new conversation in debates surrounding the democratic legitimisation of EU defence policy. It has highlighted the fact that a 'second generation' analysis with a focus on the explicitly normative considerations of democratic governance in defence and civil-military relations. This in turn implies a focus on the constraints faced by executive actors – at the EU level – in pursuing a common security and defence policy. It is clear too that the Union's pursuit of a common policy, we have moved some way beyond the formal intergovernmentalism of treaty text and the capacity of heterogeneously empowered national parliaments to provide advice and consent to national governments acting within the EU realm. At the same time, there is little or no prospect of the transnational European Parliament offering that legislative and democratic oversight in the absence of a federalised Union.

Bearing the above mind we have looked to alternate governance models to give some suggestions as to how effective democratic legitimisation might be exercised in this policy realm. Taking the liminal nature of the Union seriously, rather than boxing it as either an IGO or a state-in-the-making, allows us to open a conversation surrounding new kinds of formal institutional structures and exploring in greater detail the opportunities for informal regimes, such a civil society and the development of a European public space. These have the potential to supplement formal structures with more affective links between citizens and the foreign, security and defence policy(ies) exercised in their names. As the Union contemplates acceleration in the development of policy in this area through the new Global Strategy, this becomes an urgent conversation.

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