



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

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**Parliamentary War Powers:
A Survey of 25 European Parliaments**

Sandra Dieterich, Hartwig Hummel and Stefan Marschall

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Summary

This paper presents a survey of parliamentary 'war powers' based on a comprehensive and detailed review of the degrees and institutional forms of parliamentary involvement in military security policy-making. As our original research project focused on the involvement of European Union (EU) states in the recent Iraq war, we present data for the then 25 member and accession states of the EU as of early 2003. This survey of parliamentary war powers covers the legislative, budgetary, control, communication-related and dismissal powers of the respective parliaments relating to the use of military force. Referring to this data, we distinguish five classes of democratic nation-states, ranging from those with 'very strong' to those with only 'very weak' war powers of the respective national parliament.

This research is linked to the debate on the alleged peacefulness of democracies. In this debate, up to now, democracies have usually been treated as a homogeneous category regardless of whether military security policy-making is under parliamentary control or not. Empirical surveys based on this undifferentiated concept of democracy found that democracies (almost) never wage war against each other, but on average are not significantly less warlike than other states. However, we found that the degree of democratisation, or rather parliamentarisation, of military security policy-making makes a difference: in the case of the Iraq war in 2003 we identified that a pattern of high parliamentary war powers is significantly linked to low war involvement.

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1. Introduction

Many democracies are heavily armed, spend huge amounts of money for military purposes and, at least since the end of the Cold War, regularly deploy soldiers abroad. This observation fits uneasily into the basic liberal assumption that democracy is conducive to peace. Proponents of this liberal ‘democratic peace’ theory, referring to the late eighteenth century philosopher Immanuel Kant,¹ claim that rational citizens who are unwilling to risk their lives or spend their money for warfare will induce democratically elected governments to refrain from making risky and costly security policy decisions. Liberal constructivists add the argument that in democracies citizens are socialised to respect the law and refrain from violence; thus democracies would also hesitate to resort to military force in their foreign relations. How come democracies seem to be peaceful only selectively in relation to fellow democracies? Should not ‘democracy’ affect all foreign relations?

Starting with Doyle,² the standard explanation of the ‘separate peace’ among democracies refers to different security perceptions. While democracies perceive fellow democracies as equally restrained and thus do not feel threatened by them, they do not trust non-democracies and are prepared to fight them. Some political practitioners might even go so far as to say that democracies should actively democratise non-democracies, if necessary by force, in order to make international relations more peaceful. Paradoxically, this turns ‘democratic peace’ into ‘democratic war’.³ The case of the Iraq intervention of 2003, justified by the ‘coalition of the willing’ partly as an endeavour to pacify Iraq by democratising it, drastically illustrates this line of reasoning.⁴

We think that premature conclusions of this kind are based on a misleading understanding of democratic peace and Kant’s original idea. Most importantly, mainstream research on democratic peace is usually based on a one-sided understanding of ‘democracy’ as a homogeneous category: if political systems meet certain minimum requirements – such as free and fair elections, alternating governments, public transparency of political decision-making and the rule of law – they count as democracies. At this point, the democratic quality of security policy-making and military deployment decisions is beyond consideration. For example, it might be the case that a political system meets the general criteria for being classified as ‘democratic’, even if the government enjoys exclusive decision-

¹ Doyle (1983a, 1983b).

² *Ibid.* (1983b).

³ Geis et al. (2007).

⁴ Russett (2005).

making powers on military security issues, i.e. if it is effectively unrestricted by democratic checks and balances in this policy area. But the Kantian logic for the specific ‘peacefulness’ of a democracy (government’s responsiveness to war-reluctant citizens) cannot work if a government normally does not have to be responsive to the citizens in national security policy-making, except perhaps during election campaigns. Consequently, research on democratic peace should focus on the democratic quality of security policy-making rather than on any simple dichotomy of democracy versus non-democracy.

Such a reconceptualisation of ‘democratic peace’ lets us draw two conclusions. Firstly, we cannot treat democracies as an undifferentiated group anymore, and simply contrast them with non-democracies. Rather, we have to differentiate them according to the degree of democratisation of security policy-making. Secondly, we expect a higher degree of democratisation of security policy-making to correlate significantly with a lower degree of war involvement. Thus the empirical evidence showing that democracies (as an undifferentiated group) are not significantly more peaceful than non-democracies cannot not be explained exclusively by the regime type of the adversary. The existence of ‘democratic wars’ equally points to the fact that security policy-making is not yet sufficiently organised in a democratic way in many democracies.

Again, the case of the 2003 Iraq war illustrates our argument. It was striking to notice the remarkable *differences* in how individual European democracies dealt with the situation. The United Kingdom, Denmark and Poland deployed soldiers who actively participated in the Iraq war, whereas fellow European democracies declined to contribute troops or even closed their territories to any war-related troop movements and supply activities. Considering that a clear majority of citizens in *all* European countries rejected national participation in an intervention without UN mandate,⁵ this case clearly demonstrates that democratic responsiveness in security policy-making differs significantly among democracies.

In the following sections we first discuss how ‘democratisation’ of security policy-making can be conceptualised. We posit that parliaments provide the key mechanism for realising democratic responsiveness. We then operationalise the degree of democratisation by introducing our concept of parliamentary ‘war powers’. The major part of this paper presents in detail the remarkable variance in such powers. This section is based on our survey of parliamentary war powers as of spring 2003 for the then 25 EU member and accession states.⁶ The sources of the survey are extensively documented in the bibliography at the end of this paper. In the concluding section we give evidence of the political relevance of parliamentary war powers by uncovering a significant correlation between the war powers of parliaments and the degree of war involvement during the 2003 Iraq intervention.

⁵ EOS-Gallup Europe (2003).

⁶ We conducted the research from February 2006 to October 2007. An English summary of the project design and results is available at:
www.allacademic.com//meta/p_mla_apa_research_citation/2/5/2/1/0/pages252101/p252101-1.php.

2. Parliaments and ‘democratic peace’

In the 1990s researchers started to link different foreign policy behaviour to institutional differences in foreign policy-making.⁷ Miriam Fendius Elman distinguished subtypes of democracies based on different executive-legislative institutional arrangements and the resulting different impacts of societal and government preferences. She showed that many foreign policy options of democracies were determined by their constitutional settings.⁸ Based on mainstream comparative government literature, she used four subtypes of democracies: ‘coalitional parliamentary democracy’, ‘presidential democracy’, ‘semi-presidential democracy’ and ‘Westminster parliamentary democracy’. She concluded that, for example, war-averse preferences within societies would hardly prevail over belligerent executive preferences in Westminster democracies because the ‘executive can count on legislative approval for its foreign policy positions largely because voting against the government implies handing it over to the opposition’.⁹ On the other hand she postulated that, in presidential systems, ‘war-prone leaders’ are ‘more constrained because war powers are usually shared by the executive and legislative branches’.¹⁰ Elman also concluded that in presidential and coalitional parliamentary systems strong belligerent societal preferences can result in the use of force irrespective of possibly war-averse preferences of the government, because of the powerful influence of the legislature. In presidential democracies such as the United States, ‘while the executive may not favor aggression, the logrolling of powerful societal groups in Congress may nevertheless lead the state down that road’.¹¹

More recent studies have not only differentiated democracies according to static system types, but also according to dynamic checks and balances governments face under specific political circumstances, such as the election cycle or coalition-building – factors which are thought to have an impact on foreign policy behaviour.¹² Ireland and Gartner¹³ concluded that minority governments do not initiate violent conflict as easily as majority or coalition governments because in minority governments the executive faces many more political veto players limiting the executive’s chance to realise its preferences. However, research on democratic peace has rarely addressed the specific role of parliaments so far. Among the few are Dan Reiter and Erik Tillman.¹⁴ They started to uncover evidence suggesting peaceful effects of democratised foreign policy-making, and specifically referred to the role of parliaments. In their study they distinguished democracies according to the specific ‘foreign policy power’ of their parliaments, i.e. their powers to influence and control foreign policy-making, and discuss the probability that such countries initiate war.

⁷ Morgan and Campbell (1991); Morgan and Schwebach (1992); Maoz and Russett (1993).

⁸ Elman (2000). In addition to Elman’s analysis, Susan Peterson (1995) and David Auerswald (1999) analysed the relationship between institutional structures and the extent of societal influence on foreign policy decision-making.

⁹ Elman (*ibid.*: 98).

¹⁰ *Ibid.*: 97.

¹¹ *Ibid.*: 99.

¹² Prins and Sprecher (1999); Palmer et al. (2004). For a critical review of these studies see Kaarbo and Beasley (2008).

¹³ Ireland and Gartner (2001).

¹⁴ Reiter and Tillman (2002).

A survey of the literature helps to clarify two points. Firstly, when trying to account for the variance of democracies' foreign policy behaviour, any typology of democracies has to unbundle the 'democracy' variable. The insights into the processes and dynamics of different decision-making institutions within democratic systems suggest that there is indeed a relationship between the shape of democratic decision-making structures and the degree of war involvement. Secondly, typologies of democracies still seem to be too vague to cover the specifics of parliamentary checks and balances *vis-à-vis* governmental security policy-making. We think that research on democratic peace could benefit from policy-specific typologies of democracies based on the respective role parliaments play in this policy area.

Unfortunately the literature on comparative parliamentary research has marginalised foreign and security policy issues so far and has largely ignored parliament's role in foreign and security policy-making, with the exception of the US Congress.¹⁵ The literature abounds with statements pronouncing a 'decline of parliaments'¹⁶ or diagnosing an executive-oriented 'new *raison d'état*'¹⁷ which renders parliaments almost powerless. However, scholars focusing on the European security and defence policy (ESDP) started to doubt the alleged weakness of national parliaments in security policy-making. They became interested in asking which institutional conditions, such as deployment legislation and oversight, render parliaments weak or powerful.¹⁸

We found that the Geneva Centre for the Democratic Control of Armed Forces (DCAF) has been following this track for quite some time. DCAF researchers Hans Born and Heiner Hänggi¹⁹ examine the resources of parliamentary control regarding participation in multilateral peacekeeping operations and study the constitutional and legal rights as well as the budget and staff capabilities of national parliaments. Wolfgang Wagner, in a study published by DCAF,²⁰ focuses on legal provisions for parliamentary involvement in decisions regarding the deployment of national armed forces abroad. We contend that these proposals do not sufficiently operationalise what we call parliamentary 'war powers': the capabilities of national parliaments to transfer citizens' war-averse preferences into security policy decisions. Born and Hänggi focus on peacekeeping tasks and not on combat missions, which are usually much more risky, costly and dirty. Wagner confines himself to specific legal provisions on deployment decisions without taking into consideration the broader range of parliamentary activities.

We think that a meaningful comparison of parliaments' role in security policy-making should take into consideration the use of military force beyond peacekeeping operations and apply a wider understanding of parliamentary war powers. Having applied our typology to the then 25 member and accession states

¹⁵ Lustgarten and Leigh (1994).

¹⁶ von Beyme (1998).

¹⁷ Wolf (1999)

¹⁸ Barbé and Herranz (2005); Bono (2005); Born and Hänggi (2004, 2005); Maillet (1999); Siedschlag (2001, 2002); Wagner (2006).

¹⁹ Born and Hänggi (2004, 2005).

²⁰ Wagner (2006).

of the European Union at the time of the Iraq war in 2003, we found a remarkable variance regarding the war powers of national parliaments in Europe, ranging from ‘very strong’ in Austria, Germany and Finland to ‘very weak’ in the cases of France, the UK and Greece.²¹ As we had expected, states with very strong or strong parliamentary war powers tended to be significantly less involved in the 2003 Iraq war compared to states with weak parliaments.²²

3. Conceptualising parliamentary war powers

In our typology of parliamentary war powers²³ we are building on the work of DCAF but developing it further in three ways. Most importantly, we explicitly take into consideration the use of military force against opponents. Unlike peacekeeping missions, the actual use of military force against opponents and its consequences in terms of security, costs and possibly also suspension of norms generate societal pressures on the political system. To be sure, it has been well established that during an imminent crisis, such as the start of a war, citizens and parliamentarians tend to ‘rally round the flag’ for a short time, granting the government an unprecedented scope for action. But very soon citizens demand responsiveness and accountability, and parliaments are the first to experience the sentiment of the citizens. In this situation it becomes obvious how much parliaments can actually do in their checks-and-balances role *vis-à-vis* the government. Secondly, we include supplementary capabilities (such as oversight and control) as well as functional equivalents to participation in legislation concerning deployment. Finally, we use a refined concept of parliamentary control, combining control as limitation of the scope of executive leeway and control as co-decision-making by parliaments.

Our typology of parliamentary war powers is based upon what parliamentary studies call the four ‘functions’ of parliaments.²⁴ We reconceptualise them as four power resources. Accordingly we distinguish the legislative, control (in the narrow sense), communication and election/dismissal resources of parliaments in security policy-making.

3.1 Legislative and budgetary war powers of parliaments

Since we are primarily interested in war involvement, we focus on the question of the extent to which parliaments participate in decision-making concerning the deployment of military force. To assess the degree of legislative war powers we have to check each individual case and try to find out whether and how parliaments are involved when the respective government plans to send troops

²¹ We did not cover the European Parliament because it did not, and under the Lisbon Treaty still does not, have any relevant role in military security policy-making.

²² Cf. Dieterich et al. (2007).

²³ We presented this concept in more detail in Hummel and Marschall (2007) and our DCAF policy paper (Dieterich et al., 2008).

²⁴ Marschall (2005: chap. III.2).

into military action. In doing so, we must check several provisions. Firstly, we have to ask whether and at which stage a government must consult with parliament on a planned deployment of troops. We take it that *ex ante* consultations on the deployment of military forces indicate a higher degree of parliamentary power than *ex post* consultations, simply because the crucial decisions have already been made once the government has deployed troops. It seems to be more costly to suspend a deployment decision after the troops have been mobilised than to veto such a decision in advance.

Secondly, we have to ask to what extent parliaments are involved in the decision-making process and whether or not parliamentary participation is mandatory. We have to distinguish between different modes of participation, ranging from mere consultation to strong co-decision-making powers of the parliamentary body. We also have to take into account the majorities required, because any quorum provisions can determine the capability of parliamentary minorities to block decisions. Moreover, it seems important to check whether legislative rights (as well as other parliamentary competences such as control and budgetary powers) are limited to decisions regarding national troops, or whether they also apply to foreign troops using national territory, airspace, bases or facilities or to national participation in multilateral military missions (NATO, United Nations, OSCE, EU). Parliamentary power to decide on deployment matters could be seriously curtailed by emergency provisions or exception clauses. We consider neutrality provisions as part of legislative war powers if they are based on acts of parliament and if parliament can strengthen, or abolish, these provisions. Neutrality provisions have to be regarded as a kind of structural veto of parliaments against war involvement, and hence constitute a powerful tool of the legislatures. Constitutional provisions on neutrality or disarmament could even supersede legislative action of parliaments on the deployment of troops. Therefore, a mere lack of deployment laws does not necessarily indicate weak parliamentary war powers.

In addition to co-deciding on the deployment of troops, parliament can influence military actions by using the 'power of the purse'. Deploying troops is expensive, and these operating costs, if they are to be covered by the national budget, usually have to be approved by parliament. If parliament refuses to release the money needed for military operations, the government can be severely restrained in its capacity to deploy troops. For this reason, we consider whether parliaments are entitled to give their consent to additional budget requests on the one hand, and on the other hand whether parliaments have to authorise the budget for each deployment of troops abroad.

3.2 Control war powers of parliaments

Control is one of the core concepts of parliamentary democracy, being part of the complex structure of checks and balances. To monitor the activities of other institutions at any stage has become one of the most prominent parliamentary functions. The power of control is tightly connected to sanctioning powers, since control without the ability to threaten sanctions lacks effectiveness. Resources of control can be linked to other functions of parliament (election, legislation) or can be initiated by parliaments by addressing non-parliamentary institutions like the courts or mass media.

Parliaments have a multitude of control resources. Accordingly, the measurement of the power of control must take into account the many different controlling options. Firstly, we have to analyse which instruments parliaments can use for controlling the executive. The wide-ranging repertoire of control tools includes traditional procedures by which parliament and parliamentarians can interrogate the government, for example through a 'question time' or other forms of questions to the government. Special investigation committees are supposed to be a particularly effective means of control. Standing committees also play an important role in controlling the government; committee members, being policy specialists, can scrutinise and criticise governmental action much more profoundly in their respective policy area. It seems to be specifically relevant whether or not the parliament has standing committees on foreign affairs and/or defence. Moreover, we have to take into consideration whether parliaments, via either committees or plenary assemblies, have the right to summon members of the government and to what extent they have access to governmental documents. Finally, in some political systems parliaments can resort to judicial review by bringing government decisions before courts, although of course they cannot be sure about the courts' final rulings.

Secondly, we have to examine in close detail which parliamentary unit can make use of these instruments of control in the field of military security policy. Once again, in order to determine the policy-specific parliamentary resources, we have to find out what kind of majorities or minorities can use which instruments of control. In parliamentary democracies, it is usually the opposition which executes the power of control. More specifically, we have to find out which means of control single parliamentarians or minority groups within parliament have at their disposal. Such provisions might reduce or strengthen the effectiveness of the different instruments of control significantly.

Thirdly, another differentiation concerns the timing of parliamentary control powers. We can distinguish between control accompanying governmental activities and control taking place after government decisions have been implemented. *Ex post* control seems to be less effective than control carried out 'just in time'. On the other hand, confidentiality provisions can counterbalance and restrain parliamentary control powers. Especially in the field of military security policy, governments tend to withhold information with the justification of national security requirements.

3.3 Communication-related war powers of parliaments

Communicating between those who decide and those who are affected by decisions is one of the core functions and at the same time a key power resource of parliaments, although difficult to operationalise. In early parliamentarism debating and discussing issues of general interest perhaps constituted the most essential purpose of parliamentary bodies. Originally parliamentary discourse meant pondering decisions, presenting arguments in favour of and in opposition to proposals and at the end finding the best answer.

‘Communicative action’ used in this Habermasian sense²⁵ yields parliamentary power: by discussing pro and con arguments parliaments can compel the executive to provide good reasons for its decisions. While governments might tend not to discuss military and security policy issues in public, parliaments are principally made to discuss all areas of governmental activities, including the deployment of troops. By exercising their communicative function, modern parliaments rely on the cooperation of the mass media. Only if communication is transferred into the realm of public debate beyond the parliamentary arena can parliament’s communicative power resources be fully activated.

In order to assess the communicative powers of parliament we have to determine their competences to put government plans for deploying troops on the agenda of plenary debate. We have to identify which parliamentary player can set the agenda of parliament, and more specifically whether and how far parliamentary minorities can use the communicative resources of parliament. Effective instruments to put military decisions on the agenda include urgency debates, in which the plenary assembly discusses a topic at short notice. On the other hand, parliamentary debate could also provide an opportunity to the government or the governing coalition to mobilise public opinion for its deployment plans.²⁶ But in any case parliamentary debate offers the opposition parties in parliament a chance to criticise governmental policy and present policy alternatives.

3.4 Election/dismissal-related war powers of parliaments

Election resources of parliaments are primarily important in the form of ‘dismissal’ powers. Except for Cyprus, the European democracies of our survey are parliamentary systems in which the government depends on parliamentary backing. In parliamentary democracies, not all parliaments are allowed to elect the head of government, but they always have at least the power to dismiss the prime minister or chancellor. Similarly, in semi-presidential systems some parliaments have the right to ‘impeach’ the directly elected president.

Regarding semi-presidential systems, we have to be very careful in exactly determining who possesses the power to decide on military issues within the executive: the president directly elected by the people (and therefore more difficult

²⁵ Habermas (1984-1987).

²⁶ Cf. the much-documented ‘rally-round-the-flag effect’ (Baum, 2002; Lai and Reiter, 2005).

to dismiss by parliament), or the prime minister dependent on the support of a parliamentary majority. The answer to this question basically determines the election resources of parliament, because the dismissal of a prime minister is usually much easier to accomplish than the impeachment of a president in a presidential or semi-presidential system.

The power to remove the head of the executive branch from office is a source of parliamentary control which is not specific to military policy-making. In terms of policy-specific powers, the parliament's right to demand the dismissal of the ministers, or secretaries, of defence and foreign affairs is crucial. Parliaments possessing this power are stronger because they can target sanctions specifically at individual government members responsible for security issues without having to resort to the big stick of forcing the whole government to resign. On the other hand, the executive can balance the power of parliament to dismiss the government by the executive right to dissolve parliament, either directly or by forcing a vote of confidence.

3.5 A typology of parliamentary war powers

In making an overall functional assessment of parliamentary war power we distinguish five subtypes (Table 1). In doing so we use a decision tree starting with legislative war powers and successively taking into account the other war powers.

Table 1: Typology of parliamentary war powers

(1) Very strong	Prior parliamentary approval required for each government decision relating to use of military force; parliament can investigate and debate use of military force
(2) Strong	Prior parliamentary approval required for government decisions relating to use of military force but exceptions for specific cases (foreign troops on national territory, minor deployments, arrangements with international organisations); parliament can investigate and debate use of military force
(3) Medium	<i>Ex post</i> parliamentary approval, i.e. parliament can demand troop withdrawal; parliament can investigate and debate use of military force
(4) Weak	No parliamentary approval but deployment notification to parliament required; parliament can investigate and debate use of military force
(5) Very weak	No parliament-related action required for use of military force; no specific parliamentary control or debate relating to use of military force

We attribute the highest grade of democratisation in security policy-making ('very strong') to political systems in which parliaments participate in each individual decision of governmental players on the use of violence in foreign relations, and in which they have the power effectively to block any war involvement, for example by deployment law, budgetary powers or neutrality provisions. Parliaments in this category can effectively act as institutional veto players. Beyond this veto position,

they have strong competences regarding other war powers. The second highest grade (“strong war powers”) is attributed to parliaments which in principle have to approve the deployment of armed forces *ex ante*, but do not decide on each individual case of war involvement because of exception clauses that could be, for example, part of international agreements the country has signed. Thus the government can under certain conditions bypass parliamentary decision-making. The third category covers parliaments which cannot veto war involvement *ex ante*, but can terminate it *ex post*. Parliaments of this category have a deferred veto power. We label this subtype ‘medium parliamentary war powers’. The fourth grade of ‘weak war powers’ refers to any national parliament which the respective government is obliged to inform about the deployment of armed forces but which otherwise does not have the powers to veto, or terminate, war involvement. These parliaments still have several control and communication-related competences in the field of security policy-making, such as that government must inform them about decisions regarding the use of force abroad. The lowest degree of ‘very weak war powers’ marks parliaments which governments do not even have to inform about the deployment of armed forces, and which hence lack specific security-policy-related powers.

4. A survey of parliamentary ‘war powers’ in 25 European democracies²⁷

Based on the concept of parliamentary war powers explained in the previous section, we now provide detailed information on the parliamentary war powers of 25 countries as of spring 2003. The relevant data were collected through an in-depth analysis of the constitutions, legal regulations and standing orders of the then 25 EU member and accession states, an EU-wide survey on parliamentary control of military security policy (a questionnaire was sent to all 25 national parliaments) and a review of existing literature.

We judged individual classifications based on detailed reports for each national parliament. For every war powers type, the countries are listed in alphabetical order without further differentiating according to the respective strength of war powers. Please note that because of legislative changes that have taken place since early 2003 regarding the parliamentary war powers of some states (e.g. Cyprus, Finland, France, Hungary, Portugal and Spain²⁸), these countries would have to be reclassified in an updated version of our typology.²⁹

²⁷ This survey of parliamentary war powers in Europe is based on our research project on ‘Parliamentary control of national security policy-making in the EU-25 and the Iraq war 2003’. More details can be found at www.paks.uni-duesseldorf.de.

²⁸ Whereas in a case such as Hungary the war powers of the parliament have been considerably cut down, in many other cases like France and Spain parliamentary war powers have been increased significantly.

²⁹ Wagner (2006) investigated the causes of why parliamentary war powers differ and why they change.

4.1 Parliaments with very strong war powers

4.1.1 Austria

Summary

The ‘war powers’ of the Austrian Parliament are classified as “very strong”. Most importantly, the Austrian government must seek the formal approval of the main committee of the National Council – which reflects the respective majority situation in the plenary – prior to any deployment of Austrian forces abroad. According to the regulations of the *Bundesverfassungsgesetz über Kooperation und Solidarität bei der Entsendung von Einheiten und Einzelpersonal in das Ausland* (KSE-BVG), Austrian armed forces may only participate in military operations that have been mandated by the United Nations (UN), the OSCE (Organization for Security and Co-operation in Europe) or the EU, and must abstain from engaging in the use of force within *ad hoc* coalitions of the willing. Both the plenary and the committees of the National Council have considerable control and communication-related resources to scrutinise the government’s security and defence policy. With regard to dismissal resources, the National Council can withdraw its confidence either in the government as a whole or individually in the Ministers of foreign affairs and/or defence.

Legislative resources

In Austria the power to formally declare war lies with the National and Federal Councils. The two chambers have to reach mutual consent on this decision during a joint public session (article 38 B-VG³⁰). In the absence of a formal declaration of war, deployment of Austrian armed forces abroad is regulated by the provisions of the KSE-BVG. This constitutional law entered into force in February 1997. According to article 1(1a) KSE-BVG, Austria only participates in peacekeeping missions which are mandated by an international organisation such as the UN or the OSCE, or within the framework of the common foreign and security policy of the EU. Article 2(1) KSE-BVG states that the Federal Government always has to ask for the prior approval of the Main Committee (Hauptausschuss³¹) before authorising the deployment of Austrian troops abroad. Any authorisation or rejection of a troop deployment abroad is passed by a simple majority decision.

Austria’s commitment to neutrality, defined in the *Bundesverfassungsgesetz über die Neutralität Österreichs* of 26 October 1955, means the permanent basing of foreign military forces on Austrian territory is not permissible.³² The transit of foreign troops, use of Austrian airspace and military bases and logistical support relating to foreign armed forces are governed by the provisions of the *Truppenaufenthaltsgesetz*, which took effect in 2001. Under the terms of this law

³⁰ Bundesverfassungs-Gesetz der Republik Österreich (B-VG). In the following, the B-VG is also referred to as the Austrian constitution.

³¹ The Main Committee is a special parliamentary committee which is set up by the National Council. It consists of 32 members who are elected by the National Council. Its composition mirrors the respective majority situation in the plenary and its sessions are not open to the public (articles 29-30 of the *Bundesgesetz über die Geschäftsordnung des Nationalrates - GOG-NR*).

³² Article 1(1) of the *Bundesverfassungsgesetz über die Neutralität Österreichs* (B.G.Bl 211/1955).

the federal ministers of defence and foreign affairs jointly authorise the temporary presence of foreign military forces on national territory. The National Council is not involved in these matters: it does not even have to be informed, let alone consulted. Likewise, the National Council has no say in matters concerning the use of Austrian airspace and military bases, nor on issues of logistical support related to foreign military forces.

Budgetary resources

Every year the National Council decides on the federal budget by passing a special federal financial law. Within the scope of the debate on the general budget, the Austrian Parliament can discuss the defence budget separately and propose changes to it. However, the National Council does not individually approve or veto the defence budget line, but votes on the general budget *in toto*.³³ Pursuant to article 51b(1–2) of the Austrian constitution, extraordinary or supplementary expenditures have to be authorised by the National Council. There are no separate budgets for operations of Austrian armed forces abroad; the respective costs have to be covered by the corresponding defence budgets. Hence the Austrian Parliament has no formal possibility to discuss individually, approve or reject the budget of a military operation prior to the deployment of troops abroad.³⁴

Control resources

Each Member of Parliament may request – orally or in writing – information concerning the execution of all kinds of policies, including security and defence issues (cf. article 90 GOG-NR;³⁵ article 52 B-VG). Yet the respective ministries are not obliged to submit any contracts or internal documents in the course of such interpellations. However, article 52a(2) of the Austrian constitution states that permanent parliamentary subcommittees, such as the Standing Subcommittee of the Committee on National Defence, have the power to request information from the minister of defence and the power – upon a majority decision – to demand access to relevant documents of the Ministry of Defence. Information that could threaten national security or the personal security of individuals is exempted from these provisions (cf. article 32c(1–2) GOG-NR). Besides, the Committees on Foreign Affairs and National Defence have the power to summon members of the Federal Government, experts and other witnesses to testify orally or in writing before a committee meeting (article 40(1–2) GOG-NR). Upon the written request of at least one of its members the National Council decides on a motion to set up a parliamentary committee of inquiry on security and defence issues (article 33(1) GOG-NR; article 53(1) B-VG). The establishment of such a committee requires a simple majority decision. Once a committee of inquiry has been set up, its proceedings are governed by the principle of majority voting (cf. article 3 VO-UA³⁶). Article 53(3) of the Austrian constitution states that the courts and all other authorities are obliged to comply with the request of these

³³ Personal communication with Mrs Alexandra Becker, head office of the Austrian parliament, 26 January 2007.

³⁴ *Ibid.*

³⁵ B.G.Bl 29/2005. The GOG-NR is also referred to as the standing orders.

³⁶ Verfahrensordnung für Parlamentarische Untersuchungsausschüsse. Anlage zum Geschäftsordnungsgesetz des Nationalrates (VO-UA) (B.G.Bl. 131/1997).

committees of inquiry to be provided with evidence, and all public departments must produce their files on demand. Further legislation confirms that in the course of the investigation all requested documents have to be submitted to the committee with no exception (cf. article 33 GOG-NR).

In accordance with article 140 of the Austrian constitution, one-third of the members of the National Council or one-third of the members of the Federal Council can request the judicial review of any law by the Constitutional Court. However, the constitutionality of the decision to send Austrian armed forces abroad cannot be judged by the Constitutional Court since a governmental act (*Entsendungsakt*) does not have the legal status of a federal law (*Bundesgesetz*) the Constitutional Court can judge on.³⁷

Communication-related resources

A minimum of five members of the National Council have the power to demand a short plenary debate concerning issues of foreign and security policy in connection with the written reply of the Federal Government or one of its members to a written interpellation (article 92(1-3) GOG-NR). Additionally, five Members of Parliament can introduce a request for urgent consideration of a written question before the opening of a session's agenda (article 93(1) GOG-NR). However, each member of the National Council can make use of this instrument only once a year.³⁸ Otherwise the motion for urgent consideration of a written question has to be approved by a simple majority vote of the plenary assembly. Finally, with 48 hours' notification five members of the National Council can require in writing that a debate on matters of general topical interest takes place at the beginning of the deliberations of a plenary session (article 97a(1) GOG-NR).

Dismissal resources

According to article 74(1) of the Austrian constitution, the National Council can introduce a motion of no confidence against either one member of the Federal Government or the Government as a whole. The motion has to be passed by a simple majority decision in the National Council, of which half the members have to be present for such a vote (article 74(2) B-VG).

4.1.2 Estonia

Summary

The Estonian Parliament, the *Riigikogu*, belongs to the group of parliaments with very strong war powers, most of all because prior parliamentary approval is required for sending Estonian troops into conflicts abroad and mobilising the

³⁷ Personal communication with Dr Susanne Janistyn, Main Committee, 25 June 2007.

³⁸ In addition, each *Klub* in the National Council which is a parliamentary group consisting of at least five members who belong to the same political party can request a debate on an urgent written question four times a year (article 93(2) GOG-NR).

Estonian army (except for cases when there is an immediate threat to the Estonian people). Moreover, with minor exceptions, the Parliament has to endorse the use of military bases and transit by foreign troops. Control resources are limited, but regarding dismissal capacities the *Riigikogu* can force individual ministers to resign. Compared to other parliamentary systems, the role of the President of the republic in foreign and security affairs is remarkably important. Nevertheless, the Parliament remains a crucial player in security and foreign policy-making.

Legislative resources

Pursuant to article 128(1) of the constitution, the *Riigikogu* declares a state of war or orders mobilisation and ‘shall decide on the utilisation of the Defence Forces to fulfil the international obligations of the Estonian nation’. In the event of immediate aggression, it is up to the President to declare a state of war and order the mobilisation of troops ‘without waiting for a resolution to be adopted by the Parliament’. This regulation is specified by law. According to article 19(2) of the Peacetime National Defence Act, any mobilisation of Estonian troops may be declared by Parliament, based on a proposal by the President. Should homeland defence become necessary, the President can order mobilisation without consulting the Parliament. Article 104 of the Estonian constitution mentions explicitly the Law on Peacetime National Defence and the Law on Wartime National Defence that are supposed to regulate questions of military security policy. Article 104 rules that these laws can only be adopted or amended by a majority of the Members of Parliament.

With regard to the presence of foreign military forces on Estonian territory, the International Military Cooperation Act states that the Government decides on granting to the armed forces of a foreign state a permit for a temporary stay in the event of collective self-defence. In the absence of an international agreement, Parliament has the power to decide on the transit of armed forces of foreign countries, provided that the troops number more than 5,000 soldiers. In all other cases the power to decide rests with the Government, which is, however, obliged to inform the *Riigikogu* immediately about any decision (article 19(5) International Military Cooperation Act).

Budgetary resources

The Parliament has to approve the annual draft national budget to be introduced by the Government. The *Riigikogu* can adopt supplementary expenditures resulting from regulations in other laws only with governmental approval. According to article 5(2) of the Peacetime National Defence Act, the Government proposes additions to the defence budget to the Parliament if it deems it necessary to increase military capacities and carry out mobilisation. In urgent cases, until the *Riigikogu* adopts a resolution on the matter, the Government can solely decide on the implementation of the draft budget.

Control resources

According to article 22(1) of the Rules of Procedure Act (RoP), all committees have the right to request members of the executive to provide information necessary for their work. Article 14 of the *Riigikogu* Internal Rules Act stipulates that parliamentarians have ‘the right to access state secrets in order to perform their duties’, unless the request for information endangers the operations of certain intelligence agencies.

Pursuant to the rules of procedure, committees can ask for the presence of members of government in their sessions. However, there is no obligation for members of the executive to comply with this request unless a committee of investigation summons them. Such a committee must be established if a majority of parliamentarians vote in favour of a respective resolution. The committees of investigation have extended powers to collect information, access documents and summon persons to testify at a hearing (cf. articles 22–23 RoP).

Although there is no constitutional court in Estonia, one branch of the Supreme Court acts as the Constitutional Review Court. According to article 15(1) of the constitution, everyone has the right to appeal to a court of law if his or her rights or liberties have been violated. However, article 6 of the Law on Constitutional Review Court Procedure stipulates that only the President or the Legal Chancellor can introduce a petition to the Constitutional Review Court proposing the annulment of a law. According to the Legal Chancellor Act, the Legal Chancellor is elected by the members of the *Riigikogu* for a seven-year term. The Legal Chancellor is in charge of monitoring the law-making process and reviewing the conformity of legislation with the constitution or the law.

Communication-related resources

The interpellative procedures provide for a plenary debate subsequent to the answer of a member of government, if the interpellator or another member of the *Riigikogu* wishes to express his or her point of view (article 140 RoP). Extraordinary sessions of Parliament can be summoned if requested by at least one-fifth of the Members of Parliament (article 51 RoP). At the beginning of the extraordinary meeting, the agenda is adopted by majority vote.

Dismissal resources

Finally, the Parliament has the power to express no confidence in the Government or the Prime Minister (cf. article 97 Constitution). If the Parliament adopts such a vote of no confidence, the President may, on a proposal by the Government, declare early elections. The *Riigikogu* can also express no confidence in a single minister, in which case the President must recall the minister from office. To initiate a procedure of no confidence, at least one-fifth of the Parliament’s members have to support the motion. The President can be only removed from office by the Supreme Court, and only if he or she is incapable of performing the duties of president.

4.1.3 Finland

Summary

The Finnish Parliament (*Eduskunta*) belongs to the group of parliaments with very strong war powers. The provisions of the Act on Peace Support Operations 2000 grant the *Eduskunta* the right of prior approval of all decisions to use military force abroad, by means of consultation with either the Foreign Affairs Committee or the plenary as a whole. Regarding budgetary resources, the assembly has to authorise additional budget requests if the funds provided for in the annual state budget do not cover the costs of military operations abroad. Parliamentary minorities can exert influence by using control and communication-related resources such as requesting documents or initiating topical debates on issues of military security policy. By simple majority decision the Finnish Parliament can dismiss individual ministers or the whole Government.

Legislative resources

In Finland, the President can declare a state of war with the consent of the Parliament (article 93 Constitution). Regarding the use of military force when a state of war has not been declared, section 1 of the Act on Peace Support Operations 2000 states that, due to Finland's commitment to neutrality, the armed forces do not participate in peacekeeping missions other than those authorised by the UN or the OSCE.³⁹ Section 4 of the Act on Peace Support Operations limits the number of military personnel to be assigned to peacekeeping activities to 2,000. Section 2 stipulates that the Government has to consult with the Foreign Affairs Committee prior to each decision to deploy Finnish military forces abroad. The Committee approves or rejects the government's deployment proposal.⁴⁰ If there is the expectation that the scope of the mission will exceed the limits of 'traditional peacekeeping', the Government has to consult with, and seek the approval of, the plenary of the *Eduskunta* by submitting a detailed report including information on the rules of engagement. The proceedings regarding government statements and reports are regulated by article 44(1) of the Finnish constitution and article 23 of the rules of procedure (RoP).

Finland defines itself as a non-allied country. However, foreign troops may conduct joint naval, air force and army exercises with Finnish troops in Finland. On an annual basis the Government compiles a comprehensive list of military exercises of all kinds it plans to conduct on Finnish territory. This list is presented to and approved by the Finnish Parliament. Permission to use Finnish military bases is limited to the exercise context. Individual military planes and naval vessels may enter Finnish airspace or coastal waters. This is not regarded as a political

³⁹ The Act on Peace Support Operations (750/2000) was repealed in April 2006 by the Act on Military Crisis Management (211/2006). Due to the provisions of the new Act, the participation of Finland in military operations abroad is no longer limited to UN and OSCE peacekeeping missions, but includes other forms of coercive use of military force in the framework of 'the European Union (EU) or some other international organization or group of countries' (Act on Military Crisis Management 211/2006, section 1, para. 3).

⁴⁰ The consultation of the Foreign Affairs Committee or the plenary corresponds to the right of approval of the government's proposal. Thus, without the consent of parliament Finnish forces would not be sent abroad (personal communication with Martti Tanskanen, research office of the Eduskunta, 30 January 2007).

question and therefore the defence administration is responsible for issuing such technical permits.⁴¹

Budgetary resources

In Finland the defence budget is handled as a part of the general budget discussed and approved annually by Parliament. The defence budget line contains a separate item regarding the estimated budget for peacekeeping missions (cf. section 4 Act on Peace Support Operations 2000). According to article 59 of the rules of procedure, the draft budget proposal has to be debated in the Finance Committee, which passes its recommendation to the plenary. The assembly discusses the committee report and adopts or rejects the state budget proposal. If the costs of peacekeeping activities cannot be covered by the funds provided to the Ministry of Defence in the annual defence budget, or if unexpected missions come up, the Government has to seek prior authorisation of the *Eduskunta* for additional budget requests (article 86 Constitution). The budget for each military operation is covered by a special item in the defence budget. Unless the Government does need additional funds, the Finnish Parliament cannot approve or veto the budget for individual military missions abroad.

Control resources

According to articles 45 and 47 of the constitution, each member of the Finnish Parliament has the power to request – orally or in writing – any information, including documents from the Government, the ministers of defence and foreign affairs and all other agencies. Classified files are excluded from this provision (article 47(3) Constitution). The plenary of the *Eduskunta* and all parliamentary committees possess the same right to obtain information on all issues of concern within their competencies. Moreover, article 97 of the constitution grants the Foreign Affairs Committee special powers to receive information regarding matters of security and defence policy. Parliamentary committees are entitled to invite experts, including members of the Government, for consultation on a given foreign policy issue (article 37 RoP). However, a minister cannot be forced to attend a committee meeting. The *Eduskunta* does not possess the formal power to establish special committees of inquiry in order to carry out investigations on specific issues of military security policy. According to article 7 of the rules of procedure, non-permanent committees can be set up. However, these committees do not have investigative functions.

In Finland there is no constitutional court to perform a judicial review of decisions and laws. However, prior to the adoption of laws the Constitutional Law Committee of the *Eduskunta* reviews the legality of bills. By filing a petition, a minimum of ten Members of Parliament have the power to request the Constitutional Law Committee to inquire into the constitutionality of any decision, act or law (article 115 Constitution).

⁴¹ Tanskanen, *ibid.*

Communication-related resources

According to article 45(3) of the constitution and article 26 of the rules of procedure, each member of the *Eduskunta* has the power to propose to the Speaker's Council that a topical debate shall take place in a plenary meeting on any given matter of concern. There are no special rules of majority. The Speaker's Council decides whether to hold a topical debate, but it can only reject the requested debate if it judges the request unconstitutional or violating the law (article 42(2) Constitution).

Dismissal resources

According to article 43(2) of the Finnish constitution, 20 Members of Parliament can, in connection with the debate of an interpellation or a government report, introduce a motion of no confidence against either one member of the Government or the Government as a whole.⁴² Such a motion is passed by simple majority decision of the plenary. In order to force a particular minister or the entire Government to resign from office, the vote of no confidence has to be passed by a simple majority of the members of the *Eduskunta*.

4.1.4 Germany

Summary

The German Parliament (*Bundestag*) ranks among those whose war powers are classified as 'very strong'. The *Bundestag* has to approve in advance any decision to engage German armed forces in military missions abroad without exception. Regarding budgetary resources, Parliament has to authorise additional budget requests if the funds appropriated in the annual defence budget do not cover the expenditures of military operations abroad. In the *Bundestag*, parliamentary minorities can exert a considerable influence on issues of military security policy by using control and communication-related resources, such as establishing parliamentary inquiries, initiating topical debates and appealing to the Federal Constitutional Court for judicial review. However, the German Parliament can only dismiss the Government as a whole by a constructive motion of no confidence that has to be passed by an absolute majority vote.

Legislative resources

Following a landmark ruling of the German Constitutional Court of 12 July 1994 on the use of the armed forces in out-of-area missions, every deployment of German soldiers abroad has to be authorised in advance by the *Bundestag*.⁴³ The obligation of Government to seek prior parliamentary approval applies to both the participation of the armed forces in missions which are based on treaty obligations (e.g. article 5 NATO Treaty) and all other uses of military force

⁴² Cf. Raunio and Wiberg (2003: 312).

⁴³ BVerfGE 90, 286, principle 3a.

abroad. The decision to send German forces to military operations abroad has to be adopted by a simple majority vote (article 42(2) Grundgesetz).⁴⁴

The temporary presence and transit of foreign military forces on German territory are governed by the NATO Status of Forces Agreement (SOFA) and the *Streitkräfteaufenthaltsgesetz*, both of which have been ratified by the German Parliament. The use of German airspace and logistical support are regulated by additional bilateral agreements on defence cooperation, and administrative and technical arrangements for which the Government does not have to seek the prior approval of Parliament. The *Bundestag* has to give its general consent to treaties, but cannot approve or veto the aforementioned matters on a case-by-case basis.

Budgetary resources

Every year the *Bundestag* adopts the overall budget by means of a special finance bill, which includes the defence budget. During annual budget procedures the plenary and the respective parliamentary committees are entitled to discuss and propose changes to single items of the defence budget, including military operations abroad. In the course of the fiscal year, supplementary budget requests covering the participation of German military forces in missions abroad have to be authorised by the *Bundestag*. The costs of every military operation are covered by the annual defence budget. Implicitly, however, Parliament has the power to approve or reject the funds for missions in advance on a case-by-case basis, since the deployment proposal on which the *Bundestag* votes includes information on the budget. However, Parliament cannot amend the amount specified in the government proposal.

Control resources

To examine governmental action, each member of the *Bundestag* can address oral and written questions to particular ministers (articles 105–106 Standing Orders *Bundestag* (SOB)). Additionally, groups of at least 5 per cent of the Members of Parliament have the right to submit interpellations (articles 100–104 SOB). Each individual member has the power to request access to documents pertaining to security and defence issues (article 16 SOB). However, submission of documents can be refused with reference to national security considerations. According to article 43(1) of the German constitution, both the plenary of Parliament and the Committees on Foreign Affairs and on Defence have the power to request the presence of any member of Government at their meetings (cf. articles 68 and 42 SOB). Furthermore, a committee is entitled to summon experts and civil society members to a public hearing (article 70(1) and 70(5) SOB). As stated in article 44 of the constitution, a minimum of one-quarter of the members of the *Bundestag* can demand a parliamentary investigation of any issue of public concern.⁴⁵ In the domain of military security policy, upon the request of one-quarter of its members, the Committee on Defence has to investigate a specific subject matter

⁴⁴ The German constitution is referred to as Grundgesetz (GG). In 2005 the German parliament endorsed a new deployment law, the *Parlamentsbeteiligungsgesetz*. Cf. Dieterich et al. (2007: 18ff).

⁴⁵ Cf. *Gesetz zur Regelung des Rechts der Untersuchungsausschüsse des Deutschen Bundestages* (*Untersuchungsausschussgesetz*), 19 June 2001 (BGBl. I S. 1142).

(article 45a(2) GG). In doing so the Committee on Defence enjoys the rights of a committee of inquiry, and has the power to summon witnesses from Government and civil society institutions and demand the submission of all documents pertaining to the specific issue under question. All witnesses, including experts and civil servants, are subject to the same obligations as if questioned by a judge (article 44(2–3) GG). Once such a committee of inquiry has been installed, its proceedings are subject to the principle of majority voting.

In Germany the plenary, or one-third of the members, of the *Bundestag* has the right to appeal to the Federal Constitutional Court to request a judicial review of a decision to engage the armed forces in missions abroad if they deem it unconstitutional (article 93(1.2) GG). Moreover, the plenary, a parliamentary group or a group of single members of the *Bundestag* can appeal to the Federal Constitutional Court to review issues of internal disputes over competences and procedures (article 93(1.1) GG).

Communication-related resources

In connection with the written reply of the Federal Government, or one of its members, to a written interpellation concerning issues of security and defence policy, a plenary debate has to take place (articles 100–103 SOB). Pursuant to article 106 of the standing orders of the *Bundestag*, 5 per cent of the Members of Parliament or a parliamentary group can request a debate on a specific matter of current interest.

Dismissal resources

According to article 67 of the German constitution, the *Bundestag* can pass a so-called constructive vote of no confidence in the federal chancellor (i.e. the Government) by simultaneously electing another federal chancellor. A parliamentary group or not less than a quarter of the members of the *Bundestag* can introduce such a motion (article 97 SOB). The motion of no confidence has to be passed by an absolute majority of the Members of Parliament.

4.1.5 Hungary

Summary

In spring 2003 Hungary was a democracy with ‘very strong’ parliamentary war powers, because of far-reaching competences of the Parliament in military affairs. For a successful vote on the decision to send troops abroad or accept the presence of foreign armed forces on Hungarian territory, the constitution required a two-thirds majority by the Parliament. The control and communication-related resources are remarkably large; the dismissal resources comparably limited.⁴⁶

⁴⁶ With the amendment of the constitution in August 2003, major exceptions have been introduced in the constitutional provisions. Thus Hungary has to be downgraded from ‘very strong’ to ‘strong’ parliamentary war powers.

Legislative resources

In the process of amending the constitution in 1989, the powers of the National Assembly in decisions on the involvement of Hungary in military conflicts were extended enormously. According to article 19(3) of the constitution, Parliament has the power to declare war and conclude peace. Moreover, it has to give its approval to the deployment of Hungarian armed forces abroad, including peacekeeping missions and humanitarian operations. Article 19 also states that the National Assembly decides on the temporary presence and transit of foreign military forces on Hungarian territory. The 1989 modification of the constitution delegated the approval of such activities to the exclusive competence of the National Assembly.⁴⁷ For decisions on the presence of foreign forces on Hungarian soil and the deployment of Hungarian troops, a majority of two-thirds of members attending the vote is required (cf. article 19(6) Constitution) – a provision that strengthens the veto power of the opposition.

Budgetary resources

The Parliament has the power to adopt (or refuse) the budget plan, which is introduced annually by the Government for the next fiscal year (cf. article 19(3d) Constitution). The Parliament decides on the defence budget line separately.⁴⁸

Control resources

Article 21(3) of the constitution stipulates that everyone is obliged to provide parliamentary committees with information if requested. The same article rules that whoever is invited by a parliamentary committee to testify before its hearings has the obligation to do so. The Parliament is entitled to establish a committee of investigation if at least one-fifth of the members support such a motion (cf. article 36(2) RoP).⁴⁹ According to the rules of procedure, the committee of investigation will be chaired by a member of the parliamentary opposition after its establishment (article 36(4) RoP).

In the Hungarian political system a powerful Constitutional Court has been established which has the right to examine the constitutionality of legal acts and make a ruling should a conflict of competence arise between state organs (cf. Act XXXII 1989 on the Constitutional Court). Examination by the Constitutional Court of conflicts between international treaties and rules of law, as well as other legal means of state administration, can be initiated by the Parliament, its standing committees or any Member of Parliament (article 21 Act on the Constitutional Court).

Communication-related resources

The Hungarian Parliament can debate on answers to interpellations if it regards them as insufficient (article 117(3–4) Constitution). Beyond day-to-day legislative

⁴⁷ Dunay (2005: 52)

⁴⁸ Joó (1996).

⁴⁹ Körösényi and Fodor (2004: 333).

business, the Parliament conducts so-called ‘days of debate’ upon a request by Government or one-fifth of parliamentarians. The request must clearly indicate the topic of the plenary debate (cf. Standing Order No. 129 RoP).⁵⁰ Moreover, Members of Parliament and political groups have the right to demand debates on urgent matters before and after the adopted agenda of the day. Upon a motion supported by one-fifth of its members, the National Assembly has to convene for an extraordinary session; the motion must contain the proposed agenda (article 22 Constitution).

Dismissal resources

A motion of no confidence in the Prime Minister (which amounts to a motion of no confidence in the complete Government) can be introduced by at least one-fifth of parliamentarians (cf. article 39(A) Constitution). This motion must include the nomination of a new candidate for the office of prime minister. If the majority of members express no confidence in the head of Government, the nominated candidate is automatically elected prime minister. The constitution does not include a provision for a vote of no confidence in single members of the cabinet; only the President has the right to dismiss individual ministers.⁵¹ Article 31(4) of the constitution stipulates that the President can be dismissed if he or she breaks any law or acts against the constitution. In this event, a motion of impeachment can be introduced by at least one-fifth of the deputies. Two-thirds of deputies have to vote in favour of the motion in order actually to start the impeachment process (article 31/A(2) Constitution). Then the impeachment takes place before the Constitutional Court (article 31/A(5) Constitution).

4.1.6 Italy

Summary

The Italian Parliament rates among the group with ‘very strong’ war powers. It has to approve in advance without exception any decision to engage Italian military forces in operations abroad. Regarding budgetary resources, both chambers of Parliament approve or veto the funds of each military operation abroad and must authorise additional budget requests if the funds appropriated in the annual defence budget do not cover the expenditures of military missions. In the *Camera dei Deputati* and the *Senato* for the most part parliamentary majority groups can use control and communication-related resources, such as establishing parliamentary inquiries and initiating topical debates. The Italian Parliament can dismiss only the collective Government by a constructive motion of no confidence that has to be passed by an absolute majority vote.

⁵⁰ Ibid.

⁵¹ Ibid.: 336.

Legislative resources

According to article 78 of the Italian constitution, the *Camera dei Deputati* and *Senato* have to decide jointly on a declaration of a state of war and authorise the Government to use military force (cf. article 64(2) Constitution; article 48 Standing Orders *Camera dei Deputati* (SOCD); article 107 Standing Orders *Senato* (SOS)). If there is no formal declaration of war, the participation of Italian troops in military operations abroad is regulated by the provisions of Legge n. 25 1997.⁵² Article 1 of this law states that both chambers have to give their prior approval to all decisions of the Government pertaining to security and defence issues, including the deployment of Italian forces abroad.⁵³

The stationing of and transit by foreign military forces on Italian territory, the use of Italian airspace and military bases and logistical support for foreign military forces are normally regulated by one or more military cooperation agreements concluded between Italy and the nation whose troops are using Italian territory or airspace. Two forms of such agreements exist. Agreements on technical and administrative issues can be concluded by the Italian Government according to a simplified procedure and do not require parliamentary authorisation. International treaties of a political nature must be approved by Parliament (article 80 Constitution). It is left to the Government's discretion to decide on the political nature of an international agreement, i.e. whether or not an agreement has to be presented to and approved by Parliament.⁵⁴

Budgetary resources

Every year the *Camera dei Deputati* and the *Senato* pass the general budget, which includes the defence budget line (article 81(1) and 81(4) Constitution; articles 118–124 SOCD). Moreover, with regard to unforeseen costs incurred during the fiscal year, the Italian Parliament has to give its consent to supplementary budget requests and possesses the power to approve a separate budget for every military operation abroad on a case-by-case basis.⁵⁵

Control resources

Pursuant to article 64(4) of the Italian constitution, both the chambers and the parliamentary committees can request the presence of government members at their sessions (cf. article 37 SOCD; article 59 SOS). Furthermore, the committees have the power to summon public officials and other persons to testify at their sittings and to demand access to relevant documents from the Ministries of Foreign Affairs and Defence (articles 143, 144 and 79(5–6) SOCD; articles 46–48 SOS). Pursuant to article 82 of the constitution, both chambers of Parliament are entitled to conduct inquiries on matters of foreign and security policy. To start a parliamentary inquiry at least one-tenth of the members of the Chamber of

⁵² Legge n. 25, 18 February 1997: '*Attribuzioni di Ministro della difesa, ristrutturazione dei vertici delle Forze armate e dell' Amministrazione delle difesa.*'

⁵³ Luther (2003: 452).

⁵⁴ Personal communication with Dr Enrico Seta, counsellor in the Foreign Affairs and Security Unit, Research and Study Department of the Camera dei Deputati, 26 October 2007.

⁵⁵ Personal communication with the research office of the Italian Senate, 15 February 2007.

Deputies or the Senate have to submit a proposal to set up a committee of inquiry. If the proposal is approved in the plenary of one chamber by a simple majority vote, a special committee of inquiry has to be installed (articles 140–142 SOCD; article 162 SOS). The investigation committees of both chambers are vested with the powers of an investigating judge and therefore can *subpoena* members of governmental and public agencies as well as other persons to testify on all subjects of concern. In addition, a committee of inquiry can demand the submission of all relevant documents.

In Italy the Constitutional Court (*Corte costituzionale della Repubblica Italiana*) decides disputes concerning the constitutionality of laws and acts with the force of law adopted by the state or regions (article 134 Constitution). However, only the Government and the regions can call on the court. Members of Parliament cannot bring Government decisions to deploy Italian military forces abroad before the Constitutional Court.⁵⁶

Communication-related resources

According to article 110 of the standing orders of the *Camera dei Deputati*, the chair of a parliamentary group or at least ten deputies can introduce a motion to demand a debate on a specific topical issue. The motion has to be adopted by simple majority vote. Moreover, after an urgent interpellation, a debate on the subject of current concern can be requested by members of the *Camera dei Deputati* or the *Senato* (article 138 SOCD). To change the agenda of the *Camera dei Deputati* with the aim of including an urgent topic, a motion has to be passed by simple majority vote (article 24(6) SOCD).

Dismissal resources

Article 94 of the Italian constitution states that the Government needs the support of both chambers of Parliament and that each chamber is entitled to revoke its confidence in the Government as a whole or in individual ministers. At the request of at least one-tenth of the members of the *Camera dei Deputati* and/or *Senato*, a motion of no confidence has to be debated and voted on (article 115 SOCD). The motion is adopted by a simple majority vote.

4.1.7 Latvia

Summary

Latvia's parliamentary war powers qualify as 'very strong'. Altogether, the *Saeima*, the Latvian Parliament, is a rather powerful legislature which possesses far-reaching rights to decide on the deployment of Latvian troops. Control and communication-related resources are remarkably extensive, and dismissal powers are particularly strong: the *Saeima* can force the President, the Government and even individual ministers to resign from their offices.

⁵⁶ *Regolamento generale della Corte Costituzionale 20 gennaio 1966 e successive modificazioni.*

Legislative resources

According to article 43 of the Latvian constitution, the President of the Republic has the right to declare war, but only on the basis of a parliamentary decision. In the event of attack by an enemy, the President is entitled to take 'whatever steps are necessary for the military defence of the State' (article 44 Constitution). In this case the President is obliged to summon Parliament 'concurrently and without delay' in order to let it decide on a declaration of war.

The deployment of troops is regulated in detail by the Participation of the National Armed Forces of Latvia in International Operations Act and the National Security Law. The National Security Law stipulates that the *Saeima* shall decide on the deployment of military units outside the territory of Latvia. According to section 5 of the Participation of the National Armed Forces of Latvia in International Operations Act, decisions on the deployment of troops must be taken by the *Saeima* if the troops are supposed to operate under the supervision of international organisations or under the command of a state which is mandated by a international authority to lead an international operation. The cabinet can take decisions on the participation of Latvian troops in international rescue and humanitarian operations without prior parliamentary approval (cf. section 10 National Security Law). The *Saeima* can request withdrawal of the troops at any time if the Latvian armed forces operate under a UN mandate or within the framework of a collective security organisation of which Latvia is a member.

Budgetary resources

The *Saeima* has the power to debate and approve the annual budget draft (state revenues and expenditures budget) the Government submits to Parliament (article 66 Constitution). At the end of the fiscal year the Government presents a balance of expenditures to be approved by the Parliament. According to section 6 of the National Security Law, the *Saeima* explicitly holds the power to vote on and supervise expenditures for national security purposes.

Control resources

The constitution stipulates that the members of Government (the prime minister and ministers) have to provide documents to the *Saeima* or to one of its committees if requested (article 27 Constitution). Committees are entitled to demand information necessary for their work from individual ministers and other Government authorities (article 25 Constitution). Members of the National Security Committee even have access to 'official secrets' (cf. section 7 National Security Law). If necessary for their work, committees are entitled to invite representatives of ministries to their sessions (article 25 Constitution). If requested by at least one-third of its members, the *Saeima* must establish a parliamentary inquiry committee, which has the right to question witnesses, state officials and private citizens. If persons who are invited to sessions of a committee of inquiry do not appear as requested, police can take 'coercive' measures to bring them before the committee (article 150 RoP). Pursuant to article 85 of the constitution,

the Constitutional Court is entitled to review the compliance of laws and other acts with the constitution of the Republic of Latvia. A group of 20 Members of Parliament at minimum has the right to appeal to the Constitutional Court (cf. article 16 Constitutional Court Law).

Communication-related resources

At the beginning of a parliamentary session, the agenda and amendments of the order of the sittings must be adopted by the *Saeima*. A committee or at least five parliamentarians can request changes of the plenary agenda (article 51 RoP). Additionally, Members of Parliament can issue ‘urgent announcements’ as soon as a sitting has been declared open if the person chairing the plenary session accepts this request (article 67 RoP). Article 20 of the constitution stipulates that the presidium of the *Saeima* must convene a meeting of the Parliament upon the request of at least one-third of the members of the *Saeima*; the request must include a proposed agenda. Extraordinary sessions shall be convened within 48 hours after the motion has been introduced at the latest. The agenda of an extraordinary meeting shall include only the matters outlined in the relevant motion (article 38 RoP).

Dismissal resources

The Parliament can express no confidence in the Prime Minister. In this event the Government as a whole has to resign (article 59 Constitution). Additionally, the *Saeima* can force an individual minister to resign from office if the Parliament expresses no confidence in him or her. In order to be tabled, the necessary motion of no confidence must be supported by at least ten parliamentarians or by a committee of the *Saeima*. Finally, the President can be removed from office if a motion, having been signed by at least half of the Members of Parliament, is adopted by no less than two-thirds of its members.

4.1.8 Lithuania

Summary

The far-reaching competences of the *Seimas*, Lithuania’s legislature, result in ‘very strong’ parliamentary war powers. Parliament decides *ex ante* on the use of the armed forces within and beyond the Lithuanian borders, and is entitled to examine deployment decisions *ex post*. In many constellations the *Seimas* holds the position of an institutional ‘veto player’ when it comes to the deployment of Lithuanian forces. Considering the parliamentary war powers, the military forces of the Republic of Lithuania can be called a ‘parliamentary army’ – comparable to the German case. Control and communication-related resources are strong, as are dismissal powers, as the *Seimas* can force individual ministers to resign from office.

Legislative resources

The constitution grants extensive competences to the Parliament in questions concerning the deployment of troops. According to article 67(20) of the constitution, the decision ‘to use the armed forces’ has to be made by the *Seimas*. By implication this applies to the deployment of military forces abroad as well, since article 142 of the constitution clearly stipulates that Parliament must decide on the use of military forces resulting from the ‘fulfilment of the international obligations’ of the Republic of Lithuania. In addition, it is up to the *Seimas* to impose martial law and decide on the mobilisation of the Lithuanian armed forces. Only in the event of an unexpected military attack on the sovereignty or territorial integrity of the Republic can the President decide on the steps necessary to respond to an aggression, e.g. by announcing mobilisation. However, the President is requested to convene an extraordinary session of the *Seimas* as soon as possible after he or she has made such a decision. During this extraordinary session, Parliament can approve or revoke the measures taken by the president (articles 142 and 84(16) Constitution). Additionally, international treaties concerning the presence of Lithuanian armed forces on the territory of a foreign state have to be ratified by the *Seimas*. Regarding the role of the president, the constitution rules that he or she can decide on ‘basic’ matters of foreign policy. The President appoints or dismisses the commander-in-chief of the Lithuanian army, but needs the approval of the Parliament to do so. As for the presence of foreign military forces, the constitution bluntly states that ‘foreign military bases may not be stationed’ on Lithuanian territory.

Budgetary resources

The Parliament adopts the budget of the state at the beginning of a new fiscal year (article 131 Constitution), responding to a draft introduced by the Government. The Government must report to the *Seimas* at the end of the fiscal year on the fulfilment of the approved budget plan. The Parliament is entitled to change the budget during the fiscal year or to adopt an additional budget plan (article 132 Constitution).

Control resources

Members of Government must report to the *Seimas* if so requested by it (article 206 RoP). Representatives of Government who are invited to sessions of committees or the plenary are obliged to answer parliamentarians’ questions appropriately and provide sufficient information on matters of interest (articles 53 and 206 RoP). Committees are entitled to access any documents of state institutions (except court documents) if they consider it necessary for their work (article 56(3) RoP). The Committee on National Security and Defence is in charge of controlling the military activities of Government. According to article 25(3) of the rules of procedure, Parliament can establish investigation committees. If at least one-quarter of the members of the *Seimas* request an investigation commission, Parliament is obliged to establish such a commission in the session following the tabling of the motion. The judicial review power is based on

Parliament's right to file a petition before the Constitutional Court of the Republic of Lithuania, which decides on cases concerning complaints about laws and acts of the President and the Government alleged to conflict with the Lithuanian constitution. Pursuant to article 65 of the Law on the Constitutional Court, a group of at least one-fifth of parliamentarians is entitled to file a petition concerning governmental or presidential action or an act or law adopted by a majority of the *Seimas*.

Communication-related resources

Communication-related resources are not given exclusively to the majority within the *Seimas*, for a parliamentary minority can put a subject on the agenda too. If one-fifth of the members of the *Seimas* request a debate about the Government's answer to a parliamentary inquiry or question, Parliament is obliged to set the topic on the agenda of the plenary discussions (article 216 RoP). A group of one-third of all members of the *Seimas* is entitled to demand an extraordinary session of Parliament, in which only the matter mentioned in the motion can be debated. However, the *Seimas* as a whole decides on the agenda of these extraordinary sittings at the beginning of the proceedings. In the event of an armed attack on Lithuania, the President must immediately convene an extraordinary session of Parliament (cf. article 86 RoP).

Dismissal resources

In case of conflict between Parliament and Government, the *Seimas* is entitled to express, in a secret ballot, its lack of confidence in the Prime Minister or any other minister (article 67(9) Constitution). According to article 84(5) of the constitution, the President has to dismiss the head of Government 'upon approval' of the *Seimas*. Ministers must resign if a motion of no confidence is adopted by a majority of Members of Parliament (article 101 Constitution). The President can only be removed from office by a three-fifths majority vote in Parliament determining that he or she has grossly violated the constitution.

4.1.9 Luxembourg

Summary

The *Chambre des Députés* is among the European parliaments enjoying 'very strong' war powers. According to the provisions of the *Loi du 2 août 1997 portant réorganisation de l'armée*, Luxembourg only participates in military missions mandated by an international organisation of which it is a member. Furthermore, as stated in the Act on Peace Support Operations 1992, the *Commission des affaires étrangères et européennes, de la défense, de la coopération et de l'immigration* has to formally approve in advance any deployment of military forces in missions abroad. With regard to budgetary resources, the *Chambre des Députés* is authorised to approve, or veto, additional budget requests concerning military missions abroad. Control and communication-related resources, such as receiving information on issues of

military security policy or initiating a topical debate, are shared by parliamentary minority groups. In terms of dismissal resources, the *Chambre des Députés* can withdraw its confidence in individual ministers or the Government as a whole.

Legislative resources

In accordance with article 37(6) of the constitution of Luxembourg, the Grand Duke declares a state of war after having received the formal authorisation of the *Chambre des Députés* by means of a resolution which has to be adopted by an absolute majority vote (article 114(5) Constitution). Following article 2(2) of the *Loi du 2 août 1997 portant réorganisation de l'armée*, the participation of Luxembourgian forces in military operations other than formal war is restricted to missions implemented under the auspices of international organisations of which Luxembourg is a member. The Act on Peace Support Operations 1992 states that prior to the deployment of Luxembourgian troops abroad, the *Commission des affaires étrangères et européennes, de la défense, de la coopération et de l'immigration* has to be consulted by the Government. A Grand Ducal regulation is then issued, which has to be confirmed by the *Conseil d'Etat*⁵⁷ and the Working Commission of the *Chambre des Députés* in order to become effective.⁵⁸ The adoption of a Grand Ducal regulation is mandatory for each peace support operation abroad, with no exception.⁵⁹

The temporary presence and transit of foreign military forces on the territory of Luxembourg are regulated within NATO by the SOFA adopted by the *Chambre des Députés* in 1954, and additionally by special bilateral agreements on defence cooperation ratified by the Luxembourgian Parliament. The use of airspace and logistical support are governed by administrative and technical arrangements for which the Government does not have to seek the prior approval of the *Chambre des Députés*.⁶⁰ It is left at the Government's sole discretion to inform and consult the *Commission des affaires étrangères et européennes, de la défense, de la coopération et de l'immigration* or to demand a plenary debate regarding a decision which is deemed to be of political importance.

Budgetary resources

Every year the *Chambre des Députés* votes on the Government's draft budget proposal by adopting a special finance bill (articles 99–114 RoP). However, Parliament is not involved in the preparation of the budget bill. The defence budget line is part of the state budget. The *Chambre des Députés* cannot approve or reject it separately, since the state budget bill is adopted *in toto* by parliamentary vote. With regard to military operations abroad, Parliament is not entitled to vote on the budget for each mission.⁶¹ However, during the fiscal year supplementary

⁵⁷ The Council of State (Conseil d'Etat) is a special body which consists of members elected by parliament and members appointed by the government and the Grand Duke.

⁵⁸ Article 1(2(3)) of the *Loi du 27 juillet 1992 relative à la participation du Grand-Duché de Luxembourg à des opérations pour le maintien de la paix (OMP) dans le cadre d'organisations internationales*.

⁵⁹ Personal communication with Mélanie Troian, parliamentary attaché at the *Commission des affaires étrangères et européennes, de la défense, de la coopération et de l'immigration* of the *Chambre des Députés*, 20 March 2007.

⁶⁰ *Ibid*

⁶¹ *Ibid*.

budget requests for the use of military force must be authorised by the *Chambre des Députés*.

Control resources

Both the plenary of the *Chambre des Députés* (article 80(2) Constitution) and the *Commission des affaires étrangères et européennes, de la défense, de la coopération et de l'immigration* have the power to request the presence of the ministers of foreign affairs or defence at a parliamentary meeting (articles 19(4) and 25 RoP), but only a parliamentary committee can demand the submission of documents pertaining to foreign and defence issues. However, the minister can decide to provide the requested information only orally, not in writing. In accordance with article 64 of the Luxembourgian constitution, the *Chambre des Députés* has the right to conduct parliamentary inquiries in the field of military security policy as well as in all other policy areas. To establish a committee of inquiry, a parliamentary motion supported by a simple majority of members of the chamber must be passed (article 168 RoP). Once set up, the proceedings of an investigation committee are governed by the principle of majority voting. In the course of the inquiry, the committee is entitled to summon witnesses and demand the submission of documents pertaining to the specific issue of concern. All witnesses, including experts and civil servants (article 169 RoP), are subject to the same obligations which pertain to investigations by a judge (article 170 RoP).

Pursuant to article 95 of the constitution, the Constitutional Court decides on the constitutionality of laws. Any Luxembourgian court can appeal to the Constitutional Court to review the constitutionality of any law, except laws approving treaties. Members of Parliament, however, are not entitled to appeal to the Constitutional Court.⁶²

Communication-related resources

According to article 78(1) of the rules of procedure of the chamber, during the weekly question time, after an oral reply by a member of Government to a parliamentary question, a short plenary debate takes place concerning subjects of general and current interest, which include issues of foreign and security policy. However, the number of questions followed by a debate is restricted (article 78(3) RoP). In addition, five deputies can ask for a plenary debate concerning a specific policy issue pertaining to a particular ministry. Their demand will be implemented if it is supported by at least 15 of the 60 members of the chamber. The number of such debates is limited to one per year (article 85 RoP⁶³). Five deputies have the right to initiate a debate on current issues (article 78-2(1) RoP). Furthermore, article 72 of the constitution stipulates that the Grand Duke has to summon an extraordinary session of the plenary at the request of one-third of the members of the *Chambre des Députés*.

⁶² Ibid.

⁶³ Dumont and De Winter (2003: 488).

Dismissal resources

According to article 78 of the constitution, the Government and its members are accountable to the *Chambre des Députés*. However, there are no formalised proceedings regarding a vote of no confidence.⁶⁴ Article 82 of the constitution gives the *Chambre des Députés* the right to accuse members of the Government .

4.1.10 Malta

Summary

Malta has a Parliament with ‘very strong’ war powers, most of all because of the neutrality provisions of the constitution. These regulations severely constrain the Government in its capacity to involve the Republic in military operations and conflicts or to allow foreign troops on Maltese territory. Only a few exceptions are mentioned, among them reaction to an immediate threat to the sovereignty and the territory of Malta. Due to the neutrality provisions of the Maltese constitution, parliamentary war powers are not a subject of discussion. However, the provisions in effect constitute parliamentary war powers because the *Kamra tad-Deputati*, the Maltese Parliament, could in principle amend this constitutional provision by a majority of two-thirds. The existence of such a structural veto of the Parliament against military involvement in foreign conflicts has to be regarded as equivalent to deployment legislation establishing a veto power of Parliament in decisions on sending troops abroad. As for control resources, standing committees have remarkable competences to investigate matters of their interest, including the power to summon witnesses. On the other hand, the dismissal capacities of the Maltese Parliament are restricted. The *Kamra tad-Deputati* can only dismiss the Government as a whole; it cannot remove individual ministers from office.

Legislative resources

According to article 3(1) of the Malta Armed Forces Act, the President has the right to raise and maintain armed forces. In the event of an external threat to the integrity and sovereignty of the Maltese Republic, the President may announce the mobilisation of the Maltese army (article 26(1) Malta Armed Forces Act).

Because the neutrality provision in the constitution structurally constrains the capacity of Malta’s Government to involve the Republic in military operations overseas, there is no law that regulates the deployment of Maltese armed forces abroad. Article 1(3) of the constitution stipulates: ‘Malta is a neutral state actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance.’ The constitutional provision of neutrality as outlined in this article could be amended by Parliament by a two-thirds majority vote (cf. article 166(2b) Constitution). The specific implications of this status of neutrality are listed in the article. Malta’s neutrality does not allow for the establishment of foreign military bases on its

⁶⁴ Ibid.: 483.

territory. The temporary use of military facilities in Malta by foreign military forces may comply with the constitution only under certain conditions: in the event of an act of aggression on Maltese territory, or in order to implement decisions of the UN Security Council. Except for these cases and except for the execution of civil works or activities, any other presence of foreign military forces on Maltese territory is ruled out. Finally, the neutrality provision affects the use of Maltese shipyards. As a principle they are only to be used for civil commercial purposes. They may be used for the repair or construction of military vessels only ‘within reasonable limits of time and quantity’ (article 1(3e) Constitution). Interestingly, with reference to the principle of neutrality, the constitution explicitly excludes military vessels of ‘the two superpowers’ from these services.

The constitution clearly rules out the participation of Malta in military operations abroad. However, there is no explicit provision within the constitution or respective laws concerning logistical or medical support by its military forces. Decisions on such activities may comply with the principle of neutrality depending on the particular circumstances.⁶⁵

Budgetary resources

The House of Representatives decides upon the Government’s proposal on the annual budget. If Government requests changes to the already adopted budget, the *Kamra tad-Deputati* has to pass a supplementary appropriation bill. Article 3 of the Malta Armed Forces Act affirms that the budget for the military forces has to be defrayed out of the annual national budget, which the House of Representatives must adopt.

Control resources

The Parliament is entitled to access accounts, reports or papers as long as these are not classified as confidential and do not concern the internal affairs of the Government (article 182 Constitution, cf. Code of Organisation and Civil Procedure). According to article 164 of the standing orders of the House of Representatives (SO), it has the power to summon to its sessions or the meetings of committees persons to testify on a matter of interest (cf. article 4(1) House of Representatives Ordinance). According to article 121 SO, the *Kamra tad-Deputati* can establish a select committee to investigate a matter intensively. Such select committees – as well as the standing committees – have the power to summon witnesses and are granted privileged access to documents. Persons invited to testify before a committee are obliged to appear. If invited persons do not appear, they can be ordered to attend by means of a warrant issued by the committee’s chairman (cf. article 132 SO). These investigative privileges are granted to all standing committees as well.

Article 95 of the constitution mentions ‘superior courts’ tasked to monitor the compliance of the law-making processes and results with the constitutional provisions. Pursuant to article 116, ‘without distinction’ all persons, including

⁶⁵ Personal communication with parliamentary service, 1 August 2007.

Members of Parliament, are entitled to submit an action for a declaration of inconsistency of a law with the basic principles of the constitution of the Republic of Malta.

Communication-related resources

At the beginning of sittings, the agenda of Parliament is generally decided by a majority vote. According to article 13(1–2) of the standing orders of the *Kamra tad-Deputati*, a group of at least ten parliamentarians has the power to demand a debate on a matter of urgent public importance. An extraordinary sitting of Parliament can only be convened by a decision of the speaker of the house and only for reasons of urgency (cf. article 8(1) SO).

Dismissal resources

Article 79 of the constitution explicitly mentions the collective responsibility of the cabinet to the *Kamra tad-Deputati*. The Parliament can pass a resolution of no confidence in the Government by a majority of its members. In such a case, the President of the Republic can either dismiss the Prime Minister or dissolve the House of Representatives (cf. article 81 Constitution). Parliament has the power to remove the President from office, yet this is possible only under rather exceptional circumstances, e.g. in the event of ‘infirmity of body or mind’ or on the grounds of misconduct on the part of the President (cf. article 48 Constitution).

4.1.11 Slovenia

Summary

The National Assembly (*Državni zbor*), the first chamber of the Slovenian Parliament, plays a vital role in decisions on the involvement of the Republic in armed conflicts. The National Assembly has the power to block the deployment plans of the Government. Many other war powers (e.g. concerning control and communication-related resources) are available to parliamentary minorities. Consequently, Slovenia qualifies as a country with ‘very strong’ parliamentary war powers.

Legislative resources

The Parliament stands in the centre of legislative decision-making concerning security matters. Article 92(1) of the constitution stipulates that, on the proposal of Government, the National Assembly can declare war. Section 2 of this article rules that decisions on the use of defence forces are to be taken by the first chamber of Parliament. Only in the event that the National Assembly cannot be convened is the President given the authority to decide on a declaration of war and the use of military forces (article 92(3) Constitution). However, the President’s decisions must be submitted to Parliament for confirmation as soon as possible. Details with regard to troop deployment are regulated by special legislation.

Article 124 of the constitution rules that ‘the form, extent and organisation of the defence of the inviolability and integrity’ of Slovenia are regulated by a law which can only be adopted by a majority of two-thirds of the members of the National Assembly attending the vote. Pursuant to article 84A of the Defence Act, the Government may allow the transit of foreign armed forces through Slovenian territory, airspace or sea. According to article 124 of the constitution, the conduct of defence is supervised by the National Assembly, implying that the Government must inform the National Assembly about any decisions concerning national defence.⁶⁶

Budgetary resources

The National Assembly adopts the annual budget (cf. article 2 Public Finance Act) and must pass a supplementary budget during the fiscal year should this become necessary (cf. article 40 Public Finance Act). The budget draft of the Ministry of Defence is discussed and amended in the meetings of the Committee on Defence; the National Assembly does not hold separate debates on the budget lines for individual military missions of Slovenian armed forces abroad.⁶⁷

Control resources

According to article 45(1) of the rules of procedure of the National Assembly, any ‘working body’ of Parliament has the right to request and receive information from the Government and other state authorities. The Commission for Supervision of the Work of the Intelligence and Security Services can demand documents pertaining to the scope of their work as well – upon a request of at least one-third of the members of the commission (cf. article 45(2) RoP). The Government is obliged to provide the information demanded immediately, unless this would be contrary to the law.⁶⁸ According to article 46 of the rules of procedure, parliamentary working bodies have the right to organise public hearings and invite experts to the sessions to provide information. The Slovenian constitution rules that the National Assembly must initiate inquiries if at least one-third of parliamentarians demand the establishment of an investigative commission (commission of inquiry), to which the constitution grants competences comparable to those of judicial authorities (article 93 Constitution). Among the powers of the second chamber, the National Council, there is the right to ‘require inquiries on matters of public importance’ (article 97(1) Constitution). Thus control resources are given to both chambers of Parliament.

Pursuant to article 160 of the constitution, the Constitutional Court decides on the conformity of laws and acts with the Slovenian constitution. At least one-third of the members of the National Assembly can submit a petition to monitor the conformity of a treaty which is about to be ratified. The rules of procedure list other cases that allow the National Assembly to request that proceedings be initiated before the Constitutional Court, e.g. to decide whether a regulation of the Government or a single minister complies with the constitution and the laws, or in

⁶⁶ Personal communication with Dr Peter Bahčič, secretary of the Committee on Defence, 12 July 2007.

⁶⁷ Ibid.

⁶⁸ Ibid.

the event of a dispute between the National Assembly and the President, Government or other national authorities (article 262 Constitution). According to article 23(a) of the Law on the Constitutional Court, the National Assembly, or one-third of its members, can submit a request for the commencement of proceedings to the Constitutional Court.

Communication-related resources

A debate can be initiated in the course of an answer to a parliamentary interpellation. If the interpellant member is not satisfied with the response received, he or she can propose to the chamber that a plenary debate be held on the submitted issue. The National Assembly decides on this proposal (cf. article 246 RoP). Extraordinary sessions of the National Assembly must be convened if at least one-quarter of the parliamentary vice-presidents so demands (article 58 RoP). The motion must include the proposed topic. Extraordinary sittings of committees can be scheduled upon the request of one-third of the members of the parliamentary working group.

Dismissal resources

The National Assembly can only pass a vote of no confidence by simultaneously electing a new prime minister (cf. article 116(1) Constitution). A motion to table such a vote must be signed by at least ten representatives; to dismiss the prime minister, it takes a majority vote of the members of the National Assembly. A motion of no confidence in the Government or an individual minister – and, as a consequence, resignation – can also result from an interpellation that has not been answered sufficiently by a Government representative (article 118(2) Constitution).

Finally, the National Assembly can impeach the President before the Constitutional Court if there has been a breach of the constitution or a severe violation of law by the head of state (cf. article 109 Constitution). The Constitutional Court decides on the charges and finally on the dismissal of the President.

4.2 Parliaments with strong war powers

4.2.1 Denmark

Summary

The war powers of the *Folketinget* are categorised as ‘strong’ because on the one hand Parliament has to approve, by a prior resolution, any use of force against a foreign state, and on the other hand peacekeeping missions which are implemented with the consent of the foreign state concerned are excluded from mandatory prior authorisation. In these cases, consultation with the Foreign Policy Committee (FPC) is sufficient. However, the views of the FPC are legally not binding on the actions of Government. With regard to control and

communication-related resources, it is remarkable that most of the mechanisms applicable to Parliament are formally subject to majority decision. The *Folketinget* has the power to dismiss individual ministers as well as the Government by means of a simple vote of no confidence.

Legislative resources

According to article 19(2) of the Danish constitution, except ‘to defend the Kingdom or Danish forces against armed attack’, the King (read: the Government or the executive power)⁶⁹ has to obtain prior approval of Parliament for all use of military force against a foreign state. Both article 19(3) of the constitution and section 2 of the Act on the Foreign Policy Committee 1954 state that the Government is obliged to ‘consult’⁷⁰ with the FPC⁷¹ before deciding on any issue of ‘major importance to foreign policy’. Subsequent to these provisions the *Folketinget* has to formally authorise in advance any deployment of Danish military forces abroad by means of a parliamentary resolution. The motion to deploy troops abroad is put to vote after the Government proposal has been discussed in the FPC. The motion is adopted by a simple majority decision. Exempted from prior approval of Parliament are cases in which the engagement of the armed forces in a foreign state takes part with the consent of the concerned state, e.g. missions based on a UN peacekeeping mandate where all parties have to agree on the deployment of peacekeeping soldiers (article 19(2) Constitution).⁷²

With regard to decisions on the stationing of and transit by foreign military forces on Danish territory, the use of military bases and airspace and the logistical support provided to such forces, the Danish Government has considerable scope of discretion. This is due to the fact that formally it is the Government itself which evaluates whether one of these cases is defined as an issue of ‘major importance to foreign policy’ or not, and therefore the executive decides whether the FPC has to be consulted or not.⁷³

Budgetary resources

Based on article 46(2) of the Danish constitution, the *Folketinget* decides on the annual budget by passing a finance act. In the context of the budgetary procedure, Parliament has the power to discuss separately, approve or reject the defence budget line, which includes an item on the estimated costs for military operations abroad. There is a tradition in Denmark of adopting long-term defence agreements. This means that the budget is agreed upon for a period of up to five

⁶⁹ Cf. articles 13 and 14 of the Danish constitution.

⁷⁰ Up to now, neither the provisions of the Danish Constitutional Act nor the Act on the Foreign Policy Committee clarify on the precise scope of the obligation to consult the FPC.

⁷¹ The FPC consists of 17 members and 17 deputy members. It was established in 1954 to advise the government in all issues of major importance to foreign policy. However, its views bear no binding effect on the government’s decisions.

⁷² Cf. Jensen (2003: 238). In April 1964 the *Folketinget* gave its general consent to the establishment of a Danish emergency force which the government can put at the disposal of the UN in connection with peacekeeping missions without the specific consent of parliament. This general consent was renewed and enlarged in November 1993. Personal communication with Christina Ringvard, head of section, Parliamentary Library, Archives and Information Service, 2 March 2007.

⁷³ Ringvard, *ibid.*

years.⁷⁴ Should the costs for military engagements abroad exceed the expenses provided for in the defence agreement during the course of the fiscal year, the *Folketinget* has to formally approve each additional budget request. The costs of military operations abroad have to be covered by the corresponding defence budget; the Government's deployment proposal submitted to Parliament includes information on the number of troops, their mandate and the maximum costs of the operation.

Control resources

In the context of parliamentary information requests, ministers are generally obliged to grant the *Folketinget* access to relevant documents, even if the documents contain information of a sensitive nature. However, a minister can block the *Folketinget's* access to certain files if he or she finds it contrary to national interests. In these cases the minister must inform Parliament that such documents exist. Unless otherwise agreed, the members of the FPC are bound to observe professional secrecy as a precondition for giving them broader access to documents (section 4 Act on the Foreign Policy Committee). Moreover, pursuant to chapter III article 8(5) and 8(9) of the standing orders, parliamentary committees are authorised to request the presence of members of Government at their sessions. The motion to summon a particular minister has to be adopted by simple majority decision (chapter III article 8(4) SO). The Danish Parliament possesses the right to appoint committees from its members to investigate matters of general importance, including issues of security and defence policy (article 51 Constitution). However, there are no specific rules of procedure in the standing orders about the formal workings of these inquiry committees.⁷⁵ The *Folketinget* has not created such a committee for 50 years.

Under Danish law it has not been clarified whether or not the *Folketinget* has legal personality. In general, there is intentional avoidance of drawing the Parliament into lawsuits or other situations where the question of legal personality could be brought up.⁷⁶ Until now, the Supreme Court has ruled only once that an act passed by the *Folketinget* was unconstitutional because it violated the principle of tripartition of power. The action was brought against the responsible minister. However, there is no possibility of reviewing the constitutionality of the decision on the use of military force abroad.⁷⁷

Communication-related resources

A parliamentary group of the *Folketinget* can demand a debate regarding any subject of concern, including issues of security and defence policy (chapter VIII article 19(10) SO). Moreover, according to section 53 of the constitution, any member of the *Folketinget* may submit for discussion, in the form of an interpellation, any matter of public interest. The adoption of the interpellation

⁷⁴ Personal communication with Jens Lund, head of economics office, Danish Ministry of Defence, 27 September 2007.

⁷⁵ Personal communication with Christina Ringvard, head of section, Parliamentary Library, Archives and Information Service, 19 February 2007.

⁷⁶ Ibid.

⁷⁷ Jensen (2003: 247).

requires the consent of the plenary (chapter VIII article 21(1–2) SO). However, the minister addressed can delay the debate by judging it contrary to the national interest to hold a public debate on the specific issue in question within the next ten sitting days (chapter VIII article 21(2) SO).

Dismissal resources

Following article 15(1–2) of the Danish constitution, the *Folketinget* can revoke confidence in the Government as a whole or in individual ministers. A motion of no confidence takes the form of a ‘proposal to be passed’ and can be introduced by any Member of Parliament during a plenary debate (chapter IX art. 24 SO). The proposal is adopted by a simple majority vote.

4.2.2 Ireland

Summary

The war powers of the Irish Parliament are only assessed as ‘strong’ because of a specific exception regarding prior approval by Parliament. According to an amendment of the Defence Act 1960, the Government must seek the approval of the House of Representatives (*Dáil Éireann*) for the engagement of military forces in operations overseas only if more than 12 soldiers are sent abroad. Control and communication-related resources, such as receiving information on issues of military security policy or setting up parliamentary investigations, can usually be applied only by parliamentary minority groups. In terms of dismissal resources the *Dáil* can withdraw its confidence in individual ministers as well as the Government as a whole by a simple majority decision.

Legislative resources

According to article 28(3.1) of the Irish constitution, a formal declaration of war and the deployment of Irish military forces abroad require the approval of the House of Representatives by a simple majority vote (article 15(11) Constitution). However, the Government does not need to seek the prior assent of the *Dáil* if the number of soldiers to participate in a military operation does not exceed 12 (article 2(2b) Defence Act, Amendment No. 2, 1960).⁷⁸ Besides, due to the commitment of neutrality, the involvement of Irish forces abroad is limited to military missions legitimised by a UN mandate (article 2(1) Defence Act, Amendment No. 2, 1960).

Budgetary resources

During the annual budgetary authorisation process the plenary of the *Dáil* and the respective committees separately discuss, amend and vote on the proposed

⁷⁸ Wagner (2006: 45).

defence budget bill, which includes the planned costs for financing military operations abroad.⁷⁹

Control resources

In order to scrutinise departmental policies, both the Joint Committees and the Select Committees on Foreign Affairs, Justice, Equality, Defence and Women's Rights are entitled to demand the submission of any document they deem relevant. Furthermore, upon the authorisation of the plenary, these committees have the power to request the attendance of any member of the Government at a meeting to discuss and take evidence on a certain policy matter (article 81 SO Dáil).⁸⁰ On the other hand, the ministers cannot be forced to attend a committee meeting. They can, for example, refer to secrecy provisions and therefore refuse to reply to questions regarding matters of military security policy (article 80(5) SO Dáil⁸¹). As laid down in the Act to Amend the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998, passed by the *Dáil* in 2002, both Houses of Parliament have the right to carry out parliamentary investigations on issues of urgent public concern, including matters of military security policy. The tribunals of inquiry are established by means of parliamentary resolutions in the *Dáil* and the *Seanad*. For the purpose of the investigation, the tribunals have the power to *subpoena* witnesses to give testimony. Furthermore, in the course of the inquiry all requested documents have to be submitted to the committee without exception.

In Ireland both the Supreme Court and the High Court can be appealed to for a judicial review of laws and acts of Government regarding their conformity with the constitution (article 34(3.2) Constitution).

Communication-related resources

Pursuant to article 31 of the standing orders, each member of the House of Representatives can demand a debate on any urgent matter of current interest. The motion has to be supported by at least 12 members and needs the approval of the President of the House.

Dismissal resources

Article 29(10) of the Irish constitution states that the *Dáil Éireann* has the right to withdraw its confidence in the Government as a whole by means of a vote of no confidence (cf. article 28(2) Constitution). A motion of no confidence can be introduced by any member of the House of Representatives and is adopted by a simple majority decision.

⁷⁹ Mitchell (2003: 433).

⁸⁰ Committees of the Houses of the Oireachtas Act 1997, articles 3(7) and 4.

⁸¹ Cf. Mitchell (2003: 434ff).

4.2.3 The Netherlands

Summary

The bicameral *Staten Generaal* belongs to the group of parliaments whose war powers are classified as ‘strong’. Neither the constitution nor legislation provides Parliament with the formal right to approve the engagement of Dutch military forces in missions abroad. However, according to article 100 of the constitution and the criteria of the Review Protocol 2001, the *Staten Generaal* has to be informed and consulted in advance about any Government decision to participate in military missions abroad. These provisions have to be regarded as equivalent to the right of prior parliamentary approval.⁸² However, there are exemptions from mandatory prior consultation for contributions to military missions which fall under NATO treaty obligations and involvement in ‘special missions’. With regard to budgetary resources the *Staten Generaal* has wide-ranging powers, including the separate approval of the defence budget. The use of control and communication-related resources such as committees of inquiry or topical debates on issues of military security policy is largely limited by majority requirements. In terms of dismissal resources the Dutch Parliament can withdraw its confidence in individual ministers as well as the Government as a whole.

Legislative resources

In the Netherlands both the Senate (*Eerste Kamer*) and the House of Representatives (*Tweede Kamer*) must approve a state of war declaration and authorise the use of military force (article 96(1) Constitution). Regarding the use of armed forces for operations other than formal war, the Dutch constitution was amended in 2000 by a new article 100. Section 1 of this article stipulates that the Government has to inform the *Staten Generaal* prior to sending Dutch military forces abroad. However, section 2 limits this general obligation to inform Parliament in advance by referring to ‘compelling reasons’. In such cases, the *Staten Generaal* shall be notified of the deployment decision at the earliest possible moment.

The provisions of article 100 do not specify the precise moment, scope or content of the information to be provided by the Government. Nor do they stipulate in which way the requirement to inform Parliament amounts to a ‘material right of approval’.⁸³ Following the adoption of this article, these questions have led to different readings of the provisions on the Government’s discretion in its decision to engage troops in missions abroad. To clarify these issues, a review protocol on the procedures and criteria for the decision-making process on sending Dutch troops abroad was issued by the Government in 2001.⁸⁴ According to the rules of the protocol, at a very early stage the Government informs the House of Representatives and the Senate by letter about its investigations into the possible

⁸² ‘Although there is no formal obligation to obtain parliamentary consent to deployment, in practice government would not commit troops without support, as the negotiations and debates before the deployment of Dutch troops to Afghanistan in 2006 showed.’ Warbrick (2006).

⁸³ Besselink (2003: 567ff).

⁸⁴ The Review Protocol 2001 is partly based on the recommendations of the Bakker Commission, Temporary Committee on Decision-Making in Deployment (TCUB), which had been presented in September 2000.

participation of Dutch forces in a military operation. If later on the Government decides to contribute troops to a mission, it informs Parliament by means of another letter which contains more detailed information, for example on the number of troops to be deployed and the mandate. The Committees on Foreign Affairs and on Defence discuss this letter with the respective ministers and at the end of the debate the spokespersons of the political groups speak for or against the deployment. In cases of important or politically controversial missions, a plenary debate will take place in which members can put forward motions to approve or reject the decision of the Government.⁸⁵

However, the criteria of the review protocol do not apply to the participation of Dutch forces in military missions within the framework of NATO and WEU (Western European Union) treaty obligations.⁸⁶ Another notable exemption from the requirement to inform Parliament prior to sending troops abroad is ‘special operations’, which comprise for example ‘special intelligence operations’, ‘special forms of military support to allies’ and the ‘fight against international terror’. The procedures on contributions to such missions were outlined in a letter from the minister of defence to the House of Representatives in August 2000.⁸⁷ According to this letter, a small group of ministers (including the Prime Minister) decides on special operations and the Parliament is informed as soon as possible.

Regarding the temporary presence and transit of foreign military forces on Dutch territory and their use of military bases and logistical support, the *Staten Generaal* only has a formal right of approval if one of these issues is part of an official agreement (article 90(1) Constitution). However, such cases are often covered by multilateral technical or administrative cooperation agreements, which do not require parliamentary authorisation.⁸⁸

Budgetary resources

Every year the minister of defence presents the defence budget bill for the next year to the Dutch Parliament. The defence budget contains a specific article for expenditures related to military operations abroad. Both chambers debate the ministerial draft budget separately and have the right to amend, approve or reject the proposed defence budget bill. Twice a year, each minister sends a bill to Parliament detailing the changes made to the original budget bill. This financial adjustment bill can be amended, and finally has to be approved, by Parliament as well. According to the provisions of the Review Protocol 2001, the Government’s letter to Parliament on a new military mission abroad has to include information on the estimated budget for this mission in order to be funded by the specific article on expenditures related to military operations abroad in the annual defence budget. However, as the decision of the Government to participate in a military mission is sent to Parliament in the form of a letter (and not a bill), Parliament

⁸⁵ Personal communication with Theo van Toor, deputy secretary, Committee on Foreign Affairs, House of Representatives of the States General, 12 July 2007.

⁸⁶ Cf. Besselink (2003: 568ff).

⁸⁷ Letter of Minister of Defence, House of Representatives 26.800X, no. 46 1999/2000, session of 23 August 2000.

⁸⁸ Personal communication with Theo van Toor, deputy secretary, Committee on Foreign Affairs, House of Representatives of the States General, 2 July 2007; cf. Besselink (2003: 575).

cannot amend the estimated costs. When both Houses give their consent to a mission, they implicitly approve the accompanying budget of the mission as well.⁸⁹

Control resources

Every Member of Parliament may request – orally or in writing – any relevant information from the responsible ministers and state secretaries (article 68 Constitution; articles 134–137 RoP House of Representatives (RoP H)). In addition, the Committees on Foreign Affairs and Defence, upon simple majority decision, can demand oral and written information as well as access to documents pertaining to all aspects of a subject of concern (article 27 RoP H). However, with reference to the national interest and secrecy obligations, members of Government can decline to answer a specific parliamentary question or deny the submission of a requested document. Both Houses of Parliament as well as the Committees on Foreign Affairs and Defence have the power to invite members of Government to their sessions (article 69(2) Constitution; article 27 RoP H). As laid down in article 70 of the constitution, both Houses of Parliament have the right to carry out parliamentary investigations (*enquêtes*) on security and defence issues. Upon a written proposal of a committee or at least one of its members, the plenary of the chamber votes on a motion to set up an official committee of inquiry (articles 141–143 RoP H). The establishment of such a committee needs a simple majority decision. Once a committee of inquiry is set up, its proceedings are governed by the principle of majority voting. The committee is authorised to enforce the attendance of witnesses and interrogate them under oath (articles 145–146 RoP H).

There is no constitutional court in the Netherlands to review the constitutionality of a Government decision, law or act. The Council of State serves as the highest independent advisory judicial body of the Government, and advises on every bill (especially legal and constitutional aspects) before it is sent to both Houses of Parliament.⁹⁰ This means that the Dutch Parliament cannot request the *ex post* judicial review of a Government decision to deploy military forces abroad.

Communication-related resources

Each member of both Houses of Parliament can table a motion for a plenary debate to be held on a specific topical subject, including issues of military security policy. The motion has to be adopted by a simple majority of the members of the House of Representatives or the Senate for the debate to take place. After an urgent interpellation, a short debate can take place if such a motion is passed by a simple majority (article 133 RoP H).

Dismissal resources

According to the provisions of customary constitutional law, the *Staten Generaal* can introduce a motion of no confidence in either individual members of

⁸⁹ van Toor, *ibid.*

⁹⁰ *ibid.*

Government or the collective Government.⁹¹ In order to force a minister or the collective Government to resign, the motion has to be passed by a simple majority vote in the *Staten Generaal* while at least half the members have to be present.⁹²

4.2.4 Sweden

Summary

The Swedish *Riksdag* has ‘strong’ war powers. According to the Swedish constitution the *Riksdag* has to formally approve in advance the deployment of military forces in missions abroad. However, the deployment of less than 3,000 soldiers to UN and OSCE peacekeeping missions is excluded from prior parliamentary authorisation. In addition, there is an exception from mandatory individual authorisation by Parliament for the contribution of Swedish military forces to missions that are conducted under treaty obligations which have already been generally approved by the *Riksdag* or the Foreign Affairs Advisory Council. With regard to budgetary resources the *Riksdag* has extensive powers, including separate approval of the defence budget. Control and communication-related resources such as receiving information on issues of military security policy or initiating a topical debate are available to parliamentary minority groups. In terms of dismissal resources, the Swedish Parliament can withdraw its confidence in individual ministers as well as in the Government as a whole.

Legislative resources

According to chapter 10 article 9(2) of the Swedish constitution, with the exception of ‘an armed attack against the realm’, any formal declaration of a state of war has to be authorised by the *Riksdag*. Furthermore, the Government has to obtain the prior approval of Parliament for the use of military force and the engagement of Swedish troops in missions abroad (chapter 10 article 9 Constitution). However, following the regulations of Law no. 1153 of 1992⁹³ and Law no. 597 of 1997, the deployment of less than 3,000 soldiers to peacekeeping missions mandated by the UN or the OSCE is exempted from prior parliamentary approval. In addition, the Government is entitled to deploy Swedish troops abroad if ‘an obligation to take such action follows from an international agreement or obligation which has been approved by Parliament’ (chapter 10 article 9(1.1) Constitution). Pursuant to chapter 10 article 2 of the constitution, parliament has to authorise all international agreements and treaties which apply to Sweden. However, regarding issues of national interest, the Government can conclude an agreement by consulting only with the Foreign Affairs Advisory Council⁹⁴ and not the plenary of the *Riksdag*.

⁹¹ Besselink (2003: 569).

⁹² Timmermans and Andeweg (2003: 507ff).

⁹³ In June 2003 Law no. 1153 was repealed and replaced by Law no. 169.

⁹⁴ Chapter 10 article 7 section 1 of the Swedish constitution stipulates: ‘The Foreign Affairs Council comprises the Speaker and nine other members to be elected by Parliament from among its members.’

The stationing of and transit by foreign military forces on Swedish territory, the use of military bases and airspace and logistical support for foreign military forces are usually the object of one or more military cooperation agreements concluded between Sweden and the foreign nation whose troops are using Swedish territory or airspace. These agreements normally require the general consent of the *Riksdag* but, as mentioned above, in matters of national interest the consultation of the Foreign Affairs Advisory Council suffices.⁹⁵

Budgetary resources

On an annual basis, the Government introduces to the Swedish Parliament an overall budget bill which consists of a finance plan and a budget proposal (chapter 3 article 2 standing orders of the *Riksdag*;⁹⁶ chapter 1 article 4(2) Constitution). The annual budget for military missions abroad is included in the budget bill's expenditure area 6 (defence and readiness against vulnerability). Proposals relating to this expenditure area are prepared by the Committee on Defence. The *Riksdag* decides separately on each expenditure area (chapter 5 article 12 SO). If, during the course of the fiscal year, the costs for a particular military operation abroad exceed the sum appropriated in the expenditure area, the Government has to seek the prior approval of Parliament for additional budget requests (chapter 5 article 12 SO). With regard to the budget of individual military missions, the costs are covered by the respective expenditure area in the state budget. However, the Government informs the *Riksdag* about the planned costs of military operations, which have to be approved in advance by Parliament with the exception of the deployment of less than 3,000 soldiers to peacekeeping missions.

Control resources

The Members of the Swedish Parliament and its committees can request information from ministers and all state authorities (chapter 4 article 11 SO). Swedish statutes do not specify the form of submission of this information – it can be delivered in writing (including documents) or orally. However, members of Government and other authorities cannot be forced to give information which is subject to secrecy provisions (chapter 4 article 13 SO). The obligation to submit information to committees applies to the Government only with reference to EU activities. In relation to parliamentary inquiries, the Committee on the Constitution is relevant. This committee does not deal with issues of security and defence in particular,⁹⁷ but chapter 12 article 1 of the constitution authorises it to monitor in general whether ministers' actions comply with current rules on the handling of Government activity. The committee has the power to access the records of decisions taken by Government and all documents pertaining to such matters.

In Sweden, the Council on Legislation is vested with the power both to preview legislative proposals and to judicially review legislation already adopted with regard

⁹⁵ Personal communication with Ulf Jakobsson, Information Department, Swedish Riksdag, 25 January 2007.

⁹⁶ The Riksdag Act, which became effective in 1974, is referred to as the standing orders (SO).

⁹⁷ Personal communication with Ulf Jakobsson, Information Department, Swedish Riksdag, 25 January 2007.

to its constitutionality.⁹⁸ The Government, or a parliamentary standing committee, can appeal to the council. However, a decision to deploy Swedish military forces abroad does not have the legal status of a law and therefore falls outside the Council's area of competence.⁹⁹

Communication-related resources

Pursuant to chapter 12 article 5 of the Swedish constitution, each representative of the *Riksdag* can demand a debate on a specific issue of general or current interest (chapter 6 article 1 SO). In addition, a parliamentary group can request a plenary debate on a matter not directly connected with other business under consideration (chapter 2 article 10 SO).

Dismissal resources

Chapter 6 article 5 of the Swedish constitution stipulates that the *Riksdag* has the right to revoke its confidence in the Government or individual ministers by means of a vote of no confidence. A motion of no confidence has to be introduced by at least one-tenth of the representatives and has to be adopted by more than half of all members of the Swedish Parliament (chapter 12 article 4 Constitution).

4.3 Parliaments with medium war powers

4.3.1 Czech Republic

Summary

The Czech Republic belongs to the group of states with 'medium' parliamentary war powers. Under certain circumstances the Parliament – the Chamber of Deputies (first chamber) and the Senate (second chamber) – can give its prior approval to the deployment of troops abroad or the presence of foreign military forces on Czech territory; however, there are remarkable exceptions granting the Government the power to decide without consulting the Parliament. In these cases Parliament is entitled to revoke the Government decision *ex post*, thus having a veto power. The use of the Parliament's control and communication-related resources mostly requires majority decisions.

Legislative resources

According to article 43 of the Czech constitution, both chambers of Parliament decide on a declaration of war. Additionally, parliamentary approval is necessary for the deployment of troops abroad as well as for the presence of foreign troops on the territory of the Czech Republic – unless these decisions have been reserved for the Government. According to article 43(4) of the constitution, this exception applies under at least one of three conditions: first, if the deployment of Czech

⁹⁸ Ibid.

⁹⁹ Personal communication with Mikael Andersson, deputy director, Legal Secretariat, Ministry of Defence, 22 October 2008.

troops and the presence of foreign military forces are part of the fulfilment of international contractual obligations; second, if the troops are supposed to take part in a peace operation following a decision of an international organisation to which the Czech Republic belongs, and the state in which the operation should take place has approved of the operation; and third, if the Czech troops are to participate in a humanitarian aid operation. In these cases, the Government can decide on troop deployments and the presence of foreign forces on Czech territory for up to 60 days. This also applies to transit and the use of airspace by foreign military forces. The Government has to inform Parliament about decisions of this kind, and Parliament can revoke such a Government decision by a resolution backed by at least one of its chambers with a vote of 50 per cent. The decision is put on the chamber's agenda when introduced by one-fifth of the members of the respective house.

Budgetary resources

The constitution of the Czech Republic states that only the Chamber of Deputies is entitled to decide on the draft state budget and the draft final stage budgetary account which is introduced by the Government; the first chamber fixes the global amount.¹⁰⁰ If necessary, extraordinary expenditures not provided for in the approved budget bill have to be authorised by the Chamber of Deputies – or, of course, could also be vetoed by it.

Control resources

Deputies have the right to demand 'information and explanations' from members of Government and heads of administrative agencies. According to article 11 of the Act on Rules of Procedure of the Chamber of Deputies, those asked to provide information have a duty to comply with the request unless provisions of secrecy prevent them from doing so. Any member of Government must appear in person at the meeting of the Chamber of Deputies or one of its committees if summoned (article 38(2) Constitution). Pursuant to article 30 of the constitution, on the basis of a motion of at least one-fifth of the deputies, the Chamber decides on establishing an investigation commission having special powers to collect information (cf. Appendix 1 RoP Investigative Commission).¹⁰¹ Finally, a petition to the Constitutional Court proposing the revocation of a statute can be submitted by a group of no less than 41 deputies or 17 senators; all other enactments can be revoked by the Constitutional Court responding to a petition of at least 25 deputies or ten senators (cf. article 64(1–2) Act on the Constitutional Court).

Communication-related resources

Deputies can ask the chair of the first chamber to put a matter as a parliamentary question on the agenda of a meeting of the Chamber of Deputies, if the said deputy is not satisfied with the Government's response to a written question. The chair is obliged to enter the item on the agenda and the Chamber of Deputies may

¹⁰⁰ Personal communication with Peter Fleischmann, adviser to the Committee on Foreign Affairs, Defence and Security, 12 June 2007.

¹⁰¹ The Senate is not entitled to set up investigation committees (Fleischmann, *ibid.*).

adopt a resolution summoning the member of Government who is obliged to answer the question. At the request of one-fifth of members, the chair of the Chamber of Deputies must summon the house within ten days after the delivery of the motion (cf. article 51 RoP Chamber of Deputies). However, the majority of the deputies decide definitely on the agenda at the beginning of the sessions – a rule that holds true for extraordinary and ordinary sittings.

Dismissal resources

The Chamber of Deputies may introduce a motion of no confidence if the initiative is signed by at least 50 deputies. To dismiss the Government, a majority of all members of the house must vote for the motion (cf. article 7 Constitution). The Chamber of Deputies can only force the Government to resign as a whole and cannot remove single ministers from office (cf. article 73(2) Constitution).

4.3.2 Slovakia

Summary

At first sight the Slovak Parliament, the National Council (*Národná rada*), is a powerful player when it comes to decisions on the participation of Slovak troops in military missions abroad and the transit of foreign troops through Slovak territory. Formally, Government has to seek the consent of the parliamentary body for the deployment of troops outside Slovak territory. However, in the most relevant cases, parliamentary approval is not required for an operation not exceeding 60 days. This qualifies Slovakia as a ‘medium’ case in terms of its parliamentary war powers. Many of the control and communication-related resources are reserved to a parliamentary majority, leaving little power to the opposition within Parliament. The Parliament can remove the collective Government, as well as individual ministers, from office.

Legislative resources

The constitution of the Slovak Republic stipulates that the National Council has the power to declare war in the event of an attack on Slovakia, and to deploy troops to fulfil obligations of an international treaty ratified by Slovakia (article 86 Constitution). Furthermore, the Council has to give prior approval to the presence of foreign troops on Slovak territory. Pursuant to article 119 of the constitution, the Government decides on the presence of troops only when it is related to humanitarian aid, military exercises or peace observation missions.

Concerning the deployment of Slovak military forces abroad, article 119 of the constitution stipulates that the Government decides whether dispatching troops outside Slovak territory for a maximum period of 60 days is part of an obligation resulting from international treaties on common defence. The Government must communicate this decision to the National Council as soon as possible (article 119 Constitution). In all other cases the Government has to seek the *ex ante* consent of

the National Council, e.g. for deploying troops to provide humanitarian aid or to participate in peacekeeping operations (article 86 Constitution). Finally, it is up to the Government to decide on the transit of foreign troops through Slovak territory (article 119(o) Constitution).

Budgetary resources

The National Council has to adopt the annual budget of the Republic of Slovakia, supervise the spending and approve the budgetary balance at the end of the fiscal year (article 86 Constitution). According to article 58 of the constitution, the state budget shall be written down in a bill that has to pass parliamentary proceedings. For financing military missions, a special fund has been established that is part of the budget of the Ministry of Defence.¹⁰²

Control resources

According to article 85 of the constitution, Parliament has the right to summon members of the Government and high officials of other executive bodies before plenary and committee sessions. Section 53 of the rules of procedure stipulates that those invited to committee meetings are obliged to attend the sittings and to provide information. In the same section it is ruled that committees have the right to demand reports or other necessary documents from the executive branch. Beyond the investigative powers of these committees, the National Council cannot establish any commissions of investigation.¹⁰³

Pursuant to article 125(1) of the constitution, the Constitutional Court has the power to decide whether or not laws which have been adopted by the majority of the National Council comply with the constitution, constitutional laws and international treaties. Furthermore, it checks whether or not Government regulations are compatible with constitutional provisions as well as with national and international laws. A group of at least one-fifth of all members of the National Council is entitled to submit a motion upon which the Constitutional Court commences its proceedings (cf. article 130(1) Constitution).

Communication-related resources

The regular ‘question time’ provides parliamentarians with an opportunity to debate policy issues in public. As Kipke points out, this interpellative instrument is the only parliamentary privilege granted to the National Council’s minority.¹⁰⁴ Beyond question time, it is up to the parliamentary majority to decide on the agenda of the plenary sessions (article 24(1) RoP). According to article 17(2) of the rules of procedure, a group of at least one-fifth of the parliamentarians is entitled to request the convening of an extraordinary session of the National Council. This group must indicate the proposed topic of the debate in its motion. However, a majority within the National Council must support this request.

¹⁰² Personal communication with A. Duceka, Chancellery of the National Council, 12 July 2007.

¹⁰³ Kipke (2002: 292).

¹⁰⁴ *Ibid.*

Dismissal resources

The constitution states that the Government is responsible to the Parliament and the National Council can express no confidence in the Government at any time (cf. article 114 Constitution). Moreover, the individual members of Government are accountable to the parliamentarians and have to resign if the National Council expresses no confidence in them (article 116 Constitution). A motion of no confidence can be submitted by one-fifth of the Council's members (article 88(1) Constitution), and is adopted if at least a majority of the members vote in favour.

4.4 Parliaments with weak war powers

4.4.1 Belgium

Summary

Since the Belgian Parliament does not have to approve the deployment of Belgian military forces abroad and is only informed *ex post* about the decision, its war powers have to be rated as 'weak'. Although the Chamber of Representatives has to decide on additional budget requests for the involvement of the armed forces abroad, it cannot reject the budget for a specific military operation. With regard to control and communication-related resources, the powers of individual delegates and senators are very limited. However, both chambers can decide to set up a committee of inquiry which has the right to enforce judicially the appearance and testimony of persons as well as the submission of all relevant documents. As for dismissal resources, the Chamber of Representatives can force the Government to resign by means of a constructive vote of no confidence.

Legislative resources

Pursuant to article 167(1) of the Belgian constitution the King (which in practice means the Government or the executive power¹⁰⁵) possesses the right to formally declare war. Having made this decision, he informs Parliament as soon as national interest and the safety of the state permit it. The decision to deploy Belgian armed forces to military operations abroad is taken by the Government alone. The Belgian Parliament receives information on the decision only *ex post* by a governmental note to be delivered as soon as possible.¹⁰⁶

The stationing of and transit by foreign military forces on Belgian territory, their use of military bases and airspace and their logistical support are usually the object of one or more military cooperation agreements concluded between Belgium and the nation whose troops are using Belgian territory or airspace. The normal procedure is that the Government signs the treaties, which become effective after

¹⁰⁵ '[T]he King in the Belgian Constitution means the Executive, i.e. the King as Head of State, with the consent of his minister(s), who has (have) to undersign each and every public act of the King for the act to exist legally... [I]t is indeed the Council of Ministers, by consensus and without formal royal approval, that decides on the use of the armed forces' (D'Argent, 2003: 186, 197; cf. articles 101 and 106 Constitution).

¹⁰⁶ D'Argent (ibid.: 198); Wagner (2006: 37).

the approval of both the Chamber of Representatives and the Senate (article 167(2) Constitution). According to article 185 of the Belgian constitution, the stationing of foreign troops in Belgium or their transit through Belgian territory requires a decision of the legislative power. For example, the law of 11 April 1962 governs the transit and stationing on Belgian territory of troops of Belgium's NATO partners (*Belgisch Staatsblad/Moniteur belge*, 20 April 1962). This law contains an article that authorises the stationing on Belgian territory, and the transit of, armed forces of NATO countries within limits and conditions to be determined for every case in executive agreements and treaties concluded with the governments of the respective countries. Parliamentary approval mostly takes the form of an enabling act authorising the Government to sign these kinds of treaties and agreements.

Budgetary resources

The Belgian Government introduces an annual draft budget bill to the Chamber of Representatives (article 174 Constitution), which includes single departmental budgets such as defence. The proposed defence budget line is usually discussed in the Committee on Defence, which drafts a recommendation (after a vote on whether to issue positive or negative advice) for the Committee on Finance and Budget. This Committee votes on the budget and reports to the plenary, which finally has to approve the entire general budget. Theoretically, the budgets of the Departments of Defence or Foreign Affairs, as part of the general budget, could be rejected, but in practice this would create enormous political problems.¹⁰⁷ Budgetary provisions for military operations abroad are part of the defence budget. During the annual discussion of the budget bill it is possible to amend the clauses that apply to these operations, but again this would constitute a serious political problem if it happened without governmental agreement. If the expenditures for a particular military operation exceeds the expenses apportioned in the defence budget fund, Government has to seek parliamentary approval for an additional budget request by means of the introduction of a separate bill, which has to be discussed in committee and voted on in plenary.¹⁰⁸

Control resources

Neither the members of the Chamber of Representatives and Senate nor of the Committees on Foreign Affairs and Defence formally have the power to obtain documents concerning security and defence issues.¹⁰⁹ Ministers sometimes put documents at the disposal of committee members as a sign of good will. It has to be mentioned in this context that there is a special standing under-commission of the Senate which regularly receives classified documents pertaining to the participation of Belgian armed forces in military operations abroad. However, all proceedings are subject to secrecy provisions. Furthermore, both chambers of Parliament have the power to require the presence of a Government member in a plenary sitting upon the written proposal of one member (article 100

¹⁰⁷ Personal communication with Luc Peeterman, clerk of Committee of National Defence, Chamber of Representatives, 24 January 2007.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

Constitution). A parliamentary committee is entitled to request the attendance of the Government member responsible for the subject matter under discussion (article 30 SO Chamber of Representatives (SO CoR)). Pursuant to article 56 of the constitution, both chambers of the Belgian Parliament are entitled to carry out parliamentary inquiries concerning issues of security and defence policy. An inquiry can be requested by the introduction of a proposal from one or more members of the Chamber of Representatives or the Senate to set up a special committee of inquiry. If approved in the plenary (by a simple majority vote), the committee of inquiry is installed (articles 145–148 SO CoR; articles 76–77 SO Senate (SO Sen)). Vested with the powers of a judge of inquiry, such a committee can *subpoena* members of governmental and public agencies, as well as other persons, to testify on all subjects of concern. Additionally, a committee of inquiry can enforce the submission of all relevant documents.

Following article 166 of the standing orders, two-thirds of the members of the Chamber of Representatives possess the power to appeal to the Court of Arbitration within six months following the publication of any law, decree or rule referred to in article 134 of the constitution. The entire or partial repeal of a law, decree or rule can be requested for violation of the rules or articles of the constitution. However, the constitutionality of a decision by the Government to send Belgian armed forces abroad cannot be checked by the Court of Arbitration, since such a decision does not come up to the legal status of a law, decree or rule as described in article 134 of the constitution.¹¹⁰

Communication-related resources

Should several questions on the same topical subject be raised during the weekly question time, the President of the Chamber of Representatives may, on the advice of the chair of the political groups or the Conference of Presidents, or after having consulted the plenary, group these questions together in such a way that they can be processed during a plenary debate (article 125 SO CoR). Likewise, if during question time in the Senate three questions pertain to the same matter of current interest, the Bureau of the Senate, which consists of the President, three vice-presidents and the presidents of the political groups, may decide that a topical debate takes place (article 73 SO Sen). Additionally, article 74 of the standing orders of the Senate sets out that each member can demand a debate on a matter of general interest.

Dismissal resources

Article 96(2) of the constitution stipulates that the Chamber of Representatives has the right to revoke its confidence in the Government by a constructive vote of no confidence. A motion of no confidence has to be introduced by at least one-third of the representatives and adopted by the absolute majority of the members of the chamber (articles 137–138 SO CoR). The adoption of a motion of no confidence by the Chamber of Representatives can result in the dismissal of an

¹¹⁰ D'Argent (2003: 198, 202ff).

individual minister (article 138(1) SO CoR). However, the Chamber of Representatives cannot force a minister to offer his or her resignation.

4.4.2 Spain

Summary

According to our typology, the war powers of the Spanish Parliament as of early 2003 qualified as ‘weak’ due to the fact that the *Cortes Generales* are not involved in the decision-making process on the use of military force overseas. However, Parliament receives information on the engagement of Spanish forces in military missions abroad after such a decision has been taken. Regarding the control and communication-related resources of the Spanish Parliament, the instruments of parliamentary influence in the domain of military security policy, for example the establishment of a committee of inquiry or the initiation of a topical debate, are mostly confined to parliamentary majorities. As for dismissal resources, the Congress can revoke its confidence only in the collective Government. To become effective, a motion of no confidence requires an absolute majority decision of all Members of Parliament.

Legislative resources

Pursuant to article 63(3) of the Spanish constitution, the King (i.e. the Government or the executive power¹¹¹) formally declares war after having been authorised by the *Cortes Generales*. If there is no formal declaration of war the Government can decide to use military force and deploy Spanish troops abroad without having to seek the prior approval of Parliament. Only after such a deployment decision has been implemented does Parliament receive information from the Government. However, there is no formal obligation for Government to inform the *Cortes Generales*, and the briefing takes place on the basis of customary law.¹¹²

The stationing of, and transit by, foreign military forces on Spanish territory as well as their use of military bases and airspace and logistical support are regulated in military cooperation agreements or treaties concluded between Spain and the nation whose troops are using Spanish territory or airspace. According to article 94(1b) of the Spanish constitution, arrangements of a military character only become effective if both chambers of Parliament approve. However, once this general parliamentary approval has been given, decisions regarding the aforementioned four cases are taken exclusively by the Government.¹¹³

¹¹¹ Articles 97 and 64 of the Spanish constitution.

¹¹² Assembly of the WEU (2001: 9); Cotino Hueso (2003). In November 2005 the Ley Orgánica 5/2005 de la Defensa Nacional was adopted. This law regulates the participation of Spanish troops in military operations abroad. According to article 17, the Congress of Deputies has to authorise each engagement of military forces in missions in advance (Wagner, 2006: 53).

¹¹³ Personal communication with Fernando Santaolalla, *director de Estudios y Documentación del Senado*, 1 March 2007.

Budgetary resources

The *Cortes Generales* have the power to adopt on an annual basis the general state budget proposed by Government (article 134(1) Constitution). The defence budget, as part of the general budget, must also be approved by Parliament. If the costs of military operations abroad exceed the funds approved in the annual general budget, the *Cortes* have to authorise each additional budget request by passing a bill (article 134(5) Constitution).

Control resources

Following article 109 of the Spanish constitution, both chambers as well as the Committees on Foreign Affairs and National Defence have the right to obtain any information from members of Government and other authorities, including documents on security and defence issues (sections 7.1 and 44 SO Congress of Deputies (CoD); section 20.2 SO Sen). Exempted from these provisions are files which have been classified as official secrets. In addition, the Congress of Deputies, the Senate and the parliamentary committees are entitled to summon the Government and individual ministers to meetings and have them testify (article 110 Constitution). The committees can request the attendance of military and other civil servants as well as experts to obtain further information and expertise (article 110 Constitution). Pursuant to article 76 of the Spanish constitution, both the Congress of Deputies and the Senate possess the power to carry out parliamentary inquiries on matters of security and defence policy. A motion to establish a parliamentary committee of inquiry can be introduced by two parliamentary groups or at least one-fifth of the members of one of the chambers. The motion has to be adopted by a simple majority vote of the members present (article 79(2) Constitution; article 52 SO CoD). Once a committee of inquiry is installed in accordance with article 76(2) of the constitution and the provisions of Organic Law 15/1984, it is authorised to enforce the attendance of all persons of governmental and public agencies at its meetings and entitled to make them testify on all issues of concern. The committee proceedings are governed by the principle of majority voting.

According to the provisions of the constitution and the *Ley Organica del Tribunal Constitucional*, 50 deputies or 50 senators have the power to appeal to the Constitutional Court regarding the judicial review of laws. In addition, upon the decision of the plenary, both chambers can call on the court to settle conflicts between constitutional bodies.¹¹⁴

Communication-related resources

A minimum of either two parliamentary groups or one-fifth of the members of the Congress of Deputies can propose a change of the agenda of the plenary or a committee in order to hold a topical debate on a specific issue of general or current interest (article 68 SO CoD). With regard to matters of urgent interest, a

¹¹⁴ Personal communication with Mariá Rosario Rodríguez, Information Office, Congreso de los Diputados, 22 October 2007.

parliamentary group is entitled to demand the inclusion of a specific topic on the agenda on short notice (article 17 SO CoD). For the urgency debate to take place the motion has to get the consent of the Board of Spokespersons.

Dismissal resources

According to article 113(1) of the Spanish constitution, the *Congreso de los Diputados* can withdraw its confidence in the Government as a whole. Upon the request of one-tenth of its members the Congress can propose a motion of no confidence, which is adopted by an absolute majority vote (article 113(1–2) Constitution; articles 175–179 SO CoD).

4.4.3 Poland

Summary

The Polish Parliament, consisting of the *Sejm* (first chamber) and the Senate (second chamber),¹¹⁵ has ‘weak’ war powers. It has no veto power to block Government decisions on the deployment of Polish armed forces abroad or on the presence of foreign troops on the territory of Poland. Rather, the Parliament faces a strong Government and – compared to other semi-presidential settings – an extremely powerful President of the Republic. War powers of the Polish Parliament are mainly located in the area of control and communication. In addition, the *Sejm* can remove single ministers, including the Minister of Defence, from office.

Legislative resources

The Council of Ministers plays a central role in foreign and security policy-making. Pursuant to article 146(4) of the constitution, the Council takes care of the external security of the state and exercises ‘general control in the field of national defence’ and in relations with other states and international organisations. The President ratifies and renounces international agreements; after doing so, he or she must immediately notify the *Sejm* and the Senate.

According to article 117 of the constitution, provisions for the deployment of Polish armed forces abroad have to be specified by a ratified international agreement or a statute. Such a statute was passed in 1998. It stipulates that the *Sejm* must immediately be informed when the Government decides on the deployment of troops.¹¹⁶

The *Sejm* has the power to declare a state of war only in the event of an aggression against the Polish territory or when a declaration of war results from international agreements which Poland has ratified (article 116 Constitution). If the *Sejm* cannot convene, the power to declare war is transferred to the president. According to

¹¹⁵ When coming together in a joint session, the parliament is called the National Assembly.

¹¹⁶ Wagner (2006: 51).

article 229 of the constitution, the President can, upon request by the Council of Ministers, declare martial law in case of a military aggression or ‘when an obligation of common defence against aggression arises by virtue of international agreement’. Such a decision must be submitted to Parliament as soon as possible. The *Sejm* can revoke the regulation by an absolute majority of votes, with at least half the members of the chamber present (article 231 Constitution). Transit and use of bases by foreign troops are regulated by international agreements and statutes (Act on the Terms of Presence of Foreign Troops in Polish Territory and the Principles of Their Movement Across That Territory). If the number of foreign troops does not exceed 500, the Minister of Defence can decide on the matter.

Budgetary resources

The *Sejm* votes on the annual state budget (article 219(1) Constitution). Only the Council of Ministers can introduce changes to the annual budget (article 221 Constitution). According to article 80 of the Act on Public Finances, a long-term programme can be established in the field of national defence and security. Section 2 stipulates that such programmes can be established by the Council of Ministers. They have to be introduced by passing legislation if the budget for the programme exceeds 100 million zloty (€27 million).

Control resources

Committees of the Parliament have the right to request reports from ministers, heads of supreme organs of the state administration and other senior officials of the executive branch. Members of the administration are obliged to submit the requested information (article 153(1) RoP). Pursuant to article 138(4) of the rules of procedure, members of the Special Services Committee have access to documents that might contain secret information according to the provisions concerning state or official secrets. On the request of the presidium of a committee, members of Government must participate in sittings of the committee (article 153(1) RoP). According to article 111 of the constitution, the Parliament can set up an investigative committee in order to examine a current and important question. A motion to establish such a committee can be submitted by the presidium of the *Sejm* or at least 46 members of the chamber (article 136a(1) Act on *Sejm* Investigative Committees). In Poland, a constitutional tribunal finally decides if a conflict arises over authority between the state organs as well as about the conformity of legal provisions and international agreements with the Constitution (cf. articles 188–190 Constitution). Fifty members of the *Sejm* or 30 senators and one of the two marshals (chairs) of both chambers can initiate proceedings of the court, leading to a tribunal’s decision on the conformity of a law and other legal acts with the constitution (article 190(1) Constitution).

Communication-related resources

Requests for information and answers to the requests can be publicly debated in the plenary sessions of Parliament (article 194(4–6) RoP). Immediately after the presentation of the question and the response, a plenary discussion can take place

(article 194(7) RoP). The selection of proposals to be put on the *Sejm*'s agenda is guided by the 'significance and topicality' of the proposed matter (article 194(3) RoP).¹¹⁷

Dismissal resources

The *Sejm* can pass a vote of no confidence to remove the Prime Minister from office. The motion must be backed by at least 46 deputies and has to nominate a new candidate for the office of prime minister. The motion is adopted by a majority of the *Sejm* members (article 158 Constitution). Individual ministers can be dismissed by adopting a motion that has been submitted by a group of at least 69 *Sejm* members (article 159 Constitution). The President can be indicted for an infringement of the constitution or having committed an offence (article 145(1) Constitution). At least 140 Members of Parliament can submit a motion to the National Assembly to indict the President. This motion is adopted if at least two-thirds of the Assembly's members vote in favour. If the motion is adopted, the President will be indicted before the Tribunal of State (article 145(2) Constitution).

4.4.4 Portugal

Summary

The war powers of the Portuguese Parliament are 'weak'. The Assembly of the Republic (*Assembleia da República*) possesses some special powers to supervise military missions overseas, but the scope and procedure of parliamentary supervision have not yet been clarified by means of law or other provisions. This procedural vacuum grants the Government considerable discretionary power to decide on the deployment of military forces abroad. Parliamentary minority groups have control and communication-related powers, as they can demand access to documents, request the establishment of a committee of inquiry and initiate debates on military security policy.

Legislative resources

Pursuant to article 161(m) of the Portuguese constitution, the Assembly of the Republic authorises the President to declare war or make peace (articles 191–196 RoP). If there is no formal declaration of war the Portuguese Parliament is responsible for supervision of military missions abroad (article 163(j) Constitution; RoP Assembly). However, due to the lack of legislation specifying the supervising procedure, the Portuguese Parliament does not get involved in a decision to deploy military forces abroad.¹¹⁸ The Government is not compelled to consult or inform the Assembly of the Republic before sending Portuguese troops overseas.

¹¹⁷ The power of parliament to put 'current information' on the agenda has been described above.

¹¹⁸ Personal communication with Miguel Folgado Moreno, adviser, Committee on National Defence Commission, 26 February 2007. As late as August 2003 the Portuguese parliament adopted a special law to regulate the supervision procedure by the Assembly of the Republic concerning the involvement of Portuguese military contingents abroad. Article 3 of Law No. 46/2003 of 22 August stipulates that the government has to inform parliament about its decision to send troops abroad.

Concerning the temporary presence of foreign military forces on Portuguese territory the *Assembleia da República* does not have to approve either the temporary stationing or transit by foreign military forces on Portuguese territory, nor the use of airspace or logistical support for foreign troops.¹¹⁹ These decisions are part of the Government's prerogative in national defence and foreign affairs.

Budgetary resources

In Portugal the defence budget is handled as part of the general Government budget proposal, which is discussed and approved annually by Parliament. The defence budget line includes separate items regarding the costs for current or planned military missions abroad. These items can be discussed and changed during the general budget procedure.¹²⁰ Finally, the Portuguese Parliament votes on the Government budget proposal as a whole. If, in the course of a fiscal year, the costs of military operations cannot be covered by the funds provided in the annual defence budget, the Government has to seek the consent of Parliament for additional budget requests.¹²¹ However, if the costs of military missions exceed the amounts anticipated in the general budget, or in cases of unplanned costs of unexpected missions not yet included in the budget, the Government can register those expenses in a special emergency fund of the state budget. In doing so, the Government can bypass the Assembly, which normally would have to formally authorise supplementary budget requests in each individual case. The Parliament receives information on expenditures only *ex post*. It does not possess the power to discuss, approve or veto the budget of military operations on a case-to-case basis prior to the deployment of military forces abroad.

Control resources

Each member of the Assembly and each parliamentary committee can request documents from the Government and respective ministries under the reserve of the law concerning state secrets (article 156(d) Constitution; articles 5(l) and 113(b) RoP). Governmental bodies can decide autonomously whether or not to invoke secrecy provisions in order to withhold information and particular files. These kinds of secrecy provisions can effectively neutralise parliamentary powers to obtain documents.¹²² Pursuant to articles 111–112 of the rules of procedure, parliamentary committees have the right to summon any member of Government to participate in meetings and hearings. Upon the request of a parliamentary committee the staff of any ministerial department as well as other public agencies, conditional on the prior approval of the minister in charge, may attend a committee session. Each member and each parliamentary group of the *Assembleia da República* can request the establishment of a committee of inquiry in order to investigate matters of foreign and security policy (articles 156(f) and 180(f) Constitution). If demanded by at least one-fifth of its members, the Assembly has

¹¹⁹ Moreno, *ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² According to the information provided by Miguel Folgado Moreno (*ibid.*), only the members of the National Defence Commission have access to classified documents. However, this custom does not amount to a formal power of the committee since it is not institutionalised in any regulatory framework.

to establish a committee of inquiry (article 178(4) Constitution). The proceedings of the committee are governed by the principle of majority rule. Article 178(5) of the Portuguese constitution stipulates that committees of inquiry possess judicial investigative powers; they can *subpoena* members of governmental and public bodies to testify on all subjects of concern. Moreover, during the investigation all requested documents have to be submitted to the committee.

According to article 278 of the constitution, at least one-fifth of the members of the Portuguese Parliament can request the Constitutional Court to review the constitutionality of any decree prior to its enactment as organisational law; and at least one-tenth of the members of the Assembly can request the Constitutional Court to review the constitutionality of any law. On the other hand, the Assembly does not have the power to request the judicial review of decisions taken by the Government. Therefore, any governmental decision to deploy military forces abroad cannot be reviewed by the Constitutional Court.

Communication-related resources

In the course of an interpellation each parliamentary group has the power to request a plenary debate concerning general or specific policy issues, including matters of military security policy (article 180(d) Constitution; articles 242–243 RoP). Yet this right can only be exercised twice during a parliamentary session. Moreover, article 180(c) of the constitution states that each parliamentary group is entitled to demand on short notice the organisation of emergency debates concerning matters of urgent public interest (cf. article 78 RoP).

Dismissal resources

According to article 194(1) of the Portuguese constitution, a parliamentary group or a quarter of the members of the Assembly can introduce a motion of no confidence in the Government as a whole. The motion has to be decided upon by an absolute majority vote of the Assembly of the Republic (article 163(e) Constitution; article 238(2) RoP). One-fifth of the members of the Assembly have the power to initiate a motion to remove the president from office for crimes committed during his or her tenure. The motion has to be adopted by a two-thirds majority of all members of the Portuguese Parliament (article 130(2) Constitution).

4.5 Parliaments with very weak war powers

4.5.1 Cyprus

Summary

In spring 2003, due to the executive prerogative in foreign and security affairs and the dominant role of the President of the Republic in general, the House of Representatives of Cyprus had only very limited institutionalised influence on the Government's decisions concerning participation in military action abroad.

Extensive presidential rights left little room for the Parliament to develop and exercise war powers. The Parliament had very limited control and communication-related resources in the field of military security decision-making at its disposal. Thus, parliamentary war powers of Cyprus qualify as ‘very weak’.¹²³

Legislative resources

The power to declare war is vested with the signatories of the Treaty Concerning the Establishment of the Republic of Cyprus, i.e. Cyprus, Greece, Turkey and the United Kingdom. Regarding legislative participation in decisions on the deployment of troops, the Cypriot Parliament is in a rather weak position even though it has the general legislative power (article 61 Constitution). However, the field of foreign and security policy belongs to the domain of presidential prerogative, leaving little space for parliamentary participation. According to article 54 of the constitution, defence and security questions are subject to the ‘executive power’. The predominance of the President finds expression in constitutional provisions that grant final veto power to the President¹²⁴ over questions concerning foreign and security affairs, including the ‘distribution and stationing of forces’ (article 50(1(c)(ii)) Constitution), ‘the cession of bases and other facilities to allied countries’ (article 50(1(b)(iv)) Constitution) and the ‘declaration of war and the conclusion of peace’ (article 50(1(a)(iii)) Constitution). A presidential veto in these matters cannot be overridden by Parliament. However, the House of Representatives has to be informed about decisions in the security policy-making area in a timely manner.¹²⁵

Budgetary resources

The House of Representatives has the right to adopt or veto the annual budget bill. The Parliament is not allowed to amend the Government’s budget proposal.¹²⁶ If a need for additional expenditure arises as a result of a development that was not foreseen in the original budget, a supplementary budget has to be approved by the House of Representatives. Even in this situation, Parliament must not propose an increased amount or alter the purpose of the newly required expenditures.

Control resources

The House of Representatives has the power to summon members of the Government and ‘any interested organ, authority, organisation, society, association, trade union, person or corporate body’ (article 42(4) RoP) to provide information to the Parliament. Ministers, however, cannot be forced to appear before Parliament.¹²⁷ Committee members are entitled to request documents, but

¹²³ Since the introduction of a law effective October 2003 regulating the disposal of the armed forces of Cyprus, the Cypriot parliament holds a veto position in military deployment decisions. Thus its current war powers qualify as ‘very strong’.

¹²⁴ Zervakis (2002: 895).

¹²⁵ Personal communication with Socrates Socratus, director, International Relations Service, Cypriot Parliament, 13 September 2007.

¹²⁶ Zervakis (2002: 915).

¹²⁷ *Ibid.*: 901.

it is up to the respective ministry to decide whether to provide a document or not, depending on its level of confidentiality.¹²⁸

Pursuant to article 46 of the rules of procedure, committees can entrust the investigation of a matter to a subcommittee that has the power to summon persons and is granted privileged access to documents.¹²⁹ The House of Representatives can turn to the Supreme Constitutional Court, which, according to article 146 of the constitution, has exclusive jurisdiction to rule on decisions or acts of omission of any ‘organ, authority or person, exercising any executive or administrative authority’. Such recourse can be made by anyone who is directly affected by the relevant decision or act of omission.

Communication-related resources

Parliamentary minorities (individual representatives or party groups) have the right to ask for a matter to be registered for debate, and such matter ‘shall be so registered’ (article 76 RoP) if a question to Government has not been answered at all or answered unsatisfactorily. At a request to the President and vice-president of the house issued by a group of at least ten representatives, an extraordinary session of Parliament has to be summoned (article 74(3) Constitution), i.e. in effect proposing an ‘urgent debate’. But at the beginning of the Parliament’s session, the majority of the House of Representatives can decide on the topics to be debated and can turn down the proposal.

Dismissal resources

The House of Representatives cannot introduce a vote of no confidence against the President. The Cypriot president, being directly elected, cannot be impeached and is not subject to any criminal prosecution during his or her term of office – except for the highly improbable case of being charged with high treason. On the other hand, the President does not have the power to dissolve the House of Representatives. According to article 48 of the constitution, the President, but not the House of Representatives, has the power to dismiss ministers.

4.5.2 France

Summary

The level of parliamentary war powers in France is ‘very weak’. The French Parliament is not authorised to participate in the decision-making process on the use of military force abroad. The annual approval of the overall budget and authorisation of additional budget requests present rare opportunities to scrutinise governmental action in the domain of military security policy. Regarding the control and communication-related resources of both chambers, the instruments at the disposal of Members of Parliament are limited and for the major part can

¹²⁸ Personal communication with Socrates Socratus, director, International Relations Service, Cypriot Parliament, 13 September 2007.

¹²⁹ Zervakis (2002: 906).

only be applied by majority groups. As for dismissal resources, the National Assembly can withdraw its confidence only in the collective Government by passing an absolute majority vote. The French Parliament cannot withdraw its confidence in the powerful President of the Republic.

Legislative resources

Article 35 of the French constitution stipulates that the approval of both chambers of Parliament is required in order formally to declare a state of war. Except for this provision, the French Parliament does not have any constitutional role in deciding on the deployment of troops or the use of military force. Only the President of the Republic and the Prime Minister decide on the deployment of French armed forces abroad (article 19 Constitution). There is no formal obligation to inform or consult with either the National Assembly or the Senate prior to or after a decision to send troops abroad.¹³⁰ It is the Prime Minister's decision whether or not to inform or consult the Parliament (article 49(1) Constitution; article 132 SO National Assembly (SO NA)).¹³¹

Nor has the National Assembly any power of approval or veto regarding the stationing of or transit by foreign military forces on French territory, the use of military bases and airspace as well as logistical support provided to foreign troops. These decisions come under the Government's prerogative in matters of national defence and foreign affairs. According to article 53 of the French constitution, the National Assembly and the Senate jointly have to authorise international cooperation agreements. However, military cooperation agreements, defence treaties and security agreements are excluded from parliamentary approval.

Budgetary resources

In France the defence budget is part of the general Government budget proposal, which is examined by the Finance and Defence Committees and has to be approved annually by Parliament. While the programme on military policy is authorised separately for a period of five years, the appropriations for the defence budget are approved every year in connection with the overall finance bill. If during a fiscal year the expenditures for military operations abroad cannot be covered by the funds provided for in the defence budget, the Government has to seek the consent of Parliament for additional budget requests. In relation to the deployment of French military forces abroad, the Parliament does not possess the power to discuss, approve or veto the budget of an individual military operation.¹³²

Control resources

By simple majority decision, parliamentary committees are entitled to set up a *mission d'information* related to a specific subject of concern and demand information, including access to documents, from the Government and the

¹³⁰ Assembly of the WEU (2001: 11); Wagner (2006: 42).

¹³¹ Gerkrath (2003: 296).

¹³² Gerkrath (2003: 299ff).

competent ministers (article 145 SO NA)¹³³. Pursuant to article 45 of the standing orders of the National Assembly, the Presidents of permanent parliamentary committees can request the presence of any member of Government at a meeting. In accordance with article 140 of the standing orders, the National Assembly can establish a committee of inquiry by a simple majority vote. The proceedings of the committee are governed by the principle of majority rule.¹³⁴

In France, the Constitutional Council (*Conseil Constitutionnel*), established by the constitution of 1958, can be appealed to in order to review the constitutionality of legislation adopted by Parliament. Government decisions and decrees are reviewed by administrative courts.

Communication-related resources

During the weekly question time a parliamentary debate on matters of general topical interest, including issues of military security policy takes place (article 48 Constitution). The agenda of the debate is determined by the Government. Once a month, Parliament can decide independently on the subjects of the agenda.

Dismissal resources

According to articles 49(2(1-3)) and 50 of the French constitution, one-tenth of the members of the *Assemblée Nationale* can request the introduction of a motion of no confidence in the Government as a whole. The motion has to be passed by an absolute majority vote of the National Assembly.¹³⁵ However, the French Parliament does not have the power to remove the President from office.

4.5.3 Greece

Summary

The war powers of the Greek Parliament (*Vouli ton Ellinon*) qualify as ‘very weak’ due to the fact that the assembly is not involved in the decision-making process to deploy troops abroad at any stage. According to the provisions of Law 2297/95, the Government is not even obliged to inform Parliament on its decision to engage Greek forces in military operations. In contrast to other policy areas, the control resources of Parliament are rather limited in the domain of military security policy. For example, by an absolute majority decision of its members, the Greek Parliament can establish a committee of inquiry. As for dismissal resources, the Greek Parliament can revoke its confidence in either individual ministers or the Government as a whole. However, to become effective a motion of no confidence requires an absolute majority decision of all Members of Parliament.

¹³³ Ibid.

¹³⁴ Thiébaud (2003: 339).

¹³⁵ Cf. *ibid*: 337ff.

Legislative resources

The Greek Parliament is not involved in decisions to engage military forces in operations abroad. According to article 3(10) of Law 2292/95, which regulates the decision-making process on the deployment of Greek forces to military missions abroad, the decision is made by the Government's Council on Foreign Affairs on the basis of a proposal by the Ministry of Defence. If the Council on Foreign Affairs adopts the deployment proposal, the Minister of Defence informs the parliamentary Standing Committee on Defence and Foreign Affairs about its decision.¹³⁶

According to article 27(2) of the Greek constitution, the *Vouli ton Ellinon* has to formally authorise the temporary presence and transit of foreign military forces on Greek territory in law. Such a law has to be agreed by an absolute majority vote of all delegates. However, once Parliament has given its consent to special bilateral or multilateral agreements on defence cooperation, it is at the Minister of Defence's own discretion to approve or deny the temporary presence and transit of foreign military forces (including use of airspace, bases and ports as well issues of logistical support) on Greek territory in any given case.¹³⁷ Additionally, in the absence of a defence cooperation agreement a simplified decision-making procedure exists. For arrangements of a technical or administrative nature, the Government can authorise the temporary presence of foreign forces without seeking the prior adoption of formal law by Parliament.

Budgetary resources

In accordance with article 79 of the constitution, the assembly debates and votes on the annual draft budget bill as a whole. The budget bill is prepared by the Government (article 123(6) SO). The vote on the state budget takes place after the budget proposal has been discussed by the Permanent Financial Affairs Committee and examined by several rapporteurs. During the plenary debate on the state budget, Members of Parliament have no power to discuss, approve or veto the defence budget line separately, nor its items, which include the estimated costs for military missions abroad.¹³⁸ If expenses for military operations abroad exceed the funds provided for in the annual budget, Parliament has to authorise supplementary budget requests by a special law (article 79(4) Constitution). However, the Government is entitled to use credit from a reserve fund of the budget of the Ministry of Economics and Finance, and thereby avoid seeking the authorisation of Parliament for additional budget requests. Since the costs of military missions are covered by the defence budget, the assembly does not have the power to approve or veto the budget for each military operation abroad separately.

¹³⁶ Assembly of the WEU (2001: 12); Wagner (2006: 43).

¹³⁷ Personal communication with Professor Dr Kostas Mavrias, president, Scientific Council of the Hellenic Parliament, 8 May 2007.

¹³⁸ Personal communication with Athanasios Alevras, member of Standing Committee on Defence and Foreign Affairs, 5 March 2007.

Control resources

Each Member of Parliament has the right to request and obtain documents from the Government concerning specific policy issues (article 133 SO). The respective minister has to submit the requested documents within a month. No documents concerning diplomatic, military or other security and defence issues can be submitted to Members of Parliament (article 133(4) SO); only the Standing Committee on Foreign Affairs and Defence has the power to ask for submission of documents from the Ministries of Foreign Affairs and Defence. However, both ministers can deny to give any information pertaining to issues of the ministry's responsibility if they think that the national interest is threatened, especially if diplomatic or military secrets are concerned (article 41A(2) SO). Besides, the plenary of the Greek Parliament, as well as each parliamentary committee such as the Standing Committee on Defence and Foreign Affairs, have the right to summon members of the Government to their sessions in order to give information on all kinds of policy issues (article 66(3) Constitution; article 41(1) SO). By notifying the responsible minister, parliamentary committees can demand the presence of any person they consider relevant for their work. Pursuant to article 68(2) of the constitution, one-fifth of the total number of members of the *Vouli ton Ellinon* can propose the formation of an investigation committee to assess special issues of general interest. To establish a committee of inquiry, a parliamentary resolution supported by at least two-fifths of all members has to be passed (article 144(2) SO). However, concerning matters of foreign policy and national defence a parliamentary resolution to set up an investigation committee has to be adopted by the absolute majority of all members of the Greek Parliament. A committee of inquiry possesses the power to subpoena members of governmental and public bodies to testify on all subjects of concern (article 145(1–2) SO). However, the submission of relevant documents is again restricted by secrecy provisions (article 146(4) SO).

In observance of the separation of powers, members of the Greek Parliament or any parliamentary group do not have the right to request the judicial review of a governmental decision, act, or law by the three constitutional courts or any other court.¹³⁹ Hence, Parliament cannot demand a review of the constitutionality of a decision to send Greek military forces abroad.

Communication-related resources

Following an answer by the Government to a written question, a debate on a current issue takes place during three plenary meetings every week (articles 129–132 SO). However, it is up to the President's Conference to decide on the duration as well as on the precise day and hour on which a specific topic will be discussed (article 132a(3) SO). In addition, after the submission of an interpellation on a matter of general or current interest, a debate can take place once a week (articles 134–137 SO). Moreover, each member of the Greek

¹³⁹ Personal communication with Professor Dr Kostas Mavrias, president, Scientific Council of the Hellenic Parliament, 8 May 2007; Alevras, *ibid.*

Parliament has the right to initiate a debate concerning issues of general importance or interest (article 132A(1) SO).

Dismissal resources

Pursuant to article 84(2) of the constitution, at least one-sixth of the Members of Parliament can move for a motion of no confidence against either the collective Government or specific ministers. The motion has to be adopted by an absolute majority vote of all members of the *Vouli ton Ellinon* (article 84(6) Constitution).

4.5.4 United Kingdom

Summary

The British Parliament has only ‘very weak’ war powers. Due to the royal prerogative regarding security and defence policy, Parliament has no legal power to participate in the decision-making process on the use of military force abroad. In addition, the British Parliament is not entitled to authorise individual budgets for military missions or supplementary budget requests. Regarding the control and communication-related resources of the House of Commons, the instruments at the disposal of members of Parliament regarding military security policy are mostly restricted by majority requirements. As for dismissal resources, the House of Commons can withdraw its confidence only in the Government as a whole.

Legislative resources

In the United Kingdom the right to declare war and peace and the decision to use military force abroad are part of the royal prerogative powers of the executive¹⁴⁰ in security and defence matters. Thus the Government does not have to seek prior approval of Parliament for the engagement of British forces in military operations overseas.¹⁴¹

Regarding the stationing of and transit by foreign military forces on British territory, their use of military bases and airspace and their logistical support, the Government is responsible for these matters. Since the right to conclude international treaties as well as military and other cooperation agreements is also part of the royal prerogative powers, the Executive is not obliged to inform or consult Parliament prior to taking any decision with respect to these issues. Parliament is not, however, prevented from discussing these matters.

Budgetary resources

Every year, the Government prepares the general draft budget bill of the UK that both chambers of Parliament are entitled to examine, approve or reject, although the House of Lords does not have the power to overturn the decision of the

¹⁴⁰ The term ‘royal prerogative’ refers to ‘the existence and use of prerogative power, that is, power exercised (primarily) by ministers in the name of the Crown’ (Winetrobe, 2000: 23).

¹⁴¹ Rowe (2003: 836); Wagner (2006: 54).

House of Commons. Both Houses of Parliament have the power to vote on the defence budget as a whole.¹⁴² However, they cannot decide on the budget of each military operation abroad on a case-by-case basis, and do not have to authorise additional budget requests which may arise during the fiscal year.

Control resources

In all policy areas members of the House of Commons have the right to scrutinise governmental action and receive information. However, only departmental select committees like those on foreign affairs and defence can demand the submission of relevant documents and summon members of the Government and all departments as well as other persons to committee meetings (article 152(4) SO House of Commons (SO HoC)). In addition, parliamentary select committees have the right to conduct special inquiries into whatever area of public policy they see fit. These committees are organised on a departmental basis, therefore the Foreign Affairs Select Committee examines aspects of foreign policy and the Defence Select Committee looks into aspects of defence policy. Select committees decide which subjects to examine by a simple majority vote, and the internal working procedures of the committees are governed by the principle of majority voting as well. During a parliamentary inquiry select committees can be vested with powers to obtain files from the relevant ministerial departments and summon ministers, members of other governmental agencies and other persons to give evidence on any subject of concern. However, these powers cannot be exercised without prior authorisation by the plenary of the House of Commons.¹⁴³

Since decisions to engage British troops in military operations abroad exclusively fall into the realm of the royal prerogative, neither individual members, parliamentary groups nor the plenary of the House of Commons can request a judicial review of any deployment decision regarding its constitutionality.¹⁴⁴

Communication-related resources

Each member of the House of Commons is entitled to request debates on any subject of Government policy, including security and defence matters. The motion for a topical debate has to be passed by a simple majority vote for the debate to take place. Moreover, each Member of Parliament can introduce a motion to adjourn a session of the House of Commons in order to raise matters of general and urgent public concern (SO No. 24 HoC). For 20 days in each parliamentary session ('opposition days') it is up to the opposition parties in the House of Commons to decide the agenda and put up subjects of concern for debate.

¹⁴² Personal communication with Martin Davies, Information Service, House of Commons, 17 January 2007.

¹⁴³ 'It is usual, in the appropriate standing order, or in the order relating to its appointment, or subsequently on the motion of the chairman, to give a select committee the power to "send for persons, papers and records"' (McKay, 2004: 756ff).

¹⁴⁴ Rowe (2003: 834ff).

Dismissal resources

The parliamentary procedure to dismiss the Executive from office is regulated by constitutional conventions. Each member of the House of Commons has the right to introduce a motion of no confidence against the Government as a whole.¹⁴⁵ Since there are no formal majority requirements, the motion is passed by a simple majority vote in the House of Commons.

5. The relevance of parliamentary war powers: The case of the 2003 Iraq intervention

In our survey of 25 European democracies and their involvement in the 2003 Iraq intervention, we found strong evidence of the relevance of parliamentary war powers. The evaluation of our survey demonstrates that, in fact, high parliamentary war powers are associated with weak degrees of war involvement.

For our analysis we distinguish five successive degrees of war involvement. We assume that in the casualty-shy ‘post-heroic societies’¹⁴⁶ of the West the lives of national soldiers are particularly highly valued by the citizens. Thus we define the deployment of ‘combat ground forces’ as the most costly category of war involvement, most of all because of considerable risks of casualties among the soldiers deployed. We define the deployment of ‘air and naval forces’ as the second highest degree of war involvement. Compared to combat ground forces this kind of deployment can be more expensive in financial terms, but pilots and naval personnel face considerable lower personal risk to their lives due to the overwhelming technological superiority of the armed forces of European democracies when fighting asymmetrical wars.¹⁴⁷ The third category refers to ‘rear ground troops’. The deployment of military engineers or medical teams to non-combat zones of the war theatre usually entails some personal risk to the lives of the soldiers deployed and moderate financial costs, mostly for logistics. The fourth category comprises ‘logistical support’ for the war effort outside the war theatre. This involves minimum risks for national troops and citizens and comparatively low financial costs. The lowest, least costly degree is ‘no war involvement’.¹⁴⁸

Table 2 shows the correlation of parliamentary war powers and war involvement for the 25 European democracies surveyed. The correlation results most importantly reveal a significant pattern of high parliamentary war powers linked to low war involvement.¹⁴⁹ More specifically, just about all countries with strong parliamentary war powers did not provide more than logistical support for the intervention. The United Kingdom and Poland are the only countries in our sample that actually got involved with ground troops in the intervention stage of

¹⁴⁵ Saalfeld (2003: 630).

¹⁴⁶ Smith (2005).

¹⁴⁷ Illustrative cases are the 1991 Gulf War and the 1999 Kosovo war.

¹⁴⁸ For a detailed explanation of this concept of ‘war involvement’ see Hummel (2007).

¹⁴⁹ For testing the significance of the results see Dieterich et al. (2009).

Table 2: Parliamentary war powers and war involvement: Results of the 2003 survey

Typology of parliamentary war powers						
Typology of war involvement in 2003 Iraq intervention		Very strong	Strong	Medium	Weak	Very weak
	Combat ground forces				POL	GBR
	Air and naval forces		DEN			
	Rear ground troops	LIT		CZK	ESP	
	Logistical support	EST, GER, HUN, ITA, LAT, SLO	NED, IRE	SLK	BEL, POR	CYP, FRA, GRE
	No war involvement	AUT, FIN, LUX, MAL	SWE			

Abbreviations: AUT=Austria, BEL=Belgium, CYP=Cyprus, CZK=Czech Republic, DEN=Denmark, ESP=Espagne, EST=Estonia, FIN=Finland, FRA=France, GBR=United Kingdom of Great Britain, GER=Germany, GRE=Greece, HUN=Hungary, IRE=Ireland, ITA=Italy, LAT=Latvia, LIT=Lithuania, LUX=Luxembourg, MAL=Malta, NED=Netherlands, POL=Poland, POR=Portugal, SLK=Slovakia, SLO=Slovenia, SWE=Sweden

the Iraq war, and in both cases parliamentary war powers are classified either, as ‘weak’ in the case of Poland or as ‘very weak’ in the case of United Kingdom as we would have expected..

Lithuania and Denmark, however, do not fully match our expectation. The Danish Parliament approved deployment of naval forces, disregarding overwhelming public opposition. The United Kingdom offers another puzzle. Although Prime Minister Blair was not legally obliged to seek the approval of the House of Commons for sending combat forces to the Iraqi battlefield, he asked Parliament for a vote. As in the Danish Parliament, the majority of the House of Commons supported a high level of war involvement irrespective of public opposition.

Nonetheless a general conclusion can be drawn from this survey: parliamentary war powers make a difference. If citizens estimate warfare as too risky and costly, powerful parliaments can transfer these motivations into political decision-making and can constitute a powerful institutional brake to government’s security policy-making. This is just the way Kant had imagined the democratic peace.

6. Conclusion: Good practices regarding parliamentary war powers¹⁵⁰

Finally, our survey revealed that – as of 2003 – there was no single European parliament scoring equally well on all dimensions of parliamentary war powers; no country can serve as a ‘best case’ prototype. On the other hand, based on the results of the survey, good practices relating to the five war power resources can be summarised. They are shown in Table 3.

Table 3: War powers of national parliaments in the European Union: Good practices

Parliamentary war power resources	Good war power practices
Legislative resources	Unconditional <i>ex ante</i> approval of decisions concerning deployment of troops and related use of force (save for emergency deployments), as well as decisions concerning transit and stay of foreign troops
Budgetary resources	Mandatory case-by-case approval for expenditures covering any costs of military deployments
Control resources	Access to all relevant (including secret) information if requested by a parliamentary minority; right of parliamentary minorities to request the forming of an investigative committee, in which the opposition should have far-reaching competences
Communication-related resources	Extended minority rights to put matters of military security policy on the parliamentary agenda in the plenary and committees, including frequent and regular debates during a period of troop deployment
Dismissal resources	Ministers are directly accountable to parliament; parliament is able to force any member of government to resign

Most importantly, effective war powers of parliaments are based primarily on ‘very strong’ legislative powers. This means *ex ante* approval of military security decisions in any case of potential military involvement in armed conflicts, i.e. this has to be done on a case-by-case basis, with no exceptions regarding the circumstances of planned troop deployments, including the deployment of special forces. Moreover, in the good practices scenario *ex ante* approval by parliament should also extend to any military transit, any military use of national airspace, territorial waters and infrastructure, and any use of foreign military bases on the national territory in relation to the use of military force. Budgetary war powers would mirror or supplement legislative war powers regarding *ex ante* case-by-case approval of separate budgets for planned military deployments.

In the good practices scenario, strong war powers of the parliamentary opposition regarding the control and communication dimensions supplement the legislative and budgetary war powers of parliamentary majority parties. For control powers this includes regular and detailed government reports on security affairs, minority access to the whole toolbox of parliamentary control and the strengthening of

¹⁵⁰ This section has been taken from our DCAF policy paper (Dieterich et al., 2008).

judicial review capabilities for security policy issues. Communication-related war powers not only comprise extensive minority rights to put security policy issues on the agenda of parliamentary debates and demand urgency debates on security issues, but also frequent and regular debates during the deployment of national forces. In parliamentary systems, good practices relating to dismissal war powers would provide for the removal from office of single ministers responsible for foreign and security affairs by a parliamentary vote of no confidence. In presidential systems, a dismissal of the directly elected president would go beyond the scope of the constitutional framework. Nevertheless, there can be functionally equivalent ways to strengthen the parliamentary accountability of powerful presidents.

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