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EU foreign policy and the problem of democratic legitimacy

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Introduction

This article explores the role that legitimacy plays in EU foreign policy, from the perspective of democracy. It begins by defining what democratic legitimacy means in the context of foreign policy, taking umbrage with existing approaches that measure the democratic credentials of EU foreign policy uniquely through the prism of parliamentary accountability or by virtue of tokenistic references to favourable public opinion surveys. The article argues for a broader understanding of legitimacy, based upon a conceptualization of the relationship between foreign policy and domestic politics. The article then goes on to explore the extent to which democratic legitimacy exists at the pan-European level and at the national level. Rather than pursue the normative route, taken by a number of scholars, of suggesting ways in which EU foreign policy could be made more democratic, this article asks what the role played by democratic legitimacy can tell us about the nature of EU foreign policy. The article concurs with existing assessments of pan-European sources of legitimacy, namely that very little legitimation goes on at this level. It concludes from this that an absence of political structuring at the pan-European level should inform us when we discuss whether or not the EU has, or is capable of having, a 'real' or 'modernist' foreign policy.

The article then goes on to consider the extent of democratic legitimacy at the nation-state level, so called 'indirect legitimacy'. It takes issue with some of the existing literature by arguing that the weakness of legitimating mechanisms at this level is not simply, or even predominantly, a problem of what David Allen has called the "Brusselisation of foreign policy". Rather, the problem lies in the relationship that exists between domestic populations in Europe and their own national political representatives. Indirect legitimacy is failing not because too much unaccountable power has accrued to Brussels, but because national political elites have been unable to build a new normative consensus that would justify and legitimize EU cooperation in foreign and security policy. The problem is the quality of the relationship between national political elites and their own populations, not a problem originating in Brussels. The article ends with a reflection upon what this analysis of the 'democratic deficit' in EU foreign policy can tell us, if anything, about the dynamics behind the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP).

1. What does democratic legitimacy mean in the case of foreign policy?

There are two dominant approaches to the question of EU foreign policy and its democratic legitimacy.[1] One focuses on favourable opinion polls enjoyed by both the CFSP and ESDP, citing them as proof that foreign policy is a "popular" area for EU integration and might even serve to re-launch the European project. A second concentrates on the role of parliamentary accountability, both at the European and the national level. Given the weakness of both the European and national parliaments in this

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[1] Wolfgang Wagner includes a third approach, namely that of the legitimacy of international law. See Wagner, W. 2005. The democratic legitimacy of European Security and Defence Policy. *Institute of Security Studies Occassional Papers*(57): 1-35.

area, the tendency has been to propose ways in which parliamentary accountability can be strengthened. This section suggests that both such approaches are limited, and they miss the way in which foreign policies are legitimized through their correspondence with shared norms and beliefs. In a later section, the article considers the difficulties of EU foreign policy in securing such kind of legitimacy.

CFSP and ESDP: *popular* policies for the EU?

In recent years, European integration has run out of steam. Public opposition to integration has manifested itself ever since the difficult referenda on the Maastricht Treaty in 1992[2], reaching a crescendo of discontent in the 2005 Constitutional Treaty votes in France and Holland.[3] Partly in response to this development, member states have in recent years steadily drained power away from pan-European institutions such as the European Commission.[4] The rights of states today readily prevail over those of supranational actors. Yet one area in which integrationists still express hope (ironically given its deeply intergovernmental character) is EU foreign policy. Favourable Eurobarometer results suggest that the EU's Common Foreign and Security Policy (CFSP), and its Security and Defence Policy (ESDP), are both *popular* policies. The EU's foreign policy supremo, Javier Solana, even argued - in the aftermath of the 'No' votes in France and Holland - that foreign policy could be an area where the EU re-launches itself, and wins back the hearts of Europe's disaffected citizens. In a speech to the European Institute for Security Studies in September 2005, Solana declared that he was "personally convinced that the CFSP has its role to play in the reconquering of public opinion in favour of the European project".[5] If this is really the case, we might expect democratic legitimacy to be important for EU's foreign policy. As a popular policy, might it not channel its popularity upwards into the decision-making process, thus infusing foreign policy "outputs" with the democratic legitimacy of popular "inputs"?

Looking more closely at EU foreign policy, we find that this is not so. Eurobarometer polls are often cited as sufficient proof of the CFSP's and the ESDP's popularity, but for a number of reasons favourable poll results cannot be equated with democratic legitimacy. Most simply, there exists a considerable gap between the positive expressions of public

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[2] France voted 'yes' by a tiny margin; Denmark rejected the Treaty. On the rise of public contestation in the EU, see Mair, P. 2007. Political Opposition and the European Union. *Government and Opposition*. 42(1): pp1-17.. See also Meny, Y. (2003). From Popular Disatisfaction to Populism: Democracy, Constitutionalism, and Corruption. In J. Hayward, and A. Menon (Eds.), *Governing Europe*. Oxford: Oxford University Press. and Tarrow, S. (2003). Contentious Politics in Western Europe and the United States. In J. Hayward, and A. Menon (Eds.), *Governing Europe*. Oxford: Oxford University Press.

[3] Deighton, A. (2001). European Union Policy. In A. Seldon (Ed.), *The Blair Effect: The Blair Government 1997-2001*. London: Little, Brown and Company. p308.

[4] See Deighton, *ibid*, p316, on the Nice Treaty reforms.

[5] Solana, J. (2005). Discours de Javier Solana, *Annual Conference of the European Union Institute for Security Studies*. Paris. See also Solana, J. (2006). Speech at the 'Sound of Europe' conference. In C. Gliere (Ed.), *EU Security and Defence: Core Documents 2006*. Vol. 7. Paris: EU-ISS. On how EU foreign policy was an unfortunate and accidental victim of the No votes for the EU Constitution in 2005, see Andreani, G., and Ruyt, J.d. 2006. Une relance par la politique etrangere est-elle possible? *Notre Europe Policy Papers*(23): 1-32. See also Gnesotto, N. (2005). La PESC en antidote, *ISS Newsletters*. Paris: Institute of Security Studies.

support for CFSP and ESDP in opinion poll surveys, and any real role for the public in the foreign policy decision making process. This is evident in the way people express their support for EU foreign policy in general, but have little to say about what concrete form this foreign policy cooperation could take. As Philippe Manigart argues: "between the diffuse wish for a European defence and the operationalization of such a policy, there exists still a considerable gulf".[6] He also notes that "if the support that we could describe as 'affective' for the idea of a European defence is quite large in most countries, this support is also vague and rather shallow".[7] Richard Sinnott has traced in some detail the limits of public opinion polls as a source of democratic legitimacy for CFSP and ESDP. He notes that polls should not be confused with public opinion itself: the former is only a measurement of the latter, it is not the same thing. Public opinion, writes Sinnott, is "an underlying complex reality which is partially and imperfectly captured by a given set of operationalizations or measuring instruments".[8] Equally cautious, Wolfgang Wagner argues in his study of the pillars of democratic legitimacy of ESDP, the kind of permissive and "benevolent" support for ESDP expressed in opinion polls cannot be equated with the kind of active support that would go under the heading of "input legitimacy". To imagine that such poll figures could provide ESDP with the input legitimacy needed to launch major military interventions across the world would be a grave error.[9]

These qualifications point to a deeper problem. Reference to public opinion polls today obscures the more pressing issue that pertains to democratic legitimation: the actual connection between domestic populations and EU decision-making processes. As Jürgen Habermas has argued, the concept of public opinion no longer refers to an active citizenry or to notions of popular consent. In fact, it no longer corresponds to what was meant by the term in the seventeenth and eighteenth centuries, when 'public opinion' was counter-posed to 'prejudice' and referred to a critical thinking citizenry, engaging directly with issues of power and domination. Habermas argues that in contemporary western society, we observe a "gap between public opinion as a fiction of constitutional law and the social-psychological decomposition of its concept".[10] CFSP and ESDP boast of their legitimacy by virtue of the constitutional attachment that exists in European democracies to the notion of popular sovereignty. Yet, public opinion polls themselves have little relationship to this notion. Habermas notes that public opinion today refers to 'attitudes', not opinion, and the concept of the public has been replaced with that of the 'group'. At the best of times, these polls express 'actually-existing' but passive opinions, at worst they create the very opinions the polls are intended to measure. [11] Habermas' assessment is that

[6] Manigart, P. (2001). l'Opinion Publique et l'Europe de la Defense, *Opinion Publique et Europe de la Defense: convergence ou divergence?* Brussels. p14. My translation.
[7] Manigart, *ibid*, p21. My translation.
[8] Sinnott, R. (1997). European Public Opinion and Security Policy, *Chaillot Papers*. Paris EUISS. p6.
[9] Wagner, *op cit*, p15.
[10] Habermas, J. (1989). *The Structural Transformation of the Public Sphere*. Cambridge: Polity. p244.
[11] This problem is known in the public opinion literature as the existence of "non-attitudes". Non-attitudes are generated by polls when questions are formulated in such a way that respondents feel forced to opt for an answer which not based on any particular knowledge of their own, or on any preconceived preference/opinion. The poll in this instance is *constitutive* of the preference, rather than serving as a *measure* of pre-existing public opinion. In the case of ESDP, this is problematic since it would suggest that

> The communicative network of a public made up of rationally debating private citizens has collapsed; the public opinion once emergent from it has partly decomposed into the informal opinion of private citizens without a public and partly become concentrated into formal opinion of publicistically effective institutions.[12]

The implications of taking Habermas' analysis seriously are that invocations of public opinion polls in the case of CFSP and ESDP (but also in other areas) obscure the de-structuring of the national political sphere that has taken place since the concept of public opinion was first developed in early bourgeois Europe. The legitimacy of the old liberal model of rational citizens publicly debating the rights and wrongs of political decisions is retained in the constitutional authority granted to 'the people', but the sociological reality of an active citizenry has disappeared. This process of political de-structuring is hidden by the cavalier references to favourable opinion polls that EU leaders make when seeking to bolster the democratic credentials of EU foreign policy. It is this same process of political de-structuring that poses legitimacy problems for foreign policy today, as we will see below.

The limits of parliamentary accountability

As we saw above in Sinnott, Wagner and others, scholars who have written on the problem of democratic legitimacy in EU foreign policy have distanced themselves from public opinion polls, refusing to accept that favourable opinion polls are an adequate measure of democratic legitimacy. The tendency has been to focus on the issue of parliamentary accountability instead, with numerous studies on the role of both the EP and national parliaments in the democratic control of CFSP and ESDP. However, the framework of parliamentary accountability does not seem particularly well-suited to the analysis of foreign policy. Parliamentary accountability appears as a rather quixotic concern given the long tradition with which foreign policy has been held separate from parliamentary control. Foreign policy is generally considered a prerogative power - of the Crown, the Prime Minister or the President. Writing of English foreign policy in the seventeenth century, Franz Neumann remarked that it "can be conducted neither according to general laws nor according to preconceived opinions, but must necessarily be left to the wisdom of those in whose hands it is".[13] Foreign policy has certainly changed a great deal since then, and has been drawn into mass politics since the end of

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support for ESDP is only a product of the Eurobarometer polls themselves. The more extended and complex process of preference formation described above is what counts, since this gives birth to real preferences that exist independently of individual polls. The non-attitude problem is why polls should never be taken as equivalent to public opinion as such; to do so is to risk constructing an entirely imaginary set of opinions that do not exist independently of pollsters. On non-attitudes, see Sinnott, *ibid*, p12; see also Holsti, O.R. 1992. Public Opinion and Foreign Policy: Challenges to the Almond-Lippmann Consensus Mershon Series: Research Programs and Debates. *International Studies Quarterly*. 36(4): 439-436. pp442-444.

[12] Habermas, *op cit*, p247.

[13] Neumann, F. (1957). *The Democratic and the Authoritarian State: Essays in Political and Legal Theory*. Glencoe, Illinois: The Free Press
The Falcon's Wing Press. p259.

the First World War.[14] And yet in the UK, the parliamentary committee of foreign affairs was only created in 1979, and it was not until 1924 that under the Ponsbony rule international treaties in need of ratification were to be presented to the UK parliament at least three weeks before the vote.[15] The concern with parliamentary accountability thus sits uneasily alongside the tradition of *primat der aussenpolitik* and *raison d'état*.[16]

Moreover, as Barbé and Herranz have noted, parliamentary accountability and democratic legitimacy are not identical, accountability falling within the broader conceptual universe of legitimacy. Christopher Lord also clearly distinguishes between legitimacy and accountability, choosing to focus on the latter.[17] Legitimacy in his view refers to the acknowledgement by policy addressees of the rights of an institution to make collectively binding decisions in their name. Accountability, in contrast, is "an obligation to justify decisions and their management on pain of being sanctioned through loss of office, powers, resources or reputation".[18] Accountability therefore takes as its main concern the action of governments or specific holders of power. Legitimacy reasons from the perspective of the "policy addressee", i.e. the individual citizen. In this way, it thus draws attention to the importance of participation and to the normative and institutional framework within which individual participation occurs.[19] However, what form does it take - if any - in foreign policy?

Foreign policy and legitimacy through norms

It does not follow from the above that foreign policy is not in need of legitimacy. Rather, we can say that its sources of legitimacy are somewhat outside of the formal chambers of accountability. The legitimacy of foreign policy is derived from its particular relationship with domestic politics. Writing on the normative structure of legitimacy, David Beetham notes that in instances where governments act outside of the framework of formal rules, legitimacy is sought elsewhere, often in customary rules and conventions. He concludes from this that "legality cannot provide a fully adequate or self-sufficient criterion of legitimacy… circumstances will always occur which expose a more fundamental issue: why these particular laws, and what gives them their legitimacy?"[20] Foreign policy

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[14] Carr, E.H. (1995). *The Twenty Years' Crisis: 1919-1939*. London: Macmillan.
[15] Koenig-Archibugi, M. 2004. International Governance as New *Raison d'Etat*:The Case of the EU Common Foreign and Security Policy. *European Journal of International Relations*. 10(2): 147-188. p171.
[16] For more on the relationship between democracy and foreign policy, see Hill, C. (2003). *The Changing Politics of Foreign Policy*. Basingstoke: Palgrave-Macmillan., articles nine and ten.
[17] Lord argues that accountability is connected to democratic legitimacy in two ways. Accountable power is less likely to be arbitrary power, and accountability is one half of his definition of democracy (public control and political equality). Lord, C. (2005). Accountable and Legitimate? The EU's International Role. In C. Hill, and M. Smith (Eds.), *International Relations and the European Union*. Oxford: Oxford University Press. p120.
[18] Lord, *ibid*, pp113-114. On the EU and accountability more generally, see Harlow, C. (2002). *Accountability in the European Union*. Oxford: Oxford University Press.
[19] Bono adopts a different approach, choosing to differentiate between different kinds of accountability. Her emphasis on the importance of active citizenship participation in politics and popular democracy is consistent with what is considered in this article as the core of democratic legitimacy. See Bono, G. 2006. Challenges of Democratic Oversight of EU Security Policies. *European Security*. 15(4): 431-449. pp437-8.
[20] Beetham, D. (1991). *The Legitimation of Power*. Basingstoke: Palgrave-Macmillan. p68.

provides a powerful illustration of the limits of legality as a source of legitimacy, and proof that governments locate their legitimacy elsewhere. What distinguishes foreign policy as a domain of government activity is in part the weak legal framework within which governments operate. Some domestic constraints exist, such as the need for parliamentary support when declaring a war. But as argued above, these constraints are often minimal. This weakness in the legal system makes it incumbent upon governments to justify their actions in terms of an underlying set of norms and beliefs which the majority of the population share. In foreign policy, we therefore see 'national interest' trump 'lawfulness' as the more common justification for action.

Contained within the "national interest" are a whole set of normative justifications, some of which are particular to foreign policy. Continuing in Beetham's framework, 'national interests' fit within one type of normative justification, that of a "community of interest". Beetham notes another kind of normative justification, the principle of differentiation, which asserts the rightfulness and authority of a *particular* interest. This is the case for example in justifications of aristocratic rule, or of the hereditary principle. However, a dominant feature of the normative foundation of foreign policy is not the legitimacy of division, but the legitimacy of *unity*. This is why, for instance, foreign policy has so often been used as a way of distracting from internal political conflict. Robespierre knew this only too well. For this reason he opposed the war against France's neighbours in 1792 that was being pushed by leading Girondins such as Brissot. He saw that the elevation of the national interest above that of the revolution would serve to strip the latter of its real radicalism, making it into - in his famous phrase - a "revolution without a revolution".[21] A few years later, Napoleon saw the necessity of keeping his troops camped out across Europe in order that they did not return to challenge his waning authority back home.[22]

Still thinking in terms of the normative justifications of foreign policy, Beetham also notes that normative justification rests upon the *origins* of the norms in question as much as upon their content. He distinguishes between external and internal origins, external referring to religion or to scientific expertise, internal to origins within the political community in question. Beetham argues that two dominant internal origins exist: tradition and representation, or as he also puts it, "society of the past" and "society in the present". In the case of foreign policy, we can find examples of most of these normative justifications, though religion is perhaps less dominant than the others in the West today. However, only representation as authoritative origin of the norm is really compatible with democracy, tradition also to a lesser extent. The external authority of scientific expertise is distinctly paternalistic, assuming as it does that "decisions about the public interest… must be matters of special knowledge, and that those who have attained this knowledge

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[21] See Robespierre's 1792 speech, 'On the War', in Zizek, S. Ed. (2007) *Robespierre: Virtue and Terror*. London: Verso. In Zizek's words, "Robespierre was a pacifist, not out of hypocrisy or humanitarian sensitivity, but because he was well aware that war *among* nations as a rule serves as the means to obfuscate revolutionary struggle *within* each nation" (pix). AJP Taylor makes a similar point in his observation about Metternich. According to him, Metternich was fixated with the problems of political radicalism in Paris, as a distraction from his own internal political problems. In Taylor's words, "how much easier to forget men's political grievances and to raise the cry of foreign war". See Taylor, A.J.P. (1967). *Europe: Grandeur and Decline*. Harmondsworth: Penguin. p26.

[22] My thanks to Peter Ramsey for this example.

are thereby entitled to determine policy, decide laws, etc., on behalf of those who haven't".[23] This will be a topic of a later article which considers the role of performance and expertise in the legitimacy of CFSP and ESDP. Often foreign policies will be legitimized through a mix of these norms, with one or another dominating in any moment in time. The shift from one dominant normative justification to another, unless seamlessly achieved, will often give rise to a "legitimacy gap" or a legitimacy deficit.[24]

The example of the "Gaullist consensus"

To illustrate this framework with an example, we can consider Gaullist foreign policy, and its evolution from the 1960s through to the 1990s and present day. Originally, de Gaulle's foreign policy was a product of the general's attempt to unite a fractious and highly unstable French polity. De Gaulle justified the presidential authority given in the constitution of the Fifth Republic, and particularly his dominant role in foreign affairs, be pointing to the ominous "forces of dispersal" that risked pulling the young republic apart. French society was highly polarized at the time, and de Gaulle had to face down a coup attempt in 1961 provoked by attempts to end the colonial war in Algeria.[25] The legitimacy of his concept of French grandeur was therefore rooted in the present, and was based on a normative claim by the General to represent the French nation. Such a source of legitimacy was far removed from parliamentary accountability. De Gaulle's contempt for parliamentarians was well known, and he believed the Fourth Republic had been brought down by excessive partisanship.[26] However, though he may have appeared to distance himself from the political fray, his foreign policy was entirely *of society* and he believed that a strong foreign policy was necessary to maintaining internal political stability. The legitimacy of de Gaulle's foreign policy was therefore rooted in an idea of popular representation: de Gaulle aimed to represent the French nation in a manner that would unify the French people.

Over time, the sources of legitimacy for Gaullist foreign policy changed. Internally, domestic political conflict gave way to a high degree of consensus. The political spectrum narrowed considerable with the Gaullist and Communist traditions giving way in the 1970s to a new Giscardian centrism.[27] Mitterand continued this trend towards consensus, and by the end of the 1980s France was in the eyes of many analysts less subject to political contestation than any time since 1789.[28] In foreign policy, the

[23] Beetham, *op cit*, p89.

[24] On the notion of a legitimacy gap, and the difference between a gap and the deeper problem of illegitimacy, see Beetham, *op cit*, pp75-76.

[25] The Algerian war was central to de Gaulle's foreign policy. For instance, his reform of the military was intended to diffuse the political threat posed by the army. A wave of national *re-militarization* launched by de Gaulle, and based around the concept of national military self-sufficiency, was intended to strengthen the *civilian* control of the army. See Pickles, D. (1965). *The Fifth French Republic: Institutions and Politics*. London: Methuen & Co Ltd. p197.

[26] For an example of this argument, made by a leading Gaullist, see Debre, M. (1957). *Ces Princes Qui Nous Gouvernent*. Paris: Plon.

[27] Johnson, R.W. (1981). *The Long March of the French Left*. London: Macmillan., especially article five, 'Gaullism and the Right: the Political Sociology of Decline' pp71-102.

[28] See in particular DePorte, A.W. (1991). The Foreign Policy of the Fifth Republic: Between the Nation and the World. In J.F. Hollifield, and G. Ross (Eds.), *Searching for The New France*. London: Routledge.

legitimacy of representation that de Gaulle had relied upon gave way to the legitimacy of tradition. Gaullist foreign policy, which had divided opinion and had been driven precisely by the *absence* of consensus in French society[29], was now transformed into a Gaullist consensus. All political parties subscribed to the basic watered-down 'Gaullist' tenets, and the consensus survived more or less unaltered until the end of the Cold War.[30]

The events of 1989-1991, and the changes which ensued in international affairs, had the effect of exposing the difference between the aspirations of de Gaulle and the reality of what his consensus had become.[31] Instead of challenging the bipolar status quo, as de Gaulle had done with his revisionist call for "détente, entente and cooperation"[32], the Gaullist consensus had become dependent upon the structures and institutions of the Cold War. When these structures disappeared, France found itself a status quo power, acting as if it wished that nothing would change in order that its role in the world would remain the same it was.[33] France's actions in the aftermath of the end of the Cold War revealed the changing sources of legitimacy of the Gaullist consensus. Originally forged through a claim to represent the French people, the consensus had come to rest upon the past, on tradition. Thus, when the Cold War structures fell, there was no ongoing legitimacy of the present to sustain French foreign policy. The norms were old norms, and post-1989 France was left (and it remains to this day) adrift in a sea of post-Gaullist angst.[34]

In this account of French foreign policy, the national parliament has not played much of a role. Legitimacy rested upon the ability of de Gaulle to build a normative basis for his foreign policy aspirations. He did this by successfully sublimating national political divisions through a unified concept of French grandeur. Over time, legitimacy was concentrated in habits and traditions, and in a sedimented concept of French identity that depended more upon the dynamics of the Cold War than on the vitality of the French polity. The confrontation of this sedimented identity with the reality of post-Cold War geopolitics has created a legitimacy gap that French elites have not managed to fill. The

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p272. See also Hayward, J. (2001). In Search of an Evanescent European Identity. In A. Guyomarch, H. Machin, P.A. Hall, and J. Hayward (Eds.), *Developments in French Politics 2*. Basingstoke: Palgrave.

[29] DePorte, A.W. (1981). The Fifth Republic in Europe. In W.G. Andrews, and S. Hoffmann (Eds.), *The Impact of the Fifth Republic on France*. Albany: State University of New York Press. An example of the absence of consensus would be de Gaulle's nuclear policy. His bill was subject to three votes of censure by the National Assembly and Pickles described this bill as "the first major controversy of the regime in the field of foreign affairs". Pickles, *op cit*, p193.

[30] On the difference between Gaullist foreign policy and the "Gaullist consensus" of the later decades, see DePorte, 'The Fifth Republic in Europe'.

[31] DePorte, 'The Foreign Policy of the Fifth Republic'; Bozo, F. (1995). France and Security in the New Europe: Between the Gaullist Legacy and the Search for a New Model. In G. Flynn (Ed.), *Remaking the Hexagon: The New France in the New Europe*. Oxford: Westview.

[32] Stanley Hoffmann labelled this de Gaulle's "global revisionism". See Hoffmann, S. (1999). France: Two Obsessions for One Century. In R.A. Pastor (Ed.), *A Century's Journey: How the Great Powers Shape the World*. New York: Basic Books.

[33] Bozo notes the irony of this situation: "the nation, whose security concept ever since de Gaulle aimed at overcoming the bloc system, had become a status quo power at the time when the general's wish was fulfilled". Bozo, *op cit*, p214.

[34] On how this left French political elites paralyzed and incapable of seizing the opportunities of the post Cold War moment, see Bozo, *op cit*, and Menon, A. 1995. From independence to cooperation: France, NATO and European Security. *International Affairs*. 71(1): 19-34.

key factors in this story lie at the level of norms and their origins in both real political contradictions and narratives about national identity that build up over time. This is where the legitimacy of foreign policy lies, and the remainder of the article will consider to what extent EU foreign policy enjoys this kind of legitimacy, either at the pan-European level or at the national level.

2. Democratic legitimacy at the pan-European level

There are three points worth retaining from the discussion about the role of the European Parliament in the democratic legitimation of EU foreign policy. The first is that its role is very limited: in his book-length account of EU foreign policy, Fraser Cameron covers the EP's role in a single paragraph.[35] The second is that nevertheless, the attention given to the EP does reflect a sense of inadequacy concerning the role played by *national* parliaments in EU foreign policy. This second point is dealt with in more detail below. The third is that the real limitations to an extension of the EP's power are social and political: the EP simply cannot function as a source of legitimacy because the conditions for it to do so (transnational interests, pan-European political parties) are absent. The problem of the EP is therefore less one of its formal powers of accountability and more that of the weak political structuring at the pan-European level.

In a seminal study of the role of parliaments in foreign policy (specifically, in the use of force), Heiner Hanggi and Hans Born identify three benchmarks that can determine whether parliamentary accountability for the use of force exists or not. The most important is that parliamentary oversight be legally enshrined in both constitutional and customary practices. The two other factors are that parliaments have sufficient *resources* (such as specialised committees, dedicated budget lines and trained staff) to carry out their oversight duties, and that parliaments are *willing* to carry out their critical role of holding executives to account.[36] In the case of the European Parliament, this approach identifies the main problem as being its will to serve as a source of accountability unmatched by any legally established oversight role in CFSP or ESDP, or by a resource base capable of processing information were the EP to have access to it. The EP's legal role is limited to a right of *consultation* and the exercise of indirect influence via budgetary controls, what Barbé and Herranz refer to as "soft accountability powers".[37]

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[35] Cameron, F. (2007). *An Introduction to European Foreign Policy*. Abingdon: Routledge. p57.

[36] Born, H., and Hanggi, H. (2004). Introduction. In H. Born, and H. Hanggi (Eds.), *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force Under International Auspices*. Aldershot: Ashgate. See for a summary of their argument, Wagner, *op cit*, pp16-17.

[37] For details, see Gourlay, C. Ibid.Parliamentary Accountability and ESDP: The National and the European Level. pp188-189. See also Barbe, E., and Herranz, A. (2005). Introduction. In E. Barbe, and A. Herranz (Eds.), *The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy*. Barcelona: Office of the European Parliament in Barcelona. This is also the view of Diedrichs, who notes that the legal provisions stipulating the role of the EP in CFSP "seem to indicate rather 'soft' rights of consultation, information, questioning, recommendation and debate. There is no binding commitment for the Council to take the EP's position into account or to follow its views", Diedrichs, U. 2004. The European Parliament in CFSP: More than a Marginal Player? *The International Spectator*. 2: 31-46. p1. It is worth noting that Beetham cites 'consultation' as a buzzword designed to hide a far weaker role in decision-making. Consultation has the effect of transforming participation into a privilege accorded by the authority in question, rather than being a right enjoyed by individuals as citizens. See Beetham, *op cit*, p93.

The EP's foreign affairs committee enjoys regular consultations with the Council presidency, the High Representative for CFSP, the RELEX Commissioner, and the NATO Secretary General (article 21, TEU), but the EP's access to information remains at the discretion of the Presidency. In 2000 the EP legally contested this element of discretion, arguing that it could only fully exercise its rights under the Treaties by greater access to information on CFSP decisions. This legal battle was resolved with an agreement in 2002 which allowed a limited number of MEPs access to classified ESDP documents.[38] In terms of budgetary control, the EP's power only extends over Community spending. This restricts its role to first pillar activities of the conflict prevention/crisis management kind, whilst all military expenditures remain under national control. Much CFSP and all ESDP spending thus lies outside the competence of the EP.[39] The EP's role in overseeing the ESDP is in fact particularly weak given that many of the ESDP-specific institutions - the Military Committee, Military Staff, the provisions for the Rapid Reaction Force (RRF) - still have not been incorporated into the Nice Treaty, and lie therefore outside of the EP's oversight powers. The one ESDP institution that falls within the remit of the EP is the Political and Security Committee, known by its French acronym, COPS.[40]

The above makes clear that the EP serves only a limited role as a provider of accountability for CFSP and ESDP. However, there is a broader problem faced by the EP, namely its role as a source not just of accountability but of legitimacy more generally. Barbé and Herranz note that accountability should be situated within a broader discussion of the democratic legitimacy. They also identify major limitations on the capacity of the EP to play any legitimizing role. In their view, democratic legitimacy would require that the EP function in a manner analogous to a national parliament: the EP should be composed of competing parties representative of pan-European cleavages, that translate social interests into partisan foreign policy positions. The problem here is that the EP simply does not function in this way. Instead of more cohesion *within* political groupings (*intra*-group cohesion), and greater differentiation *between* groupings, we observe at least in foreign policy an equally powerful trend towards greater *inter*-group

[38] Gourlay notes that some MEPs have contested this agreement, arguing that such a concession in fact transforms the EP's right to consultation into a privilege accorded by the Presidency to a select few MEPs. Gourlay, *op cit*, p190. For more details on the modalities of consultation, see Diedrichs, *ibid*, p3. See also the point about consultation in footnote 37, above. Notwithstanding the continued problem the EP faces in terms of access to information, the one *strength* the EP enjoys in comparison to national parliaments is that it is relatively better informed. Bono's research on the role of national parliaments in consultation and approval of the EU's military missions (Concordia and Artemis) found that they play only a very limited role. With the exception of the German Bundestag, Bono found that the British, French and Italian parliaments were either constitutionally unable or politically unwilling to exercise supervision on EU led military missions in the *ex ante* phase. A British parliamentary committee approved both missions *ex post*, the Italian parliament had no role in operation Artemis, and in France a single individual, the President of the Delegation of the EU, approved both operations. For details see Bono, G. 2005. National Parliaments and EU External Military Operations: Is there any Parliamentary Control? *European Security*. 14(2): 203.
[39] Diedrichs, *op cit*, p6. For details on EP budgetary oversight, see Missiroli, A. (2003). Euros for ESDP: financing EU operations, *Occasional Papers*. Paris: EUISS.
[40] See Bono, 'Challenges of Democratic Oversight', p440. For a detailed account of the functioning of COPS, see Juncos, A.E., and Reynolds, C. 2007. The Political and Security Committee: Governing in the Shadow. *European Foreign Affairs Review*. 12: 127-147.

cohesion.[41] This comes from the need for the EP to find for itself a single institutional identity on foreign policy matters that can differentiate itself from the Council and the Commission. Barbé and Herranz note that the EP has partly succeeded in this goal: "the EP has attempted to play a unified role that even seems to have consolidated into an institutional identity, that of advocate *par excellence* of human rights, democratization, foreign aid and development".[42] And yet, they note that this also undermines the wider democratic legitimacy of the EP. In their words,

> The ambition of the EP to effectively perform as a unified actor in the EU process is generally welcomed because a Parliament that was ideologically polarized or atomized by national interests would have no impact on the Council or the Commission. However, this might be partially hindering the political pluralism required to set up a competitive party democracy at the EU level, where citizens identify different opinions in different European political parties and groups.[43]

Thus, the *efficiency* of the EP defending itself in the inter-institutional battle it is fighting with the Council and the Commission runs against its *legitimizing role* as a source of partisanship, debate and competing interests, that European citizens can identify with and that are representative of the conflicts that exist within European society.

As already noted, it is rare in the case of foreign policy that parliaments are the main sources of democratic legitimacy. However, in the case of the EP, the problem is not that its limited powers inhibit its role as a source of legitimacy, but rather that the conditions necessary for legitimacy to be located at the European level are absent. A lack of transnational interests and pan-European political parties point to the political underdevelopment of the EU itself. This makes a normative argument about how the EU should pay a greater legitimizing role an exercise in wishful thinking. Taking the EU as it is, rather than as some would like it to be, the conclusion about the weakness of the EP has implications for how we conceptualize EU foreign policy. It would suggest that it should not be considered a unified, 'modernist' foreign policy, but rather a collection of national foreign policies, each with its own traditions, interests and national sources of legitimacy.[44] This conclusion is fitting with a number of analyses of EU foreign policy, but is also suggested by the institutional configuration of both CFSP and ESDP. These

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[41] This discussion draws upon a wider debate around the "politicization" of the EU. This article argues in line with Bartolini, who is sceptical of the idea of "politicization". According to Bartolini, the EP's function is as much determined by its role within the EU's institutions and its relationship with the Commission and the Council as it is by its connection with European citizens and their interests via the European elections. See the debate between Bartolini and Hix, Bartolini, S., and Hix, S. 2006. La politicisation de l'UE: remede ou poison? *Notre Europe Policy Papers*(19): 1-52. See also Bartolini, S. (2005). *Restructuring Europe: Centre Formation, System Building, and Political Structuring between Nation State and the European Union*. Oxford: Oxford University Press.

[42] Barbe, E., and Herranz, A. (2005). Introduction. In E. Barbe, and A. Herranz (Eds.), *The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy*. Barcelona: Office of the European Parliament in Barcelona. No page numbers given in electronic version.

[43] Barbe and Herranz, *ibid*, no page numbers given in electronic version. For a development of the argument, see Barbe, E., and Herranz, A. (2007). Introduccion: Que legitimidad para la politica exterior europea? In E. Barbe, and A. Herranz (Eds.), *Politica Exterior y Parlamento Europeo: Hacia el equilibrio entre eficacia y democracia*. Barcelona: Oficina del Parlamento Europea.

[44] For this view of EU foreign policy, see Smith, M. 2003. The framing of European foreign and security policy: towards a post-modern policy framework. *Journal of European Public Policy*. 10(4): 556-575.

are highly intergovernmental areas of EU decision-making, implying that legitimacy should in any case be located at the level of the nation state. This will be addressed by the following section.

3. Democratic legitimacy at the national level

CFSP and ESDP are instances of what we might call 'hyper-intergovernmentalism': decisions are taken by sovereign states in the form of inter-state cooperation, without recourse to those supranational institutions to whom states have 'pooled' their sovereign prerogatives in other policy areas. Democratic legitimacy therefore should pass through the nation-state, not through pan-European institutions. This is the force of Andrew Moravcsik's rebuttal of the 'democratic deficit' debate that has been raging in Europe for a number of years.[45] Moravcsik's argument has considerable force, and usefully reorients the debate away from imagining that legitimacy should only come from pan-European institutions.[46] Moravcsik reminds us of the centrality of intergovernmental bargains to the forward movement of European integration, which implies that the nation-state remains the core institution providing the EU with its legitimacy. Since all EU member states are fully functional liberal democracies, Moravcsik wonders where the democratic deficit can come from. The area of foreign policy is a useful test case of his argument. It remains an intensely intergovernmental sphere, and as we saw in the section above, there are few mechanisms at the pan-European level that serve to democratically legitimize EU foreign policy. Nonetheless, as the section above also argued, the reason why attention has been drawn to the EP and its role of providing democratic legitimacy for policy areas that remain intergovernmental, is precisely *because* the indirect legitimacy via the nation-state is not seen to be working as it should. There are two possible explanations for this. One is that unaccountable power has accrued to the EU, to the extent that the intergovernmentalist logic in foreign policy is reduced to a chimera. Another explanation is that the problem does not lie in the relation between nation states and the EU, but rather in the quality of the relationship between national governments and their own populations. The following argues that the more important problem lies within states, and not in their relations to Brussels, and suggests that some of the dynamics behind EU foreign policy may in fact be derived from the difficulties confronted by national governments in forging a national foreign policy consensus.

3.1. Problems in Brussels

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[45] Moravcsik, A. 2002. In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union. *Journal of Common Market Studies*. 40(4): 603-24.

[46] Hayes-Renshaw and Wallace give an interesting reason why so much attention has been paid to pan-European institutions rather than intergovernmental fora like the Council of Ministers. They write that is more immediately recognizable and mundane than the sexier, more *sui generis* Commission or European Court of Justice. In their words, the Council's attributes "resemble the traditional features of conventional international organizations", and it "is as much an excrescence of the member states as the result of institutional innovation at the European level". Thus, "rightly or wrongly, the Council has largely been seen as an unglamorous institution, the flag carrier of the old state-based politics of Western Europe rather than of the new politics of European transnational integration". Hayes-Renshaw, F., and Wallace, H. (2006). *The Council of Ministers*. Basingstoke: Palgrave. p4.

For instance, in spite of the intergovernmental decision-making procedures, the Council of Ministers is "more than a sum of its parts".[47] Being able to hold individual national leaders to account for the decisions they make and consent to in the Council does not amount to holding the Council as a whole accountable as a collective body. As Beetham and Lord remark, "it is precisely by means of *a collegiality that transcends the notion of concurrent consent* by fifteen [now twenty-seven] separately elected governments that the most intergovernmental parts of the Union - CFSP and JHA - are supposed to be capable of producing coherent and cumulative policies".[48] In the same vein, Hayes-Renshaw and Wallace argue that the Council is more than just a forum of member states: "[it] embodies a sense of collective purpose, collective commitments and collective ideas. It is the forum for reconciling the distinctive purposes and powers of the member states with the needs for recurrent and disciplined joint action".[49] Bono puts it thus: "because of the manner in which governments negotiate in secret about CFSP, ESPD and Justice and Home Affairs (JHA) in the European Council, most national parliaments cannot influence collective decision-making because they just do not know what the positions of each member state is".[50] And yet the strength of the indirect legitimacy argument rests upon "the notion of concurrent consent".

Another problem with CFSP and ESDP is that the content of these policy areas often demands a certain overlap with other areas of EU competences. Thus, elements of supranational authority are mixed in with strictly intergovernmental domains, what is often known as "inter/cross-pillarization".[51] The role of conflict prevention for instance, was long a speciality of the European Commission.[52] It has become, however, part of ESDP, suggesting that Council decisions will overlap with Commission competences, and vice versa. On this point, Catherine Gourlay notes that

> The modern demands of an effective conflict prevention, crisis management, armaments and anti-terrorism policy involves the use of a panoply of national and Community instruments with a complex mix of executive responsibilities. This presents an additional challenge for parliamentary scrutiny, whereby democratic accountability runs the risk of falling between the 'pillars' of Community and Council competence.[53]

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[47] It is worth noting that 'the Council' itself does not exist in any standalone, monolithic way. Rather, what we refer to the Council is in reality a shorthand term for "a huge number of multilateral and multilingual meetings, as varying groups of ministers and officials from the member states meet recurrently with their opposite numbers from the Commission and periodically with opposite numbers from third countries". Hayes-Renshaw and Wallace, *ibid*, p15.

[48] Beetham, D., and Lord, C. (1998). *Legitimacy and the EU*. London: Longman. p63. See also for more details on Council collegiality, Hayes-Renshaw and Wallace, *op cit*, p47.

[49] Hayes-Renshaw and Wallace, *op cit*, p3.

[50] Bono, 'Challenges of Democratic Oversight', p440.

[51] Bono refers to this as a contradiction between legal and political forms: legally, decisions are made in respect for the pillar structures; in practice, political necessity requires that policies overlap and draw upon different pillars. Bono, 'Challenges to Democratic Oversight', p432.

[52] Cameron writes that "the Commission sees its contribution to the CFSP/ESDP under the overall theme of conflict prevention, and its internal structures and procedures are being adapted to ensure that hitherto disparate policy areas form part of a coherent and coordinated whole". Cameron, *op cit*, p54.

[53] Gourlay, *op cit*, p187. For a similar argument, see Lord, in Hill and Smith, *op cit*, p115.

Added to this are the various Brussels-based committees and institutions created in order to assist the CFSP decision-making body. In practice, the Council of Ministers meetings (the General Affairs and External Relations Council, GAERC, in the case of foreign policy) are often little more than rubber-stamping exercise for decisions already agreed upon by Brussels-based permanent national representatives. The contexts for these decisions are even more collegial and clubby than is the Council of Ministers, and David Allen refers to the central role played by Brussels-based committees as the "Brusselization of national foreign policy".[54] Hayes-Renshaw and Wallace note that in GAERC meetings around 78% of decisions are simply the voting on pre-agreed issues (so-called agenda 'A' points).[55] Wolfgang Wagner sums up the problem thus: "even though unanimity has remained the prime decision-making rule, national decisions have de facto been pre-formed by European decision-making to a considerable extent".[56]

It is worth noting however that the Council of Ministers has itself not escaped the reassertion of national prerogatives over the integration process. Fraser Cameron notes that the influence of the GAERC in EU foreign policy has declined in recent years, largely as a result of heads of state keeping the major decisions to themselves.[57] Stephan Keukeliere has also argued that because of the expansion of the EU, the Council of Ministers has become increasingly less relevant as the locus of foreign policy decision-making. Without the Council being able to serve as a forum for debate and for building consensus around the common interests of the EU, key member states have turned their attention to smaller and less formal sub-groupings, such as the EU-3 directoire in negotiations with Iran, and informal contact groups on Afghanistan, the DRC and on Somalia.[58] What is interesting about this development is that it highlights the clash of different sorts of legitimacy relied upon by different member states within the Union. For the more powerful EU states, like France, Germany and the UK, greater "flexibility" ensures a closer correspondence between national goals and pan-European outcomes.[59] In these instances, there is little pretence to pursuing a unified EU foreign policy. However, for smaller states, like Holland or Belgium, the phenomenon of "core groups" exposes the trade-off they have made: in return for better foreign policy performance, they have sacrificed any real input into the decision-making process. As long as EU foreign policy was conducted under the veneer of intergovernmentalism, performance and democratic legitimacy did not clash. As this veneer is removed, individual member states are seen to rely on different, and at times incompatible, sources of legitimacy.

3.2. Problems at the national level

[54] Allen, D. (1998). Who Speaks for Europe? In J. Peterson, and H. Sjursen (Eds.), *A Common Foreign Policy for Europe? Competing Visions of the CFSP*. London: Routledge.
[55] This figure is for 2004. In 1997, it was estimated that 'A points' covered 85-90% of what was on the Council of Ministers' agenda. See Hayes-Renshaw and Wallace, *op cit*, p52-53.
[56] Wagner, *op cit*, p21.
[57] Cameron, *op cit*, p43.
[58] Keukeleire, *op cit*, pp1, 6. Keukeleire calls these "core groups".
[59] This is the term Bono uses to describe this development. See Bono, 'Challenges of Democratic Oversight', p442.

Many of the problems above supposed that indirect legitimacy of EU foreign policy is weakened because of the way business is organized, and decisions are taken, *in Brussels*. In fact, this is far from being the whole story. Beetham and Lord argue that the problem with the consociational model that intergovernmental decision-making presupposes is that it can function only if national elites are able to command the full support and trust of their own electorates.[60] However, "it was precisely such a consociational pattern of negotiation - with its emphasis on the need to trust national elites - that was de-legitimized by the Maastricht ratification crisis".[61] In fact, there was a time in the mid 1990s when European citizens expressed greater trust in pan-European institutions, such as the European Commission, than in national political parties and national parliamentary institutions.[62] Since the scandals that brought down the Santer Commission in 1999, much of this trust has ebbed away, but scepticism of *national* political institutions remains as strong. Evidently, the trust between national elites and domestic publics required for the indirect legitimacy model - defended by Moravcsik - to work is lacking. This helps explain the paradox of *perceptions* of the democratic deficit continuing alongside a *strengthening* of state power over the integration process.

In the context of foreign policy, a number of examples illustrate the way indirect legitimacy in the cases of CFSP and ESDP is not working. National political elites are not succeeding in legitimizing to their own domestic populations their involvement in pan-European cooperation in foreign and security policy. This is less a problem of accountability and more one of normative justification. As already argued, unable to rely upon a robust legal framework, foreign policy depends upon its normative resources in order to legitimize itself. These include a justification of actions as being in the 'national interest', and an ability to draw either upon the authority of tradition or of representation in order to secure the normative foundations of foreign policy. Such a reliance upon norms demands an extensive public discourse that is able to communicate government actions to the public, and which is on its own terms ideationally coherent.[63] On the function of discourse, March and Olson write that discourse "serves to explain political

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[60] Beetham and Lord specify that a consociational model of representation would have the following features: publics would entrust their national elites with wide discretion to represent them at the European level; pay-offs from the political system would be proportional to national weights; agreements would depend on the concurrent consent of all member governments, …and cultural-territorial segmentation would be respected with the implication that there would be some upper limit to political discourse and coalition building across national boundaries". Thus, "each member democracy would remain self-contained, free to adopt its own representative methods, and to authorise, or remove, in its own idiosyncratic fashion, those who attend EU institutions. European countries would be able to solve their collective action problems while remained separate life worlds". Beetham and Lord, *op cit*, p69.

[61] Beetham and Lord, *op cit*, p70.

[62] For a discussion of this phenomenon, see Heartfield, J. (2007). European Union: Process without a Subject. In C.J. Bickerton, P. Cunliffe, and A. Gourevitch (Eds.), *Politics without Sovereignty: A Critique of Contemporary International Relations*. London: UCL Press..

[63] This distinction between the ideational and communicative dimensions of discourse is taken from Schmidt, V.A. 2000. Democracy and Discourse in an Integrating Europe and a Globalizing World. *European Law Journal*. 6(3): 277-300. and Schmidt, V.A. (2006). *Democracy in Europe: The EU and National Polities*. Oxford: Oxford University Press.. See also Radaelli and Schmidt, who distinguish between the ideational and interactive dimensions of discourse. Radaelli, C.M., and Schmidt, V.A. (2005). Policy Change and Discourse in Europe: Conceptual and Methodological Issues. In C.M. Radaelli, and V.A. Schmidt (Eds.), *Policy Change and Discourse in Europe*. Abingdon: Routledge.

events, to legitimate political actions, to develop political identities, to reshape and/or reinterpret political history, and all in all, to frame national political discussion".[64] The problem in the case of EU foreign policy is that its normative foundations are either weak or absent altogether. Conceptions of a pan-European interest are superficial; discourse on foreign and security cooperation in Europe is either absent or restricted to a very limited group; and national governments fluctuate between asserting the national interest behind instances of pan-European cooperation, and using the EU as a way of masking national adaptation deemed necessary by national elites - a strategy which has resulted in considerable public scepticism concerning the purpose and merits of European integration. What is also striking is that the difficulty national governments have in legitimizing EU foreign policy is tied up with wider problems they experience in managing and legitimizing change and adaptation in national foreign policy. National governments in Europe often find themselves caught between the Scylla of national foreign policies that are in retreat by still retain their normative foundations, and the Charybdis of EU foreign policy cooperation that has forward momentum but a very weak normative basis. The conclusion of the article will consider the implications of this for our understandings of the role and dynamics of EU foreign policy from the perspective of individual member states.

Thinness of communicative discourse

Given the weakness of the legal framework within which foreign policy decisions are taken, legitimacy in this area relies heavily on normative justifications, which are provided through an elaborate public discourse. What is striking about EU foreign policy is that decisions are taken with very little communication with the public. Put in Vivien Schmidt's terms, the "communicative dimension" of discourse is underplayed, resulting often in hostile reactions to EU policies when these are later implemented through national legislatures.

Jolyon Howorth provides a particularly striking example of this problem in foreign policy: the UK's decision to pursue a European security and defence route, outside of the NATO framework. Howorth argues that the conditions for a shift towards a European security and defence policy were in place by the mid 1990s, after having built up over the years.[65] However, the British decision to "cross the European Rubicon" in 1998 was nevertheless a significant change in direction, particularly since the incoming New Labour government had refused such a move at the Amsterdam summit in 1997. Howorth's account of the decision emphasises the restricted number of those involved. In his words, "a key feature of the British paradigm shift was its restricted community. It is no exaggeration to say that fewer than two dozen individuals were involved in constructing the coordinative discourse that generated the UK side of the parallel shift".[66] Williams notes that "the roots of Labour's shift reportedly lay in a confidential

[64] Cited in Radaelli and Schmidt, *ibid*, p20-21.
[65] On the underlying drivers behind ESDP, see Howorth, J. (2007). *Security and Defence Policy in the European Union*. Basingstoke: Palgrave Macmillan. pp33-60.
[66] Howorth, J. 2004. Discourse, Ideas, and Epistemic Communities in European Security and Defence Policy. *West European Politics*. 27(2): 211-234.p221.

memorandum written by a senior FCO diplomat, Robert Cooper, in May 1998". This memorandum was taken up by a few government mandarins and - via Blair and his entourage - was transformed into what Anne Deighton has called "the greatest change that New Labour has made in EU policy".[67]

Comparing EU policy with national defence policy, Howorth notes that a much greater attempt was made to legitimize the Strategic Defence Review carried out in 1998, with a series of public workshops and colloquia organized in order to bind the defence and security community to the changes proposed in the SDR. Lawrence Freedman notes that the SDR commanded considerable domestic support even though its proposals did not correspond with the traditional role expected of the armed forces. A key difference between the two foreign policy actions was that the SDR was underpinned by a strong legitimizing discourse that drew upon ideas that had been developing both within government and outside for some time. The SDR was rooted in an evolving consensus concerning Britain's role in global crisis management. Freedman notes that "given the supportive position adopted during the Bosnian operation, and the instincts of the leading players, there was never much doubt that the defence review would come down on the side of the interventionist, internationalist position".[68] By 1998, "the consensus view in London was that Britain could not stand aside" when faced with the problems of weak states, humanitarian crises etc.[69]

The turn to ESDP, in contrast, came entirely out of the blue, and no normative justification was provided at all. The decision concerning ESDP was either bluntly denied by the UK government or it was justified on normative terms quite unrelated to Europe. Rathbun notes that when challenged by the Conservative opposition in parliament over ESDP, the New Labour government "did not engage the Conservative criticism directly". Accused of endorsing a move towards a 'European army', the Labour frontbench "dodged questions on the institutional innovation behind the initiative and stressed the continuities with the previous government's policy". The ESDP was misleadingly referred to as merely a continuation of the ESDI, which the previous Conservative government under John Major had agreed to. As Rathbun notes, the "ESDP was not ESDI, but the government manipulated the confusing set of acronyms".[70] Howorth remarks that any justification by New Labour of closer European cooperation in military matters was given in terms of the wider humanitarian-ethical foreign policy agenda:

> As far as the wider public was concerned, the communicative message that accompanied what few speeches were delivered on the subject [of ESDP] had much more to do with 'Third Way humanitarianism' than with Europe. Since the government could not admit in cognitive terms what it was doing… it resorted to explaining why it was doing it, with the emphasis overwhelmingly on the normative legitimation.[71]

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[67] Dieghton, *op cit*, p323. Williams, P.D. (2005). *British Foreign Policy Under New Labour 1997-2005*. Basingstoke: Palgrave. p59.

[68] Freedman, L. (2001). Defence. In A. Seldon (Ed.), *The Blair Effect: The Blair Government 1997-2001*. London: Little, Brown and Company. p293.

[69] Freedman, *ibid*, p295.

[70] Rathbun, B.C. (2004). *Partisan Interventions: European Party Politics and Peace Enforcement in the Balkans*. Ithaca: Cornell University Press. p170.

[71] Howorth, 'Discourse, Ideas and Epistemic Communities', p226.

Evidently, in the case of ESDP, the British government's chosen source of legitimacy was a wider humanitarian intervention agenda, rather than anything specifically to do with Europe. This is in fact consistent with the reasons *why* the UK decided to move forward on ESDP. It was not, as some have mistakenly assumed, a sign of Blair's European vocation. It was rather a tactical decision, based on improving European capabilities in order that the EU be better adapted to short-notice interventions of the crisis management kind. Blair had seen the limited response capabilities of the EU in the crisis over Kosovo, and was determined not to let the EU hamper his wider humanitarian agenda. The rapprochement with the EU was purely instrumental, without any normative basis of its own.[72]

Howorth cites the French decision over ESDP as an example of where a communicative discourse on Europe did exist. According to Howorth, the decision was prepared over a long period of time, reaching maturation through a series of defence reforms, and consultations with various domestic actors. In Howorth's view, the French government had successfully built an "epistemic community" around the issue of closer security and defence cooperation, and this was what enabled the President Jacques Chirac to act in the way that he did.[73] In fact, French actions in this case demonstrate both the very limited nature of discourse surrounding EU defence cooperation, and the wider ambivalence which French national elites have shown to European integration in this field. In Anand Menon's view, it was precisely because *no* new normative justification has been found to replace the Gaullist foreign policy consensus that French elites were forced into a piecemeal process of integration, that was uneven, inconsistent and often pursued in order with France blowing its Gaullist trumpet at the same time as it compromised on its security and defence autonomy. Menon's emphasis is on the inability of the French elite to escape their Gaullist past, rather than any ability to forge ahead with a new European project.

Howorth's "epistemic community" in France refers to foreign and security think-tanks, institutes, experts and commentators whose links to government are close and permanent".[74] In his view, the French government's ability to disseminate its ideas through this community provided it with the legitimacy to act boldly in the field of European defence cooperation. In fact, such "epistemic communities" represent sociologically a major contraction in the scope of opinion within which governments operate. In particular, it denotes an absence of any connection between governments and their wider public. Habermas writes of the "quasi-public domain" which corresponds roughly to the concept of "epistemic communities". In his view, this domain is made up of "opinions that circulate in a relatively narrow circle… skipping the mass of the population". He goes on to argue that these quasi-official opinions can be addressed to a wider audience, but that "they do not fulfil the requirements of a public process of

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[72] See Howorth, 'Discourse, Ideas and Epistemic Communities', and also 'Security and Defence Policy in the European Union'. See also Whitman, R. (1999). Amsterdam's Unifinished Business? The Blair government's initiative and the future of the Western European Union, *Occasional Papers*. Paris: EU-ISS.
[73] Howorth, 'Discourse, Ideas and Epistemic Communities', pp214-219.
[74] Howorth, 'Discourse, Ideas and Epistemic Communities', p219.

rational-critical debate according to the liberal model". As a result, "as institutionally authorized opinion, they are always privileged and achieve no mutual correspondence with the non-organized mass of the 'public'".[75] Such a sociologically narrow base, whilst it may provide some legitimacy for government decisions, hardly compares with the wider sources of legitimacy enjoyed by de Gaulle in the 1960s when the "mass of the public" was more directly involved in the political processes that shaped Gaullist foreign policy.

European cooperation and the politics of ambivalence

Along with the sociological limits of "epistemic communities", those who have written in detail on these communities note that they are empowered and drawn into the policymaking process precisely under conditions of governmental uncertainty. Peter M. Haas argues that when "it is difficult for leaders to identify their potential political allies and to be sure of what strategies are most likely to help them retain power", and when "poorly understood conditions… create enough turbulence that established operating procedures may break down, making institutions unworkable", *then* governments turn to "epistemic communities".[76] This argument correlates well with the French case, as recounted by Menon. In his account of French policy towards European defence cooperation within NATO, Menon highlights the power domestic interests exercised over national policymakers, even when the need for adaptation in French foreign policy was evident. What he seeks to explain is why,

> On the one hand, Paris increasingly came to recognize the limits of traditional quest for a leading international role, stressing instead the need to work with allies. On the other, whilst making timid steps to increase participation in NATO and construct European structures, Paris remained loyal to certain policies which seemed explicitly to work in the opposite direction.[77]

Menon's explanation lies in the political inertia of French elites. He characterizes France's relations with NATO as a "politics of ambivalence", meaning that there was never a clear communicative discourse between French elites and the French public on the country's role in the Alliance. One example is defence reform. Menon notes that any reforms undertaken were routinely justified through references to Europe, the assumption being that European integration and French leadership were seen as relatively more compatible than rapprochement with NATO. Menon recounts that in the 1990s "Europe increasingly came to serve as a justification or legitimization for virtually every aspect of policy".[78] However, this did not signify the birth any new post-Gaullist 'European consensus' around foreign policy. In fact, what has marked out French foreign policy since the early 1990s has been widespread political pusillanimity. Unable to forge any new foreign policy consensus, French elites have been suffering from a legitimacy deficit. The result

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[75] Habermas, *op cit*, p247.
[76] Haas, P.M. 1992. Introduction: Epistemic Communities and International Policy Coordination. *International Organization*. 46(1): 1. p14.
[77] Menon, A. (2000). *France, NATO and the Limits of Independence 1981-1997: The Politics of Ambivalence*. Basingstoke: Macmillan. p5.
[78] Menon, *ibid*, p108.

is that entrenched domestic interests have asserted themselves, their strength a reflection of government weakness.[79]

Menon notes that "the relative inability of France's political leadership to impose its own policy preferences often stemmed, not from over-riding powers of competing interests, but from an apparent lack of political will". Menon points to the issue of legitimacy when he argues that given the institutional autonomy and strength of the French presidency in foreign affairs, the surprising lack of assertiveness on the part of the President in the 1990s must be explained through the political environment of the time. This environment was marked by, on the one hand, a desperate attachment to the Gaullist consensus, and on the other an awareness of the need for change but also of the absence of any normative foundations upon which such change could be justified. Hubert Védrine, French foreign minister from 1997 to 2002, captured the difficulties faced by the government when he defined the goal of French diplomacy as being that of changing whilst remaining ourselves.[80] The weakness of political elites when faced with domestic constraints, recounted in detail by Menon, is thus the result of a legitimacy deficit, and one which frequent references to the necessities of European cooperation cannot fill. In fact, frequent reference to Europe has merely deepened the scepticism felt by French citizens towards their own elites. As Jack Hayward recounts, in France there is a widespread sense that "political, administrative and business elites who manage the French state have shamefacedly opted for a European identity, while endeavouring to cling on to their old legitimizing nationality-universality myth".[81] European cooperation has therefore not served as a substitute legitimizing discourse for French foreign policy, but rather as a poor attempt at dressing up the collapse of the old consensus in an unfitting European garb. This helps us understand why, as pointed out above, a stronger intergovernmental policy area can nevertheless be subject to growing concerns about a democratic deficit. Closer European cooperation is treated with scepticism, as it has often reflected an elite abdication of responsibility for national decisions. This is perhaps most apparent in the French case, where the failure of government programs has often been masked in the language of closer European integration. This was the case in 1983 under Mitterand, 1996 under Chirac, and in 1997 after Lionel Jospin arrived as Prime Minister.[82]

From the above, it is clear that the legitimacy of EU foreign policy via the nation-state functions badly not so much because of the transfer of power to the pan-European level, but because of an inability of national political elites to unite their populations behind a new European project. The only normative agenda which has driven British foreign policy forward since 1997 has been humanitarian intervention; European cooperation has been a tactical adjunct to this goal, without any attempt or desire to build a normative public consensus behind closer cooperation. In the case of France, what has shaped the

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[79] Howorth gives the example where Chirac in 1996 ordered France's two big aircraft manufacturers, Dassault and Aérospatiale, to merge within a year. Their response was to simply ignore him. Howorth, J. (2001). Foreign and Security Policy in the Post-Cold War World. In A. Guyomarch, H. Machin, P.A. Hall, and J. Hayward (Eds.), *Developments in French Politics 2*. Basingstoke: Palgrave. p160.
[80] Vedrine, H., and Moisi, D. (2001). *France in an Age of Globalization*. Washington: The Brookings Institution. p18.
[81] Hayward, *op cit*, p260.
[82] Howorth, *op cit*, p165.

post-1991 political climate in foreign policymaking circles has been the collapse of the Gaullist consensus. This has left political elites suffering a legitimacy deficit, which closer European cooperation has not solved, and has on occasion even exacerbated.[83]

Conclusion

When we conceptualize legitimacy in terms of the input side of the equation, i.e. how foreign policy is legitimized through a domestic-level normative framework, we find that EU foreign policy suffers from a major legitimacy gap, both at the pan-European and at the national level. What role can legitimacy therefore play in EU foreign policy? This article would suggest that EU foreign policy can only draw on sources of legitimacy unrelated to the input side of the equation. Two of these sources will be explored in subsequent articles: the legitimacy of performance, and the legitimacy of ethics. A question posed by the article, and which would be interesting for future research, is how this limited role for democratic legitimacy connects with the dynamics of EU foreign policy. Is the absence of democratic legitimacy internally tied to the process of EU foreign policymaking or is it merely coincidental? The way in which French political elites have used EU foreign policy cooperation as a means of managing the collapse of the Gaullist consensus suggests that there is a close correspondence between a legitimacy gap in national foreign policy and forward movement in EU foreign policy cooperation, the latter if you like offsetting the former.

These questions are different from the issues normally addressed in the literature and particularly the prescriptive arguments made about the need for the democratic control of EU foreign policy. This article suggests that it is important to ask first what *function* EU foreign policy serves in the foreign policy process of member states, as this may be related in some way to problems of legitimacy at the level of national foreign policies. If this is so, arguing for more democratic legitimacy at the EU level would seem to be jumping the gun. It would be better to treat the problem rather than its symptom, and therefore to address national legitimacy deficits as a priority over those that exist at the EU level.

[83] Howorth notes that it took Mitterand two years to abandon the programme for which he was elected in 1981 and instead "embrace Europeanism"; it took Chirac six months to do the same in 1995, and Jospin no more than four weeks. In each case, Europe was used as a way of covering up domestic policy failures, a strategy which has done little to improve the image of politicians in France. Howorth, *op cit*, p165.

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