

Chapter 11: Reinforcing executive dominance. Norway and the EU's foreign and security policy

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Published: "Reinforcing executive dominance: Norway and the EU's foreign and security policy", in *The European Union's non-members: Independence under hegemony?* Routledge 2015 ISBN 9781138922457, pp. 189-208.

Introduction

When Norwegian citizens voted 'no' to EU membership, the idea that it would be possible to conduct a foreign policy that was different from that of the European great powers if the country remained outside the Union, was important. Foreign and security policy is not covered by the European Economic Area agreement (EEA).¹ Nevertheless, Norway has entered into a set of separate agreements with the EU on such matters. In this chapter I discuss the nature and extent of these agreements, and assess their implications for sovereignty and self-rule.² Is Norway's affiliation to the EU in the domain of foreign and security policy problematic from a democratic perspective? And if so, why?

The implications of Norway's affiliation to the EU in the domain of foreign and security policy are assessed with reference to the two democratic principles of autonomy and accountability, as outlined in the introductory chapter (Eriksen and Fossum). The requirement of autonomy pertains to the ability of those affected by laws also to be their authors. As for the principle of accountability it pertains to the possibility of citizens to hold those in power responsible for what they do (see Eriksen in Chapter 5). These principles, which are linked to the concept of popular sovereignty, might be considered to yield unrealistic expectations of citizen influence in foreign and security policy. The main objective here is usually considered to be the protection of state sovereignty, which presumes the executive's capacity to act. Nevertheless, in a constitutional democracy we assume that also foreign and security policy is democratically legitimate. The particularity of foreign and security policy does not legitimise a neglect of the question of democracy. Rather, this particularity makes it all the more important to discuss and scrutinise how the principles of autonomy and accountability are understood and realised in specific contexts.

In the first part of the chapter, I briefly identify the constitutional arrangements and procedures that actually apply to Norwegian foreign and security policy. Focus is directed specifically to how the principles of autonomy and accountability are balanced against the need for action capacity. In the second part I examine the main features of Norway's policy towards the EU in this domain. I find that the balance has tipped even more in favour of action capacity and executive dominance. In the third part, I discuss to what extent it is possible to find acceptable reasons for the prioritisation of action capacity from the perspective of democracy. And in the fourth and final part I suggest that although it may be difficult to justify this prioritisation from a principled perspective, it is easily explained.

Autonomy and accountability in Norwegian foreign and security policy

Art. 25 and 26 of the Norwegian constitution make foreign, security, and defence policy an executive prerogative. As Andenæs writes, executive prerogatives are remnants of a system of separation of powers which is otherwise abandoned with the transition to a parliamentary system (Andenæs, cited in Stavang 2002: 98). The transition to parliamentarism in itself does not however require these competences to be exercised by the legislative assembly. And the executive's right to govern is indeed still the overriding principle in Norwegian foreign and security policy. The executive signs treaties and declares war 'for the defence of the country'. Pursuant to the constitution, the government also has so-called command authority and therefore decides how Norwegian armed forces will be used.

Norwegian constitutional experts are ambivalent in their reading of the constitution in matters of foreign and security policy. The prevailing opinion is that parliament, given the constitutional prerogatives, may most likely not give the government binding orders regarding the formulation of foreign policy (Andenæs and Fliflet 2008: 301). Parliament must confine itself to parliamentary leverage or possibly bring a no-confidence motion against the government. At the same time constitutional experts argue that parliament's influence is stronger than what the constitution's text indicates. The standard understanding seems to be that 'according to the constitution, it is the government that decides the country's foreign policy – naturally not against the will of parliament and naturally in accordance with parliament's position on the main dimensions of the country's foreign policy' (e.g. see Castberg, cited in Stavang 2002: 102). Also, legal analyses emphasise that '[p]arliament's position [will] appear politically binding for the government' (Stavang 2002: 301), despite the fact that the parliament's powers are formally limited.

In the following I suggest that the opposite is the case: parliament has taken a passive role in foreign and security policy. It is rather the government's position that appears binding on parliament. Decision-making processes in Norwegian foreign and security policy rest on a series of consensus-making mechanisms designed to facilitate efficient decision-making, and thereby strengthen the executive's capacity to ensure state sovereignty. Few mechanisms secure free and open critical debate, which is a condition for citizens' ability to make informed choices and form an opinion regarding the best course of action. This makes it difficult to establish whether policy is in accordance with the will of the people (see the principle of autonomy). It also means that the possibilities of controlling the executive and holding it to account are more limited than in domestic politics.

Parliament's Committee on Foreign Affairs and Defence is responsible for budgetary matters. It is also charged with preparing cases for plenary discussion. International treaties or agreements regarded as being 'of major importance' must, according to Art. 26, be ratified by parliament. All treaties must be presented for review. However, treaty-making is only a small part of foreign and security policy. Consequently a large part of what the executive does in this policy area escapes parliament. By comparison, the Danish constitution has more wide-ranging

requirements for parliamentary involvement (Holmøyvik 2014). According to Art. 19 of the Danish constitution, the government cannot undertake any ‘action [...] of major importance’ without the consent of the Danish Parliament, and the executive is obliged to confer with ‘the foreign policy committee (den utenrigspolitiske nævn)[...] prior to any decision with wide-ranging implications’.

The formal limitations on parliament’s opportunity to influence the whole spectrum of foreign policy are somewhat compensated for in that the government informs parliament of its activities in various ways. Parliament receives written reports, amongst other things on Norway’s relationship with international organisations such as the North Atlantic Treaty Organization (NATO), the Council of Europe, and the Nordic Council of Ministers. Moreover, the minister of foreign affairs presents semi-annual reports to parliament. These reports may highlight changes in focus or emphasise new and emerging issues that are considered to be of relevance to Norway. Thus they are important sources of information regarding the direction and priorities of Norwegian foreign policy. But these reports seldom raise controversial issues or present new information. They are merely taken note of and rarely the subject of much debate in parliament. Most important, however, there is a significant difference between issuing routine reports on general issues, and presenting and discussing concrete (and potentially controversial) questions. Thus, these exchanges of information do little to change parliament’s generally limited role in foreign and security policy.

The Enlarged Committee on Foreign Affairs and Defence (DUUFK) was established in 1923, to facilitate more general discussions between the executive and legislative branches.³ The purpose of establishing this committee was to give parliament a role in formulating and controlling foreign policy, something the parliament did not have prior to 1923. Thus, the committee considers ‘important questions concerning foreign policy, trade policy, security policy’ (Section 16 of Parliament’s order of business, Parliament 2012). But the establishment of DUUFK does not really strengthen the possibilities for free and open critical debate regarding foreign and security policy. The executive’s dominant position remains. The committee, which consists of the ordinary members of the Foreign Affairs Committee and the Defence Committee, the parliament’s president, and the leaders of all party groups, is merely consultative. It does not make decisions, nor does it control the executive. Furthermore, discussions within the committee are secret. Minutes of the meetings are recorded but do not become publicly available until 30 years have passed, and the members of the committee sign a declaration of confidentiality. As for the agenda for the meeting, it is (in principle) publicly available, but it may be kept secret.

A minority of six DUUFK members may request the release of cases for debate in an open session of parliament, but this rarely happens. When it does happen it is difficult to understand why the debate was assigned to DUUFK in the first place. A well-known example from recent times concerns the decision regarding Norwegian participation in military operations in Afghanistan in 2001. The debate was moved to an open parliamentary session on the initiative of the Socialist Left Party and the Progress Party.⁴ The Labour Party’s Thorbjørn Jagland and the Conservative Party’s Jan Petersen opposed this move (Sølhusvik 2012: 378–379).⁵

Given the secrecy, there are very few analyses of the committee's role. There is little publicly available knowledge on what is discussed, how it is discussed, whether there is disagreement among the committee members or between the committee and the government, and how these disagreements are resolved. Based on the little that we do know it seems that the committee is subordinate to the executive. Usually, meetings open with a statement by the minister of foreign affairs. It is followed by contributions from the political parties in a sequence agreed upon prior to the meeting: 'The form is more like a delivery of positions' (Sjaastad 2006: 31). The few analyses that do exist, of the internal processes in DUUFK point out that the committee is hierarchically organised, and that there is little critical debate (Løvold 2002, 2004; Sjaastad 2006). There are seldom any preparatory case papers. At the end of the meeting, agreement is reached on what may be said publicly.

Based on this knowledge, however limited, it is difficult to regard DUUFK as a decisive factor in the parliamentarisation of foreign and security policy. Rather, DUUFK ensures a continuous cooperation between the government and parliament (Colban 1961: 31–48). It is both a 'parliamentary body' and a 'governmental body' (Sjaastad 2006: 45, note 21). The role of DUUFK in limiting rather than encouraging critical debate is also indirectly confirmed by scholars of constitutional law: 'That the consultations [in DUUFK] lessen the potential for parliamentary control and criticism, and contribute to increased political consensus and compromise in foreign policy, however, can hardly be called negative' (Sejersted 2002: 591). Thus, it is only in the Committee on Foreign Affairs and Defence that open, public exchange of arguments regarding the government's choice may potentially take place. But the challenge is not only that the constitution to a limited extent opens for parliament's influence. Parliament itself has established a practice that differs from that in the other committees. There is *inter alia* a close cooperation between the chair of the Committee on Foreign Affairs and Defence and the Minister of Foreign Affairs, also when the chair belongs to the opposition. As a result of this co-operation, the basis for debate is often cleared away before a case reaches the committee: 'the normally close and confidential relationship between the Minister of Foreign Affairs and the chair of the Foreign Affairs Committee, who often comes from the opposition, means that the government may sort out tricky issues informally' (Sjaastad 2006: 28).

In addition, a large number of decisions are made outside both DUUFK and the Committee on Foreign Affairs and Defence. As Olav Fagerlund Knudsen (1995: 73) writes, '[o]ne does not convene DUUFK without good reason. In Norway this arrangement is therefore supplemented by an informal practice, whereby the MFA consults the parliamentary leaders on matters that are not important enough to warrant formal procedures such as convening DUUFK'. Limited access to information and debate in the legislative also has ripple effects for the broader public sphere. According to Fagerlund Knudsen, it is thus that 'much of what captures people's attention in foreign policy [can] in reality be window dressing. The really significant matters – seen from Norwegian interests – do not necessarily receive the equivalent public attention' (Fagerlund Knudsen 1995: 65).

As long as parliamentarism is the main principle of the Norwegian political system, one may perhaps assert that ‘[e]ven though foreign policy is still the King’s (the government) prerogative, the government is just as dependent on parliament in this policy area as in other areas’ (Andenæs and Fliflet 2008: 308). But this general principle is not necessarily reflected in day-to-day policymaking. To assess parliament’s real influence, it is necessary to look at the practice of policymaking. To the extent that there is social scientific research on this topic, it appears that a range of mechanisms ensures that the government receives the support it needs from parliament without much discussion or opposition (Fagerlund Knudsen 1995; Løvold 2002; Sjaastad 2006). Although *in principle* the government depends on parliamentary support, *in practice* it may be quite certain that it will get it.

The executive’s freedom of action is often legitimated by the claim that there is a consensus on major issues in Norwegian foreign policy.⁶ However, with regard to Norway’s relations with the EU, we know that there is no such consensus. Does that mean there is more consultation and that all possibilities for debate and critique are used when Norway affiliates itself with the EU’s foreign and security policy?

Norway and EU foreign and security policy

Norway participates in much of what the EU does in foreign and security policy. When, in the early 1990s, it was expected that the EU’s security and defence policy would be handled by the Western European Union (WEU), Norway became an associate member of this European military alliance.⁷ Norway routinely aligns with the EU’s foreign policy declarations and common positions. Norwegian authorities usually accept the EU’s invitations to contribute to or participate in crisis management operations. It tops the list of third countries that participate in the EU’s operations. Furthermore, Norway is part of one of the EU’s so-called battle groups. Consequently, Norwegian troops have been on standby for the EU three times, in 2008, 2011, and 2015. Moreover, Norway also participates in a number of the projects for the European Defence Agency (EDA).

Norway’s participation in the EU’s foreign, security, and defence activities is regulated by international agreements of various designation. Adherence to the EU’s foreign policy statements, interventions in international organisations, for example, as well as alignment with the EU’s restrictive measures (sanctions) is regulated through a declaration on political dialogue and is included as an appendix to the EEA agreement. Cooperation with the EDA is regulated through a so-called administrative agreement between the Norwegian Ministry of Defence and the EU.⁸ Norway’s contributions to the EU’s crisis management operations are regulated through a framework agreement.⁹ A chronological overview of Norway’s agreements with the EU in the domain of foreign and security policy is provided in Table 11.1.

TABLE 11.1 Norway’s agreements with the EU in the domain of foreign and security policy

1988 – informal consultation arrangement between Norway and the presidency
1992 – associate member of the Western European Union
1994 – declaration on political dialogue as part of the EEA agreement

- 2000 – dialogue on security and defence policy
 - 2001 – agreement between Norway and the EU regarding the establishment of the EU’s satellite centre
 - 2002 – agreement on Norwegian participation in the EU’s police operation in Bosnia
 - 2003 – agreement between Norway and the European Union on security procedures when exchanging classified information
 - 2004 – agreement on Norwegian participation in the EU’s police operation in Macedonia
 - 2004 – framework agreement on Norwegian participation in the EU’s crisis management operations
 - 2005 – agreement on Norwegian participation in the EU’s battle groups
 - 2006 – cooperation agreement between Norway and the European Defence Agency
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International agreements are generally regarded as a contract that does not affect citizens directly and that has limited influence on national legislation and national decision-making processes. It is therefore not common for agreements to affect the democratic chain of government. With one exception, namely the 2005 agreement on participation in the EU’s battle groups, this is also true for the agreements between Norway and the EU in the domain of foreign and security policy.

Nevertheless, as conveyed in the first part of the chapter, such international agreements require the consent of the parliament if they are ‘of particular importance’ (Art. 26). Prior to the parliamentary vote there must be a written proposition and a recommendation from the relevant parliamentary committee. The question of which procedure to apply is not a mere legal formality. An issue will be subject to far more thorough consideration through the procedure contained in Art. 26 than if it is discussed, for example, in connection with a more general foreign policy report. The use of Art. 26 is therefore also in line with the autonomy principle. The problem is that there is no precise definition of ‘particular importance’. It is therefore left to parliament itself to identify those agreements that, in their view, necessitate the use of procedures in Art. 26 of the constitution (assuming the executive does not choose to present the agreement in accordance with this procedure). Given the increase in the number of international legal agreements, it is a challenge not only for the Norwegian Parliament but also for many other national parliaments to keep track. The evaluation of whether or not the government must or should request parliamentary consent is based just as much on political considerations as on legal or constitutional considerations. This is so as parliament has usually been considered as responsible for determining the precise meaning of ‘particular importance’. This makes the evaluation emphatically political.¹⁰

What status should then be given to Norway’s agreements with the EU in the domain of foreign and security policy? Can they be understood as particularly important? If so, on what grounds? And what procedures have been applied when Norway has entered into these agreements?

Insignificant legal agreements of particular political importance?

When the EU’s efforts to form its security policy gained momentum in the middle of the 1990s, Norwegian authorities openly expressed concern about the consequences for Norway (Sjursen 1999). Norway already had some bilateral agreements with the EU in this domain, but entered into several new ones in the wake of the new changes.

The agreement on associate membership in the WEU, which had been signed in 1992, was perceived as especially decisive to Norwegian interests. This was so because, as an associate member, Norway received the same access as full members to discussions regarding the future organisation of the EU's security policy. Norwegian authorities emphasised their wish to utilise the associate membership 'to the maximum'.¹¹ At the same time there was a concern that something might upset the agreement:

If the WEU was to be fully integrated in the EU, as is now proposed, a range of difficult questions would be raised inter alia for the countries – such as Norway – that do not participate in the EU co-operation, but that participate in the WEU. It will lead to a more closed co-operation instead of laying the basis for a broad European security co-operation. But if the EU becomes the governing organ of the WEU, it will be necessary to develop suitable association arrangements for the countries that are members of NATO, but not members of the EU.
(Bjerke 1995)

Likewise, the other agreements with the EU, such as the declaration on political dialogue, have been described as decisive for Norwegian interests. These agreements do not place obligations on the EU. They have no consequences for the substance of EU policy, or for the EU's internal decision-making processes. The agreement on political dialogue, for example, only promises routine meetings where Norway (and a number of other states) is informed of EU developments. Still, from the Norwegian perspective they are considered *politically* important:

The opportunity to join or associate with EU initiatives, declarations, and statements regarding foreign policy questions of common interest, is of great value. We have already used this opportunity on several occasions and evaluate on a continuous basis how and in which manner we can participate.
(Bjerke 1995)

The *legal/constitutional* implications of the agreements are fairly limited also for Norway. Norwegian authorities decide for themselves whether they will accept the EU's invitations to participate in, align itself with, or contribute to policy. At the same time, these agreements are the only formal tools available to the executive when relating to the EU in the domain of foreign and security policy. This is why the agreements are described as politically important:

The Government places [...] great emphasis on developing the tightest and closest possible connections with the EU on all matters, including the domain of foreign and security policy.
(Bjerke 1995)¹²

The fact that the agreements have limited constitutional implications helps explain why they have not been presented to parliament under the provision contained in Art. 26 of the constitution. Yet, as the interpretation of Art. 26 requires discretionary evaluations, and the

executive describes the agreements as politically important, it would not be unreasonable to expect that at least the more extensive agreements were presented to parliament.

The agreement on Norwegian participation in the EDA is one example of such an extensive agreement. Previously, European co-operation on defence materials was organised under the auspices of NATO, and thereafter the WEU. When it was transferred to the EU in 2004, Norway went from being a full member to non-membership. This was described as dramatic for Norwegian interests:

From the Norwegian perspective it is serious that we can be in a situation where we on a strategic level have no access to any cooperation organisations on defence materials in Europe.

(Parliament Proposition no. 42 (2003–2004): 41)

Norway's diplomatic efforts to achieve an agreement with EDA were massive and the failure to achieve full membership in the agency was a disappointment.¹³ The agreement that was finally reached sets clear limits to Norwegian participation. Parliament was informed of the government's efforts to establish such an agreement with the EU (Parliament Proposition no. 1 2004–2005: 54; Parliament Proposition no. 1 2005–2006: 67).¹⁴ However, the agreement is not listed in the Ministry of Foreign Affairs' treaty register, nor has it been discussed as a separate case in parliament. It must therefore be assumed that it has not been subject to parliamentary approval in accordance with Art. 26.

The framework agreement on Norway's contribution to the EU's crisis management tasks were also not presented to parliament in accordance with Art. 26. The minister of defence, Kristin Krohn Devold, did report to Parliament on the agreement in 2004, but it was not followed by much debate.¹⁵ Every time Norway decides to participate in an EU operation a specific agreement is also made. It has not been possible to find evidence of any of these agreements having been presented to parliament in accordance with Art. 26. Nevertheless, the contributions are described as politically important, and Norway accepts as many invitations to participate as possible. Indeed, between 2002 and 2012, Norway contributed to 10 EU-led operations (of a total of 24).¹⁶

Norway's associate membership in the WEU is a third agreement that cannot easily be rejected as insignificant. The question of Norway's relation to the WEU was discussed in parliament on various occasions (see the Budget – Parliamentary Recommendation no. 7 1992–1993). In 1991, representatives from the Conservative Party suggested that Norway should apply for full membership in the WEU.¹⁷ Only the Conservative Party and the Progress Party were in favour. The idea of applying for associate membership, on the other hand, gained the support also of the Labour Party. The Socialist Party and Centre Party were opposed, while the Christian People's Party would only support this if it gave Norway the possibility, but not the obligation, to participate in WEU operations.¹⁸ The Labour Party's official justification for going against full membership was that there was considerable confusion regarding the direction of developments within NATO, the European Economic Community (EEC), and the WEU.

Surprisingly, when associate membership was debated this argument was not perceived as relevant. According to historian Rolf Tamnes, the ‘real’ reason for the Labour Party’s rejection of the idea of full membership was that it wanted the question of membership in the EC (EU) to be resolved first (Tamnes 1997: 238).

An ‘association document’ was signed at the WEU’s ministerial meeting in Rome on 20 November 1992, and parliament was informed in the spring of 1993. It was emphasised that the agreement ‘is a political document that does not entail binding international obligations for Norway’ (Parliament White Paper no. 47 1992–1993: 29). It was not considered as a separate matter by parliament, and because it is not considered binding in accordance with international law, it has not been possible to trace the agreement in the Ministry of Foreign Affairs’ treaty register.

In sum, the most important mechanisms for ensuring scrutiny and debate on matters of foreign and security policy, have not been used to discuss Norway’s agreements with the EU in this domain. This is not unusual. Norwegian participation in military actions in Libya in 2011 was for example decided on by mobile phone on a Friday evening and a Saturday morning. After deciding that there was agreement in government, the parliamentary leaders for the opposition parties were consulted (by telephone). The DUUFK met to discuss the matter three days after the decision to dispatch fighter aircrafts to Libya had been made (Sølhusvik 2012: 378–379).

The executive usually makes foreign and security policy without much interference from parliament. Relations with the EU in this domain are no exception. In one particular case, however, parliament has gone even further than it usually does in giving the executive freedom to act. This raises questions for both popular sovereignty and state sovereignty.

Adverse effects on state sovereignty?

The agreement on participation in the EU’s battle groups, which was signed in 2005, has been the subject of more debate and attention in parliament and the media than the other agreements. The reason is that it was unclear whether or not this agreement entails an obligation on Norway to participate in EU operations. Thus, this agreement raises more complex constitutional questions than the other agreements. Together with Sweden, Finland, and Estonia, Norway is part of a so-called Nordic Battle Group. This force participates in a rotating arrangement with the EU’s other battle groups. As the battle groups are integrated forces, each participant country contributes with a specialised part.

The Norwegian government had not planned for an open parliamentary debate on this agreement, but wished to discuss it in DUUFK. However, the opposition required the matter to be taken out of DUUFK and put to an open debate. The government presented its intentions to parliament in 2004, and votes were made regarding a motion put forward by the Socialist Left Party to reject participation. The motion was defeated.¹⁹ After concluding the agreement, the minister of defence returned to parliament and reported on the specifics of its content. It was accepted by a majority of the votes.²⁰ However, while parliament debated the matter thoroughly, Art. 26 was not used.²¹ Thus the procedure was less extensive.

Formally speaking, the agreement does not challenge Norway's sovereignty (Holmøyvik 2012). As emphasised by government officials, a decision on participation in a concrete operation shall be made nationally. However, because the battle groups are integrated forces, they depend on the participation of all parties. A 'no' from Norway would thus bring the entire operation to a halt. The potential political pressure on Norway's involvement would most likely be strong also because of the fact that only two forces are on standby at a time. In reality then, this agreement obliges Norway to deploy military forces when and where the EU wants it to.

In his contribution during the 3 June 2005 parliamentary debate, Labour Party Representative Thorbjørn Jagland confirmed his full awareness of the difficulties involved in refusing participation in an operation:

We must admit that we become interwoven in a military co-operation that naturally binds us more than has been the case with other international operations.²²

Jan Petersen from the Conservative Party also accepted this premise, as is evident in the exchange of views with a Progress Party representative in a parliamentary debate on 20 November 2007:²³

Per Ove Width: Thank you for the report. It was good and clear. Even if one does not need to be in agreement with everything, I understood what was said. I also understand that before things begin to escalate, the minister of Defence will return to parliament and present further the details.

Jan Petersen: I think that many of the bridges that Representative Width believes he will cross, he has in fact already crossed by accepting this agreement. Therefore, what we would probably evaluate, if it gets that far, is considerably more limited than what he implies. It is also important to emphasise that when Norway has said yes to participating in the Nordic Battle Group in a larger European context, it is clear that one does not start at point zero when the clearly defined operation comes before parliament.

Prioritising action capacity

Norwegian citizens had their say regarding Norway's relation to the EU in the referendum in 1994. Afterwards, the executive has been left to manage relations with the Union without much interference. If it had been up to Norwegian authorities alone, the relationship with the EU would have been even more extensive. We see this for example from the Parliament White Paper no. 12 (2000–2001), where it was stated that:

[i]n the government's opinion the consultation arrangements, dialogue, and assistance in defined crisis management operations can only to a limited degree compensate for Norway not being part of the continuous consultations [within ESDP].

Similar viewpoints came to light, inter alia in connection with a follow-up of the decisions contained in the Maastricht Treaty (1992):

As the Minister of Defence, I can nevertheless not omit to note that the EU's intergovernmental conference in 1996 can be of great significance to our interests. Our lack of participation in this conference is therefore a paradox and part of the price we pay daily for the fact that we are outside the EU.

(Kosmo 1996)

Paradoxically, it is not the citizens' elected representatives that have prevented the executive from entering into more extensive agreements. The EU sets limitations by maintaining a clear division between the Union's members and non-members. Sjaastad's (2006:19) observations regarding parliament's view of its role in foreign policy in general thus also applies to the relation to EU in this domain: 'Parliament's main task does not consist [therefore] in exercising constitutional control over the government, but in supporting the government's policy'.

As the agreements are not perceived as significant from a purely legal perspective parliament's role can be limited. Yet, because Art. 26 rests on a discretionary evaluation of what is particularly important, parliament could also have chosen to be more active. In line with the executive's own descriptions of several of these agreements, parliament could have considered them so important that they required parliamentary consent in accordance with Art. 26. But parliament may have had good reasons not to do so? Three possible reasons must be considered.

In line with tradition?

A continuation of alliance policy?

Norway's affiliation to the EU in the domain of foreign and security policy is often described as a mere continuation of its alliance policy. If this is what it is, perhaps there is no particular need to scrutinise it?

In the post-war period, Norwegian foreign and security policy became closely interwoven in various co-operative relationships on a regional and global level. Membership in NATO was central (Berg 2008). Together with Nordic cooperation, NATO remains the key reference for Norwegian security and defence policy. Moreover, Norway cultivates close bilateral ties, especially with the United States, Germany, and the UK, as well as the other Nordic states.

Thus, the agreements made with the EU in the domain of foreign and security policy area may indeed be seen as a maintaining bilateral and multilateral ties, in particular to the member states of NATO. After all, Norway's Nordic allies are now all members of the EU. With the exception of Turkey, Albania, and Iceland, all of Norway's European NATO allies are also EU members. The informal European co-operation that previously took place within NATO, such as within the Eurogroup and the Independent European Programme Group has now been moved to the

EU.²⁴ Thus, one could argue that by entering into these various agreements with the EU, Norway simply maintains existing cooperation with its NATO allies.

However, there are several problems with this understanding of Norwegian policy. First, the EU is a separate political entity and not merely the European branch of NATO. Although most of the EU's member states are also NATO members, the EU's foreign and security policy is something other than NATO's policy. The policy is formulated and justified with reference to the EU's interests and values. With the Treaty of Lisbon (2007) the EU also achieved legal personality, which gives the Union an independent status in international law.

The EU's foreign and security policy is also something more than the sum of the policies of individual member countries. As a result of their EU membership, Norway's allies are bound together in a community that alters their policies as well as their relations to other states. This is so even though the EU's foreign and security policy is formally intergovernmental. Participation in the Common Foreign and Security Policy (CFSP) binds member states to common principles that are based on the EU's interests and values (Hillion 2014; Sjursen 2011; Wessel 2014). There is a continuous, daily exchange of information where ideas and positions wrestle with one another on various levels in the administration and among political decision-makers. These processes are different from traditional diplomatic relations, and they entail the formation of common positions beyond the 'national interests' of each state.

Thus, Norway's agreements with the EU in the domain of foreign and security policy are not simply agreements with Norway's allies. Rather, they are agreements with a separate polity. A concrete expression of this can be seen in the framework agreement for participation in the EDA's projects, which was signed by High Representative Javier Solana. A second problem with seeing Norway's relations with the EU in the domain of foreign and security policy as a mere continuation of its NATO membership is that the conditions for co-operation are fundamentally different. Norway is only included in the EU's activities after the political decisions regarding what to do and how to do it are made. Furthermore, it is not part of the ongoing political discussions that define longer-term priorities. It joins in when the policy line is already established. This also applies to Norway's contribution to the EU's crisis management operations, where strategic deliberations and decisions regarding each operation are undertaken before issuing an invitation for external contributions.²⁵ The same goes for the agreement with EDA, which does not allow for Norwegian involvement in the 'political' part of the cooperation.²⁶ The difference in conditions for participation in NATO and in the EU's foreign policy activities is seen most clearly in the contribution to the EU's battle groups. Here, there is an informal understanding that Sweden will represent Norway in the discussions in the European Council on how and when the force is to be used. Apparently there is no formal agreement on how to proceed.²⁷

Arguably such differences in the conditions for participation are mere formalities. Surely, a small country such as Norway does not have much of a say within NATO, even if it is a full member? This argument only holds if we consider that relations between allied states are governed by size and material power alone. In fact, participation in the decision-making process

provides opportunities to influence the outcome by using competence, convincing arguments, and to ally with others who share one's interests or values.

Finally, and on slightly different note, one might argue that Norwegian policy towards the EU in the domain of foreign and security policy actually represents change rather than continuity. Norwegian alliance policy after World War II was chiefly oriented towards the US. Norwegian governments took no interest in the debates about European integration that took place in the 1950s, and there was never any question of Norway supporting a purely European defence plan (Eriksen 2008). On the contrary, Norwegian foreign policymakers often spoke of Norwegian foreign policy in contrast to the policies of Europe's 'belligerent Great Powers'. From this perspective the conscious attempts to achieve a close connection to the EU in the domain of foreign and security policy, especially since the mid-1990s, can be seen as a change in policy. In fact, the element of change is visible in that while Norwegian authorities have been persistent in pursuing close relations with the EU in this domain, they have also been deeply sceptical to the very idea of an autonomous EU foreign and security policy. When EU security policy cooperation gathered speed in the middle of the 1990s, Norwegian authorities used every opportunity to argue against constructing an independent security policy within the EU, while (Sjursen 1999; Tamnes 1997). While trying to secure access to the process, they also believed that such a common policy would not materialise and hoped that the entire project would fail. The very establishment of a purely European institution dealing with security and defence goes against the Atlantic orientation of Norwegian security and defence policy.

Lately, however, added nuances have appeared to the Norwegian perspective. This is visible in, for example, the parliamentary debate on Norway's contribution to the EU battle groups. Here, members of several political parties described the EU's security policy as important and a valuable contribution to the UN's agenda for global security (Sjursen 2008). To the extent that such perspectives have become generally accepted, they would represent a considerable change from the idea of the EU as carrier of belligerent 'Great Power Policies'.

But parliament's passivity with regard to this issue might be explained by the fact that it agrees with what is done—that there is consensus. In that case, why not just let the executive do its job?

Policy based on consensus?

Because there has been so little questioning of this policy, can't we simply assume that it rests on consensus? The problem with such an assumption both with regard to Norwegian foreign policy in general, and with regard to the particular issues analysed in this chapter, is that a consensus is supposed to be preceded by a free, open, and critical debate. Norwegian foreign policy decisions are taken according to procedures that limit criticism and debate. 'Consensus' is created through closing the debate or by co-opting key actors. Thus, it is not possible to know if a qualified consensus exists or indeed if we are rather faced with an illusory agreement.²⁸

What is more, references to consensus on foreign policy are often ambiguous: they are used to show that the policy has legitimacy. But when, at the same time, it is repeated that consensus is decisive to protect the national interest, it becomes a means for curbing debate. An example

of how the consensus requirement is applied to temper critical debate may be found in parliament's discussion of the situation in Iraq in 2002. Here, representatives of the Labour Party and the Conservative Party stressed the importance of national cohesion, in the face of questions asked by the Socialist Left Party. A representative from the Conservative Party stated:

On the other hand, I feel a certain need to further emphasise what Thorbjørn Jagland opened and closed with, namely the value and significance of having a united parliament as much as possible behind the main lines in the foreign policy carried out by the government²⁹.

And the representative further stated:

Let me first thank Thorbjørn Jagland for his clear answer and clear confirmation that for his part he evaluates it as essential that we are capable of preserving the predictability and stability in Norwegian foreign policy on the part of parliament as well.³⁰

Kristin Halvorsen (Socialist Left Party) replied as follows:

But I cannot fathom and understand why it should, in the Norwegian Parliament, be unheard of and indelicate to discuss the serious developments that are now seen.³¹

In sum, it is difficult to merely assume that consensus exists. In fact, consensus making mechanisms at work in Norwegian foreign policymaking processes may contribute to cover disagreement on controversial issues. Yet, parliament might have legitimately chosen not to meddle because of considerations of national interest, or because of a need for rapid decision making, or to protect the interests of other states?

A legitimate need to ensure action capacity?

There is naturally a certain legitimacy to prioritising action capacity in foreign and security policy, where secrecy and quick decisions are often needed. There is no time to wait for lengthy parliamentary debates in the midst of an international crisis. Information from allies is also processed, information that is often confidential and cannot be used in a public debate. But it is difficult to see that such considerations are relevant for Norway's relation to the EU in the domain of foreign and security policy.

Limitations on open debate are typically connected to the notion that foreign policy is ultimately about state survival. The executive is regarded as custodian of the national interest in the face of an anarchical international system. In line with such notions, parliament chooses to support rather than oppose the executive:

Open disagreement is regarded not only as a strategic problem but as a threat to Norway's role in the world. [...] Instead of politicising – through control and critical questions – parliament contributes to de-politicising.
(Sjaastad 2006: 20)

But the idea of a national interest has always been a fable. This becomes even more evident in today's security context. What should be done is not given, as it is assumed when reference is made to national interests. In foreign policy one can choose to prioritise a range of different interests and values: Industry, environmental organisations, fishermen and fish farmers, for example, will often have different opinions about what the 'national interest' should be. When one is not faced with matters of state survival, but matters requiring complex evaluations and value judgements, then there is a need for open reflection. In reference to Norway's relation to the EU in the domain of foreign and security policy, this is not an issue of state survival. Neither is it possible to see that there were specific needs for secrecy or rapid decision-making in the negotiation of these agreements.

Paradoxes in foreign policy

When it remained outside the EU, there was an expectation that Norway would develop a distinct foreign and security policy and that it would be better able to ensure both state and popular sovereignty. But the executive has instead sought to ally itself with the EU. Parliament has in no way attempted to prevent, alter or question this strategy, despite the fact that it expresses a different perception of reality than the one that inspired the 'no'-vote in the referendum on Norway's EU membership. Significantly, the search for connection points to the EU in foreign and security policy has not resulted in any substantive changes in Norwegian foreign policy. The similarities between Norwegian and EU policies are too important. However, the policymaking process suffers from democratic weaknesses, and it is difficult to find legitimate grounds for the parliament's decision to take a passive role. Nevertheless, it is not difficult to understand *why* this policy has been developed.

First and foremost, the Norwegian policy signals a perceived need to compensate for a loss in action capacity. Second, it points to a desire for recognition of Norway as part of Europe.

With the development of the EU's foreign and security policy the external context of Norwegian foreign and security policy has been transformed. The executive's access to relevant information regarding developments in European security, as well as regarding the viewpoints of close allies has become more limited. The agenda set by the EU in foreign and security policy inevitably affects Norway. This becomes particularly evident in the Ukraine crisis of 2014. The Norwegian executive's ability to influence this policy agenda is more limited due to the interaction within the EU. Norway aligned itself with EU restrictive measures towards Russia, but did not have any influence on the definition of those measures. Norway is now excluded from participation in decision-making processes that it was previously part of as a member of NATO. One way of understanding Norwegian policy is thus that it aims to regain some of the control that it has lost over external conditions. Nevertheless, the effect must be seen as limited and policymakers are well aware of this.

Quite possibly, then, the policy may also be driven by a concern for recognition (Wendt 1999). A state's foreign policy identity is defined through a process of mutual recognition that also provides the basis for solidarity between states. In parallel with the development of the EU's foreign and security policy, new institutional boundaries have been drawn in European security

policy. The various associational arrangements and agreements that Norway has entered into with the EU in this domain demonstrate the importance of these boundaries, as they clearly distinguish between members and non-members. The frustration conveyed by Norwegian authorities by finding themselves on the outside of these borders may thus be the result of foreign policymakers' perception of Norway as belonging on the inside. Formally, Norway has gone from being one of 'us' to being one of 'the others' in European security policy. The policy can therefore be understood as a search for recognition of Norway's rightful place inside a European security community. And while the agreements that have been entered into do not always render a large gain in the form of real influence, they do provide a certain recognition of Norway as part of the European 'family'.

Paradoxically, however, the result of the executive's endeavours to increase action capacity (or reduce the effect of lost action capacity), and to secure recognition, is that both state sovereignty and popular sovereignty are weakened.

Conclusion

According to Norwegian authorities, Norway is independent of the EU in foreign and security policy. Insofar as the EEA agreement does not cover this domain, the claim is formally correct. However, Norwegian governments have sought to establish as close an affiliation as possible with the EU's foreign and security policy. This fact testifies, if not to a de facto dependency, then at least a strong perception of loss of influence and relevance in the European context on the part of Norwegian foreign policymakers. In particular the agreement on Norwegian participation in one of the EU battle groups comes close to establishing precisely the kind of dependence that the majority of Norwegian citizens sought to reject by voting 'no' to EU membership. Paradoxically, the result of their vote is that an informal hegemony by default. It is unintended by the EU, but nonetheless it has consequences for the democratic anchoring of Norwegian foreign and security policy. Norwegian citizens can say no to EU membership. Yet, Norway remains a European state and this fact inevitably influences the policy options available to the Norwegian executive when developing national foreign and security policy. This becomes particularly evident with the 2014 crisis in Ukraine.

Norwegian foreign and security policy is usually defined by the executive. But, with regard to relations with the EU in this domain, the executive has had an even freer hand than what is usual. Parliament has been passive, and the citizens have been sitting on the sidelines. They know little about what assessments are made and on what grounds. Consequently, the basis on which they form their viewpoints on what should be done is skewed. Often, in debates on Norwegian foreign policy, the EU remains the elephant in the room.

The special needs of foreign policy are not sufficient to justify setting aside the democratic principle that citizens have the right to exercise influence over decisions that affect them. This case confirms the need to review the drawing of boundaries for when closed doors and secrecy is needed to develop an effective foreign and security policy and when open reflection is

required. It should indeed be possible to combine the interests of efficiency and the need for a degree of secrecy with greater co-determination.

Notes

¹ This paper addresses Norway's relationship with the system that governs the traditional arenas of foreign and security policy as well as defence policy, that is the so-called Common Foreign and Security Policy (CFSP).

² The analysis draws on relevant secondary literature in law, history and politics, as well as a review of propositions to the Parliament and Parliament White Papers during the period 1991–2011 that directly address Norway's relationship to the EU; the foreign policy reports by the Minister of Foreign Affairs (1996–2011) and EU/EEA reports (2007–2011); speeches by representatives of the Ministry of Foreign Affairs (MFA) and the Ministry of Defence (MOD); and the MFA's work programme for CFSP (2006–2011). Furthermore, systematic searches have been made of the MFA's treaty register, the government's and parliament's databases, and the media database Atekst. Some interviews have also been carried out with MOD and MFA representatives. Unless otherwise stated, the citations from the executive are intended as examples of statements and arguments that have been retrieved systematically from the above-mentioned texts, and not as exceptions to them. I am extremely grateful to Guri Rosén and Johanne Døhlie Saltnes for their assistance in this work.

³ Originally named the Enlarged Committee on Foreign Affairs, it was renamed the Enlarged Committee on Foreign Affairs and Defence.

⁴ See 'Afghanistan. Possible Norwegian force contributions', matter handled on 30 November 2001 in DUUFK and brought before parliament in pursuant of parliament's Rule of Procedure 13, final paragraph on 5 December 2001.

⁵ See also Eirik Holmøyvik (2012) for a legal evaluation of the requirements made by the Progress Party and Socialist Left Party in this case. According to Holmøyvik, neither the constitution nor constitutional custom suggests that parliamentary approval is required to send Norwegian forces to Afghanistan during operation *Enduring Freedom*.

⁶ See for example the final debate at the Ministry of Foreign Affairs' conference entitled 'Norway and the new world map', Oslo, 22 May 2013 available at <http://www.regjeringen.no/nb/dep/ud/lyd_bilde/nett-tv-2/refleks_verdenskart.html?id=726903>, last accessed 27 January 2015.

⁷ 'Document on Associate Membership of WEU of the Republic of Iceland, the Kingdom of Norway and the Republic of Turkey', Rome, 20 November 1992. Sent by email from the Ministry of Foreign Affairs Treaty and Documentation Department, 16 May 2013.

⁸ 'Administrative arrangement between the Ministry of Defence of the Kingdom of Norway and the European Defence Agency', Innsbruck, 7 March 2006. Ministry of Defence Case no. 0500445-6.

⁹ 'Agreement between Norway and the European Union on the establishment of a framework for Norway's participation in the European Union's crisis management operations', Brussels, 3 December 2004. Available at the Ministry of Foreign Affairs Treaty Register <<http://www.lovdato.no/traktater/>> 'Ident 03-12-2004 no. 48 Bilateral', last accessed 27 January 2015). Those agreements that are considered binding by international law are published in the Treaty Register, however, there may be long time lags between the Treaty ratification and its appearance in the Register. Also, the appearance in the Register is not signify that the treaty has been presented to Parliament through Art. 26.

¹⁰ Thanks to Holmøyvik for clarifying this point. See also Smith (2012: 274).

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- ¹¹ See Minister of Defence Jørgen Kosmo (1995).
- ¹² In addition to these formal channels, the Norwegian authorities also seek informal access to the EU's foreign and security policy area (Sjursen 1999, 2008).
- ¹³ Interview with three different representatives of the Ministry of Defence in Oslo and Brussels in the spring of 2011.
- ¹⁴ Relations with the EDA were addressed in Chapter 5 – Informational matters – of propositions to the Norwegian Parliament regarding budgetary matters, as one of a series of items, including the description of trends in the international material co-operation.
- ¹⁵ 'Statement to the Storting by the Minister of Defence on the possible Norwegian participation in the EU's battle groups, and framework agreement on Norway's participation in EU civilian and military crisis management operations', 30 November 2004.
- ¹⁶ Five of these operations were police operations, two were peacekeeping, while three were military operations.
- ¹⁷ The proposal is found in Parliament Recommendation no. 195 (1990–1991).
- ¹⁸ Parliament Recommendation no. 7 (1992–1993): 5–8.
- ¹⁹ Supra n. 15 and 'Debate on the defence minister's statement on Norwegian participation in EU's battle groups and the framework agreement on Norway's participation in EU civilian and military crisis management operations', debate in the Storting on 3 December 2004.
- ²⁰ Debate in the Storting on the defence minister's statement on the EU's battle groups, advanced storage, and further participation in Afghanistan, 3 June 2005.
- ²¹ For a more detailed analysis of the reasons for parliament's acceptance of the agreement, see Sjursen (2008).
- ²² Supra n. 20.
- ²³ Statement to the Storting by the Minister of Defence on the status of Norwegian participation in the Nordic Battle Group, 28 November 2007.
- ²⁴ The Independent European Programme Group (IEPG) was established in 1976. In 1993 it was connected to the WEU and changed its name to the Western European Armament Group (WEAG). WEAG was abolished with the establishment of EDA.
- ²⁵ In cases where Norway has a so-called significant contribution to the EU's operations, Norway will participate in the contributor committee. The committee is responsible for the daily management of the operation. But strategic leadership and political control remains with the Political and Security Committee (PSC) or the European Council, where Norway is not represented. Likewise, Norway does not have access to the EU's discussions on EU operations that draw on NATO's resources. The 2003 Berlin Plus agreement between the EU and NATO does however provide Norway with a right to participate in such operations.
- ²⁶ Norway does not have access to the meetings of the working groups. It is granted a meeting with the chairs of some of the working groups after they have concluded their internal business.
- ²⁷ Interviews with representatives of the Ministry of Defence and Ministry of Foreign Affairs in Brussels and Oslo, summer 2011.
- ²⁸ For a discussion of different types of consensus, see Eriksen and Weigård (2003).
- ²⁹ Debate in the Storting on the Foreign Minister's statement on current foreign policy issues, 17 October 2002.
- ³⁰ Supra note 29: 210.
- ³¹ Supra note 29: 213.

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