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The 2011 Debacle over Danish Border Control: A Mismatch of Domestic and European Games

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Abstract

In May 2011 the Danish minority government successfully obtained the support of the Danish People's Party to carry out a comprehensive pension reform. In return, it was agreed that Denmark would reintroduce border controls. However, this appeared to be at odds with the Schengen Agreement and prompted a heated response from Berlin and Brussels. The Danish government had to backtrack and insist that the proposed initiatives would not violate the Schengen *acquis*. This paper examines how a purely domestic issue galvanized into a strong diplomatic pressure on Denmark, and what that tells us of modern diplomacy in an integrated Europe. It argues that by linking its pension reform with border controls, the Danish government introduced the international level into its national negotiations. This illustrates that the two levels cannot be kept entirely separate in the European Union and diplomacy increasingly becomes a part of daily policy-making.

The debacle over Danish border controls: interplay between national and European politics

In the spring of 2011 a most peculiar string of events unfolded that originated in the attempts by the Danish government to find parliamentary support to pass a pension reform, and culminated in heated diplomatic exchanges with its European partners who feared that Denmark was about to violate the Schengen Agreement which had abolished border controls. How did a rather obscure domestic issue become a matter of contention between the Danish government, the European Commission and other European countries? And what does this recent series of events tell us about how modern diplomacy is conducted in the context of an unfolding process of European integration?

In order to understand why the Danish government became embroiled in this diplomatic controversy we must appreciate how the process of European integration brings national politics and European-level negotiations closer together. Essentially, the Danish government tried to have it both ways by promising concessions to the nationalist Danish People's Party (DPP) in the form of a tightening of border controls in return for its support for a pension reform, while insisting *vis-à-vis* its European partners that it would abide strictly to the Schengen Agreement.

The inconsistency of this position soon became evident when the other European countries began to fret over the prospects of Denmark 'reintroducing border controls' as the Danish People's Party proudly proclaimed in national news media. Traditionally, international relations are portrayed as a separate sphere of 'high politics' utterly distinct from national-level domestic politics. As the Danish example highlights, the advent of European cooperation has changed that dramatically. Hence, diplomacy must take into account the interplay between domestic and European politics.

This is best done with recourse to the two-level game theoretical framework developed by Robert Putnam.¹ This approach was subsequently applied to a variety of analytical approaches where international negotiations and European politics are nested in a broader context which must take into account political considerations at

¹ R.D. Putnam, "Diplomacy and domestic politics: the logic of two-level games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

least at the domestic and international level.² This paper thus applies the two-level games framework to the debacle over the reintroduction of border controls in Denmark in May 2011 and considers the broader implications for diplomacy and European politics. It argues that the Danish government, in order to carry through with its pension reform, linked it to the issue of border controls, thus introducing the international level into its ongoing domestic negotiations in order to overcome the deadlock. The Danish government attempted to present one version of the border control agreement to the national audience to appease the DPP and a softer version to its European partners. However, this failed as the heavy-handed interpretation of the new border regime expounded in particular by the DPP that it would ostensibly reintroduce border controls generated much apprehension in Europe. Faced with the prospect of losing much of its political clout in Brussels or losing a trial at the European Court of Justice (ECJ), the government retracted from its position and sought a solution that would maintain the support of the DPP while putting fears to rest concerning the Schengen-compatibility of the agreement on border controls.

Games with two levels

The two-level game framework developed by Robert Putnam has become a standard theoretical apparatus for studying how international relations are affected by domestic politics.³ At its heart, the approach puts the need to move beyond the simple observation that domestic and international concerns often interrelate with each other. Putnam's two-level game approach is thus an attempt to develop a more rigorous understanding of how the inter-linkages between international relations and national politics work, rather than merely concluding out of anecdotal evidence that they exist.

At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign

² For example, P.B. Evans, H.K. Jacobson and R.D. Putnam (eds.), *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993; A.R. Young, "What Game? By Which Rules? Adaptation and Flexibility in the EC's Foreign Economic Policy", in M. Knodt and S. Princen (eds.), *Understanding the European Union's External Relations*, London, Routledge, 2003, pp. 54-71.

³ Putnam, *op.cit.*

developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign.⁴

States are seldom unitary actors. When one representative conducts negotiations at the international level, he or she will usually be dependent on getting the eventual deal accepted at home. The U.S. President will need to get Congress to ratify an international treaty, for example, and his entire international position may be undermined if that fails, as President Woodrow Wilson's failure to get Congress to accept American accession to the League of Nation famously demonstrated. As a result, a negotiator must conduct negotiations with internal stakeholders or at least bear the domestic situation in mind before and while negotiating at the international level. More often than not negotiators spend as much time building alliances and balancing concerns at the domestic level as they do in head-to-head negotiations with their counterparts at the international level.

This logic can be applied to the EU, where countries negotiate with each other on matters of great interest to domestic interest groups and the populace at large. The interplays between national and international concerns are therefore obvious. Many sectors have become integrated, in particular in relation to the single market. Accordingly, a single country cannot amend, say, its business legislation dramatically on its own since the area has been made the subject of EU-level legislation. In this sense, as European integration progresses, more and more sectors become increasingly subjected to the logic of a game at two levels. That is to say, the inter-linkages between the two levels become more pronounced and the costs of ignoring either rise as the integration process unfolds.

This dynamic is particularly strong at the European level, where European integration over the past couple of decades has reinforced the inter-linkages between domestic politics and international relations. Putnam explicitly mentions the neo-functional approach to European integration, as developed by Ernst Haas, to describe how integration creates self-reinforcing 'spillovers' as examples of international relations theories that acknowledge the interplay between international

⁴ *Ibid.*, p. 434.

and domestic factors.⁵ The underlying logic is that once a certain area has become integrated, it will create incentives to integrate in other areas in order to obtain the full benefits. In other words, domestic circumstances create a pressure on the international level. The recent euro crisis may be a case in point. A common currency has created some benefits, but also a strong pressure for integrating fiscal policy as well. The functionalist schools of European integration also emphasize that domestic pressure groups will push this logic further by demanding integration that will benefit their economic interests. Once a certain area has become integrated, therefore, it generates a pressure to integrate other areas. This provides incentives for political elites or pressure groups and economic interest groups to press for further integration. This generates a 'snow-ball effect' where European integration gradually expands. In that respect European integration, according to the neo-functionalist theories, is propelled forward primarily by domestic and economic factors.

One of the hallmarks of European integration is the celebrated creation of the single market. The Schengen Agreement abolished passport checks on all internal borders. It was furthered through numerous pieces of legislation from Brussels and rulings from the European Court of Justice that have sought to level the impediments to the four freedoms: the free movement of goods, services, persons and capital throughout the common market. Border policy is consequently an area which is deeply integrated, and hence where domestic politics and international relations/European-level politics are not always easily disentangled. In order to understand how Danish plans to upgrade border controls engendered a sharp response from the rest of Europe, we must look at the domestic and European levels of policy-making.

The domestic level: reforming the pension system

Like its European counterparts, Denmark was badly hit by the economic crisis which dawned in 2008 and 2009, and throughout 2011 consolidating public finances has been high on the political agenda. The centre-right government sought to pass a number of reforms to ensure budgetary compliance with the requirements of the Economic and Monetary Union, which puts a ceiling on the overall ratio of public

⁵ Putnam, *op.cit.*, p. 431. For neo-functionalism, see E.B. Haas, *The Uniting of Europe: Political, Social and Economical Forces 1950-1957*, London, Stevens & Sons, 1958.

debt to GDP and on the size of public budget deficits. Moreover, a general election was due in November 2011 and the centre-right government was trailing in the polls.

Then-Prime Minister Løkke Rasmussen decided to embark on an ambitious strategy of putting forward unpopular economic reforms, and in his new year's speech to the nation he unveiled plans to cut back on the '*efterløn*' pension scheme.⁶ This scheme had long been bedeviled by economists for effectively paying people to retire early despite the looming shortage of labour generated by societal ageing and because of the inherent inefficacy of paying people who are in employment to retire early. Others argued, however, that the scheme should be maintained since it allows manual workers who begin working at a young age and would otherwise be worn down physically by the time they reach the normal retirement age. The government's plan was to reform the scheme to save public expenses, and presumably also to present itself as a political bloc the Danes could trust to manage the macroeconomy even if it meant making unpopular decisions.

In order for this to work, gaining the support of the Danish People's Party for the pension reform was imperative. At the time, Denmark was led by a minority government consisting of the two largest centre-right parties. As a minority government it was necessary to build a majority on a case-by-case basis. The government therefore relied on the nationalist DPP for a majority in parliament on most political issues, as agreement with the centre-left bloc could be found only on centrist or uncontroversial matters. Consequently, in order to pass a reform of the '*efterløn*' pension scheme, the DPP would have to be in favour.

But convincing the DPP was not easy. The party has a large share of the blue-collar vote, and many of its voters stood to lose from the proposed reform. More generally, it had adopted a political stance which implied opposition to immigration combined with staunch support for the Danish welfare model and was therefore reluctant to be seen backing reforms that would cut back on welfare services.

The negotiations on the '*efterløn*' pension reform proved arduous. In the end, the DPP indicated it was willing to support the reform despite the prospect of electoral

⁶ M. Munkøe, "Political Change in Denmark? Outlooks on the Snap Election in September 2011", Stockholm, Friedrich Ebert Stiftung, 2011.

repercussions, provided it received due compensation. This would need to be a concession that could be highly publicized and have a very strong symbolical resonance among its voters. Hence, it demanded the reintroduction of border controls, long abolished under the Schengen Agreement of 1995.⁷

Eventually an agreement was reached that appeased the DPP. The '*efterløn*' reform was agreed to in return for a strengthening of border controls. Following the agreement, the DPP proudly and very vocally proclaimed that it had ensured a deal which would reintroduce border controls. In order to secure support for its much-vaunted pension reform, the Danish government thus decided on what is often termed a negotiation strategy of *issue linkage*. In isolation, no pension reform was politically feasible since the DPP would veto it, but by linking the reform to another issue a deal was made possible. Putnam has observed that what he calls synergetic issue linkages can be employed between the international and the domestic level of two-level bargaining in order to enable mutually acceptable agreements in both arenas.⁸ In this case the linkage was made between the Schengen Agreement, an international agreement pertaining to the international arena, and the national arena of domestic politics. However, whilst introducing the international arena allowed the Danish government to overcome the deadlock, it also introduced new actors that would have to react to what was portrayed as a breach of the Schengen *acquis*. What started off as a simple negotiation game between a number of Danish parties over economic policy thus became a two-level game, where the Danish government tried to preserve the agreement and its European partners attempted to pressure it to cave in.

It had long been a much-vaunted goal for the DPP to reinstate border controls, which it argued would stem the tide of illegal immigrants, illicit goods and criminal gangs from Eastern Europe. As such, the rhetoric of the DPP conveyed the impression that the agreement would be a flagrant infringement of the Schengen Agreement. The government had chosen a more modest language and insisted that it would stay within Schengen,⁹ but unlike the DPP was not very outspoken about this when the deal was announced. Instead, it allowed the DPP to make the most out of the

⁷ Ritzau, "'DF kræver grænsebomme for efterløn'", *Berlingske*, 26 April 2011.

⁸ Putnam, *op.cit.*

⁹ Ritzau, "Tyskland takker for droppet grænsekontrol", *B.T.*, 6 November 2011.

symbolic concession even if the DPP may have used overly strong language in its depiction of the agreement. This predictably prompted a strong response at the European level.

The European level: complying with the Schengen Agreement

For onlookers on Danish politics, the impression in May 2011 was that the Schengen Agreement was effectively being circumvented by the centre-right government and its DPP ally. Newspapers reported that border controls were to be re-introduced in blatant disregard of Schengen,¹⁰ and if this interpretation was inaccurate, the government did nothing to correct it. As Danish professor Marlene Wind noted, "a signal has been sent abroad that this truly is a return to border controls. And because nobody has contradicted (DPP leader) Pia Kjaersgaard, it is of course understood as such abroad".¹¹

In practice, Denmark's two neighbouring countries, Sweden and Germany, would feel the impact of reinforced border controls the most. Germany in particular decided to pursue a very active interest in relation to the proposed measures for the Danish borders.

Not only was the Danish move a clear challenge to the Schengen border regime, it also came at a time where other European stakeholders were particularly sensitive. There were signs that the system was under pressure, and France and Italy had recently put forward a proposal to temporarily suspend Schengen membership for countries that fail to stem the tide of illegal immigration in light of the immense pressure of illegal immigration across the Mediterranean. If one country could reinstate border control checks in violation of the Schengen Agreement, this might soon engender similar moves elsewhere, like a house of cards collapsing. German Foreign Minister Guido Westerwelle insisted that the measures to be undertaken be Schengen-compatible and warned that freedom enjoyed in today's Europe could be jeopardized by such developments.¹²

¹⁰ I. Traynor, "EU warns Denmark over border controls", *The Guardian*, 13 May 2011.

¹¹ Marlene Wind quoted in "EU-ekspert: Danmark er ved at gentage Muhammed-fejlen", *Politiken*, 9 June 2011.

¹² Guido Westerwelle quoted in Ritzau, edited by U. Søgaard Thomsen, "Tyskland fastholder kritik af grænsekontrol" *DR*, 15 June 2011.

A strong German pressure on Denmark ensued. A German Minister for European Affairs in Hessen, Jürg-Uwe Hahn, gained much public attention when he encouraged Germans to boycott holidays in Denmark,¹³ and most forcefully, Chancellor Angela Merkel had a telephone conversation with Danish Prime Minister Løkke Rasmussen.¹⁴ During the June 2011 European Council summit many heads of government had informal consultations with the Danish Prime Minister on the matter. Prior to the summit, the Danish Foreign Minister Lene Espersen had been in Berlin to meet her counterpart Westerwelle, but despite her insistence that the Schengen Agreement would not be violated, the Germans remained skeptical.

At one point the Danish Minister of Taxation Peter Christensen indicated in a communiqué to the parliamentary committee on taxation that the diplomatic crisis had been caused by a misinterpretation abroad that the Danes intended to reintroduce passport controls, rather than just customs checks.¹⁵ However, a Commission spokeswoman forcefully rejected the interpretation that the international criticism was conditioned on a misreading of the agreement and was quoted as saying that any "permanent and systematic control is not permitted", adding that "it is difficult to imagine a permanent customs control without a corresponding identity control".¹⁶

The European Commission also chose to pursue an active role in the debacle. The President of the Commission José Manuel Barroso directly contacted the Danish head of state. In a letter to the Danish Prime Minister, he wrote:

As you know, the European Commission has already expressed its grave concerns about the announced measures, which appear to put into question the smooth functioning of Europe's single market and the benefits that an integrated area without internal borders brings for both businesses and citizens. [...w]ilst the European Commission is fully committed to ensuring that this dialogue results in a satisfactory outcome, I must recall that if necessary we will take all necessary steps to ensure the full respect of the relevant law".¹⁷

¹³ "Europaminister fordert Dänemark-Boycott", *Der Spiegel*, 5 July 2011.

¹⁴ Ritzau, "Merkel hænger Løkke til tørre i grænsesag", *Berlingske*, 24 June 2011.

¹⁵ "Skatteminister: EU har misforstået os", *DR*, 27 May 2011.

¹⁶ "EU går i rette med Peter Christiansen", *Politiken*, 10 June 2011.

¹⁷ J.M. Barroso, Personal correspondence from Mr. Jose Barroso to Prime Minister Lars Løkke Rasmussen, 13 May 2011.

As such he used all the means at his disposal to put pressure on the Danish government. President Barroso further warned that the preliminary analysis of the Commission's legal service had suggested the Danish plans were not in accordance with Schengen rules, and posited that the burden of proof that the measures implemented would not violate international law or secondary national law should be on the individual country. It was becoming clear that the new Danish border control regime would be subjected to the European Court of Justice in Luxembourg. A team of Commission experts that had conducted a study into the proposed designs for the border controls were also inconclusive and prompted Commissioner of Justice and Home Affairs Malmström to release the following communiqué:

Unfortunately, the mission did not enable us to get adequate answers to our questions. There are persistent concerns about the compatibility of Denmark's strengthened internal control measures with the freedoms provided under the EU Treaty including the Schengen acquis. It is incumbent on Denmark to demonstrate factually that the gravity of the situation justifies putting in place controls which might affect the exercise of free movement of goods, services and persons at the internal borders with Germany and Sweden. [...] The Commission will not hesitate to use all tools at its disposal to guarantee free movement of goods, services and persons and the full respect of EU legislation.¹⁸

This strategy of trying to affect the position of the other party is often called *reverberation*. Putnam notes, however, that reverberation can also be negative and aim to apply foreign pressure to create a domestic backlash.¹⁹ This was exactly what occurred.

As mentioned, illegal immigration had for some time prompted proposals to suspend the Schengen Agreement, and in some countries intra-border checks had been put in place in lieu of proper border controls. Many therefore felt the Danish move might spell doom for Schengen altogether by openly challenging it. The ineffectual European response and the fact that it had been sidelined by heads of state in responding to the accelerating sovereign debt crisis made it opportune for the Commission to take a high-profiled role in resolving the matter of the Danish border controls. Also, the Danish Prime Minister had been in power only since mid-2008 and had presumably not had the opportunity to build a comprehensive network among

¹⁸ European Commission, "Persistent concerns about Danish border control measures – European Commission to intensify monitoring", *Press Release*, 18 July 2011.

¹⁹ Putnam, *op.cit.*, p. 456.

his European peers which could help him get the benefit of the doubt until the details of the border control system were hammered out. Instead, the Danish government came under close scrutiny by the Commission, which even sent a team of legal experts to monitor the exact implications of the reinforced border control, and faced international pressure, particularly from the German government.

The dilemma for the Danish government

As pressure mounted on the Danish government it retracted somewhat and insisted that the deal struck with the DPP would not violate the Schengen Agreement. While the Eurosceptic DPP seemed pleased that the heavy-handed response from Brussels demonstrated the ineptitude of Danish politicians to regulate their own affairs, the government did not want an international incident and quite possibly a trial at the ECJ that it hardly could expect to win. The matter of contention therefore soon came to resolve around the exact contents of the new border control. Would it, as the initial press releases and media coverage had suggested, entail the reintroduction of the border controls abolished under Schengen? Or would it be a system of minor intra-border checks to fight trafficking and other types of crime?

In a policy brief the Danish think-tank on foreign policy DIIS aptly concluded that

much indicates that it is impossible to reconcile domestic and foreign policy concerns. In the coming months Denmark fundamentally has two options: sticking to the agreement on border control that was presented in May 2011, or caving in by ensuring in liaison with the Commission that Danish border control is compatible with the Schengen acquis.²⁰

The situation was obviously unattractive on many accounts for the Danish government, which was struggling to avoid losing face and political credibility. If it was seen as bowing to pressure from the EU it would lose much respect domestically only months before the general election, but it was also clear that it would and could not unilaterally violate the Schengen Agreement. In other words, it would have to lose either at the domestic level or in the European-level game. Its simultaneous claims that the deal would be fully Schengen-compatible yet still reintroduce the border controls that Schengen had abolished were close to self-contradictory.

²⁰ T. Gammeltoft-Hansen and J. Herschend Christoffersen, "Danmarks Dilemma: Grænsekontrol og Schengen", *DIIS Policy Brief*, Copenhagen, Danish Institute for International Studies, June 2011 [author's translation].

An attempted solution: constructive ambiguity

The crucial question was thus whether the proposed deal would be in line with Schengen. The only way to answer it was to evaluate the exact specifications of the proposed arrangements, but as the Commission's team of legal experts found out, the specificities were still shrouded in uncertainty. It seems clear that the particularities had not been established during the initial negotiations between the DPP and the government, since priority was given to finding a compromise that allowed for a speedy settlement on the pension reform the deal was nested in.

When the international consequences became obvious, the government began to backtrack from its position and insisted that the agreement would comply with Denmark's international obligations, as mentioned above. The government also underlined the fact that the proposed measures would correspond to what is already practiced in Germany, Sweden and other places.²¹ The Minister of Justice Lars Barfoed also said that there "had been no written study of the legal implications in the proposed measures",²² which must be taken as a strong indication that the Danish government began to worry that the situation might end with a lost trial before the European Court of Justice. In other words, the government decided to respond to the international criticism by assuring its European partners that their fears were unfounded. But convincing the other governments and the Commission that this was indeed the case required more concrete details on the border control regime to be implemented.

The vagueness of the deal that had initially served the Danish government turned out to be a double-edged sword. It had allowed the DPP to present the package deal as a major concession to compensate for the fact that it backed an unpopular economic reform, but also made it impossible to refute the consternation that Denmark was balking at the Schengen Agreement. Moreover, as the issue became politicized it became pertinent that the government could detail exactly what it purported to do.

²¹ Ritzau, "Uforstående minister: Tyskland praktiserer jo samme grænsekontrol", *Politiken*, 31 May 2011.

²² K. Pedersen, "Grænseslagsmål foregår i blinde", *Politiken*, 10 June 2011 [author's translation].

On 8 June 2011, therefore, the government put forward a more detailed agreement, backed up by an international press release in English. The press release began by noting that "[o]n May 11 2011 the Danish government and the Danish Peoples Party concluded an agreement on strengthening the customs border controls in Denmark".²³ There was no reference to "reinstating" or "reintroducing" border controls as the DPP had proudly proclaimed in Danish media following the conclusion of the deal. The international text could also dismiss concerns on other accounts by noting that

[t]he agreement aims first and foremost at enhancing customs control and implies increased controls in relation to the smuggling into Denmark of mainly goods and items. The agreement also implies a strengthening of policing in order to enable the Danish police to act upon specific requests from customs officers. However, this does not mean that the Danish police will be permanently present at the border. It also is important to bear in mind that the agreement in no way implies that the police will carry out checks on individuals at the Danish border, just as there is no question of introducing passport control in relation to the other Schengen States. During the negotiations, the Danish Government has paid close attention to ensuring that the agreement is fully compliant with Denmark's EU obligations. The government will naturally continue to do so during the implementation phase.

The Danish Government and the relevant authorities are engaged in a dialogue with the Commission about the practical implementation of the agreement. A meeting between the Commission and the Danish Government has been held in order to clarify a number of points where misunderstandings might have occurred regarding the precise nature of the Danish efforts to enhance customs control. The Danish Government will provide the Commission with further information and expects the dialogue to continue.²⁴

This seemed to address all the concerns raised against the border control agreement. Border controls would only be "enhanced [...] in relation to the smuggling into Denmark of mainly goods and items".²⁵ The Schengen Agreement does allow for certain checks in relation to preventing smuggling of illicit goods. Also, the text stresses that the Danish police will not be permanently present at the border and that the police will not carry out checks on individuals at the Danish border or passport checks. Finally, it emphasizes the fact that there is an ongoing dialogue

²³ Ministry of Taxation, *The Danish agreement on border controls*, 8 June 2011.

²⁴ *Ibid.*

²⁵ *Ibid.*

between the Danish government and the Commission which can help "clarify a number of points where misunderstandings might have occurred".²⁶ This press release in other words dismissed all concerns that the agreement would not live up to the requirements of the Schengen Agreement.

However, the Danish government soon came under fire as the English version of the text was manifestly not a translation or a summary of the original Danish agreement. Danish news media reported the incongruence of the two text versions, and the Social Democratic spokesman on financial affairs, Morten Bødskov, commented that "[t]o the Danish People's Party and the Danes there is one content, and when explaining itself to its European counterparts in English, the agreement takes on an entirely different character".²⁷ He also said he would ask the government to clarify which agreement was the real one, the Danish or English one.

The Danish version was entitled "Permanent border control in Denmark (strengthened border control)". According to the agreement, the objective is a "substantial strengthening and permanent and visible control at the Danish border crossings".²⁸ The scope of the agreement also appears broader in the Danish text, which notes that the measures will "not least concern theft and robberies committed by gangs of foreigners, the trafficking of drugs, weapons, persons and large sums of money and tax avoidance from the Danish state by using foreign labour".²⁹ The Danish text thus appears much more heavy-handed than the English text.

Given the importance of the matter this can hardly be put down to errors in the translation or general neglect with regard to the particular phrases employed. Instead, this would appear to be an example of what is often termed 'constructive ambiguity', that is, the use of wordings that are deliberately left sufficiently vague to

²⁶ *Ibid.*

²⁷ N. Braagaard, "To tekstudgaver af grænsekontrol", *Nyhederne, TV2*, 11 June 2011 [author's translation].

²⁸ Ministry of Finance, "Permanent grænsekontrol i Danmark (aftale om styrket grænsekontrol)", *Press Release*, May 2011 [author's translation].

²⁹ *Ibid.*

support two or more dissimilar interpretations.³⁰ It allows two or more sides to accept a text even though substantial disagreement persists.

The strategy of employing constructive ambiguity seems to have been adopted when publishing two different text documents in English and in Danish. The Danish text is comprehensive while the English text is more of a short summary. Furthermore the English version supported the interpretation the Danish government wanted to convey at the European level, whilst the Danish interpretation catered to the DPP and supported its claims of having ensured the reinstatement of border controls to stem the tide of criminal activities into the country. It also speaks of "mobile control teams, who will carry out visible and targeted customs control etc. of the travelers".³¹ Finally, the Danish text specified that the Danish government would actively pursue an amendment of Schengen to allow for a temporary suspension of the accord in cases of massive immigration or the failure of one or more member states to properly secure the external border.

In both versions, a number of measures to be undertaken were listed. An additional 98 man-years would be allocated to increase the number of customs officers at the borders, and new permanent facilities were to be established at border crossings, with "a daily presence of customs officers". Both versions make clear that this is a customs control, backed up by police officers who are not stationed directly at the border, rather than a systematic check on every individual seeking to enter Danish territory.

In substantive terms, the agreement as it was portrayed in both languages therefore ultimately appeared to implement a permanent presence of customs officers carrying out control checks to stem the tide of illegal trafficking of illicit goods, persons and other criminal activity, but not of police officers. From a diplomatic point of view, the wordings employed in the two communications differed enough to allow the government to calm its European partners while maintaining that the deal involved significant new measures. As such, the Danish government tried to reconcile

³⁰ C. Bell, *The Conventions of Crisis: A Study of Diplomatic Management*, Oxford, Oxford University Press, 1971; P. Dražen, "Use of Ambiguities in Peace Agreements", in *Language and Diplomacy*, DiploProjects, 2001, pp. 163-200.

³¹ Ministry of Finance, "Permanent grænsekontrol i Danmark (aftale om styrket grænsekontrol)", *op.cit.*

the need to maintain the support of the DPP with the necessity of resolving the diplomatic crisis at the European level by the strategic use of ambiguous language in its communications. Ultimately, the Schengen-compatibility of the actual measures implemented would be closely evaluated in terms of the international obligations Denmark had assumed. The Commission maintained its decision to monitor closely the development of the new and permanent customs checks, and the Germans also remained wary of the proposed initiatives. But at least the matter was temporarily settled as the Commission would have to await the actual implementation before it could examine whether the Schengen Agreement was indeed violated. This gave the Danish government a respite from a strong international pressure which had caused it to lose face and frustrated its attempt to set a domestic agenda which could help it claw back victory in the upcoming election.

The endgame of border control

As more customs officers were deployed on the borders and the construction of new permanent facilities planned, these measures were watched with intense attention from European capitals. Meanwhile the Danish government had gradually become more prone to emphasizing that the measures would not infringe on the Schengen Agreement. On 29 August 2011, a Danish newspaper even cited a prominent DPP politician who demanded that the Minister of Taxation confirm his "loyalty" to the deal after he had publicly described it as a series of "sample-based controls".³² "We did not agree anything concerning some sample-based control. We agreed to a permanent border control", he fumed.³³ The change of language, from "substantial strengthening" and "permanent" to "sample-based" border control, was a crucial element in the Danish government's attempt to make the measures more acceptable to the European level – albeit at the cost of enraging the DPP. This again demonstrated how the government had gradually retracted from its original deal with the DPP by changing the language used to depict the arrangement.

In the end, the debacle came to a definite end as the centre-right government was ousted in the September 2011 general election. The new government immediately

³² Quoted in Ritzau, "DF: Skatteminister skal bevise sin loyalitet over for grænsekontrollen", *Politiken*, 29 August 2011.

³³ *Ibid.* [author's translation].

reassured its European partners of its intent to abide by the Schengen Agreement and that the establishment of "permanent" facilities at the border would be cancelled.³⁴ Instead of increasing the number of customs officers present on border crossings, the new government announced plans to strengthen the tax authorities more generally to fight trafficking, smuggling and tax avoidance.

The new government did not consider itself bound by the deal struck by the centre-right parties with the DPP, and with the Danish EU presidency coming up it was a welcome opportunity to establish good rapport and generate a sense of goodwill among the other European countries. This was met with relief in Berlin and Brussels.³⁵ The prospect of a "permanent" border control, whether in the form of customs checks or other checks, sounded too much like a proper border.

In many respects, the issue was of greater symbolic than practical importance. The DPP had wanted to establish once and for all that there would be some border control when entering Danish soil, but had not been overly specific about what that would entail inasmuch as it would counter cross-border crime. According to DPP politician Thulesen Dahl,

[b]order controls were torn down ten years ago due to EU cooperation on free movement. But also due to the fact that borders were seen as the scars of history. For the supporters of the EU, border controls have been the very symbol to mark that the characteristics of nation-states are being erased [...] This deal contains both something practical in terms of fighting cross-border crime, but it is also symbolic that things are now back to where they were ten years ago.³⁶

The Germans in particular were, conversely, haunted by the memories of a deeply divided Europe, as Foreign Minister Westerwelle said clearly after a meeting with his Danish colleague, and opposed any moves to recreate borders even though the DPP leader had explained that "most people will get only a friendly nod"³⁷ rather than being subjected to a actual check when crossing the border.

³⁴ Ritzau, "Rød regering sløjfer blå grænsekontrol", *Information*, 1 November 2011.

³⁵ Ritzau, "Tyskland takker for droppet grænsekontrol", *B.T.*, 6 November 2011.

³⁶ Quoted in M. Hjortdal, "DF fejrer grænsekontrol med baconchips og lyserød champagne", *Politiken*, 11 May 2011 [author's translation].

³⁷ Ritzau, "Pia K.: De fleste får et venligt nik", *Nyhederne*, TV2, 11 May 2011.

The duality of politics in the modern Europe

If the Danish government had thought the deal would go unnoticed in European capitals, it was soon dismayed to see that it instead gave rise to an outcry in Berlin and Brussels. This was in many ways a predictable turn of events, as Germany and the European Commission would have no choice but to react if the Schengen Agreement was seen as being transgressed upon. Nevertheless, it would seem that the strong international reaction came as a surprise to Danish policy-makers, who had focused their attention on getting the pension reform through.

Marlene Wind noted in an interview with Danish newspaper *Politiken* that "[i]n a global world one cannot control what is a national agenda and what is the message for Brussels. International media have received the signals that have been sent in the domestic context, and that cannot be controlled. It is incredibly naive to believe one can control how this is perceived abroad.³⁸ In other words, the attempt to play a two-level game by presenting different messages to either level was inherently flawed.

A similar conclusion was reached by the Danish Institute for International Studies in an analysis of the debacle over border controls: "The problem is perhaps that there is after all some European public, which makes it very difficult to maintain a clear distinction between a purely domestic and a corresponding European discourse".³⁹ The government had presumably thought it could make some high-sounding concessions to the DPP without incurring the ire of its European partners. This judgment was very wrong and perhaps betrayed a fundamental misreading of the implications of European integration on domestic politics. Matters which are at the heart of the integration process receive far more attention in foreign capitals than the Danish government by all accounts had foreseen.

This sentiment was mirrored abroad. The German daily *Süddeutsche Zeitung* very accurately argued that

³⁸ Marlene Wind quoted in M. Hjortdal, "EU-ekspert: Danmark er ved at gentage Muhammedfejlen", *op.cit.* [author's translation].

³⁹ Gammeltoft-Hansen and Herschend Christoffersen, *op.cit.* [author's translation].

[t]his presumed misunderstanding began when the Danish government thought it could spread a hard version of its plans in Denmark and a soft version in Europe. This results from a considerable belief in national boundaries. And a very limited understanding of how politics works in a common Europe.⁴⁰

In an integrated Europe, the traditional barriers between foreign and domestic politics can no longer feasibly be maintained. This has substantial ramifications for modern diplomacy in Europe. Diplomacy has traditionally been conceived as the conduct of foreign affairs between representatives of states insulated from society at large. Diplomats enjoy special privileges and their doings are usually shrouded in secrecy. Domestic pressures and sentiments are bypassed by the interests of the state, and hence foreign policy is carried out with a view only to advancing the political objectives of the nation free from the whims of the populace and news media. The debacle over the Danish border controls highlighted that this is no longer the case.

National debates are immediately transmitted onto the European level. When the Danish public debate began to resolve around reintroducing border controls, it was of immediate concern for all countries in the Schengen area, who may see the freedom of movement impinged upon. That lies at the very heart of European integration – by ‘pooling sovereignty’ an issue becomes a matter of common concern. Insofar that the issue is important enough to warrant attention at a high political level, it cannot be restricted to a national context. By strengthening these linkages, European integration also weakens the distinction between the domestic and European political levels. In the same vein, for these reasons rhetoric proved to be of much greater importance than the Danish government would appear to have noticed. The use of words such as ‘permanent border control’ and ‘reinstatement of the border control’ that Schengen had abolished were expedient for domestic reasons, but were also sure to raise alarm in the neighbouring countries.

International relations and domestic politics

The failure to recognize the importance of politics at the international level is most evident from the fact that the Foreign Ministry was not consulted during the

⁴⁰ Quoted in Ritzau, “Merkel hænger Løkke til tørre i grænsesag”, *Berlingske*, 24 June 2011.

negotiations with the DPP that resulted in a new agreement on border control.⁴¹ The Foreign Minister Lene Espersen became involved in the matter only when international pressure began to mount, and she was given the unenviable task of going on an international tour around European capitals to explain how the agreement on reintroducing permanent border controls would not be in violation with the Schengen Agreement.

The Danish government thus ignored the international ramifications of its domestic deal-making with the DPP altogether, concentrating instead on finding a settlement that would suffice in terms of national political concerns. In fact, the Foreign Ministry or its Minister was not at all involved in the domestic negotiations despite their consequences on Denmark's foreign relations. The Prime Minister later said that there "could perhaps have been a better advance notice" for the Foreign Ministry.⁴² Foreign Minister Espersen concurred that "as the Prime Minister said yesterday, had we known how the international community would react, it is possible there might have been a need for a different approach from the very beginning".⁴³

The new proposed border control regime was therefore agreed to by the government with the Minister of Finance and the Minister of Taxation, the latter being responsible for the customs authorities. Instead of giving advance notice to the international partners to pave the way for the adjustments, the change of Danish border control was presented as a '*fait accompli*' that would involve a radical break with the *status quo ante*. This disregarded the stake Germany, Sweden and the other Schengen countries more generally had in the matter and rendered it very difficult to portray the agreement as anything but a unilateral decision that would infringe on the Schengen *acquis*.

Historically, international relations have been of the utmost importance for states, and domestic concerns were subjected to the 'reason of the state'. The conduct of foreign relations was largely kept separate from national debates, and it was widely accepted that what was said in the secretive international circles needed not

⁴¹ H. Davidsen-Nielsen, "Grænseaftalen blev driblet på plads uden om Lene E.", *Politiken*, 17 June 2011.

⁴² L. Simonsen, "Man skal ikke være bagklog", *Politiken*, 17 June 2011 [author's translation].

⁴³ *Ibid.*

necessarily be fully congruent with public debates and rhetoric. But in this case, international concerns were wholly subjected to the national concern of finding a way to get the DPP to accept the proposed pension reform. It was seen as one of the last good chances for the incumbent government to turn the electoral tide and win reelection, and in the context of the economic crisis the financial consequences of removing a costly early retirement scheme was an important priority.

While it remains unclear whether the omission of the Foreign Ministry was owed to a disregard of the international repercussions or simple negligence, it does illustrate how domestic concerns took priority over international ones. While international pressure soon forced the government to soften up the evocative language of the original deal with the DPP, the decisive argument was probably the prospect of the agreement being found to be illegal in the sense of being incompatible with the Schengen Agreement that Denmark had ratified. As such, the debacle over border controls is a clear demonstration that foreign policy considerations no longer have the unreserved primacy they once held for political decision-makers.

The changing fabric of European diplomacy

What does the debacle over the new Danish border control regime in 2011 tell us about European-level diplomacy? Clearly, it would have been impossible to make such an agreement without due considerations for the international implications in a less benign foreign policy environment. For instance, in the historical period from German unification to the end of the Second World War, Danish foreign policy was dominated by the threat posed by Germany, and political moves had to be perceived and evaluated in this light. National concerns have gained importance relative to international concerns as the immediate foreign policy environment has gradually become less hostile in the twentieth century.

This requires decision-makers to synchronically evaluate a range of dilemmas and questions that pertain to domestic and international circumstances. Failing to understand how one is engaged in a political 'game' at the European level as well as the domestic level, which may often overlap, leads to an erroneous evaluation of available choices and the costs associated with different policy alternatives. These

are all well-known facts, but the debacle over Danish border controls illustrates that they are often forgotten.

This paper has explored how what originated as a purely domestic political affair escalated into an international debacle over Danish border controls. We have seen that the Danish government pursued a strategy of issue linkage to overcome the deadlock with regards to its proposed pension reform. It had thought it could keep the debate over border controls in a national context, effectively presenting one interpretation to the Danish population which would be expedient to the DPP and another to the rest of Europe. But this is not how politics functions in an integrated Europe, where the very rift between international and domestic affairs has lost relevance due to the process of European integration. Legislation from Brussels impacts directly on domestic affairs, and consequently domestic affairs have in many instances become relevant to international partners. Accordingly, diplomacy no longer rests on high-flung meetings between diplomats, but increasingly becomes an integrated element of day-to-day policy-making. In his seminal work on two-level games, Robert Putnam noted that "[d]omestic politics and international relations are often somehow entangled. The [...] interesting questions are 'when?' and 'how?'".⁴⁴ The debacle over the Danish border controls was a clear demonstration of the linkages between domestic politics and international relations in an integrated Europe. Once the Danish government linked the issue of pension reforms to the issue of border controls, it transformed the negotiation context into a two-level game. This forced the Danish government to re-evaluate the agreement it had reached with the DPP over border controls and ensure it would be in accordance with the Schengen Agreement.

⁴⁴ Putnam, *op.cit.*, p. 427.

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