

CHAPTER 3

Parliamentary oversight of EU external military operations: The roles of the British, French and Italian parliaments

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Introduction¹

Between 2003 and 2004, the EU marked its arrival on the international scene as a military actor by sending police units and military forces with a peace-enforcement mandate to Bosnia-Herzegovina and the Former Yugoslav Republic of Macedonia (FYROM). It also went outside its European borders by launching a peace-enforcement operation in the Democratic Republic of Congo (DRC): Operation Artemis. During the decisions to embark on these operations, the European Council negotiated important aspects of external military engagements that will have a vital impact on future patterns of EU military undertakings. For example, the European Council concluded an agreement of cooperation with NATO for external crisis management, the so-called Berlin Plus; it negotiated the rules for the financing of its military operations; it determined the laws that should govern the status of EU forces and finalised the types of agreements that should be signed with non-EU or non-NATO countries taking part in operations. The aim of this article is to examine the level of democratic scrutiny exercised by the British, French and Italian parliaments in the decision-making process before and after two of the first three operations: Concordia and Artemis. Hence, I will analyse the control exercised by these parliaments on the activity of their national

¹ The author is grateful to the British Academy for financial support she received to undertake face-to-face interviews. Many thanks are due to all British, French and Italian MPs who agreed to be interviewed.

ministers during the preparation of the General Affairs External Relations Council's (GAERC) meetings, when the agenda and the main guidelines of decision-making were established (ex-ante accountability) and on the scrutiny after the operations had been launched (ex-post accountability). Parliamentary supervision in foreign, security and defence issues is today more important than ever because there is an emerging new division of labour between Europe and the United States in international security within the context of a challenge to international legal norms on the use of force.

By comparing the performance of parliaments, this article will contribute to the debate about the relationship between democracy and security. In fact, despite substantial public support for the development of the ESDP (European Security and Defence Policy), there is an ongoing controversy surrounding the extent to which national parliaments in Europe have the means to provide collective control over the decisions and implementation of EU defence and security policies. To summarise the debate, there are those who argue that the internationalisation of security, of which recent EU military operations are an expression, challenges the ability of national parliaments to control the executive. The reasons for this range from the inability of national parliaments to shape collectively ESDP policies prior to their approval, to the impossibility to modify decisions after they have been taken by the European Council. (Stavridis 2001; Gravilescu 2004) Opponents of the 'democratic deficit' argument stress the intergovernmental nature of the ESDP and the fact that national governments are in charge of the decision-making process. From this perspective, it is up to national parliaments, in their individual capacities, to oversee decisions taken in the European Council.²

The article is structured in two parts: in the first part, I briefly sketch how the existing literature has compared performance of the British, French and Italian parliaments' roles in foreign, security and defence policies and in European affairs. In the second part, I summarise key aspects of the two operations, Concordia and Artemis, and then outline the findings. These results were obtained through a review of public available sources and qualitative interviews, undertaken in the autumn of 2004, with the chairmen

² This is a position expressed by British, French, and Italian government officials at time of writing.

and members of parliaments of national committees responsible respectively for Foreign Affairs, Defence and European Affairs.³

Comparative performance

How has the performance of national parliaments in the supervision of foreign, security and defence policies and European affairs been compared until now? Some explanations have been put forward as to the reasons why parliaments have different opportunities to shape legislative output. (Blondel 1973; Norton 1998) There are also studies that clarify the differences in national parliaments' performance in multilateral security engagements⁴ and in European affairs. (Maurer and Wessels 2001; Norton 1996; Smith 1995; Katz and Wessels 1999; Bergman September 1997) If these findings are combined, some key factors can be identified as potential explanations for the differential relationships that exist between the executive and the legislature in the area of foreign, security and defence policies and in the area of European affairs. These are: constitutional traditions, including the law-making powers of parliaments; whether the executive is elected by a majority of parliaments or whether the executive is more independent of parliament; the role of political parties and public opinion; traditions over the use of military force; how international legal norms on the use of force have been interpreted by successive governments; trust in European institutions; procedural issues such as the degree of committees' specialisation (their power of agenda settings, jurisdictions, access to resources and nature of membership) and the stages at which a bill is referred to committees for detailed consideration.

Despite this knowledge, most of the comparative literature that has been published during the past ten years tends to describe the performance of the British and French parliaments in the scrutiny of foreign, security and defence policies as relatively weak and that of the Italian Parliament as strong, by focusing on a limited number of factors: the formal legal powers that the

³ Interviews were undertaken with the following British, French and Italian MPs: Donald Anderson, Bruce George, William Cash, Michael Connarty, Kevan Jones, Gisela Stuart, Bill Tynan, Wayne David, Michel Voisin, Roberto Lavagnini, Dario Rivolta, Elettra Deiana, Marco Zacchera and assistants to the French, British and Italian Committee of the European Union. And an interview with Dr. Rita Palanza.

⁴ There are no up-to-date comprehensive analyses but some comparative country analysis, an exception is (Ku and Jacobson 2002).

two parliaments have and the functions of the committees involved in foreign, security and defence policies. Thus, for example, Hans Born (2004) in a seminal comparative analysis of the performance of parliaments in overseeing multinational peace support operations, highlights the functions that the parliaments have by focusing on their legal powers without investigating whether and how these powers are used.

Table 2.1. Powers of the parliaments during the decision to send troops abroad

Functions	France	Italy	UK
Approval of sending troops abroad <i>a priori</i>	No	Yes	No
Approval of mission mandate	No	Yes	No
Approval of budget of the mission prior to the launch	No	Yes	Yes
Approval of budget of the mission after the launch of the operation	Yes	Yes	Yes
Approval of operational issues (Rules of Engagement, command and control and risk assessment)	No	No	No
Approval of duration of the mission	No	Yes	No
Parliamentarians have the right to visit troops on a mission	Yes	Yes	Yes

Source: Born and Urscheler (2004)

Most descriptive and comparative analyses follow this model (WEU Assembly⁵; Wessels 2002). From this legal perspective, the British and French parliaments are located on the ‘weak’ side of the spectrum and the Italian one on the strong. The British system is described as ‘weak’ because, in Britain’s unwritten constitution, the power to agree treaties and declare war is a royal prerogative. Thus, the British Government can sign treaties, go to war and send troops on peace support missions under this prerogative without having to consult Parliament before taking such decisions. Similarly, the French Constitution of 1958 attributes to the executive the monopoly over the deployment of force. Hence there is no formal requirement on the part of the French Government to request parliamentary approval for the external deployment of its forces, except for a declaration of war or a state of

⁵ WEU Assembly, *National parliamentary scrutiny of intervention abroad by armed forces engaged in international missions: the current position in law*. Brussels, 4 December 2001.

emergency. The French Parliament is not involved in the ratification of military cooperation agreements, defence treaties and security agreements. In comparison, the Italian Parliament is described as 'strong' because the Italian Constitution has provisions that regulate the use of military forces abroad.

The literature on parliaments in EU affairs comes to opposite conclusions regarding performance: the British and French parliaments have superior forms of overseeing EU affairs compared to the Italian.(Maurer and Wessels 2001:20-21, 448-452, 461-465) One of the many variables responsible for this is the fact that the European Affairs Committee of the Italian Parliament does not have the same formal powers of scrutiny as the British European Scrutiny Committee or the French Delegation for the European Union. This is also reflected in the area of the CFSP (Common Foreign and Security Policy), as the table below exemplifies.

Table 2.2. European Affairs Committees and national scrutiny processes

Formal Rights in the CFSP	French National Assembly	Italy Camera	Italy Senate	UK House of Commons
Does the committee have a formal right to receive and discuss draft documents on the CFSP?	Yes	No, at discretion of the Government	No, at discretion of the Government	Yes

Sources: For Italy: interview with Dr. Rita Palanza, Camera dei deputi (4 November 2004). For Britain: Ware and Wright (2004); Maurer and Wessels (2001: 443).

Taking into account these brief comparative remarks, let us now turn to an analysis of parliamentary performance in the supervision of Operation Concordia and Operation Artemis.

Operation Concordia

On 27 January 2003, the General Affairs European Council agreed to undertake Operation Concordia by approving a Joint Action, made official on

4 February 2003.⁶ However, the operation did not start until 18 March 2003 because the launch involved the conclusion of agreements between the EU and NATO on crisis management aspects, the so-called Berlin Plus. The operation involved sending 467 troops from 26 countries to the Former Yugoslav Republic of Macedonia (FYROM) to ensure the implementation of the 'Ohrid Agreement', which provided for a new constitutional form of power sharing among the ethnic Albanians and the Macedonians. The EU, with the support of NATO and the United States, had negotiated the agreement during the summer and winter of 2001, following the outbreak of armed conflict between ethnic Albanians and Macedonians. Operation Concordia was designed to take over the security and military functions that until then had been undertaken by the NATO operation Allied Harmony. (In fact, between 2001 and 2003, NATO had launched three military operations in the FYROM).⁷ Operation Concordia was only agreed after the EU had been invited by the Macedonian Government to do so and the UN had approved its mandate under UN Security Council Resolution 1371 (Mace 2004).

British Parliament: Operation Concordia

Ex-ante accountability. MPs belonging to the Foreign Affairs and Defence Committees⁸ were not consulted either formally or informally in the decision to launch Operation Concordia. Interviews confirmed that both committees had no formal right of consultation over aspects of the operation; such as the mandate, the chain of command or the rules of engagement. Although the Defence Committee approved the defence budget, it could not have used its control over it to influence aspects of the operation, if it had so wanted. This is because the defence budget is sent by the Government to the committee approximately every three months and is of a very generic nature.⁹

In contrast, MPs in the Select Committee on European Scrutiny actively monitored and raised substantial questions about the legal process

⁶ European Council, *Council Joint Action on the European Union Military Operation in the Former Yugoslav Republic of Macedonia*, COSDP 56, Relex 35, NO 5794/03, Brussels, 4 February 2003.

⁷ The operations, which succeeded one another were: 'Operation Essential Harvest' launched on 24 August 2001; 'Amber Fox', launched in September 2001; 'Allied Harmony', launched on 16 December 2002.

⁸ Interviews with Donald Anderson, Bruce George, Gisela Stuart and Kevan Jones.

⁹ Interview with Bruce George.

related to the operation. The Committee, in fact, has a right to view all documents submitted for discussion in the European Council, including those for decisions taken under the CFSP. It has a right of access to information and also a right to approve the documents prior to their endorsement by the European Council; (Ware and Wright 2004; Maurer and Wessels 2001:395-421) though in the area of ESDP a debate has taken place, which remains inconclusive at the time of writing, as the sections below demonstrate. If it is not satisfied with the legislation proposed, the Committee can take three steps: request more information; decide whether the document should be debated on the Floor of the House or one of its three European Standing Committees; decide to put forward a scrutiny reserve resolution. The last option constrains ministers from giving agreement to proposals or recommendations at European Council meetings. It is not the Committee's role, however, to express an opinion with regard to the merit of policies. As MP William Cash explained in an interview with the author: "We do not have the power to scrutinise ... we do not express a view, though we sometimes get close to scrutiny".¹⁰ The discussions in the Committee remain private, there is no public record of the votes taken and not all the documents shown to it are publicly available.

The British Government agreed to Operation Concordia before the European Scrutiny Committee had the opportunity to view the final draft of the decision and give its consent. As previously stated, the GAERC made public the Joint Action for Operation Concordia on 4 February 2003 and then agreed to launch the operation on 18 March. On 22 January¹¹ and 29 January¹², members of the Committee saw drafts of the Joint Action and cleared them while holding some reservations and requesting additional information. However, the Committee did not receive the final version until 12 February.¹³

Similarly, Members of the Committee were kept informed about the aspects of the operation, but they did not see the final version of the decision

¹⁰ Interview with William Cash.

¹¹ European Scrutiny Committee (House of Commons), *Unofficial Presidency text of a draft Council Decision implementing Joint Action establishing an operational Fund to provide for the financing of the shared costs of operation ALPHA*, 24182, London, 22 January 2003.

¹² European Scrutiny Committee (House of Commons), *EU Military Operations in the Former Yugoslav Republic of Macedonia*. Tenth Report 9, 24205, London, 29 January 2003.

¹³ European Scrutiny Committee (House of Commons), *EU led military crisis management operation in Macedonia*, London, 26 March 2003.

taken by the European Council to launch the operation on 18 March. In fact, the European Scrutiny Committee only viewed the document on 26 March 2003; that is, nearly a week after the operation had begun. In that instance, the only additional information that the Government released was the list of topics of negotiations between the EU and NATO prior to the agreement and a clarification of the documents that the European Council considered as secret. The Government argued that the operational plan could not be made public and that it contained the following elements: command and control structure, threat assessment, rules on the use of force, and logistics and reserve, as well as other operational issues. The Committee agreed that the operational plan should not be deposited with the Committee.¹⁴

The role of the European Scrutiny Committee in the ex-ante accountability phase was to use its power to request additional information and clarifications. It did not go as far as using its reserve resolution options, though it seems that members of the Conservative Party involved in the Committee came close to such an action. Interviews with Members of the Committee reveal that some MPs were reluctant to approve the operation because they were concerned that, during the negotiations on specific aspects of ESDP military operations, the British Government would give away its sovereignty over defence matters. This can be seen during the discussion on the status of EU forces, described below. In addition, some MPs wanted to clarify the principles on the level of access to information that the Committee should have over ESDP matters. As MP Bill Tynan explained, the main concern of the Committee was not so much to view the final draft of the decision but rather to have access to the information that the Government had to allow the process to go forward.¹⁵ By so doing, the committee was testing its ability to be part of the decision-making process.

In fact, on many occasions the Committee officially complained about the government's failure to provide all the necessary information so that they could assess the decision. MPs wanted clarifications on the exact procedures to be followed in case of urgency. Hence, on 29 January 2003, Mr Denis MacShane, the Minister for Europe, was told to "present to us its detailed proposals on scrutiny of EU-led military operations and undertakes it shortly

¹⁴ European Scrutiny Committee (House of Commons), *EU led military crisis management operation in Macedonia*. London, 26 March 2003.

¹⁵ Interview material.

on this issue".¹⁶ Then again on 12 February 2003, the Committee complained that the Government had not submitted the Draft Joint Action with an Explanatory Memorandum prior to the decision being taken. The Committee also reminded the Minister that, in May 2002, they sent a letter to the Foreign and Commonwealth Office asking about the course of events they would envisage in the case of a developing crisis, in which the Council eventually decided to undertake an EU-led military crisis management operation.¹⁷ On 12 February 2003, the Minister for Europe responded to the Committee's complaint by apologising and arguing that there had been insufficient time to submit the decision for scrutiny because specific EU-NATO arrangements had to be in place before the decision could be adopted. The full official answer to questions about procedures came only four months later, in relation to discussions about Operation Artemis.

During January and March 2003, the European Scrutiny Committee viewed documents related to two issues: the financing of the operation and the Agreement under Article 24 between the EU and non-EU countries.

Financing of the operation. The question of financing is of importance because it determines the extent to which EU-led military operations remain strictly an intergovernmental affair or whether the Commission and the European Parliament are also involved in decision-making. (Missiroli 2003) On 22 January 2003, the Committee received a document for clearance that explained the generic model and different options under discussion in the European Council for financing the common costs of ESDP operations. The Committee approved the document and urged that arrangements should be established without delay. However, the Committee had some reservations about the role of the Presidency. It wanted to know what would happen if the country holding the Presidency would not take part in the military operation. They asked if the country would then still have a say in the conduct of the operation. In addition, it requested clarifications about how non-EU, third country, contributors would participate in the financing, as the draft proposal presented contained contradictory statements.¹⁸

¹⁶ European Scrutiny Committee, 29 January 2003, *op.cit.*

¹⁷ European Scrutiny Committee, 12 February 2003, *op.cit.*

¹⁸ European Scrutiny Committee, 22 January 2003, *op.cit.*; European Scrutiny Committee, 12 February 2003, *op.cit.*

Between 25 February and 11 March, the European Scrutiny Committee cleared the Council's decision concerning the conclusion of agreements under Article 24 between the EU and third country contributors to Operation Concordia.¹⁹ Similarly, on 26 February 2003, the Committee approved a Draft Council Decision on this topic in which the provisions included aspects of command and control arrangements, financing and access to EU classified information. However, the Committee requested the Minister to provide a full Explanatory Memorandum as soon as the document containing the outcome of the negotiations became available. The material submitted for scrutiny was considered as a simple preliminary document for opening negotiations.²⁰

Ex-post accountability. Once the operation was launched, the European Affairs Scrutiny Committee was not formally involved in the monitoring of the operation because, as previously explained, its role is confined to the clearance of EU documents. The Committee does not have powers to scrutinise the merit of the policies presented. Its final task with regard to Operation Concordia was to view and clear, without raising any questions, the Council's decision concerning the conclusion of agreements under Article 24 between the EU and third country contributors to the EU military operation in the FYROM, and the Council's decision on the extension of the EU military operation in the FYROM.²¹

The role of overseeing the peacekeeping and peace-enforcement operations is held by the Defence Committee. In this committee, no formal discussions on the operation took place. According to Bruce George, the President of the Committee, members were in agreement with the British Government and, since they had also already extensively discussed ESDP during the previous two years, they decided to prioritise other issues.²²

During 2003 and the early part of 2004, the Foreign Affairs Committee was not involved in overseeing either Operation Concordia or other political and security policies concerning the FYROM. The working priorities of the

¹⁹ European Scrutiny Committee (House of Commons), *Council Decision concerning the conclusion of agreements under Article 24 between the EU and non-EU third country contributors to the EU Military Operation in the FYROM*, London, 10 March 2003.

²⁰ European Scrutiny Committee (House of Commons), *Draft Council Decision concerning the conclusion of agreements under Article 24 between the EU and non-EU third country contributors to the EU Military Operation in the FYROM*. Thirteenth Report, 24274, London, 26 February 2003.

²¹ European Scrutiny Committee (House of Commons), *The EU Military Operation in the DRC*, London, 10 September 2003.

²² Interview material.

Committee were Gibraltar, Zimbabwe and the war against terrorism. Although MPs in this committee had visited Afghanistan, Iran and Iraq, they had not visited the Western Balkans since 2000²³. MP Donald Anderson, the President of the Foreign Affairs Committee, did, however, discuss aspects of the operation with the head of the EU military force and other senior military officers within the context of meetings organised by the NATO Parliamentary Assembly.

In the House of Commons, two written questions and an oral one were raised. They covered the following subjects: the plans to launch the operation (Mr Jenkins, 2 July 2002); the number of interpreters taking part in the British contingent (Mr Jenkins, 7 April 2003); the number of countries taking part in the operation (Mr Spring, 11 April 2003). In addition, the Select Committee on 11 February 2003 asked how many British personnel were participating in Operation Concordia.

In summary, these findings show that, in the case of the British Parliament, only the European Scrutiny Committee exercised ex-ante accountability. The Foreign Affairs and Defence Committee did not show any interest. Members of the European Scrutiny Committee understood that there were important legal aspects that were being negotiated during the launch of the first EU military operation and wanted a clarification of their role in the policy-making process prior to a decision being taken, along with clear legal procedures for the involvement of British troops in these new arrangements. In addition, members on the committee wanted a clarification of the level of access to information.

French parliament: Operation Concordia

Ex-ante accountability. The Vice President of the Defence Committee, Michel Voisin, confirmed that the committees and the national assembly did not discuss Concordia prior to its launch since it is the prerogative of the Executive, and not of Parliament, to decide to undertake military operations. He stressed that under no circumstances can Parliament influence the decision to deploy forces, except in a war-like situation.

Article 88-4 of the Constitution, as revised in 1992 and 1999, gives the French Parliament the power to the Delegation of the European Union, its specialised committee on European Affairs, to approve all drafts of EU

²³ Interview with Gisela Stuart.

documents including those in the CFSP. In contrast to its British counterpart, the Delegation can express an opinion through a resolution. A parliamentary scrutiny reserve gives the French Parliament the option to vote for or against an instrument. The Delegation has three options: to approve it; to defer taking a decision and ask a 'rapporteur' to address in greater depth the examination of the document; or to oppose it. There is, however, an emergency examination procedure that allows the Government to ask the President of the Delegation to directly carry or reject a draft European instrument, without convening the Delegation, when the Community schedule requires the urgent adoption of a text.²⁴

Given these legal requirements, the Minister of European Affairs and the Minister of Foreign Affairs sent two separate letters concerning Operation Concordia to the Delegation of the European Union on 22 and 24 January 2003 respectively. In these letters, the ministers asked the President of the Delegation, MP Pierre Lequiller, to take an urgent decision on the matter. The President of the Delegation lifted the parliamentary scrutiny reserve on Operation Concordia and on a document covering financing issues by using the emergency examination procedure. He then informed the Delegation that he had done so on 30 January 2003. The operation was therefore not discussed in the Delegation prior to its approval.²⁵

Ex-post accountability. Information concerning the operation was provided during interviews organised by the Defence Committee. On 28 May, the Minister of Defence, Michèle Alliot-Marie, explained the type of operations that France was undertaking and mentioned Concordia²⁶. General Henri Bentegeat made similar references during an interview held five months later.²⁷ On both occasions no debates or questions were raised about specific aspects of the operation that are publicly available. The Defence Committee did not undertake a study on the significance of the operation for future EU-NATO operations or for the political situation in the FYROM. As MP Michel Voisin explained, the evaluation is undertaken when the Minister for Defence

²⁴ Website of the French National Assembly, <<http://www.assemblee-nationale.fr/english/european-delegation.asp>>

²⁵ Délégation pour l'Union Européenne. *Compte Rendu* 8, Paris, 30 January 2003.

²⁶ Commission de la Défense Nationale et de Forces Armées, *Compte Rendu* No. 40, Paris, 28 May 2003.

²⁷ Commission de la Défense Nationale et de Forces Armées, *Compte Rendu* No. 40, Paris, 28 October 2003.

provides a summary of the operation to the Defence Committee.²⁸ However, MPs demonstrated a general interest in the significance of the operation on the development of the European Security and Defence Policy, as will be discussed in the next section.

To summarise, the French Parliament did not discuss the operation prior to its launch. The Delegation of the European Union was prevented in doing so because the emergency examination procedure was used. Once the operation was underway, the Government kept Parliament informed on basic aspects of the operation. MPs did not show an interest in the details of the operation, that is, the issue of financing, status of forces, etc. There was an overall consensus on the importance of the operation on the development of European defence and the shaping of the EU-NATO relationship.

Italian Parliament: Operation Concordia

Ex-ante accountability. The Italian Government took part in Operation Concordia with 45 military units, most of which were the same as those that were part of the NATO operation Allied Harmony. As MP Marco Zacchera, member of the Foreign Affairs Committee, explained in an interview, “the Government welcomed the operation, which was perceived, from a political point of view, as a demonstration of the ability of Europeans to manage European problems”.²⁹

Officially, the Italian Government argues that Parliament was informed about Operation Concordia through a law decree dated 20 January 2003³⁰, which was converted into law on 18 March 2003.³¹ A close scrutiny of the procedures, however, reveals a slightly more complex picture.³²

The law decree that was presented to Parliament on 20 January 2003 did not contain a specific reference to Operation Concordia or to the fact that negotiations were underway to transfer aspects of NATO tasks in the FYROM to the EU. The law decree, which is issued every six months to allow the renewal and extension of the mandate of all Italian troops abroad, simply

²⁸ Interview with Michel Voisin.

²⁹ Interview with Maro Zacchera, Member of the Foreign Affairs Committee and Vice-President of the EU Interim Security and Defence Assembly.

³⁰ Decreto Legge 20 gennaio 2003, no. 4, convertito con modificazioni dalla legge 18 Marzo 2003, no. 42, recante disposizioni urgenti per la prosecuzione della partecipazione Italiana ad operazioni militari internazionali.

³¹ Camera dei Deputati, *Gazzetta Ufficiale* No. 66, Rome, 20 March 2003.

³² Interview with the Vice President of the Italian Defence Committee, MP Roberto Lavagnini.

mentioned that the presence of Italian police and military units in Kosovo, FYROM and Albania should be extended until 30 June 2003. The decree provided information on costs and type of forces sent, the status of forces and specifications of the tasks to be followed.

The Government, through its Undersecretary of State for Foreign Affairs, Mario Baccini, informed Parliament of Operation Concordia on 5 February during a joint meeting of the Defence and Foreign Affairs Committees.³³ In other words, the Government informed the Italian Parliament of its decision to take part in the operation after it had already agreed to do so in the European Council. Parliament's role was therefore to provide purely ex-post accountability. Indeed, as MP Roberto Lavagnini, the Vice President of the Defence Committee, confirmed in an interview with the author, Parliament ratified the decision taken by the Government with regards to the financing, participation and rules of engagement to be followed in the operation.

The Foreign Affairs, Defence and European Affairs committees did not debate Operation Concordia. There were no discussions about the financing, rules of engagement, the nature of the cooperation between the countries involved in the operation and the status of forces.³⁴ MP Dario Rivolta, Vice President of the Foreign Affairs Committee, explained that there was no involvement because the Italian Foreign Affairs Committee has no competency in this field. As he stated:

“It is a decision that is taken by the Government. The decision is taken in the form of a law decree (...), which can become law. This decree authorises the presence of Italian troops abroad and is not part of a strategic plan to justify the presence of Italian troops. The commissions of Foreign Affairs, Defence and European Affairs, meeting together, ratify the decision that is then sent to the floor of the house. The decision is, however, taken at government level with no parliamentary involvement.”³⁵

In his view there was, however, no need for the Government to introduce a resolution for Operation Concordia, because the law decree, which has to be become law within 60 days, already mentioned NATO's involvement in the

³³ Commissione Riunite III and IV, *Resoconto*, Rome, 5 February 2003.

³⁴ Interview material.

³⁵ Interview material.

FYROM. The issue could have been debated through a law decree or a resolution, but this did not happen. In MP Elettra Deiena's opinion, at a constitutional level the Italian Parliament could have requested this information, but it decided not to do so because of lack of political pressure.³⁶

During the debates on the decree, the Legislative Committee expressed concerns about the lack of a normative and disciplinary approach that could be applied to all international military operations. The same criticism was voiced by MPs from the Democrazia di Sinistra and Margherita, political formations on the centre-left forming the opposition. In a debate on the floor of Parliament on the law decree, only one question was raised with regard to Operation Concordia. After welcoming the decision to give the EU a military role in the FYROM, MP Bedin stated, "we believe that Parliament should have been informed before, especially for matters concerning the financial consequences of our participation".³⁷ In the Committee stages, Rifondazione Communista, a left-wing party, voted against the law decree; not because they were fundamentally opposed to Operation Concordia, but because of the way in which the law decree was presented in that it put together war-like operations, such as those undertaken in Afghanistan, with peace-keeping and police operations. As MP Elettra Deiena explained, "Every mission has to be discussed on its own merit. If a mission changes from being led by NATO to the EU, there should be a change in the decree... We rejected the decree because in it there were operations that we do not support. The law decree is global, there is everything in it. To vote for an undifferentiated container means to deprive the Parliament of its authority. The law decree 'omnibus' is a decree for everything; it's a delegation of power to the Government".³⁸

Ex-post accountability. There were no discussions or specific studies undertaken concerning Operation Concordia in the three Italian committees investigated. MP Marco Zacchera, a member of the Foreign Affairs Committee, explained that, although the Committee discussed the situation in the Balkans on many occasions, there was no specific reference made to Concordia.³⁹ Those MPs who are members of the WEU Assembly had, however, the opportunity to

³⁶ Interview material.

³⁷ Camera dei Deputati, *Resoconto Stenografico No 353*, Rome, 11 March 2003.

³⁸ Interview with Elettra Deiena. My own translation.

³⁹ Interview with Marco Zacchera.

exchange views on the operation with colleagues from other national parliaments.

In summary, the Italian Government asked parliamentary approval for Operation Concordia once it had already committed itself to take part in the operation. Parliament approved a decision taken by the Government to participate in the operation without asking any substantial qualitative questions. Italian parliamentarians had formal powers to provide monitoring of the operation, but decided not to use them.

Operation Artemis

On 5 June, the EU Council adopted a Joint Action on an EU military operation in the Democratic Republic of Congo (DRC): Operation Artemis. This was the first autonomous EU-led military operation conducted outside of its immediate neighbourhood. It was ‘autonomous’ in that it was undertaken without relying on NATO assets but, rather, made use of a ‘Framework Nation’ concept, agreed by the EU on 24 July 2002. This concept essentially allows a member state to put at the disposal of the European Council its command and control facilities necessary for the planning, launch and conduct of a military operation.

The decision was taken as a result of a deterioration of the ability of the United Nations to deal with the outbreak of fighting in the Congolese Ituri’s regional capital of Bunia. Since 1998, the DRC has been riven by a war that involves nine African states (Rwanda, Uganda, Burundi, Angola, Chad, Namibia, Sudan and Zimbabwe), Congolese rebel movements and guerrilla groups outside the DRC. Added to this is a legacy of differential Western governments’ support for actors in the conflict. In July 1999, with the signing of the Lusaka Agreements, a ceasefire and inter-Congolese dialogue were established under UN auspices. As a result, the DRC and Ugandan Governments signed an agreement in Luanda (Angola), in September 2002, whereby Ugandan troops would withdraw from Ituri province in the north-west of the country. Following their withdrawal, fighting resumed between the different armed factions in Ituri’s regional capital, Bunia. Clashes between different militia groups resulted in a humanitarian crisis in early 2003, with people being displaced throughout the region and reports of widespread massacres. On 23 April, the United Nations Organisation Mission in DRC

(MONUC) began the deployment of 700 ‘blue berets’ in Bunia. But the United Nations Secretary-General Kofi Annan perceived that the force was not sufficient and called for an Interim Emergency Multinational Force (IEMF) to stabilise the town of Bunia.

The French Government proposed that the EU take over the IEMF. On 19 May 2003, the body responsible for crisis management in the EU Council, the Political Security Committee, requested the Secretary General/High Representative to study the feasibility of an EU military operation. On 30 May, the UN Security Council (UNSC) adopted Resolution 1484, under Chapter VII of the UN Charter, authorising “the deployment of an Interim Emergency Multinational Force (IEMF) in Bunia in close coordination with MONUC”. The IEMF and Artemis’ aims were to contribute to the stabilisation of security conditions and the improvement of the humanitarian situation in Bunia. They were to protect the airport and the camps of internally displaced persons in Bunia and, if necessary, protect the civilian population as well as UN and other humanitarian personnel in the town. The deployment of the IEMF and Artemis was authorised until 1 September 2003 and contributing states were authorised to take all necessary measures to fulfil the mandate. In fact, during the operation, consisting of 1400 soldiers, a number of rebels were killed. This marked the baptism of the EU’s military might in Africa. (Ulriksen et al. 2004).

British Parliament: Operation Artemis

Ex-ante accountability. In both the Defence and Foreign Affairs committees there were no formal or informal discussions regarding Operation Artemis.⁴⁰ As Bruce George explained in an interview, the Committee was in agreement with the British Government with regard to the use of the Framework Nation concept, and therefore it did not see it appropriate to discuss this issue further given the other priorities that the Committee had set itself.⁴¹

As in the case of Operation Concordia, the Government approved the operation prior to the European Scrutiny Committee having received and given its clearance to the Joint Action. The Joint Action was approved on 5 June 2003; however, the Committee did not view and clear it until 25 June 2003. The European Minister, Mr Denis MacShane, sent a draft of the Council Decision to the Committee with an Explanatory Memorandum (EM)

⁴⁰ Interviews with Kevan Jones and Gisela Stuart.

⁴¹ Interview with Bruce George.

on the day the operation was approved by the European Council. In the letter he admitted that the Government decided to take part in the operation before clearance was given. However, he stressed he had already warned the committee on an earlier occasion, 5 February 2003, that this could happen. To justify the Government's decision, he called upon the Committee to approve the proposal on the grounds of urgent humanitarian needs.⁴²

In response to previous MPs' questions on the procedures that should be followed for ESDP military operations, in his letter of explanation to the Committee, the Minister for Europe argued that the procedures had been stated in a letter that he sent to the Committee on 5 February. This involved providing a summary of the Council Secretariat Framework Paper, which is a classified document. As he explained, this paper provides the following: "it describes the approach the EU proposes to adopt in the management of the crisis in Bunia. It sets out to ensure "coherence and comprehensiveness" of the EU's actions, that is, that the actions complement each other in an orderly fashion and that they fully cover what needs to be done. Given that the situation on the ground requires immediate action, the paper groups together key elements of a Crisis Management Concept (CMC) and those of a Military Strategic Options paper, and will be used for the operation". The documents outline the background to the conflict, external involvement in it, the current situation in Bunia and Ituri, and regional attitudes to multinational intervention.⁴³

The Committee stressed that they were satisfied with the information received and that they did not want to have access to sensitive information. They cleared the document but they requested further consultation with the Government about the modalities for obtaining access to information. As it stated, "We note the need for further discussion with the Foreign Commonwealth Office about how the difficulties over the timing of the provision of information to us should be dealt with".⁴⁴ Behind this statement is an ongoing debate about whether the European Committee has a right to access the legal advice that the Government is shown. The Government

⁴² European Scrutiny Committee (House of Commons), *27 Report: 12: EU military operation in the Democratic Republic of Congo*, 24578, London, 25 June 2003.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, point 12.11.

seems to be reluctant to show this information to the Committee and the debate was still ongoing in November 2004.⁴⁵

Ex-post accountability. As in the case of Operation Concordia, the European Scrutiny Committee viewed a number of documents related to the operation, including the issue of the status of forces, and asked for further information. On 18 June 2003, the Select Committee received a draft agreement on the status of EU forces (EU SOFA).⁴⁶ The Status-of-Forces Agreement is a legal document of considerable importance in that it sets out, among other things, arrangements for liabilities and claims, and immunities from legal processes in respect of acts undertaken by EU civilian and military staff during their duties. The issue that caused considerable disagreement among Member States at the time of drafting related to circumstances in which forces could be deployed on an EU operation that made use of NATO assets and capabilities. It was unclear whether NATO SOFA, EU SOFA procedures or other international agreements would apply. The UK Government's position was that any agreement under such circumstances should reflect the NATO SOFA. British MPs wanted to ensure that the EU SOFA would not become part of the EU's 'acquis' under the 'first pillar'. In fact, the Minister reassured MPs that, "implementing certain sections of the EU SOFA under the International Organisation Act 1968 would not give the EU any additional powers".⁴⁷ Indeed, the European Council agreed that the EU SOFA would be an intergovernmental agreement, rather than a measure under the EU treaty.

The Committee endorsed the Government's position, but did not want to clear the document before having obtained additional information about subsequent negotiations.⁴⁸ These documents reveal that Member States agreed to sending forces even before they had reached a consensus on the nature of the legal provisions that should rule the conduct of their soldiers.⁴⁹ In fact, the draft document (Part IV, Article 19) included a new paragraph stating: "the

⁴⁵ Interview material.

⁴⁶ European Scrutiny Committee (House of Commons), *Agreement on status of EU forces - Draft Agreement among the Member States considered on 27 June 2003*, 24567, London, 18 June 2003.

⁴⁷ *Ibid*, point 9.9.

⁴⁸ The document was in fact cleared a few months later, on 2 July 2003. European Scrutiny Committee (House of Commons), *Agreement on status of EU forces - Draft Agreement among the Member States considered on 27 June 2003*, London, 2 July 2003.

⁴⁹ Indeed at the time of writing, March 2005, there is still an ongoing debate and no clear procedures. The French Parliament approved EUSOFA only in November 2004.

Agreement should apply *provisionally* on signature, pending the completion of constitutional procedures among Member States. This would in practice mean that the SOFA was in force between those Member States able to sign it, but not all Members at once".⁵⁰

Other forms of scrutiny. The Defence Committee did not hold any hearings about Operation Artemis. Bruce George explained that the Committee had the option and that they chose not to because he considered that the operations "did not amount to much". In addition, the committee had other working priorities focused on events in Afghanistan, Iran, Iraq, Bosnia and Kosovo. The workload and the calendar also prevented additional issues to be added on to the agenda.⁵¹ In the House of Commons, only one question was raised: Mr Wray, on 8 July 2003, asked the Government to explain how many troops had been deployed to DRC, their role and if the government could make a statement on the progress of the joint operation with other allied troops. On 28 April 2004, the Select Committee on Foreign Affairs, thanks to a set of questions posed to the Foreign Commonwealth Office (FCO), was able to discover that both Operation Artemis and Operation Concordia had been financed out of the Conflict Prevention Pools jointly managed by the FCO, Ministry of Defence (MoD) and Department for International Development, and that a total of three million were transferred to the MOD for the two operations.⁵²

French Parliament: Operation Artemis

Ex-ante accountability. France played a leading role in the operation by acting as a Framework Nation. It sent approximately 1,000 men out of the 1,400 sent and established a multinational main headquarters in Paris. It relied on its own intelligence resources and a French General commanded all forces deployed.

The national assembly was only formally informed about the operation on 4 June 2003 after MP Jacques Godfrain asked a question of the Minister of Defence, Michèle Alliot-Marie. There was no debate in Parliament and the issue was not formally discussed in the Defence and Foreign Affairs committees. Given the legal practices that have to be followed for EU

⁵⁰ *Ibid*, my own italics.

⁵¹ Interview with Bruce George.

⁵² Select Committee on Foreign Affairs (House of Commons), *Written evidence*, London, 28 April 2004.

decisions, the Delegation for the European Union was again the key committee in the French Parliament, with the legal right of consultation in the decision-making process. As in the case of Concordia, the French Government asked the Delegation to use the emergency examination procedure. The President of the Delegation of the European Union, MP Pierre Lequiller, lifted the parliamentary scrutiny reserve on the operation using a verbal urgency procedure on 4 June 2003. The Delegation was then informed of this matter on 11 June 2003 but no document was submitted.⁵³ In other words, the Delegation did not have the opportunity to discuss any aspects of the joint action. In fact, MP Jérôme Lambert complained that there was an excessive use of the emergency examination procedure in ESDP and that it was the duty of the Delegation to be more vigilant.⁵⁴

Ex-post accountability. The Delegation for the European Union discussed Operation Artemis in relation to broader European defence issues during an interview with Michèle Alliot-Marie, the Defence Minister, in December 2003.⁵⁵ On that occasion, the President, Pierre Lequiller, expressed support for the measures introduced by the Government to develop European defence, as did other MPs. An analysis of discussions on European defence topics held by the Defence, Foreign Affairs and the Delegation for the European Union committees during the second half of 2003 shows that MPs' main focus of concern was the potential of a 'hard core', or structured cooperation, in European Defence. No enquiries or specific studies were undertaken by the Foreign Affairs and Defence Committee on the lessons learnt by Operation Artemis.

In summary, the French Parliament was informed about Operation Artemis one day before the European Council agreed to the operation because one MP put a question to the Minister for Defence. The French Government chose to use the emergency examination procedures for informing the EU Delegation for the European Union. This meant that the Delegation as a whole did not view or discuss legal documents related to the operation prior to its approval. Ex-post accountability was not exercised, in that MPs did not probe the Government with specific questions or demands

⁵³ Assemblée nationale, *Rapport d'information*, 1011, pp. 147, Paris, 9 July 2003; Délégation pour l'Union Européenne, *Compte Rendu* No. 48, Paris, 11 June 2003.

⁵⁴ Délégation pour l'Union Européenne, 9 July 2003, *op.cit.*

⁵⁵ Délégation pour l'Union Européenne, *Compte Rendu* No. 67, Paris, 9 December 2003.

for a study or discussion about the lessons learnt from the operation and its impact on developments in the DRC.

Italian Parliament: Operation Artemis

Ex-ante accountability. The Italian Government agreed to Operation Artemis and took part in the operation by sending one military observer. It did not convert the decision into a law decree and the issue was not put on the agenda of Parliament for discussion.⁵⁶ As the Italian Vice President of the Defence Committee, Mr Roberto Lavagnini, explained, “We were not involved in this decision because we have sent only one person. Hence, our participation has been purely symbolic”. MPs interviewed confirmed that they had not been informed about this operation and that no discussions took place in their committees or on the floor of the house concerning the Framework Nation concept and its significance for future EU-led external military operations. As MP Dario Rivolta, Vice President of the Foreign Affairs Committee, stated: “The details of operations escape us because the Government acts independently from Parliament”.

Ex-post accountability. Parliament and its specialised committee did not discuss any aspect of the operation during or after its conclusion.⁵⁷ As in the case of Operation Concordia, those Italian MPs who held a role in the WEU Assembly were better informed on aspects of the operation and had the opportunity to debate its significance in WEU committees and in biannual plenary sessions.

Discussion and Conclusion

The results of this investigation demonstrate that national parliaments are either constitutionally and procedurally unable or politically unwilling to exercise supervision over EU-led military engagements in the ex-ante accountability phase. In both cases studied, the British and Italian parliaments did not view or have a say on the final drafts of the documents discussed in the European Council that approved Operation Concordia. The Italian

⁵⁶ Interview with Roberto Lavagnini.

⁵⁷ Interviews and analysis of documents.

Parliament, despite a formal legal right of involvement in decisions to launch military operations abroad, approved Concordia *a posteriori*. In the case of Operation Artemis, the Italian Parliament was not formally consulted. In the British case, the Government bypassed the European Scrutiny committees' supervisory processes over both operations by using the arguments of the need for an urgent decision to be taken. In the case of France, the President of the Delegation for the European Union was the only parliamentarian who had a formal engagement in the decision-making process because the emergency examination procedure was used to approve both military operations.

In the ex-ante accountability phase, as in the ex-post accountability phase, the British Parliament asked some qualitative questions. In contrast, French and Italian parliamentarians asked hardly any questions. In all three parliaments no studies or debates about the impact of the operations on political and security developments in the FYROM and the DRC took place. These findings provide support to the thesis of a democratic deficit in European security.

One can cast doubt on the extent to which parliaments should have access to information about planning and operational issues, but parliaments as a whole should be able to give their formal approval to military operations prior to their launch. There should also be public discussions on the significance of military operations for the countries in which the military forces are engaged.

Some could argue that the proposition that the Italian Parliament did not exercise scrutiny in the case of Artemis is questionable since the country's involvement was minimal. However, France, as a Framework Nation, did conduct a military operation on behalf of the EU. The legitimacy conferred by a single EU member state to the EU's activities requires an involvement by each national parliament. What is at stake in such an operation is not purely the legitimacy of French troops but of the European Union as a whole. Moreover, in the case of Italy, some experts believe that the practice of not involving Parliament on the basis that the number of Italian troops sent is modest could be seen as a challenge to the legal norms in external security deployments. (Dickmann 2001: 62-63)

What can we learn from this comparative analysis? The findings challenge some of the assumptions in the current comparative literature about the 'strength' of the Italian Parliament in foreign, security and defence policies

vis-à-vis the British. The classification of the French Parliament as ‘weak’ can be considered as correct. The French Parliament could have perhaps played a stronger role if the Delegation for the European Union as a whole had been given the opportunity to fully debate the two operations and view documents.

How is one to explain this differential performance of the three parliaments? To what extent do other factors (constitutional, executive-legislature, tradition over the use of force, political culture and procedural) outlined in the existing literature provide any insight?

Constitutional powers

Constitutional factors continue to play a very significant role, especially in the cases of the British and French parliaments. Even if the European Scrutiny Committee had decided not to approve one or both operations by using its scrutiny reserve, the Government would still have been in control of the decision-making process in that ministers can bypass the Committee if they consider that a proposal is confidential or for other ‘special reasons’. In the French case, the executive powers enshrined in the constitution on deployment of forces abroad can partly explain the lack of adequate supervision. French parliamentarians chose not to ask questions because they cannot affect the decision-making process in the ex-ante accountability stage.

In the Italian case, constitutional factors are less important. Although the Government chose a specific course of action for the two operations and introduced practices and constitutional conventions by widely interpreting Articles 11, 78 and 80 of the constitution (Lippolis 2001: 563-568), Italian MPs still have substantial legal instruments at their disposal to hold the Government to account. They can, in fact, call for resolutions and ask for additional information to be made available in private meetings.

Executive-legislature relationship

In studies of the executive-legislature relationship, there is the assumption that, in a political system in which the government has a solid majority (such as Britain’s Westminster), the role of parliament in foreign affairs is reduced, whereas in countries where there is a tendency to form unstable coalitions, such as in Italy, the control of foreign policy is more incisive. In such countries, the parliament, outside its constitutional and procedural powers, can be the place of real decisional power, in that the opposition has a right to manoeuvre. This assumption is not fully supported by the findings. This

might be explained by the political cultural factor elaborated below, and by the fact that there has been an emerging consensus among Italian political parties with regard to the need to support 'peace support operations' in which there is some form of UN involvement. As Lippolis (2001:551) argues, with the end of the Cold War, the divergent views in foreign, security and defence policies between Italian parties have disappeared.

Tradition over the use of external military force

It is often assumed that, if a country had a historical tradition of empire or unrestrained use of unilateral force in the post-war period, parliament will be less likely to use its power to exercise full supervision, because there will be a culture of acceptance of external military action. From this perspective, the French and British parliaments would have performed less well than the Italian. The findings are inconclusive because additional research would have been required to compare parliaments' performance against different types of operations over a decade or more.

Tradition over the use of force can shape collective consciousness over a long period of time but it can also be quickly disrupted by significant world developments, such as the end of the Cold War and the unilateral British-American decision to declare war on Iraq. The contemporary transformation of the relationship between civil-society and political parties also means that unpredictable factors come into play in shaping reactions to specific external security developments. In the British case, the Iraq war did awaken public debate. Parliament was forced to be more sensitive toward issues of external military engagements.

Political culture: attitudes to the EU

Attitudes to the EU can go far in explaining the differential performance of the three parliaments. French and Italian MPs seemed to have been less willing to question the government on ESDP military operations because of their strong support for European defence, which cut across all political parties and is reflected in the high level of public support. French and Italian MPs had no electoral gains in asking questions. In contrast, in the case of Britain, the inter-party split on Europe, along with the impact of the row over misuse of information during the British Government's decision to go to war against Iraq, allowed the emergence of a consensus among Labour and

Conservative MPs in the European Scrutiny Committee on the importance of questioning the Executive.

Procedural issues

The findings highlight procedural issues related to the powers of the committees involved in overseeing EU legislation. In the case of France and Britain, the committees responsible for European Affairs are at present the only place in which ex-ante accountability can be exercised within the context of formal rights of access to information.

In conclusion, the weaknesses of parliamentary supervisory processes over EU-led external military operations found in this research demonstrate the need to strengthen a political culture of parliamentary debates and questioning.

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