

Parliamentary oversight of the security sector:

Principles, mechanisms and practices

"Vis consilii expers mole ruit sua"

(Force without judgment, collapses under its own weight)

Horace, Odes, 3, 4, 65

The following persons participated in the production of the
IPU-DCAF handbook on parliamentary oversight of the security sector

Editors-in-Chief

Philipp Fluri (Switzerland) and Anders B. Johnsson (Sweden)

Editor and Lead Author

Hans Born (Netherlands)

Contributors

Alexey Arbatov (Russia), Jean-Christophe Burkel (France), Eva Busza (USA), Marina Caparini (Canada), Umit Cizre (Turkey), David Darchiashvili (Georgia), Jonah Isawa Elaigwu (Nigeria), Hans-Peter Furrer (Switzerland), Denise Garcia (Brazil), Suzana Gavrilesco (Romania), Wilhelm Germann (Germany), Owen Greene (UK), Miroslav Hadzic (Serbia and Montenegro), Karl Haltiner (Switzerland), Heiner Hänggi (Switzerland), David Hobbs (UK), Jan Hoekema (Netherlands), Rogier Huizenga (Netherlands), Andrzej Karkoszka (Poland), Peter G. Kelly (USA), Simon Lunn (UK), Tom McDonald (UK), Dorijan Marsic (Slovenia), Gian Giacomo Migone (Italy), Michael F. Noone (USA), Aleksandr Pikayev (Russia), Christine Pintat (France), Andreas Prüfert (Germany), Christopher Sabatini (USA), Liliane Serban (Rumania), Ravinder Pal Singh (India), Anders C. Sjaastad (Norway), Bauke Snoep (Netherlands), Svitlana Svetova (Ukraine), Jan Trapans (Latvia), Matias Tuler (Argentina), Marlene Urscheler (Switzerland), Pentti Väänänen (Finland), Biljana Vankovska (Macedonia), Marie Vlachova (Czech Republic), Casper W. Vroom (Netherlands), Tamas Wachsler (Hungary), Donna Winslow (Canada), Herbert Wulf (Germany).

Editorial Board

Willem van Eekelen (Netherlands), Andreas Gross (Switzerland), Miroslav Filipovic (Serbia and Montenegro), Stepan Sulakshin (Russia), Dimitro Tabachnik (Ukraine), Ahmad Husni Hanadzlah (Malaysia), Adeseye Ogunlewe (Nigeria) and Elissavet Papadimitriou (Greece) - members of the IPU Committee on Political Questions, International Security and Disarmament - and Beth Mugo (Kenya) and Ricardo Vasquez (Argentina), members of the IPU Committee on Parliamentary, Juridical and Human Rights Questions

Language Editor

Oliver Wates (UK)

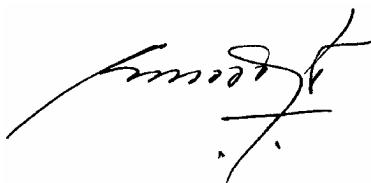
Original version: English, Geneva, 2003

Preface

Because security is central to people's well-being, it is essential that their views find expression in the nation's security policy. That policy has to incorporate the underlying values and principles relating to security which the State seeks to foster and protect.

There is thus a clear need for the people's elected representatives in parliament to work closely with the government and the security sector. Yet although they work for the same end, their roles are and should be fundamentally different. Parliament is responsible for setting the legal parameters, adopting the budget and overseeing security activities. It can only exercise these responsibilities in full if it has broad access to information, the necessary technical expertise, and the power and intention to hold the government to account. This, in turn, requires a social fabric that is underpinned by trust and dialogue.

In Chile, relations between society and the armed forces have improved over the years. Today's international community will find in Chile an atmosphere of mutual respect and cooperation, which we hope will be further consolidated in the future. We are confident that this handbook will help to ensure that all the key players in the security arena will steer their cooperative endeavours towards the common good of each and every citizen.



Senador Sergio Páez Verdugo
President of the Council of the Inter-Parliamentary Union

Foreword

From time immemorial, national sovereignty and security have been considered essential to a viable state. Nowadays, the part that is played by those whose job it is to provide security is undergoing considerable change. New types of armed conflict and growing ties between states have prompted innovative responses and new thinking about the very concept of security. The attacks of 11 September 2001 and their aftermath have only underscored this need.

Effective parliamentary oversight has thus become all the more crucial to ensure that these new responses are devised and implemented with full transparency and accountability. In its absence, there is a danger of security services misinterpreting their mission and acting like a state within the state, either placing heavy strains on scarce resources, or exerting excessive political and economic influence. They may hamper democratisation and even increase the likelihood of conflict. While transitional, war-torn or crisis-afflicted societies are at particular risk, stable democracies also have to grapple with civil-military relations, transforming and managing them so as to keep pace with the changing security environment.

The inherent nature and dynamics of the security sector represent a real challenge to effective parliamentary oversight. The variety of the often very technical issues involved, the significant size and complex organisation of security personnel and, frequently, the secrecy laws, rules and practices, make it very difficult for parliamentarians to work effectively unless they can avail themselves of independent research and expertise.

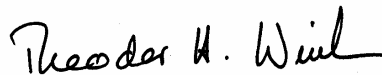
Against that background, the Inter-Parliamentary Union (IPU) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) agreed on the practical need for a concise and accessible guide that would offer a comprehensive set of practices and mechanisms which might shape parliament's contribution to security oversight. This handbook is the culmination of that idea. Throughout the drafting process the text has been scrutinised and sharpened by an editorial board of parliamentarians, and checked by various experts.

The handbook has been written on the assumption that there is no single model of parliamentary oversight which works for all countries. The rules and practices that are accepted and effective in one place may be unthinkable or irrelevant in another. Moreover, all parliaments do not have the same powers. Given these different realities, some of the suggestions the handbook contains may inevitably appear excessively idealistic. At the same time, the complex nature of security issues makes it impossible to treat all aspects in a single volume. The handbook should therefore be seen as a broad introduction to enhancing parliamentary oversight of the security sector which - it is hoped - will encourage the reader to carry out further research. At the end of the day, we hope that this publication will contribute to ensuring that security policy and practices genuinely reflect the aspirations of the people they are meant to serve.



Anders B. Johansson

Secretary General
Inter-Parliamentary Union



Ambassador Dr. Theodor H. Winkler

Director
Geneva Centre for the Democratic
Control of Armed Forces

What you can find in this handbook

The handbook is divided in eight sections, each containing several chapters, and can be read in two different ways. A complete reading of the Handbook will provide the most comprehensive understanding of security issues and the role of parliamentary oversight. However, it is also possible to make a selective reading of those sections and chapters which are of particular concern to the user. The index and various cross-references are designed for this purpose.

Throughout the handbook, there are separate boxes which clarify complex issues in the main text, provide examples of laws or regulations and highlight practices of parliamentary oversight of the security sector in various countries. At the end of most chapters there is a section called *What you can do as a parliamentarian*, where concrete recommendations are given. However, as stated before, these recommendations have to be looked at from the national context.

The first two sections set out the theoretical and analytical framework for the examination of parliamentary oversight of the security sector. Section I focuses on the evolving concept of security and provides a global overview of the role of Parliament and other state institutions in security issues. Major questions which are dealt with in Section I are:

- What are the recent developments in the security environment?
- What are the so-called new threats and responses?
- Why is parliamentary oversight of the security sector necessary?
- What are the main principles of democratic governance of the security sector?
- What is the role of the parliament vis-à-vis the government and the judiciary?

Section II describes all stages of the national security policy cycle as well the international regulations which are relevant to national security policy. The last two chapters of Section II present the role of civil society and the media and a gender perspective on security issues. Major questions are:

- What is the role of parliament in decisions relating to national security policy?
- How does international law limit or enhance opportunities for a national security policy?
- How do civil society and the media relate to the security sector, and how can parliament make use of their different contributions?
- How can security issues be communicated to the public?
- What is the role of women in the security sector?

Section III provides a Who's Who of the security sector, which includes the military, police and intelligence services, other state militarised organisations and private security companies.

- What are the main functions and specifics of each security service?
- Which internal and political accountability mechanisms are needed?
- How can parliaments implement effective oversight of the security services?

Section IV examines the tools and instruments that parliaments can use to oversee the security sector and provides answers to *inter alia* the following questions:

- Which tools may be used by parliaments to secure oversight of the security sector?
- How can parliamentary expertise on security issues be improved?
- What is the role of parliamentary inquiry and hearings on security issues?
- How can defence committees work effectively?
- What is the role of the ombudsman?
- How does the institution of the ombudsman for defence work?
- Why should parliamentarians visit the premises of security services?

Section V deals with circumstances which pose a specific challenge to security such as states of emergency, threats to internal security, terrorism and cyber-crime. It also outlines the implications of participating in international peace support missions which are often sent to areas where security is totally absent or fragile at best. Section V therefore deals, among others, with the following questions:

- How can the delicate balance be preserved between states of emergency and the preservation of internal security, and respect for human rights?
- What are the purposes and limits of a state of emergency?

- What are the changes since September 11? How can terrorism be distinguished from legitimate democratic protests? What are the consequences for the international security of states? What is the role of parliament in this area?
- What is the relevance of parliament's involvement in decisions to send troops abroad in international peace support operations?

Sections VI, VII and VIII analyse three sets of resources related to the security sector. Section VI focuses on the defence budget and its control both by parliament and *a posteriori* by state auditing bodies.

- How can the budget be a key element for security?
- How can transparency and accountability be applied to security budgeting?
- What are the conditions for the proper oversight of security budgeting?
- How can the security sector be audited? Why is an independent audit important and how does it function?

Section VII is about the personnel of the security sector and aims to assist parliaments in regulating the recruitment, selection and training of servicemen, retirement and pensions schemes, conscription and alternative service.

- How can democratic values be inculcated in the personnel in the security sector?
- Can servicemen form military unions?
- What is the professional ethos of the sector?
- How is military conscription and alternative service arranged in various countries?
- Do codes of conduct for servicemen exist? Are international standards available?
- Which aspects of the management of personnel in this sector are relevant to parliamentarians?

Finally, section VIII deals with material resources of the security sector, in particular procurement (what to buy from whom), arms trade and transfers.

- What are the legal constraints?
- What is comprehensive decision-making on procurement about?
- What circumstances justify secrecy?
- How can parliament assess these issues?

Contents

Foreword

What you can find in this Handbook

List of boxes

Section I

Evolving security concepts and actors: a challenge faced by parliaments

Chapter 1 – Changing security in a changing world

Chapter 2 – Relevance of parliamentary oversight

Chapter 3 – Roles and responsibilities of parliament and other state institutions

Section II

Oversight of national security policy

Chapter 4 – Forging a national security policy

Chapter 5 – National security policy and international regulations

Chapter 6 – The role of civil society and the media

Chapter 7 – A gender perspective on security policy

Section III

The main operational components of the security sector

Chapter 8 – The military

Chapter 9 – Other state militarised organisations

Chapter 10 – Police structures

Chapter 11 – Secret and intelligence services

Chapter 12 – Private security and military companies

Section IV

National security under parliamentary scrutiny: conditions and mechanisms

Chapter 13 – Conditions of effective parliamentary oversight

Chapter 14 – Parliamentary mechanisms applied to the security sector

Chapter 15 – Parliamentary defence or security committees

Chapter 16 – The Ombudsman

Chapter 17 – Visiting the premises of security services

Section V

Overseeing security services in action: special circumstances and operations

Chapter 18 – States of exception

Chapter 19 – Preserving internal security

Chapter 20 – Terrorism

Chapter 21 – Security and information technologies: new tools and challenges

Chapter 22 – International peace missions

Section VI

Financial resources: achieving effective budgetary control in relation to security

Chapter 23 – Security and the power of the purse

Chapter 24 – The audit of security-related national budgetary expenses

Section VII

Human Resources in the Security Sector: ensuring professionalism and democratic oversight

Chapter 25 – Promoting democratic values within the security sector

Chapter 26 – Personnel management in the security sector

Chapter 27 – Military conscription and conscientious objection

Section VIII

Material resources: realising effective oversight of arms transfer and procurement

Chapter 28 – Arms and military equipment procurement

Chapter 29 – Arms trade and transfer

The Geneva Centre for the Democratic Control of Armed Forces

The Inter-Parliamentary Union

Thematic index

List of Boxes

- Box N° 1 Other security threats today include, alone or combined ...
- Box N° 2 Different kinds of security arrangements
- Box N° 3 Possible functions of the main branches of state concerning the security sector
- Box N° 4 Good governance as an important value for the democratic oversight of the security sector
- Box N° 5 Questioning national security policy
- Box N° 6 Direct democracy and ratification of international treaties and other major agreements: the case of Switzerland

- Box N° 7 Civil society in Latin America: a practical illustration of the role and importance of civil society organisations

- Box N° 8 New kinds of wars: hard times for freedom of the press
- Box N° 9 Freedom of the press after 11 September 2001
- Box N° 10 Parliamentary websites
- Box N° 11 Parliaments and the media
- Box N° 12 Gender in peace processes
- Box N° 13 A gender perspective on peace operations and processes
- Box N° 14 Military female personnel force strengths: examples of NATO countries
- Box N° 15 Women's involvement in security policy as part of gender mainstreaming
- Box N° 16 New dimensions and challenges brought about by the inclusion of women in the security sector
- Box N° 17 Countries without militaries
- Box N° 18 Defence reform: what purpose?
- Box N° 19 The use of the military in civilian law enforcement in South Africa
- Box N° 20 Examples of other state militarised units in selected countries
- Box N° 21 Key features of democratic policing
- Box N° 22 Dangerous distortions and circumstances
- Box N° 23 Policing in Eritrea: a developing case
- Box N° 24 Parliament and special funds assigned to intelligence agencies: the example of Argentina
- Box N° 25 Some practices of parliamentary committees dealing with classified documents
- Box N° 26 Private security and military companies and some potential dangers for democracy
- Box N° 27 Instruments and tools that may be used by parliament for securing the democratic oversight of the security sector

- Box N° 28 Proactive strategies for parliamentary oversight of the security sector
- Box N° 29 Mechanisms and practices for enhancing parliamentary expertise on security issues: a few suggestions

- Box N° 30 Common features of the parliamentary machinery and procedures of control of the executive
- Box N° 31 Suggestions for effective questioning
- Box N° 32 Key characteristics of parliamentary committees of inquiry
- Box N° 33 The Commission of Inquiry into the deployment of Canadian forces in Somalia: an illustration of the public impact of parliamentary reports on security issues

- Box N° 34 Possible key functions of a parliamentary committee on defence and security issues
- Box N° 35 Joint sessions of the committee on foreign affairs and the committee on defence of the Stortinget (the Norwegian Parliament)

- Box N° 36 The ombudsman
- Box N° 37 Overview of defence ombudsmen in selected countries
- Box N° 38 The German Parliamentary Commissioner for the Armed Forces
- Box N° 39 The Argentine case
- Box N° 40 Optional protocol to the Convention Against Torture enlarges possibilities for visits to the premises of security services

- Box N° 41 States of emergencies: purpose and principles
- Box N° 42 Preserving both security and democracy
- Box N° 43 Distortions with serious consequences
- Box N° 44 UN Security Council's response to 11 September
- Box N° 45 Fight against terrorism
- Box N° 46 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS N° 108)

- Box N° 47 Peacemaking, peacekeeping, peace-enforcement, peace-building: some useful UN definitions
- Box N° 48 The process of deploying UN peacekeeping operations step by step
- Box N° 49 Rules of engagement of peace missions
- Box N° 50 UN training of peacekeepers
- Box N° 51 The budget: a key instrument for democratic governance
- Box N° 52 Why should parliament take an active part in the budget?
- Box N° 53 Defence expenditures as % of GDP of world areas and selected countries
- Box N° 54 Planning, Programming and Budgeting System (PPBS)
- Box N° 55 Basic components of the Defence Budget: the Spanish defence budget 2002
- Box N° 56 Key obstacles for transparent security budgeting
- Box N° 57 Three levels of classification in the security budget
- Box N° 58 Main problems constraining effective budget control of the security sector
- Box N° 59 Defence budget practices in selected states of South-Eastern Europe
- Box N° 60 The Auditor General
- Box N° 61 The role of the UK National Audit Office in the parliamentary oversight of the security sector
- Box N° 62 The Georgian parliament and budget control
- Box N° 63 Council of Europe Recommendation on the right of association for members of the professional staff of the armed forces

- Box N° 64 Leadership and civic education in the German armed forces: the principles of "Innere Führung"
- Box N° 65 Code of conduct for law enforcement officials
- Box N° 66 The OSCE Code of Conduct on Politico-Military Aspects of Security (1994): key features
- Box N° 67 Personnel management: focal points for parliamentarians
- Box N° 68 Military service around the world
- Box N° 69 Harassment of conscripts
- Box N° 70 UN Commission on Human Rights resolution 1998/77: conscientious objection to military service
- Box N° 71 Alternative service: the case of Switzerland
- Box N° 72 Why parliamentarians should care about arms procurement
- Box N° 73 Weak or ambiguous arms procurement policies or highly confidential procurement processes may lead to ...

- Box N° 74 Netherlands policy on defence procurement: the parliamentary oversight dimension
- Box N° 75 Arms transfer: a definition
- Box N° 76 Regional arrangements on arms transfer
- Box N° 77 Making arms sanctions smarter: what parliaments can do
- Box N° 78 Trading surplus weapons: a negative by-product of disarmament
- Box N° 79 Estimated figures on the trade of small arms
- Box N° 80 UN Programme of Action against illicit trade in small arms and light weapons: focal points for parliamentarians
- Box N° 81 The role of parliament in arms export controls: transparency and accountability in EU countries

Section I

**Evolving security
concepts and actors:
A challenge faced by parliaments**

Changing security in a changing world

During the last decade the global security situation has changed dramatically. While old threats have faded away, new and daunting challenges have taken their places. This has spurred new thinking about the very ideas underlying security, conflict and peace.

Peace and security in democracies

Not all conflicts pose a threat to peace and security. In every society competing and often opposing views exist on a wide range of issues. In a democracy, freedom of expression allows people to relay these views to their elected representatives. They, in turn, have the task of discussing and weighing the issues at stake through a public debate. This procedure enables democracies to defuse conflict and to seek viable compromises which have the support of society at large. Not surprisingly, it is often in the absence of well-functioning democratic institutions that tensions escalate beyond control and turn into violent conflict. Given its built-in mechanism for channelling conflict, democracy has come to be seen as intrinsically linked to peace and security.

This link stands out for a further reason: it is now widely recognised that security is not a goal in itself, but should ultimately serve the well-being of the people. Democracy, rooted in an effective parliament, is most likely to give this idea practical meaning:

"The sovereignty of the community, the region, the nation, the state, makes sense only if it is derived from the one genuine sovereignty – that is, from the sovereignty of the human being." – Vaclav Havel

National security, with its focus on the protection of the state, "becomes" human security, which puts the individual and community first. In practice, this has led states to widen their responses to threats against security by including:

- ✓ **Preventive action:** initiatives to prevent conflicts, such as people-centred conflict resolution and peace-building actions;
- ✓ **Intervention:** in extreme cases, when other efforts fail – to intervene in internal conflicts in order to protect populations at great risk;
- ✓ **Reactive action:** relief action, which is necessary during or after a civil war in order to provide support to civilians who suffer through war. This includes building camps for displaced people, granting asylum to refugees or providing relief.

From military security to comprehensive security

The shift in focus to "human security" goes hand in hand with a broadening of the security concept beyond strictly military considerations. There is a growing consensus that the issue of security should be approached in a comprehensive manner by also taking non-military factors into account (see Box N°1).

Box N° 1

Other security threats today include, alone or combined ...

- ▷ **Political threats** such as internal political instability, failed states, terrorism and human right abuses;
- ▷ **Economic threats** such as poverty, the growing gap between rich and poor countries, international financial recession, the impact of an economically powerful or unstable neighbouring state, and piracy;
- ▷ **Environmental or man-made threats** such as nuclear disaster, global ecological changes, degradation of land or water, lack of food and other resources;
- ▷ **Social threats** such as minority/ majority conflicts, overpopulation, organised crime, transnational drug-trafficking, illegal trade, uncontrolled mass immigration, and disease.

The advantage of a broader security agenda is that it provides a more comprehensive understanding of the threats to security and the responses needed. The disadvantage is that security services, which include all organisations that have the legitimate authority to use force, to order force or to threaten the use of force in order to protect the state and citizens, can become too powerful if they become active in non-military areas of society. Moreover, the security sector may not have the necessary expertise to respond to these new challenges.

From individual state security to security cooperation among states

The idea that national security cannot be achieved through national "self-help" alone, but that security cooperation among states is needed is very old. In the 19th century

the “balance-of-power” approach was prominent. In the 20th century collective security organisations flourished, such as the League of Nations and its successor the UN, but also collective defence organisations such as NATO.

Since the end of the Cold War, there has been an upsurge in internal conflicts. Recently terrorism has come to dominate headline news. Globalisation has heightened interdependence between states, including in the area of security. Nowadays threats to security in one country can easily spill over and destabilise a region or even world peace. This new reality, together with a broadening of the security agenda, has given further impetus to international security cooperation.

Box N° 2

Different kinds of security arrangements

▷ Collective Defence

Collective defence is defined as a treaty wherein two or more states promise to assist each other in case of an outside attack. The most prominent examples of this type of security arrangement are NATO and the Organisation of American States.

▷ Collective Security

With this system, the community agrees to renounce the use of force and to assist any member of the community in the event that another resorts to force. It is a system providing for a forceful reaction by the international community to a breach of international peace. Unlike collective defence, collective security is directed against an attack from the inside of the community. The UN is a typical example of a collective security system. Under Art. 41 and 42 of the Charter, the international community is supposed to exert pressure on the peace-breaker, be it non-military coercion or the use of military force.

Source: SIMMA, Bruno: The Charter of the United Nations, 1995

▷ Cooperative Security

Cooperative security links collective security to the comprehensive approach towards security. It can be defined as “a broad approach to security which is multidimensional in scope; emphasises reassurance rather than deterrence; is inclusive rather than exclusive; is not restrictive in membership; favours multilateralism over bilateralism; does not privilege military solutions over non-military ones; assumes that states are the principal actors in the security system, but accepts that non-state actors may have an important role to play; does not require the creation of formal security institutions, but does not reject

them either; and which, above all, stresses the value of creating habits of dialogue' on a multilateral basis".

Source: EVANS Gareth: Cooperating for Peace, 1993

A "collective defence arrangement" is one of the most far-reaching forms of cooperation. In addition, less cohesive security cooperation exists through networks of bilateral or multilateral agreements without a formal or overriding military organisation.

The decision to join a security cooperation organisation, and in particular a collective defence organisation, will have a strong impact on a country's security situation. In principle, such cooperation enhances national security as it ensures a collective "fist" against threats. Membership, however, comes at a price: a country will be obliged to adapt itself to the alliance's objectives and requirements, thereby limiting its options for defining a national security policy. Moreover, it will affect parliamentary oversight as the decision-making process shifts partly from the national to the international arena.

Relevance of parliamentary oversight

There is a widespread belief that security policy is a 'natural' task for the executive as they have the necessary knowledge and can act quickly. Parliament tends to be regarded as a less suitable institution for dealing with security issues, especially given its often time-consuming procedures and lack of full access to the necessary expertise and information. However, as with any other policy area, parliament is entrusted with reviewing and monitoring the executive. There are at least four reasons why such oversight in security matters is crucial:

A cornerstone of democracy to prevent autocratic rule

Former French Prime Minister Georges Clémenceau once stated that *"War is a much too serious matter to be entrusted to the military"*. Beyond its humorous side, this statement recalls that in a democracy, the representatives of the people hold the supreme power and no sector of the state should be excluded from their control. A state without parliamentary control of its security sector, especially the military, should, at best, be deemed an unfinished democracy or a democracy in the making.

According to the eminent American scholar Robert A Dahl, *"the most fundamental and persistent problem in politics is to avoid autocratic rule"*. As the security sector deals with one of the state's core tasks, a system of checks and balances is needed to counterbalance the executive's power. Parliamentary oversight of the security sector is thus an essential element of power-sharing at state level and, if effective, sets limits on the power of the executive or president.

No taxation without representation

To this day, one of parliament's most important mechanisms for controlling the executive is the budget. From the early days of the first assemblies in Western Europe, parliaments demanded a say in policy matters, their claim being: *"No taxation without representation"*. As security sector organisations use a substantial share of the state's budget, it remains essential that parliament monitor the use of the state's scarce resources both effectively and efficiently.

Creating legal parameters for security issues

In practice, it is the executive that drafts laws on security issues. Nevertheless, members of parliament play an important role in reviewing these drafts. They can, if need be, suggest amendments so as to ensure that the proposed legal provisions adequately reflect the new thinking about security. Moreover, it falls to parliament to see to it that the laws do not remain a dead letter, but are fully implemented.

A bridge to the public

The executive may not necessarily be fully aware of the security issues which are priorities for citizens. Parliamentarians are in regular contact with the population and are well-placed to ascertain their views. They can subsequently raise citizens' concerns in parliament and see to it that they are reflected in security laws and policies.

Challenges for parliamentary oversight of the security sector

At least three aspects of the security sector represent a real challenge for parliamentary oversight:

- ✓ Secrecy laws may hinder efforts to enhance transparency in the security sector. Especially in emerging democracies or conflict-torn countries, laws on secrecy may limit or jeopardise parliamentary oversight of the security sector; this is also due to the absence of legislation on freedom of information.
- ✓ The security sector is a highly complex field, in which parliaments have to oversee issues such as weapons procurement, arms control and the readiness/preparedness of military units. Not all parliamentarians have sufficient knowledge and expertise to deal with these issues in an effective manner. Nor may they have the time and opportunity to develop them, since their terms as parliamentarians are time-bound and access to expert resources within the country and abroad may be lacking;
- ✓ The emphasis on international security cooperation may affect the transparency and democratic legitimacy of a country's security policy if it leads to parliament being left out of the process. It is therefore crucial that parliament be able to provide input to, participate in and follow up on debates and decisions in the international arena.

Roles and responsibilities of parliament and other state institutions

Shared responsibility

While parliament and government have different roles in security matters, they share the responsibility for keeping a well-functioning security sector. This idea of shared responsibilities also applies to the relation between political and military leaders. These two parties should not be regarded as adversaries with opposing goals. On the contrary, they need each other in order to achieve an effective, comprehensive and people-centred security policy. Democratic oversight must therefore also include dialogue between political leaders and high-ranking military officials based on trust, open lines of communication and mutual inclusion. Such regular exchanges have the important additional advantage that they prevent politicians and military leaders from becoming alienated and thus help consolidate stability.

Division of roles

The three branches of state, the executive, legislature and judiciary, fulfil major roles in national security policy. An attempt to describe them is made in Box N° 3 which highlights the specific functions of each of the three major actors within the executive branch - head of state, government and general staff. The table aims at providing an overview of possible functions as political systems may differ from country to country. It therefore does not claim to represent the situation of all countries.

In addition to parliament, the judiciary and the executive, civil society makes an important informal contribution to the formulation and implementation of security policy, while the media contribute by informing the public of the intentions and action of all state actors (see Chapter 6).

Finally, two institutional actors play a crucial role in overseeing the implementation of national security policy and the corresponding budget, namely the Ombudsman (see Chapter 16) and the Auditor General (see Chapter 24).

Political accountability

The security services should be accountable to each of the main branches of the state:

- ✓ The **Executive** exercises direct control from the central, regional or local levels of government, determines the budget, general guidelines and priorities of the activities of the security services.
- ✓ The **Legislature** exercises parliamentary oversight by passing laws that define and regulate the security services and their powers and by adopting the corresponding budgetary appropriations. Such control may also include establishing a parliamentary ombudsman or a commission that may launch investigations into complaints by the public.
- ✓ The **Judiciary** both monitors the security sector and prosecutes the wrong-doings of servicemen through civil and criminal proceedings whenever necessary.

Box N° 3

Possible functions of the main branches of state concerning the security sector

	Parliament	Judiciary	Executive		
			Head of State	Cabinet	Chief of General Staff
Supreme command	in some countries parliament debates and/ or appoints the supreme commander	Constitutional court evaluates the constitutionality of the president or cabinet as commander-in-chief	In some countries the head of state has a merely ceremonial function, in others he or she has real authority; e.g. supreme command in wartime	The government is supreme commander in times of war	In some countries the post of supreme military commander exists only in times of war, in others it is permanent
Security policy	Debates and approves security concept, enacts laws	–	Signs laws related to security policy	Proposes and implements security policy	Advises the government, and plans, helps and implements the security policy
Budget	Approves budget		–	Proposes budget	Advises the government
Defence laws	Adopts laws	Constitutional court interprets	Signs promulgation	Proposes laws and	Advises the government;

		the constitutionality of laws	of laws	adopts by- laws	implements laws
Personnel	In some countries, the parliament has the power to approve major appointments.	Judges lawfulness of their behaviour.	Appoints main commanders; approves personnel plans	Appoints main commanders	Advises on personnel plans; implements personnel plans; appoints lower commanders
Procurement	Reviews and/or approves major arms procurement projects	Judges trial violations of laws on corruption and fraud	–	Proposes arms procurement	Initiates and implements arms procurement process
Sending troops abroad / Hosting foreign troops	<i>a priori</i> approval, <i>a posteriori</i> approval or no approval at all	Judges lawfulness of their behaviour	–	Negotiates international participation, decides on rules of engagement	Operational command
International treaties, joining alliances	Approval		Concludes and ratifies international treaties	Responsible for international negotiations	Advises government

As stated before, the roles of the three branches of state may be different in every country. It is, however, paramount that a system of power-sharing is in place at all times which provides for checks and balances against political abuse of the security sector. Bearing in mind that in many countries government tends to fulfil a dominant role in security matters, it is crucial that parliament be vested with effective oversight powers and resources. This is all the more important as the new security challenges (see Chapter 1) may incite public institutions to redefine their roles.

Principles of democratic and parliamentary oversight

No internationally agreed standards in the field of democratic and parliamentary oversight exist, as security and defence were regarded as falling into the domain of national sovereignty. There exist some regional standards, as for example the OSCE

Code of Conduct (for more information see Box N° 66). There are as well certain principles regulating democratic civil-military relations:

- ✓ The state is the only actor in society that has the legitimate monopoly of force; the security services are accountable to the legitimate democratic authorities;
- ✓ The parliament is sovereign and holds the executive accountable for the development, implementation and review of the security and defence policy;
- ✓ The parliament has a unique constitutional role in authorising and scrutinising defence and security expenditures;
- ✓ The parliament plays a crucial role with regard to declaring and lifting a state of emergency or the state of war (see Chapter 18).
- ✓ Principles of good governance (see Box N° 4) and the rule of law apply to all branches of government, and therefore also to the security sector;
- ✓ Security sector personnel are individually accountable to judicial courts for violations of national and international laws (regarding civil or criminal misconduct);
- ✓ Security sector organisations are politically neutral.

Box N° 4

Good governance as an important value for the democratic oversight of the security sector

"Good governance is epitomised by predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterised by arbitrary policy-making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption."

*Source: World Bank. 1994. Governance: The World Bank's Experience
Washington*

Section II

Oversight of national security policy

Forging a national security policy

The ingredients

A national security policy sets out the government's approach to security and how such security is expected to be achieved. National security policy involves major decisions about the security sector which affect the external and internal security of state and society. It is based on a given approach to security, gives guidelines for the military doctrine, and is developed within the framework of the international and regional regulations to which a state is party. It is thus not only based on a perception of national security needs and priorities, but is affected by a variety of external factors, pressures and commitments. In all cases it should meet the values and principles enshrined in the national constitution or charter.

Box N° 5

Questioning national security policy

In the debate and approval of the national security policy documents, or in debates regarding their implementation in specific circumstances, the representatives of the people should address some or all of the following questions:

- ✓ What kinds of threats and risks does society need to be protected from? Which and whose values need be protected? And hence, what kind of security is required?

- ✓ Does the national security policy include the examination of new risks to security such as organised crime and terrorism?
- ✓ How much security is enough?
- ✓ How can national security best be achieved: By joining an alliance? By maintaining neutrality?
- ✓ What kinds of operations are most likely to be undertaken by the national security forces? Only defence operations, or are they going to be involved in peacekeeping operations?
- ✓ What means need to be available and which sectors have to be involved to reach the desired security level? And for how long and under what conditions?
- ✓ How often should the security policy be reviewed?
- ✓ How to ensure that security policy is consistent with international humanitarian and human rights law and principles?
- ✓ What will be the financial and economic implications and how much will taxpayers be ready to disburse?
- ✓ What impact will the security policy and its implementation have on foreign relations and regional stability?
- ✓ What are the actual status and the future national strategy regarding weapons of mass destruction?

As a rule, the implementation of the national security policy involves many state agencies and departments as well as policy documents. Therefore, it is important that a country develops a comprehensive national security strategy involving all the relevant players and aspects of security. Such an approach provides the government with an opportunity for dealing with all security aspects in an integral and comprehensive way. The so-called new risks, such as terrorism and international crime, in particular require a concerted effort, as combating these new threats demands the involvement of various institutions: the military, ministry of finance, police, border guards and intelligence services.

Importance of parliament's involvement

Against that background, and bearing in mind parliament's mission to represent people's interests and concerns, there are a number of reasons for parliamentary involvement in the development of a national security policy and for its approval by parliament in a transparent manner:

- ✓ The national security policy affects people's lives, values and welfare and should not be left to the judgement of the executive or the military alone;
- ✓ The national security policy has major consequences for the future of the military, its servicemen and servicewomen;
- ✓ The national security policy has major financial consequences and is thus about taxpayers' money;
- ✓ In addition to the financial costs, security measures can restrict citizens' freedom and liberties and have major consequences on democracy.
- ✓ It is therefore important that the parliament ensures that such measures are at all times consistent with applicable international humanitarian law, in particular the four Geneva Conventions and the two Protocols and with human rights law, in particular the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The latter states that certain rights can under no circumstances be derogated from. See also chapters 18-20.

Parliament's role in the phases of national security policy-making

As far as parliament is concerned, the debate on the national security policy should not be a single event but a process developing through all its four phases: development, decision-making, implementation and evaluation. While there should be no interference in the responsibilities of the executive in drawing up and implementing this policy, the process should be as transparent and participatory as possible, allowing a proper balance to be reached between all those exerting any kind of influence on it, including the security sector itself and the military-industrial complex.

In all phases, parliamentarians should thus be able to use the mechanisms available to them for making the executive aware of the security concerns and expectations of the public: oral and written questions, motions, inquiries, select committee hearings, "white papers", representations to ministers and departments. (See also Chapter 14 on parliamentary mechanisms applied to the security sector)

Development

In all parliamentary systems, parliament plays a limited role in the phase of development of a new national security policy. This task belongs primarily to the competent government departments and agencies. Yet parliament and its members can play a crucial role in ascertaining that the existing policy meets people's needs and aspirations and in requiring its revision if necessary.

Ideally, its role should thus not be confined to being presented with a document which it may either accept or reject. Its competent committee(s) should be consulted early in the process so as to provide an input – reflecting the variety of political visions in parliament – to the policy documents and legislation being prepared. This would not only enable it to relay people's concerns early in the process, but would also secure a more positive atmosphere and debate in parliament when the policy document is presented for approval. The highest interests of the nation should transcend the power relations between the majority and the opposition in parliament and should not hinder a democratic reading of the national security document. In that spirit, parliament should be able to propose changes to the documents presented to it.

Decision-making

The parliament can and should play an important role in the decision-making phase, especially as once the national security policy document reaches parliament it becomes "parliament's property" and direct responsibility. It should thus be given sufficient time to study it in depth and refuse to be rushed through it.

The parliament can decide to give its consent to a new policy and legislation proposed by the government or to reject it and suggest changes instead. Once again, at this stage it should be able to be proactive and exert some influence, proposing changes if it is not satisfied with the document before it. The main questions that may be addressed during parliamentary debates and decision-making are mentioned earlier in this chapter.

In this phase, parliament's most important influence is usually exerted through budgetary appropriation. (For more information please refer to Section VI on financial resources). This influence is dramatically enhanced when parliament can arrange for its competent committee to hold a separate debate and vote on each security-related appropriation as well as on the full security policy budget. Defence plans must be defined in time for examination and should have a clear link with budgetary demands.

Parliament can play a crucial role in raising or increasing public support and ensuring the legitimacy of the policy finally adopted. Transparency in the conduct of parliamentary debates in connection with security issues is thus crucial, and it is extremely important that the public and the media have access to parliament's debates and hearings.

Implementation

Parliament's responsibility with regard to national security does not end with the adoption of a policy document or even the budget; its oversight and audit functions should be rigorously enforced. During the implementation phase, parliament should scrutinise the activities of the government with all the tools at its disposal (see Chapter 14) and with the aid of other monitoring institutions (e.g. national audit office; see Chapter 24). Parliament can exert influence especially through its decisions on the corresponding budgetary appropriations. Parliament should also review the professional and technical competence of audit offices to conduct performance and compliance audits.

Parliament can intervene at times of major changes or crises requiring its approval of government actions. Examples are: sending troops abroad (see Chapter 22) or declaring a state of emergency (see Chapter 18). In addition, parliament can intervene if the government makes serious mistakes. In such cases, parliament usually raises questions; in extreme cases, it can order a special inquiry.

Assessment and lessons learned

In a democratic environment, the government has responsibility for assessing the relevance of its policy and presenting the results of its evaluation to parliament, both in qualitative and quantitative terms. As far as parliament is concerned, such an assessment inevitably includes the auditing – of figures and performances – of the implementation of the corresponding budgetary appropriations. Even if this represents a delayed assessment, it can always be taken into account in confirming the existing policy or developing a fresh one. Wherever civil society is dynamic, NGOs also carry out their own evaluations. Examples are the assessment of peace missions, major

and costly weapon systems as well as personnel systems of the ministry of defence (especially conscription). Parliaments can also commission consultants to conduct special performance audits.

What you can do as a parliamentarian

Security policy

- ▷ Make sure that there is a logical link between national security policy, operational doctrines, defence plans and budget demands.
- ▷ If appropriate – especially after comparison with the policy used in other countries in comparable circumstances – raise questions in parliament with regard to its relevance and/or its possible updating in the light of recent developments in the field: see Section I on evolving security policies and actors.
- ▷ Parliament should legislate on the process of developing, decision-making, implementing and evaluating the national security policy, defining parliament's role in all four phases of the cycle.

Relevant questions

- ▷ Make sure that, in the process of defining or redefining the national security policy, most questions listed under section in Box N° 5 “Questioning National Security Policy” are addressed”0.

National security policy and international regulations

International principles

International treaties limit and sometimes enhance the options for defining national security policies. Most countries of the world are members of the United Nations and are thus bound by the UN Charter, Articles 2.3. and 2.4., which state:

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. "

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

In addition, a number of customary international principles provide a reference framework. The Declaration 2625 (XXV) of the General Assembly on the principles of international law relating to friendly relations and cooperation between States (1970) is recognised as an authentic interpretation of the UN Charter and therefore binding on all UN member states. In this declaration the following eight indivisible principles of equal value are enunciated:

- Principle I:** Refraining from the threat or use of force.
- Principle II:** Peaceful settlement of international disputes.
- Principle III:** Inviolability of frontiers and territorial integrity of states.
- Principle IV:** Right of peoples to self-determination and to live in peace on their own territories within internationally recognised and guaranteed frontiers.
- Principle V:** Sovereign equality of states and non-intervention in internal affairs.
- Principle VI:** Respect for human rights.
- Principle VII:** Cooperation between states.
- Principle VIII:** Fulfilment in good faith of obligations assumed under international law.

Multilateral treaties on security and defence

There exists a wide range of multilateral treaties within the realm of security. The main categories of such treaties are as follows (the enumeration is not exhaustive, it gives only examples of treaties in each category):

Treaty regulating world security: Charter of the United Nations.

International treaties of international humanitarian law, that regulate international and non-international armed conflicts: Four Geneva Conventions, 1949, including the two additional Protocols, 1977.

International treaties concerning different types of armaments and their regimes: Anti-Ballistic Missile Treaty, Strategic Arms Reduction Treaty, Landmines Convention, Tlatelolco Treaty, etc.

International treaties creating regional organisations partly relating to security issues: Charter of the Organisation of American States, Treaty of the European Union, CSCE Final Act – OSCE/OSCE, Constitutive Act of the African Union.

Regional agreements of military cooperation and mutual defence assistance: NATO Treaty, Partnership for Peace Agreement, WEU Treaty, Inter-American Treaty of Reciprocal Assistance.

The rationale for states to ratify international security treaties is to define principles of international behaviour with a view to strengthening international and regional security and enhance their bilateral or multilateral cooperation. The executive, through its ministry of foreign affairs, normally leads the process of negotiation.

Bilateral agreements or treaties of friendship, cooperation and mutual military assistance

When delineating the security policy of a state, bilateral agreements also play a central role. With only two state parties involved, the provisions of such treaties can be negotiated with a view to adjusting as narrowly as possible the specific values, circumstances and needs of the countries concerned. The strategic arms reduction treaties (START) between the former USSR and the US are an example.

Not only have these kind of treaties been used to express friendship and non-aggression (for example the bilateral Treaty of Friendship, Cooperation and Mutual Assistance signed between Russia and Armenia in August 1997), but they also help to solve practical cases of military cooperation including in some cases permission to deploy troops and weaponry on foreign territory. During the 1990s Russia signed several bilateral treaties on military cooperation with other former republics of the USSR.

These treaties can also include concrete military assistance in case of need. In this connection, The Charter on Democratic Partnership of 1994 can be seen as a continuation of the US-Kazakh Agreement of 1992, which opened the way to developing bilateral military relations.

Overall, bilateral treaties can be seen as a tool to outline foreign security policy, to enhance friendly relations with other countries and to resolve concrete problems. Parliaments tend to be in a more decisive position when approving these treaties and to have larger scope for suggesting changes in the text – for the executive to negotiate afterwards – than in the case of the traditional multilateral security treaties.

Importance of parliamentary and public involvement

In countries where the involvement of the public and the parliament in the process of ratification of international treaties is not common, it should be encouraged as it helps to enhance popular support. As a matter of principle, in a democracy the executive cannot conclude secret treaties or bilateral agreements without the knowledge and consent of parliament. International agreements that affect the sovereignty, the territory and the international status of the country, should most certainly be subject to parliamentary debate and approval.

In some countries, like Switzerland, major treaties are subject to a popular referendum. In this way the involvement of civil society in major changes to the country's foreign policy is guaranteed. In Switzerland, the popular referendum (see box N° 6) precedes ratification.

Box N° 6

Direct democracy and ratification of international treaties and other major agreements: the case of Switzerland

In Switzerland the Federal Parliament, the Federal Council (government) and the population take part in the process of ratifying international agreements. Important agreements for the country are not only subject to a parliamentary debate, but to a public debate as well. Society can express its opinion on negotiated agreements through referendum. In addition, society, by referendum, can give a mandate to the Federal Council to start or to stop negotiating future agreements. A referendum is required if the government wants to accede to a “collective security organisation or to a supranational community” (article 140.b of the Federal Constitution).

What you can do as a parliamentarian

Treaty negotiations

- ▷ Ensure that parliament / its relevant committee(s):
 - is associated with the negotiation process, including by having MPs from different political leanings as members of the negotiation team;
 - receives advice from civil society, in particular relevant research and advocacy organisations, on the issues at stake;
 - can present its views in an official and timely fashion to the government so as to ensure that people's concerns and aspirations are taken on board.

Impact analysis

- ▷ Ensure that parliament is presented with and can discuss a detailed analysis of the potential impact (both medium- and long-term) – political, economic, social, environmental or otherwise – of a treaty.

Ratification

- ▷ Make sure that parliament is asked in due time to ratify the treaty;
- ▷ Ensure consistency between the treaty to be ratified and domestic law by modifying national provisions or, if necessary and possible, by making a reservation or interpretative clause concerning the international agreement.

Review of reservations and interpretative clauses

- ▷ Ensure that the continuing validity of the reservations and interpretative clauses made by your country are reviewed as a part of the periodical review of the national security policy.

The role of civil society and the media

The security sector is becoming increasingly large and complex. This represents a growing challenge for parliaments as they often lack the resources and specialised staff which are indispensable to help them oversee the security sector in an efficient manner. As a result numerous bodies have emerged to complement its role, even though parliament retains supreme responsibility to hold the government accountable. Both civil society and the media could contribute to the parliamentary scrutiny of the security sector within the framework shaped by the parliament.

Civil society

The term civil society refers to autonomous organisations that lie between the state institutions on the one hand and the private life of individuals and communities on the other. It comprises a large spectrum of voluntary associations and social movements, i.e. a broad range of organisations and groups representing different social interests and types of activity. The following paragraphs will look at why civil society should play a role in ensuring accountability of the security sector, what this role includes, and how civil society contributes to parliamentary oversight.

Civil society and democracy

Civil society is both important to, and an expression of, the process of democratisation and plays a strong and increasing role in the functioning of established democracies. It actively reminds its political leaders that there is a multiplicity of competing demands and interests to be taken into account when deciding on public expenditures and state policies. This is why a vibrant civil society is a basic requirement for democracy. It has the potential to provide a counterweight to the power of the state, to resist authoritarianism and, due to its pluralistic nature, ensure that the state is not the instrument of a few interests or select groups.

Civil society and the security sector

Groups within civil society such as academic institutions, think tanks, human rights NGOs and policy-focused issue NGOs, can actively strive to influence decisions and policies with regard to the security sector.

Governments can encourage the participation of NGO's in public debate about national security, the armed forces, policing and intelligence. Such debate, in turn, enhances further the transparency of government.

Specific role and input of non-governmental organisations and research institutes with regard to the security sector

Non-governmental organisations (NGOs) are generally private non-profit organisations, aiming to represent social aspirations and interests on specific topics. As to research institutes, these may either be NGOs independent of government, or on the contrary have links with government, for example, through state funding.

NGOs and research institutes can strengthen democratic and parliamentary oversight of the security sector by:

- ✓ Disseminating independent analysis and information on the security sector, military affairs and defence issues to the parliament, the media and the public;
- ✓ Monitoring and encouraging respect for the rule of law and human rights within the security sector;
- ✓ Putting on the political agenda security issues which are important for society as a whole;
- ✓ Contributing to parliamentary competence and capacity-building by providing training courses and seminars;
- ✓ Giving an alternative expert point of view on government security policy, defence budgets, procurement and resource options, fostering public debate and formulating possible policy options;
- ✓ Providing feedback on national security policy decisions and the way they are implemented;
- ✓ Educating the public and facilitating alternative debates in the public domain.

Interventions by civil society in Latin America perfectly illustrate the wide range of roles NGOs and research centres can play in the oversight of the security sector (see Box N° 7).

Box N° 7

Civil society in Latin America: A practical illustration of the role and importance of civil society organisations

Many civil society groups in Latin America were formed in the late 1980s and 1990s with the goal of improving dialogue between civilians and the military as newly elected civilian governments were attempting to restructure the armed forces. These dialogues helped to break down the isolation of the armed forces and opened up a process of professional exchange between civil society, elected officials and the military high command. Since that time, these groups have taken on a greater role, often serving as important sources of civilian

expertise and technical assistance on matters of security and defence and assuming greater responsibility in scrutinising military policies and budgets.

Examples

One example is the Argentine group *SER en 2000*. Established after the military coup attempt of 1990, *SER en 2000* initially began as a space to promote dialogue among representatives of civil society, political parties and the military. These dialogues formed an important base from which *SER en 2000* provided civilian input to the design and drafting of key pieces of legislation that formed the framework of subsequent defence policy.

Similarly, in the Dominican Republic civilian security and defence experts forming part of FLACSO have worked with the military to develop a bill to reform the police, and later advised the Executive and the Congress as it considered the bill.

Many of the groups in Latin America work closely with the defence and security committees in the national congress to improve the human and technical capacity of their legislatures to oversee military functions.

The Peruvian group *Instituto de Estudios Políticos y Estratégicos* (IDEPE) trains congressmen and congresswomen and their staffs in the congressional defence committee on military budgeting and administration.

FLACSO in Guatemala has assisted the congress in the analysis and consideration of several laws affecting the military, including intelligence reform and military service.

Lack of Civilian Expertise

Civilian expertise in the field of defence and security is still lacking in Latin America. This deficit of civilian experts has hampered the effectiveness of executive and legislative institutions intended to oversee the military. In the short term, however, civil society organisations can help fill the gap, by assisting state institutions and training an expanding cadre of citizens.

Network

To this end, *SER en 2000* recently formed a regional network of think tanks and non-governmental organisations dedicated to security and defence. The network, RESDAL (www.ser2000.org.ar) has established a

database of materials and legislation related to security and defence and offers programmes for civilians to conduct research and visit the organisation.

Source: Chris Sabatini, National Endowment for Democracy, Washington DC, 2002

The media

Independent media generally help the public and their political representatives in the task of informed decision-making. They contribute to overseeing the action of the three branches of state and may influence the content and quality of the issues raised in public debate, which in turn influences the government, business, academia and civil society. Free media are thus a key component of democracy. Box N° 8 mentions the huge problems that can be encountered by journalists who try to criticise their governments. Assurance of the security of journalists is a sine qua non for the freedom of the press.

Box N° 8

New kind of wars: hard times for freedom of the press

“Nearly a third of the world's people still live in countries where press freedom is simply not allowed. (...) We must also distinguish between those killed in war zones who were not singled out for being journalists and those who were deliberately murdered because of their investigations and articles about sensitive matters and for having denounced arbitrary behaviour, embezzlement, injustice, crime and racketeering. New kinds of wars, not between the regular armies of old but between ethnic, ideological, religious or plain criminal interests, have made reporting increasingly dangerous. But the death or injury of journalists in these conflicts is not always purely accidental. Sometimes the combatants, even from regular armies, deliberately target inconvenient witnesses to their deeds.”

Source: Annual report 2002, Reporters Without Borders

In countries where the media is not independent of government institutions, it is easily possible for the media to be abused for propaganda purposes by the rulers. In such cases, the media certainly cannot enhance transparency and democratic oversight of the security sector.

With the advent of the internet, the potential for public access to official information is huge. There has been a general trend over the past decade towards greater transparency, public accountability and accessibility of official information. This trend should be encouraged, as it contributes to a more informed citizenry, higher quality of public debate on important policy issues and ultimately better governance. The internet also has the drawback that it can be used by extremist groups to spread, for example, racism and anti-Semitism. In some recent conflicts other news media, such as radio stations, have provided a platform for extremist groups and helped to create a climate of hate between different groups of society.

Collecting and disseminating information on security-related issues

From a democratic and good governance perspective, the media have the right to gather and disseminate information on security-related matters that is in the public interest and have a corresponding responsibility to provide news that meets standards of truth, accuracy and fairness.

The media can thus help the government and parliament to explain their decisions and policies to the citizens, who have the right to be informed and participate knowledgeably in the political process. For example, the media can contribute to the public's right to know by disseminating information about those who hold public office in the security field, the kind of security policy adopted, deployment of troops abroad, military doctrine, procurement and treaties and other agreements on which it is based, the players involved, the security challenges ahead and relevant debates. However, they can also be subject to imposed or self-imposed censorship when confidential information is involved.

Legislation on the media and security-related issues

All countries have in place legislation addressing the issue of freedom of the press. This principle is enshrined in Article 19 of the Universal Declaration of Human Rights, which states as follows:

"Everyone has the right to freedom of opinion and expression: this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"

While no internationally agreed guidelines exist on how such freedom may be achieved and protected, it may be noted that the above international principle is stated in unrestricted terms, without any reference whatsoever to possible generic restrictions related to security issues.

Box N° 9

Freedom of the press after 11 September 2001

The International Day for Freedom of the Press is celebrated each year on 3 May. The focus of the year 2002 International Day was the possible impact on the freedom of the press of measures that countries might have taken to reinforce national and international security following the terrorist attacks of 11 September, 2001.

“There is an undoubted tension between the exercise of basic freedoms and the need for greater security in the face of terrorism, but the whole point of any anti-terrorist campaign must be the security of our freedoms,” said Mr Koïchiro Matsuura, UNESCO Director-General.

Source: The World of Parliaments, Issue No 6, May 2002, IPU.

Parliament communicating with the public on security issues

Democratic oversight can only be effective, as a principle of good governance, if the public is aware of major issues open to debate at parliamentary level.

The effectiveness of public communication on security issues is dependent upon the wealth and accuracy of the information released to the public by both government and parliament. The parliament should take a special interest in the public having the necessary level and quality of information so as to be able to understand both the current state of affairs and the outcome of the decision-making process in parliament.

Making documentation accessible to the public

One effective way for parliament to secure public information is, in cooperation with the government or alone, to make available to the public, in the form of documents and/or through its website, a variety of information and documents on security-related issues.

Box N° 10

Parliamentary websites

As of May 2002, 244 parliamentary chambers exist in 180 countries (64 parliaments are bicameral). The IPU is aware of 165 parliamentary Web sites in 128 countries (individual chambers in some bicameral parliaments maintain separate Web sites). The « *Guidelines for the content and structure of parliamentary Web sites* » adopted by the IPU Council in May 2000 are accessible on the IPU Web site: <http://www.ipu.org>.

Examples of information on security sector issues that could be released to the public, preferably in public friendly versions:

- ✓ Documents of strategic importance, such as the national security policy;
- ✓ The defence budget (not including secret funds);
- ✓ Press releases concerning all major debates, decisions, motions, laws, etc. in parliament concerning the security sector;
- ✓ Minutes of all parliamentary (committee) meetings and debates on security issues (except meetings held behind closed doors); these should include reports on the scope and terms of reference of such closed hearings
- ✓ Publications related to parliamentary inquiries into security issues;
- ✓ Annual parliamentary reports or reviews on the functioning of all security services;
- ✓ Reports by the ombudsman or the auditor general concerning the security sector; the ombudsman may not be allowed to table reports of some special investigations, but would be asked to submit them to select committees; the government should table any action taken upon the ombudsman or auditor's reports to the parliament;
- ✓ Information on multilateral and bilateral agreements;
- ✓ Information on how individual parliamentarians or political factions in parliament voted on security issues (such as the budget, joining international alliances, conscription issues, procurement);
- ✓ Freedom of information legislation.

Facilitating public involvement in parliamentary work

One-way information (from parliament or government to the public) is not sufficient. Parliament should give the public the possibility of communicating with it on security issues. A two-way communication or dialogue is important because:

- ✓ It ensures participation and permanent oversight from the citizen's side;
- ✓ It increases the public's confidence in the functioning of the parliament;
- ✓ It offers a potential check on maladministration (for example through the parliamentary ombudsman);
- ✓ It secures public support and legitimacy for legislation and government policies, and hence democratic stability.

Two-way communication could be enhanced by parliamentary information, hearings and monitoring news services, television panel discussions and tailor-made news mailers to committee members, provided by the parliamentary research service etc.

Box N° 11

Parliaments and the media

"11. The Assembly invites national parliaments to urgently consider measures aimed at:

- i. Ensuring greater openness of parliamentary work, including committee meetings, and to consider this question not only as a matter of communication policy but also as an important political priority with direct implications for the functioning of democracy;
- ii. Making better use of classic communication methods and new information technologies, in particular:
 - a. by providing the best possible working conditions for the media and especially for parliamentary correspondents;
 - b. by ensuring the speedy dissemination of information about debates, inter alia, by rapidly publishing the minutes and verbatim reports of proceedings;
 - c. by creating on-line services for direct electronic communication with the public and with journalists;
 - d. by providing full access to parliamentary documents, so that public debate can be encouraged before the vote on a bill;
- iii. Taking advantage of the advice of experts in communication;
- iv. Making legal texts more accessible to non-specialist readers;
- v. Taking the necessary steps to place themselves more in focus for political debate identifying, for instance, areas in which procedures can be streamlined to speed up decision making;
- vi. Encouraging, within information and communication services, the assembly of information packs presenting laws and describing their specific features for the journalistic and professional circles most closely concerned;
- vii. Organising seminars for journalists on parliamentary work with a view to familiarising them with legislative procedures and parliamentary proceedings and to improving their knowledge on relations between parliaments and international institutions. Journalists from local and regional newspapers and magazines should receive special attention;
- viii. Creating communication networks on the Internet, enabling citizens to communicate interactively with both parliamentarians and parliamentary information services;
- ix. Devising means of encouraging the creation of independent television channels devoted to parliamentary work, as is the case in several European countries, in the United States and in Canada;
- x. Assisting, through fiscal or other means, those media which strive to provide high-quality news on a fully independent basis and which are threatened with extinction by market forces.”

Source: Resolution 1142 (1997) of the Parliamentary Assembly of the Council of Europe

Public participation is important for the long-term democratic stability of a system. Degrees of participation vary from country to country. Some parliaments allow the public to attend committee meetings. This can be of great importance for NGO's activities or for individuals who are interested in the law-making process. Even if such participation does not give persons attending committee meetings the right to intervene, their mere presence is already valuable.

What you can do as a parliamentarian

Input to the security policy by non institutional actors

- ▷ Make sure that mechanisms are in place to enable parliament to benefit from inputs from civil society representatives in its work regarding security and security-related issues.
- ▷ To that end, if appropriate, promote the adoption of legislation allowing competent institutions, NGOs and the media to contribute to the work of the parliamentary committee(s) which are competent to address security and security-related issues.

Public awareness

- ▷ Make sure that parliament has an active public relations policy with regard to its decisions affecting security and its decision-making process in that field.

The nexus between security and freedom of the press

- ▷ Make sure that freedom of the press is upheld in law and in practice with regard to security issues and that any limitations imposed do not breach international human rights principles.
- ▷ Ensure that appropriate freedom of information legislation is in place.

A gender perspective on security policy

Gender equality is a relatively recent public concern. It is now regarded as an important parameter in relation to security issues as well, not only because the vast majority of those affected by any armed conflict, including refugees and internally displaced persons, are women and children, but also because women - who represent over a half of the world's population - have equal rights with men and much to contribute to resolving security issues. Factoring in women's talents and insights will lead to responses to security challenges that are more people-centred and consistent with a human security approach and are therefore more sustainable. Therefore when aiming at gender equality in security policy it is essential to approach this aim from two different angles. First, security policy has to focus on and address gender-sensitive issues. Possible solutions have to be presented and structures introduced to ensure the respect of women's rights and interests. Second, it is essential to promote women's participation at all levels of decision-making and in all fields related to security policy.

Women and conflict resolution

Conflict resolution, peacekeeping and peace-building do not only concern those participating directly in war or armed conflicts who are mostly men. Yet the presence of women at peace negotiation tables has always been and continues to be marginal, even when, during war or armed conflict, they have had to transcend their traditional gender roles and assume responsibilities that were usually those of men. However it is now increasingly acknowledged that women contribute important skills, perspectives and insights. In practice, women's direct involvement in the decision-making process, in conflict resolution and peace-support activities, requires a shift in the traditional vision of the respective roles of men and women in society and in conflict situations.

Box N° 12

Gender in peace processes

“Any peace process that ignores the needs and roles of women is unnatural, and therefore inherently unstable.” ... “During post-conflict transitions, the empowerment of women is crucial to re-launching social and economic development. Women like men, are both victims and actors in wars and armed conflicts, but usually in different ways and in different fields. During wars, women participate in new activities and assume new roles, often taking on more responsibilities. Despite these changes, women are often marginalised in post-conflict peace-building, both in the societies emerging from conflict and in the formulation and implementation of peace-building strategies by international peace operations.”

Gendering Human Security: From Marginalisation to the Integration of Women in Peace-Building, 2001, Norwegian Institute of International Affairs

Box N° 13 provides extracts of the UN Security Council resolution 1325 (2000), underlining the value of the shift from a vision of women as mere victims of conflicts (including violence and rape as an instrument of warfare) to a vision of women as actors in conflict resolution, peace-building and peacekeeping on an equal footing with men. Such a shift implies looking at both women's and men's activities and roles before, during and after a war or an armed conflict. It means that gender equality and gender issues have a place at an early stage of policy definition, nationally and internationally, and in corresponding legislation.

Box N° 13

A gender perspective on peace operations and processes

The Security Council (...)

- "7. *Urges* Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, *inter alia*, the United Nations Fund for Women and United Nations Children's Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;
8. *Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's

peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary (...).

15. *Expresses its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups;(...)"*

*Excerpts from United Nations Security Council Resolution 1325 (2000)
adopted on 31 October 2000*

In line with resolution 1325 (2000), the UN Secretary-General submitted a report on "Women, Peace and Security" (October 16, 2002). The report deals with the impact of armed conflict on women and girls, the international legal framework, women's involvement in peace processes, peacekeeping operations, humanitarian operations, reconstruction and rehabilitation as well as in disarmament, demobilisation and reintegration. Some of its conditions are integrated in the recommendations at the end of this chapter.

Women in parliamentary defence committees

Successive IPU world surveys on women in politics in the last 25 years have shown, that women are still largely absent from, or under-represented in parliamentary defence committees. Needless to say, they rarely occupy the function of presiding or deputy presiding officer or rapporteur in such committees. A 1997 IPU survey (*Men and Women in Politics: Democracy Still in the Making*) showed that, of 97 parliaments which provided data on women in parliamentary committees, only 3% had a woman chairing their defence committee. Generally, women represented only 18.6% of presiding officers of all parliamentary committees. This situation may be explained by two key factors. First, there are still very few female parliamentarians worldwide (14.3% in May 2002). Second, the view that war and peace and security issues in

general are less women's business than men's is still deeply entrenched in mentalities all over the world. This view is problematic as wars most certainly affect the entire population of a state, often women are even victimised to a greater extent than men.

Women at arms

At the level of the administrative, logistical and support services, women's involvement in the armed forces is common and traditional in most countries. This female presence in back-up positions is relatively important not only during peacetime but also and sometimes even more in the context of war or armed conflict. In contrast, at the troop and operational levels such involvement is a much more recent phenomenon. On an international and comparative level, little data is available on women in the military. Box N° 14 below gives an example of women's participation in the military in NATO member states.

Box N° 14		
Military female personnel force strengths: examples of NATO countries		
Country	Numbers	% of Total Force
Belgium	3,202	7.6%
Canada	6,558	11.4%
Czech Republic	1,991	3.7%
Denmark	863	5.0%
France	27,516	8.5%
Germany	5,263	2.8%
Greece	6,155	3.8%
Hungary	3,017	9.6%
Italy	438	0.1%
Luxembourg	47	0.6%
Netherlands	4,170	8.0%
Norway	1,152	3.2%
Poland	277	0.1%
Portugal	2,875	6.6%
Spain	6,462	5.8%
Turkey	917	0.1%
United Kingdom	16,623	8.1%
United States	198,452	14.0%

Source: NATO Review Summer 2001

Generally it is safe to say that women's involvement as conscripts and/or in professional military units can be prompted by the political leadership or can result from developments within the security sector itself. It appears to be related to two phenomena, which may take place independently of each other:

- ✓ A perceived need to mobilise the entire population to protect and promote national security;
- ✓ A modernisation of the armed forces which, like any other branch of activity, are exposed to social developments and thus are becoming increasingly sensitive to the concept of gender equality.

Box N° 15

Women's involvement in security policy as part of gender mainstreaming

The government's security policy could be assessed from the point of view of gender mainstreaming. At the 4th UN World Conference on Women in Beijing, the UN established gender mainstreaming as a global strategy for promoting gender equality. The UN (ECOSOC) defines gender mainstreaming as *"... the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality"*.

Source: UN ECOSOC Agreed Conclusions 1997/2

Women's increasing involvement in the armed forces may in turn contribute to the shift from traditional defence to human security: increasing emphasis is placed on research, information technologies (including in banking) and intelligence work besides, and sometimes instead of, methods and operations requiring physical force and training. This trend offers new opportunities to women, especially in countries where men and women have equal access to education and training.

Box N° 16

New dimensions and challenges brought about by the inclusion of women in the security sector

Women's increased involvement in the security sector, and more especially the military and the police, raises the question of whether training (especially physical training) and discipline should be the same for men and women.

It also requires regulations on dimensions of sexuality which have so far been strictly excluded from the military, other state militarised organisations or the police: the special needs and interests of married and unmarried couples within the same or different units must be taken into consideration as well as issues related to maternity and paternity.

It further requires reconsideration of the question of clothing and its aesthetic and even sexual attractiveness: should uniforms be identical for men and women? Should they have a male cut in all circumstances?

These areas call for new thinking. National legislation, as well as military, other state militarised organisations and police regulations, have to be developed and adapted to these modern realities.

Women in peacekeeping operations and ministries of defence

As may be seen from the data presented by NATO in its Summer 2001 Review, the number of female personnel involved in peacekeeping operations since the end of World War Two remains marginal. Only a few countries – Canada, Hungary, France, the Netherlands and Portugal – have included over five per cent of women among their peacekeeping personnel. Yet the UN experience shows that their presence is well received by the populations concerned and has a positive influence on the outcome of the operation: for example, more attention will be paid to gender issues and violence.

The appointment of a woman as a minister or even deputy minister of defence is still very rare. An IPU world survey shows that in March 2000, women represented only 1.3 per cent of all ministers in charge of defence/security issues and 3.9 per cent of all vice-ministers and other ministerial officials, including parliamentary secretaries, in that area (see the world map jointly released by the IPU and the UN, entitled *Women in Politics: 2000*).

What you can do as a parliamentarian

Data

- ▷ Request statistical data with regard to the proportion of women in each branch of the military, the other state militarised organisations, the police and the intelligence services, as well as in their respective training centres. Additionally, request data on the proportion of women in high-ranking and decision-making positions, and on the inclusion of women among your country's delegations to the United Nations, NATO or other international bodies discussing security issues.

Gender and conflict resolution and reconstruction*)

- ▷ To the extent possible, make sure that the negotiating teams are gender balanced;
- ▷ Ensure that peace accords systematically and explicitly address the consequences of armed conflict on women, their contributions to the peace process and their needs and priorities in the post-conflict context;
- ▷ Make sure that the knowledge, experience and capacity resources developed by women during conflict are put to good use in the context of reconstruction.

Gender and peace missions*)

- ▷ Advocate women's participation in peace missions and in post-conflict reconstruction;
- ▷ Make sure – possibly through legislation – that peacekeepers and other international personnel are trained in both culture sensitivity and gender sensitivity.
- ▷ Monitor the punishment of peacekeepers and other international personnel who violate the human rights of women.

Government

- ▷ Ensure that the level of responsibilities exercised by women and men in the ministry of defence over, for example, the last 10 years is balanced. Verify whether opportunities for women to rise to high-ranking, decision-making responsibilities are equal in law and in practice to those of men.

Parliament

- ▷ Verify the composition – historically and/or currently – of the defence or security committee in parliament and the level of responsibilities exercised by women within it.
- ▷ Further check whether the committee pays attention to gender issues and press for increased gender balance and gender sensitivity if need be.

*) Recommendations derived from the Report of the UN Secretary-General on Women, Peace and Security, October 16, 2002.

Section III

The main operational components of the security sector

The military

The military branch has existed throughout history and is widely viewed as the shield and the sword of the state. Box N° 17 shows that in mid-2002 only very few countries in the world did not have a military branch.

Box N° 17

Countries without militaries

Some countries do not have armed forces. These are some micro states in the South Ocean such as Nauru, Maldives, Kiribati, Samoa, Solomon Islands, Tuvalu, Palau and Vanuatu; and in the Caribbean: Saint Vincent and the Grenadines, St. Kitts and Nevis, St. Lucia, Dominica, Grenada. Other countries without armed forces are Costa Rica, Iceland, Mauritius, Panama, Somalia (which is in the process of forming an army), Andorra, San Marino, and Haiti. Most of these countries have paramilitary units (for example national guards and border guards).

Functions of the military

Security developments since the end of the Cold War have greatly affected the military around the globe. The military were given new assignments while being asked to perform their old core tasks in a different manner. Today, it is quite common for the militaries around the world to be involved in the following five functions:

- ✓ Protection of the country's independence, sovereignty and territorial integrity, or more broadly, its citizens
- ✓ International peacekeeping or peace enforcement missions;
- ✓ Disaster relief;
- ✓ Internal security tasks (assistance to civilian law enforcement authorities to maintain order in exceptional cases if it has broken down);
- ✓ Participation in nation-building (social function).

The degree to which the military performs these functions varies from one state to another, depending on the national legal framework and on the perceived security situation.

Protecting sovereignty and society

Despite new security developments and threats, the traditional job is still the most important task for most militaries, that is to defend the home country or allied countries against foreign military attacks. This task not only includes the protection of the state's territory and political sovereignty, but also the protection of the society at large.

Since the end of the Cold War, political leaders and militaries have become increasingly aware that national sovereignty is not only threatened by foreign militaries, but also by other new non-military threats such as terrorism, civil wars, organised crime, cyber-attacks and corruption (see Box N° 1). Almost all armed forces are currently in the process of defence reform. Box N° 18 describes the three main reform processes.

Box N° 18

Defence reform: what purpose?

Since 1990, most militaries have been drastically reformed. The reforms took place for different reasons in different countries. Put simply, three objectives for reform can be distinguished.

▷ **Democratisation**

In many post-communist, post-dictatorship and post-conflict countries the aim of the defence reform was democratisation:

- Making the military accountable to the democratically-elected political leadership, as otherwise the military constitutes a threat to democracy
- Balancing the resources needed for the military with the needs of other sectors of society

▷ **Adaptation to the new security environment**

- Adjusting the size and budget of the military to the new security threats
- Making the military ready for new missions, e.g. peacekeeping

▷ **Internationalisation**

Increasingly, the military no longer operate only within a national context, but together with units of other countries. This international cooperation can take place on an *ad hoc* basis, such as in UN peace missions, or on a long-term and institutional basis (for example NATO) or on a bilateral or multilateral basis.

- Putting the military (partly) under international command and organisational structures
- Increasing the military's ability to operate with the military of other countries in terms of equipment, training, language, information, command and control systems (interoperability)

Examples of permanent international units:

- ◆ 1st German–Netherlands Corps
- ◆ Baltic Battalion (Lithuania, Estonia, Latvia)
- ◆ Polish–Danish–German Corps
- Multinational Engineer Battalion between Slovakia, Hungary, Romania and Ukraine (“TISA” Battalion)

Contributing to international peace

Militaries are involved in peace missions for at least two reasons. First, to prevent conflicts and to avoid possible spill-over effects, such as the destabilisation of regions, the disruption of economies and the creation of uncontrolled streams of refugees. Second, as a means of contributing towards human security and protecting the civilian population in conflict areas. Human security, especially the enjoyment of human rights, has become a rather important policy objective of the international community since recent conflicts have turned increasingly violent and have affected the civilian population. A side effect of participation in peace missions is that they offer an opportunity to train military units and to gain experience in real scenarios.

Disaster relief

Every country can be or has been affected by natural or man-made disasters such as earthquakes, floods, large fires or plane crashes in urban areas. In such emergency situations, the military are called in by the civilian authorities to assist and supply disaster relief aid. The military carry out tasks such as maintaining law and order, providing food, medical and other resources and maintaining the lines of communication and transportation. A side effect of using the military for disaster relief operations is that they become visible to society in a positive way, and their popular support increases.

Assisting civilian law enforcement authorities

A further function performed by some militaries is to assist civilian law enforcement authorities. However this use of the military is very controversial. Societies may be endangered by threats that are too great for civilian authorities and police to face alone and therefore military support may be needed. Examples of such threats are terrorist attacks, organised crime or illegal drug trafficking. The concerns and dangers of using the military for civilian law enforcement include:

- ✓ It could threaten civilian control and oversight of the military;
- ✓ It inevitably leads to the politicisation of the military;
- ✓ The military can only temporarily restore law and order, but they cannot remove the political, social or economic roots of conflict or disorder;
- ✓ Armed forces are trained for combat and are therefore not specifically trained for policing tasks or for dealing with civilians at home;
- ✓ There is a risk of functional rivalries between the police and the armed forces.

Box N° 19

The use of the military in civilian law enforcement in South Africa

(...) The South African National Defence Force (SANDF) would only be deployed in the most exceptional circumstances, such as a complete breakdown of public order beyond the capacity of the South African Police structures, or a state of national defence (...).The internal employment of the military will be subject to parliamentary control and the constitutional provisions on fundamental rights, and will be regulated by legislation.

Source: "Defence in a Democracy". White Paper on National Defence for the

Republic of South Africa, May 1996.

Social functions

It is recognised that the military, especially military with conscripted soldiers, contribute to nation-building as young people (mostly men) from all parts and from different social backgrounds and ethnic origins work together. This is especially true in immigrant or multi-cultural societies, where the military has the function of a 'melting pot'. Another social function of the military consists in providing people with educational opportunities. People with limited or no labour perspectives can benefit from joining the military service. Another social function of the military, mostly in

developing countries, is to assist or support civil administration in remote areas, by using veterans for education, preventative health care or preventing ecological degradation.

These social functions are examples of how the military can contribute to society in a positive manner. In some countries, however, we witness the military interfering negatively in society, economics and politics. For example, in some countries the military intervenes in politics and threatens the government. In other countries, unfortunately, the military is involved in commercial businesses which provides them with an income in addition to the state budget, that is neither overseen nor controlled democratically.

What you can do as a parliamentarian

Functions of the military

- ▷ Make sure that the functioning of the military:
 - Is well defined in law and military rules and regulations;
 - Is consistent with the national security concept and policy;
 - Corresponds to the actual security needs of the society.
 - Non-military functions do not detract from the military's readiness for its primary function, which is to protect national sovereignty and to contribute to international rule of law.

Defence reform

- ▷ Make sure that the competent parliamentary committee(s) receives detailed reports on the reforms envisaged or undertaken with the corresponding impact analysis, and can raise issues in that connection, for example by organising hearings.

Use of the military in civilian law enforcement

In principle it is undesirable that the military should be involved in civilian law enforcement, but where there is no other solution the parliament should:

- ▷ Make sure that the involvement of the military in civilian law enforcement is clearly defined, restricted and regulated by law as to the:
 - Circumstances in which it may be resorted to;
 - Nature and limits of the involvement;
 - Duration of the involvement;
 - Kind of units to be involved in each case;
 - Institution(s) able to take a decision to involve the military and to discontinue their involvement;
 - Competent jurisdiction in case of any breach of the law or of human rights violations in that context, etc.
- ▷ Legislate that approvals or warrants must be issued by an authorised institution before the carrying out of house searches, arrests or before opening fire.
- ▷ Make sure that mechanisms exist – parliamentary or otherwise – to ensure that the involvement of the military in civilian law enforcement is consistent with international humanitarian and human rights law and principles.

Other state militarised organisations

The words “other state militarised organisations” (onwards referred as *OSMOs*) may have different meanings according to the settings and the countries in which they are used. In any event, OSMOs have to be distinguished from private militarised organisations. According to the London-based International Institute for Strategic Studies (IISS), the concept of *OSMOs* (sometimes also referred to as *paramilitary organisations*) includes the “gendarmerie”, customs services and border guards, if these forces are trained in military tactics, are equipped as a military force and operate under military authority in the event of war.

Nearly all countries in the world have OSMOs besides the military. These organisations are closely linked to the military and in some cases the military provides equipment, access to military bases, training and assistance to OSMOs.

In a number of situations, OSMOs have been known to apply inappropriately military techniques to civilian policing activities and/or to be responsible for serious human rights abuses. As the use of OSMOs can blur the distinction between civilian police and military forces, it is important that their role and position be well defined. It is preferable to exclude their participation in conducting internal security operations. Parliament should adopt appropriate legislation to this end and oversee action by the government. The president or prime minister has to allow parliamentary oversight of OSMOs, not only because by law any force which is funded by the state must be overseen by the parliament, but also because of the challenges and potential dangers of their wide and unchecked use.

Box N° 20

Examples of other state militarised units in selected countries

<i>Country</i>	<i>Total active personnel in armed forces</i>	<i>Personnel in other state militarised forces</i>	<i>Type of other state militarised units</i>
Finland	31,700	3,400	Frontier Guard
USA	1,365,800	53,000	Civil Air Patrol

Russian Federation	1,004,100	423,000	Border guard, interior ministry troops, forces for the protection of the Russian Federation, Federal Security Services, Federal Communication and Information Agency, Railway troops, etc.
Morocco	198,500	42,000	Gendarmerie, Force Auxiliaire, etc.
France	294,430	94,950	Gendarmerie
Italy	250,600	252,500	Especially the 'Carabinieri' and the Public Security Guard of the Ministry of Interior
Turkey	609,700	220,200	Gendarmerie/national guard, Coast guard
Burkina Faso	10,000	4,450	Gendarmerie, security companies
Chile	87,000	29,500	'Carabineros'
Republic of Korea	683,000	3,500,000	Civilian Defence Corps and Maritime Police
Indonesia	297,000	195,000	Including police, marine police and local military auxiliary forces

Source: IISS, The Military Balance 2000–2001, London

Functions of other state militarised organisations

OSMOs fulfil a wide range of functions, the most frequent of which are mentioned below:

- ✓ Border control, including tracing illegal trafficking of goods and people;
- ✓ Riot control;
- ✓ Maintenance of law and order in emergency situations and guarding the head of state and vital installations such as nuclear plants.

What you can do as a parliamentarian

Please refer to the corresponding sections under the previous and following chapters, which, *mutatis mutandis*, are fully applicable.

Police structures

Police in democracies

The police must at all times operate within the rule of law. They are bound by the same law they have to enforce and uphold. Furthermore, the role of the police is and should be distinct from that of other key institutions in the criminal justice system, such as the prosecutor's office, the judiciary, or the correctional system. From a good governance perspective, all states should provide public security while respecting individual liberties and human rights. Citizens in a democracy are entitled to expect fair, impartial and predictable treatment at the hands of the police. The conduct of police forces towards the public may be viewed as one of the chief indicators of the quality of democracy in a country.

Box N° 21

Key features of democratic policing

- ▷ Police services must respect the rule of law and operate according to a professional code of ethics;
- ▷ Democratic policing seeks to provide effective public security while respecting human rights;
- ▷ Police accountability requires transparency and the existence of mechanisms of oversight and of internal and external control;
- ▷ Democratic policing is a bottom-up process, responding to the needs and concerns of individual citizens and community groups, and seeking the trust, consent and support of the public. It therefore relies on transparency and dialogue. To that effect, in many countries it is decentralised, in order to respond adequately and quickly to local needs.

Need for special safeguards

Police organisations are instruments of the executive branch and they enjoy a virtual monopoly of legitimate coercion within a society in order to fulfil their functions. However because of this capacity, they have the potential to be used as an

instrument for state abuse, violence, suppression of human rights, and corruption. Police services in a democracy thus require special safeguards in order to ensure that they serve the interests of the society they are meant to protect, and not those of politicians, bureaucrats, or the police institution itself. Policing structures have to be endowed with discretion and should enjoy operational independence, but they must respect impartiality in upholding the law and act professionally. Police officers should be aware of and adhere to an explicit or implicit professional code of ethics. Part of this ethic of professional policing should be to respect everyone's right to life, as well as the commitment to use force only when necessary to secure a legitimate objective and no more force than absolutely necessary and authorised by law. The use of force by police forces must always respect the rule of proportionality. In addition to external – political and judicial – accountability structures (see Chapter 3), internal or bureaucratic accountability structures should also be in place. Internal review of alleged police misconduct and public complaints should always exist within the system of professional policing.

Box N° 22

Dangerous distortions and circumstances

“Undemocratic governance of security forces can also distort security priorities. In many countries a bias towards military security has led governments to militarise police forces (further blurring their distinction with the military) or to seriously underfund them, undermining their capacity to guarantee people's safety and security. Especially in low-income countries, the police and other security forces have barely subsistence wages, limited or no training, corrupt management and high illiteracy levels.” ... “Elected leaders in fledgling democracies often depend on security forces, including military units, to stay in office because those forces are the most powerful in society. For the same reason, leaders may actively resist greater accountability and openness for the military, because they depend on its power for their own ends.”

Human Development Report, 2002

Grassroots initiatives

Democratic oversight of the police may also be enhanced by informal bottom-up mechanisms such as human rights organisations from the grassroots levels of local communities, which can help ensure that police forces enjoy public confidence. Civilian oversight bodies, such as an ombudsman for public complaints brought against the police, provide external accountability of the police to the communities they serve. In some cases the creation of provincial security councils that include civil society groups and local leaders has had beneficial effects for the improvement of local police services. There should be legislation to protect whistleblowers and civil

society watchdog groups from harassment by the police, intelligence agencies and the military.

Box N° 23

Policing in Eritrea: a developing case

The relationship between a police organisation and its environment is always slightly multi-faceted. This is best described by considering how the organisation deals with the two main aspects of policing: using force to uphold the law and providing service to the general public. In so-called developing countries, like Eritrea, this dilemma is even more visible. The country has gone through a 30-year liberation struggle against Ethiopia, which apparently has not yet totally ended, as fighting resumed in 1998 and 1999. The police force of some 5,000 officers was filled with former liberation army people in the beginning of the nineties. The reason was quite simple: the government had to take care of its veterans. Some of the leading people had a police background, serving as officers in the former combination of Eritrea and Ethiopia.

Next to various kinds of technical assistance in criminal investigation methods, the building of a police academy, the setting up of schooling programmes, all supported by the Dutch government, the necessity of some cultural change was evident, at least for the donors and some of the leading elite within the country. People who have served as military, have a different perspective on the use of force than e.g. the typical English bobby. The culture change project within the Eritrea Police Force, with the aid of the Dutch government, aimed at realising democratic policing, characterised by maintaining law and order with a minimum of force.

Source: Casper. W. Vroom, University of Maastricht, The Netherlands, involved in the cultural change project of the Eritrea Police Force, 2002.

**What you can do as a
parliamentarian**

Democratic framework

- ▷ Make sure that the police operate within the rule of law.
- ▷ Make sure that the police operate according to a code of ethics in such a way that all citizens may expect from them fair, impartial and predictable treatment. In that connection, make sure that your state adheres to the UN Code of Conduct for Law Enforcement Officials (1979): see Box N° 65.

Training

- ▷ Ensure that the professional education and training of the police aim at maintaining law and public order with a minimum of force and, to that end, include more especially democratic and ethical values, human rights and gender sensitivity and training: see also Chapter 7.

See also the recommendations in sections VI, VII, VIII on financial, human and material resources.

Secret and intelligence services

Intelligence services (sometimes also called “security services”) are a key component of any state, providing independent analysis of information relevant to the security of state and society and to the protection of its vital interests. Although they depend on the executive branch, the parliament plays a crucial role in overseeing their activities.

The new threats and risks to internal security resulting from international terrorism, drug trafficking, smuggling, organised crime and illegal migration, are eliciting calls to strengthen intelligence capabilities. In particular, following the events of September 11, 2001, good intelligence is seen as essential. In the months following the attacks, governments of several countries have granted wider powers to intelligence services, such as wiretapping of internet, telephone and fax communications (see Chapter 20 on terrorism).

New technologies are expanding capacities for surveillance, detection, and apprehension of possible suspects, and greater cooperation is being developed among intelligence services, both internal and external. It is largely up to the parliament to ensure that the increasing powers of the intelligence services do not run counter to international humanitarian and human rights law and principles.

Nature of intelligence services

The very nature of intelligence services is to gather and analyse information. Such actions require a high degree of secrecy. On the other hand there is a danger that this information can be abused in the domestic political context. Intelligence services can become threats to the society and the political system they are meant to protect. Therefore, there is a great need for clear democratic and parliamentary oversight of the intelligence services in addition to executive control. Only a system of checks and balances can prevent the executive or the parliament from misusing intelligence services for their own political purposes.

In a democracy, intelligence services should strive to be effective, politically neutral (non-partisan), adhere to a professional ethic, operate within their legal mandates, and in accordance with the constitutional-legal norms and democratic practices of the state.

Democratic oversight of intelligence structures should begin with a clear and explicit legal framework, establishing intelligence organisations in state statutes, approved by parliament. Statutes should further specify the limits of the service's powers, its methods of operation, and the means by which it will be held accountable.

Box N° 24

Parliament and special funds assigned to intelligence services: the example of Argentina

"Law No 25.520 on National Intelligence. (27 November 2001). Article 37: "The Bicameral Committee of the National Congress is competent to oversee and control the 'budget allocations' assigned to the different components of the National Intelligence. With this aim, the Bicameral Committee of the National Congress can execute any act related to its competence, in particular:

1. To participate and intervene in the discussion of the national budget law that the Executive Power sends to the Congress. With this aim, the Executive Power sends all the necessary documentation, in particular a) an annex with the reserved, confidential, secret or limited-access budgets executed by jurisdiction; b) an annex containing purpose, programme and object of the expenditure.
2. To ask for assistance from all the intelligence organisms included in this law, which are compelled to give all data, background and reports related to their functions. In those cases of necessity, data and documents referred to in article 39 of this law could also be required.
3. To monitor that the budget allocations had the purpose assigned in the budget law.
4. To make an annual report for the National Congress and the President containing: a) the analysis and evaluation of the execution of the budget allocations given to the intelligence organisms; b) a description of the oversight and control activities carried out by the Bicameral Committee, as well as any recommendations that it would like to make."

Source: Law No 25.520 on National Intelligence of Argentina, 27 November 2001.

Most states implement some degree of formal oversight, usually in the form of parliamentary oversight committees. The purview of already existing parliamentary committees, such as the defence or armed forces committee, is sometimes expanded to include intelligence matters. In other countries, the parliament has established

parliamentary committees or sub-committees focusing specifically on the oversight of the intelligence and secret services.

Parliamentary oversight committees should be guaranteed access to information, a role in appointing the head(s) of intelligence service(s), and budgetary oversight (see Box N° 24 on special funds).

In addition to, or in the absence of, a competent parliamentary committee, some states have formally established intelligence oversight committees outside the executive branch or cabinet. Cabinet and executive-level oversight bodies normally involve a managerial or administrative function, and tend to be less independent from the structures whose activities they supervise than parliamentary committees which involve representatives from across the political spectrum.

Box N° 25

Some practices of parliamentary committees dealing with classified documents

- ▷ If necessary the committee meets behind closed doors;
- ▷ The committee reports to the plenary of the parliament, followed by a public debate (on non-classified issues)
- ▷ The committee is entitled to request any information, provided that it does not disclose information on current operations or the names and employees of the intelligence services
- ▷ The committee may disclose any information after it has determined (by a qualified majority or normal majority) that the public interest would be served by such a disclosure
- ▷ The committee does not limit itself to the information that is requested. On its own initiative, the minister(s) responsible for the intelligence services should provide information to the committee, whenever such information may help complete understanding.

Parameters for intelligence services in democracies

The particular form of oversight of intelligence or secret services is influenced by the state's legal traditions, political system and historical factors. For example, certain countries influenced by the British common law tradition tend to emphasise the judicial aspect of oversight. In contrast, legislative oversight tends to be favoured by continental European countries and those having experienced repressive police powers at some point in modern history. The United States of America has oversight control mechanisms in the executive, legislative and judicial federal branches. Some democratic countries have created the institution of the ombudsman, which is empowered to investigate alleged violations of human rights by the intelligence

services and to inform the public about the outcome of the inquiry. (On the ombudsman, see Chapter 16)

Scope

The oversight of intelligence services is often limited in scope. This limitation may concern the type of activity (domestic/counterintelligence or foreign intelligence), or substantive areas of concern (operational methods, covert action).

Open or confidential debate in parliament

Generally, intelligence oversight in democratic societies remains less open and developed than over other areas of state activity. For example, the deliberation of parliamentary intelligence oversight committees does not usually occur in full and open public debate and the members of parliament involved may have to take a special oath committing them to respect the confidential nature of the information made available to them. Regardless of the particular form of oversight adopted, democratic societies seek to maintain a balance between ensuring the appropriate, legal behaviour and accountability of such organisations through regular scrutiny on the one hand, and preserving their secrecy and effectiveness in protecting national security on the other.

Division of tasks

A structural means of controlling intelligence is to avoid a monopoly of the intelligence function by one organisation or agency. A proliferation of different intelligence organisations, perhaps corresponding to separate structures such as the armed forces and police, or domestic and foreign intelligence, may be less efficient and foster bureaucratic competition, but is generally considered to be more conducive to democratic control. Therefore many states have separate services for internal intelligence and military intelligence. This distinction is favourable from a democratic oversight point of view, but fragments the intelligence-gathering and analysis, which turned out to be especially problematic after the terrorist attacks on the United States.

Training of intelligence personnel

The training and professional formation of intelligence experts is a key aspect of oversight. In particular the inculcation of professionalism, commitment to democratic norms and human rights principles, as well as a sense of civic responsibility are important aspects of the training of intelligence personnel. Democracies endeavour to train and employ civilians in intelligence functions, not leaving this to the domain of the military.

Declassification of material

Another structural factor that may facilitate control and accountability is the possibility that information about intelligence activities will become accessible to the public after a certain period of time. This can be promoted by freedom of information legislation and by rules on the release of classified materials after a set amount of time. This

possibility of delayed transparency and eventual public scrutiny may facilitate democratic control (see Chapter 21).

What you can do as a parliamentarian

Parliamentary oversight mechanisms

- ▷ Make sure that your parliament has a committee or a sub-committee with a specific mandate to oversee all intelligence services (see for a comparison Chapter 15 on parliamentary committees).
- ▷ Make sure that that body's mandate is clearly defined and is restricted as little as possible, and that its members have access to all necessary information and expertise.
- ▷ Make sure also that the parliamentary committee takes action and reports periodically on its findings and conclusions and recommendations.

Democratic and legal framework

- ▷ Make sure that the law on intelligence services regulates the following issues: they should define the status, the purview, operation, cooperation, tasking, reporting duties and oversight of the intelligence services. In addition, the use of specific methods of acquiring information and keeping records containing personal details should be arranged by law as well as the status of the intelligence services employees.
- ▷ Monitor whether the intelligence services are politically neutral and operate according to a professional ethic that includes commitment to democratic norms and a sense of civic responsibility.
- ▷ Make sure that the parliamentary intelligence oversight committee takes action to ensure that intelligence personnel receive education in democratic principles and human rights law.
- ▷ Parliament should enact laws that give all three branches of the state a complimentary role, that is:
 - The executive has the final responsibility of tasking and prioritising the intelligence services;

- The parliament enacts relevant laws, oversees the budget and oversees the government's role and the functioning of the intelligence services; parliament should NOT interfere in intelligence operations on the ground;
- The judiciary issues warrants if the intelligence services want to interfere in private property and/or communication and oversees that the intelligence services operate within the law.

Transparency and accountability

- ▷ Make sure that the parliamentary intelligence oversight committee is consulted or informed about the general intelligence policy developed by the executive.
- ▷ Make sure that the parliamentary intelligence oversight committee seeks to ensure that intelligence services operate in a legal, appropriate, and accountable manner, while preserving their necessary confidentiality and effectiveness; this includes, *inter alia*, legal provisions with regard to wire-tapping.
- ▷ Make sure to that effect that the committee is comprehensively informed about the activities of intelligence agencies, and has a role in appointing the heads of the intelligence and secret services.

Issues relating to confidentiality

- ▷ Make sure that the legislation on freedom of information is an important means of accountability and oversight - both direct and indirect - of intelligence services.
- ▷ Special Audits should be in place in the case of secret funds in order to maintain balance between confidentiality and accountability requirements.
- ▷ Make sure that criteria and delays for the release of once classified material are provided by law so as to secure, or raise the prospect of, delayed transparency. The title of reports which can be accessed through freedom of information legislation must be released periodically.

See also Chapter 20 on terrorism and Section VI on financial resources!

Private security and military companies

The state has the monopoly of the legitimate use of force and is the sole security provider, responsible for the provision of internal security and defence from external threats. However in recent years the wave of internal conflicts have brought to the fore a new phenomenon known as privatisation of security functions. Some non-state security actors have (re-)emerged and they challenge the traditional form of democratic control of the security sector.

Since the 1990s there has been a proliferation of private security and military enterprises. The majority of these which can be divided into three main groups: mercenaries, private military companies and private security companies. It is important that the activities of these actors be controlled by state mechanisms.

The functions and dangers of private security and military companies

It is mostly post-conflict or so-called failed states that are tempted to call on private security and military companies. They usually do so to compensate for the lack of adequate military training and strength and because they are thus unable to provide security for all their citizens and/or groups, or are unwilling to uphold the state's monopoly of violence to implement genuine democratic oversight over their own security sector, or are facing intra-state conflicts.

In those kind of circumstances, the use of private military/security companies may seem to have positive effects in the short run, especially in terms of improving national professional skills and training capabilities, and even sometimes in terms of increased self-confidence. However the negative impact on the democratisation process may be high and multi-faceted as shown in Box N° 26.

The public and democratically-elected institutions, and first of all the parliaments of the "receiver" states, need adequate and efficient mechanisms of oversight and democratic control not only over their state security structures, but also over the hired military/security expertise.

Box N° 26

Private security and military companies and some potential dangers for democracy

- ▷ Private security actors may bring a degree of stability in the military/security sphere but, in the long run some governments may see reliance on military force as the main way of resolving (internal) problems;
- ▷ Hiring foreign experts opens a range of questions, such as their concrete military/security mission and budgetary aspects: from a democratic and good governance perspective, such questions should always be addressed in a public and parliamentary debate;
- ▷ In many cases these private actors act as arms brokering agents under the guise of other more visible (and more legitimate) missions.

Mercenaries

Mercenaries are part of a relatively old phenomenon. More recent conflicts proved that mercenaries can still be found in many parts of the world.

A definition of mercenaries is provided in Article 1 of the 1989 *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* adopted by the General Assembly in its resolution 44/34 of 4 December 1989. The Convention entered into force on 20 October 2001, but up to now only very few countries have ratified it. The Convention expands the definition contained in article 47 of *Additional Protocol 1* to the *Geneva Conventions* of 1949 (in particular with respect to those persons who are specifically recruited to participate in concerted acts of violence with the aim of overthrowing a government, or undermining in any other way the constitutional order of a state or its territorial integrity):

"Article 1 - For the purposes of the present Convention,

1. *A mercenary is any person who: (a) Is specially recruited locally or abroad in order to fight in an armed conflict; (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) Is not a member of the armed forces of a party to the conflict; and (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.*
2. *A mercenary is also any person who, in any other situation: (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or (ii) Undermining the territorial integrity of a State; (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) Is neither a national nor a resident of the State against which*

such an act is directed; (d) Has not been sent by a State on official duty; and (e) Is not a member of the armed forces of the State on whose territory the act is undertaken."

For the purposes of the International Convention, a serious offence is committed by any person who recruits, uses, finances or trains mercenaries, or attempts to commit such acts or is an accomplice in such acts or attempts. However, there are cases when governments hire foreign military experts for special tasks (jet pilots, anti-terrorist operations, etc.).

The Special Rapporteur on mercenaries of the UN Commission on Human Rights recommends in his report that "the General Assembly should reiterate its invitation to all states that are not yet party thereto to ratify or accede to the Convention. It should, at the same time, invite member states to review their national legislation so as to bring it into line with the Convention" (par. 70).

Private military companies

Private military companies are a kind of modern and corporate-type of "mercenaries". As such, they work for profit, i.e. giving military services and training or, more precisely, performing combat and/or non-combat roles. From a legal point of view, however, they do not fit into the narrowly-drawn definition of mercenary forces as they normally consist of retired military personnel, who are no longer active in the security forces. Private military companies offer a wide range of services from combat and operational support, or advice and training, to arms procurement, intelligence gathering, or hostage rescue, etc. Regardless of the type of services they provide, their common characteristic is to operate at the request of governments, especially in conflict situations or post-conflict reconstruction.

An example of such a private military company is the US-based MPRI. This is a professional services company engaged in defence-related contracting, focusing on support and assistance in defence matters such as law enforcement expertise, and leadership development. It was created by former senior military officers in 1988 and still is primarily operated by former military personnel.

Private security companies

Private security companies provide services aimed at protecting business and property, and thus at contributing to crime prevention. As such, private security companies exist everywhere, but recent trends show that their use has increased, especially in conflict regions, where businesses feel a need for more protection than the state can provide. They are believed to be more concerned with the protection of property and personnel than with the military side of a conflict. In practice, however, very often companies combine military and security expertise since both appear to be equally important and necessary in the respective regions. This tends to blur the line between private military and security companies.

Due to the increased importance and spread of private security actors it becomes more and more important that democratic institutions, especially the parliament,

assure a minimum standard of oversight and control over those new actors in the security sector, otherwise basic democratic principles are threatened.

What you can do as a parliamentarian

Legislation

- ▷ Ascertain your state is party to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and has adopted satisfactory corresponding legislation.
- ▷ Verify that a legal framework for private security and military companies is in force.

Respect of norms and arms embargoes

- ▷ As private security and military companies are operating abroad in conflict regions, encourage your parliament to check whether the activities of the private and military security companies based in your country are in line with the national security strategy as well as foreign policy and the relevant international laws, norms and resolutions.
- ▷ Provide by law that private security and military companies should NOT be allowed to operate in regions or countries which are subjected to an arms embargo.

Transparency

- ▷ Ascertain that no foreign private security and military company is allowed to operate on national territory without prior authorisation of the parliament, even where it is operating at the request or with the consent of the government.
- ▷ Make sure that the government's budget for private security and military companies and their activities is overseen by parliament.

Accountability

- ▷ Make sure that the parliament keeps the government accountable for all deeds of private security and military companies, both in law and in practice, at home and abroad.

Section IV

**National security under
parliamentary scrutiny:
Conditions and mechanisms**

Conditions of effective parliamentary oversight

Parliamentary oversight of the security sector depends on the power of the parliament in relation to the government and the security services. In this context, power means the capacity to influence the government's options and behaviour according to the collective will of the people as expressed in parliament. It also includes the capacity to oversee the implementation of policies, legislation, decisions and the budget, as approved by the parliament. This power derives not only from the constitution and laws but also from rules of parliamentary procedures and customary practices.

Conditions for an effective parliamentary oversight of the security sector thus include:

- ✓ Clearly defined constitutional and legal powers
- ✓ Customary practices
- ✓ Resources and expertise
- ✓ Political will

Constitutional and legal powers

The constitution (or its equivalent) provides the most important legal basis for parliamentary oversight of the security sector. While constitutions vary from one country to another according to the country's political, cultural, economic and social background, most constitutions stipulate that:

- ✓ The executive (e.g. president, prime minister or minister of defence) is responsible for the security services;
- ✓ The executive is accountable to the parliament.

As constitutional provisions have the highest juridical status it is important to inscribe parliamentary powers regarding the security sector in the constitution. Constitutions cannot be easily changed; any such reform generally requires a qualified majority in parliament. Therefore the constitution represents an effective way of protecting the power of the parliament in that sensitive field. Such powers may be further reinforced by specific legislation and through the rules of procedure of parliament. In addition, over time, social norms and practices for accountability and parliamentary oversight have been developed.

Box N° 27 gives an indication of the wide range of powers which parliaments can use when overseeing the security sector. Most of these powers will be discussed in the following chapters.

Box N° 27

Instruments or tools that may be used by parliament for securing democratic oversight of the security sector

1. General Powers

- a. To initiate legislation
- b. To amend or to rewrite laws
- c. To question members of the executive
- d. To summon members of the executive to testify at parliamentary meetings
- e. To summon military staff and civil servants to testify at parliamentary meetings
- f. To summon civilian experts to testify at parliamentary meetings
- g. To obtain documents from the executive
- h. To carry out parliamentary inquiries
- i. To hold hearings

2. Budget Control

- a. Access to all budget documents
- b. The right to review and amend defence and security budget funds
- c. Budget control is exercised on the level of programmes, projects and line-items
- d. The right to approve/reject any supplementary defence and security budget proposals

3. Peace missions/deployments abroad: the parliament's right to approve/reject:

- a. Participation in decision-making before the troops are sent abroad
- b. Mandate of the mission; ensuring a UN mandate
- c. Budget of the mission
- d. Risks of military personnel involved
- e. Rules of engagement
- f. Chain of command/control
- g. Duration of the mission
- h. The right to visit troops on mission

4. Procurement

- a. Obligation of the executive to fully inform parliament on procurement decisions
- b. The right to approve/reject contracts
- c. Review of the following phases of procurement:
 - i. Specifying the need for new equipment
 - ii. Comparing and selecting a manufacturer
 - iii. Assessing offers for compensation and off-set

5. General Defence and Security Policy: the right to approve/reject

- a. Security policy concept
- b. Crisis management concept
- c. Force structure
- d. Military strategy/doctrine

6. Defence/security personnel

- a. The right to approve/reject the personnel plan
- b. The right to fix ceilings for manpower
- c. The right to approve/reject or the right to be consulted on the highest military appointments (such as chief of staff)

Customary practices

Not all behaviour and interaction can be regulated by law. Hence it is equally important to develop and maintain habits and practices of parliamentary oversight backed by social norms, such as mutual respect and trust. For example, informing and involving parliamentarians fully and in good time about new developments with regard to security is not only a matter of transparency and legal accountability, but of dialogue between people too.

Resources and expertise

Generally the ability of the parliament to oversee the security sector is influenced by time factors and the level of expertise and information available to it.

The time factor

It is crucial for parliament to receive timely information on the government's intentions and decisions regarding security issues and the security sector. The parliament will not have a strong case if the government briefs it only after having reached a final decision. In such situations, the parliament will be confronted with a 'fait accompli' and will have no other alternatives than to approve or reject the government's decision.

In times of national crises or emergency, the government is usually bound to act very quickly and will only inform the parliament *post facto*. This however does not excuse it from acting within the framework approved by parliament.

As far as regular and long-term policy issues are concerned, parliament should have enough time to analyse and debate essential matters such as the defence budget, arms procurement decision-making or a defence review.

One way of getting round the time pressures routinely confronting parliamentarians in their work is to develop a proactive strategy. Box N° 28 presents some elements of such a proactive strategy for overseeing the security sector.

Box N° 28

Proactive strategies for parliamentary oversight of the security sector

The work of parliamentarians is often dominated by the news of the day. Moreover their political agenda is to a large extent imposed by the government. An effective way to overcome time restraints, however, may be to develop a proactive strategy for parliamentary oversight. With regard to the security sector, such a strategy could include the following.

Agenda setting: Parliamentarians should continuously try to translate people's intentions and needs into issues on the political agenda.

Latest developments: The parliament needs to stay informed about the latest national and international developments in security and military matters. This may be achieved not just via governmental channels but also via non-state organisations such as universities, think-tanks, etc.

Lessons learned: The parliament needs to learn from past operations carried out by the security sector participants, by means of frequent and structural reviews.

Continuous review: The parliament has to require that the government take account of all latest intentions, developments and lessons learned when updating its security policy.

Information, expertise and parliamentary staff

Effective parliamentary oversight of the security sector requires expertise and resources within the parliament or at its disposal. However, the expertise found within

parliament rarely matches the expertise of the government and the security forces. In most cases, parliaments have only a very small research staff if any, whereas the government can rely on the staff of the ministry of defence and other ministries dealing with the security sector. Some parliaments, like the Argentine Congress, have a military liaison office permanently attached to them that can be consulted by parliamentarians and parliamentary staff and can provide advice, more especially, to the committee on defence/security issues. In addition, parliamentarians are only elected to sit in parliament for a limited term, whereas civil servants and military personnel on the whole spend their entire career in the ministry of defence. The basic problem is, however, that parliaments mainly rely on information emerging from the government and military, yet these are the institutions they are supposed to oversee. This creates a disadvantageous position for parliamentarians vis-à-vis the government and military. The situation is aggravated by the closed nature of the security sector due to its typically military work, culture, education and secrecy laws.

Box N° 29 presents some suggestions about how to enhance the expertise of parliamentarians with regard to the security sector.

Box N° 29

Mechanisms and practices for enhancing parliamentary expertise on security issues: a few suggestions

- ▷ Establish – wherever it does not yet exist as a separate entity – a parliamentary security/defence committee concentrating expertise and parliamentarians’ knowledge on security issues: parliament could consider dividing the defence committee into subcommittees on procurement, personnel issues, budget and peace missions.
- ▷ Attend national and international seminars, go on study tours, visits to premises of security services (see Chapter 11 on secret and intelligence services) and training sessions for parliamentarians. This could also include briefings for parliamentarians travelling to countries where national troops are involved in peace missions;
- ▷ Exchange experiences and practices between parliamentarians from different countries, for example during sessions of international parliamentary assemblies;
- ▷ Have well-trained and sufficiently numerous professional parliamentary staff;
- ▷ Secure access to specialised and up-to-date libraries and documentation/research centres, including electronic databases;

- ▷ Secure advice from external experts from non-state organisations (e.g. universities, think-tanks), or retired military officers (see Chapter 6 on civil society);
- ▷ Make international and regional treaties relating to the security field available to parliamentarians in the national language(s) together with their status of ratification and relevant documents from the treaty monitoring bodies, if any;
- ▷ Select on a yearly basis two or three themes related to the security sector, which will be thoroughly investigated (e.g. by subcommittees);
- ▷ Set up an all-party group of parliamentarians (both chambers wherever appropriate) concerned with security/defence issues: such a caucus may serve as an informal think-tank on these issues.

Political will

Even if the legal basis for parliamentary oversight is impeccable and the parliament has enough resources and expertise to tackle this issue, effective parliamentary oversight of the security sector cannot be taken for granted. The last element, the political will of the parliamentarians to use the tools and mechanisms at their disposal is a crucial condition for an effective parliamentary scrutiny of the security sector. A lack of political will to oversee security services can be caused by different factors including the following:

- ✓ Party discipline: as it is in the interest of the parliamentarians of the governing party to keep the executive in power, they have a tendency to refrain from public criticism of the executive.
- ✓ Constituency interest/lack of interest: in many countries the public is generally uninterested in security issues. Therefore many parliamentarians think that it does not pay, in terms of being re-elected, to spend too much of their time on security issues.
- ✓ Security considerations forcing parliamentarians, who are for example members of the intelligence committee, not to disclose their findings.

As a result of this kind of situation, parliamentary instruments may be applied in a passive way when it comes to overseeing the policy and action of the executive except when an extreme situation such as a scandal or an emergency situation compels otherwise. Nevertheless, it is a constitutional duty and an important task of any parliamentarian to scrutinise critically the intentions and actions of the executive.

Parliamentary mechanisms applied to the security sector

All legal systems provide parliaments with a variety of means to retrieve information for controlling policy, supervising the administration, protecting the individual, or bringing to light and eliminating abuse and injustice. In addition, parliamentarians can benefit from or develop good practices and informal methods that complement these constitutional or legal tools and mechanisms.

The three common legal possibilities for parliaments to obtain information from the government are:

- ✓ Parliamentary debates
- ✓ Parliamentary questions and interpellations
- ✓ Parliamentary inquiries

Parliamentary debates on security

Parliamentary debates on security issues provide a key opportunity for exchanging opinions and gathering essential information about facts and the government's intentions. Generally speaking, parliamentary debates on security policy and issues can occur in five types of situations:

- ✓ Following the presentation by the executive of its yearly defence budget proposals;
- ✓ Further to official or unofficial statements by relevant ministers such as the minister of defence or the minister of foreign affairs;
- ✓ In connection with a national defence review, the presentation of a defence white paper or any other major national defence documents;
- ✓ In connection with the government's programmes, which are mainly issued after an election;
- ✓ Any specific issue that demands a parliamentary debate, such as a scandal, major security concern or disaster.

Box N° 30

Common features of the parliamentary machinery and procedures for overseeing the executive

▷ **General debate**

“In some countries the provisions of the constitution require the executive to give parliament periodic accounts of its stewardship. (...) In most countries matters of general policy are not automatically subject to periodic examination. Most often they would come up for debate if specifically raised by a member (...).”

▷ **Interpellation**

“(...) Interpellation is the stock procedure for obtaining information and exercising control in the classical parliamentary system. An interpellation is addressed by a member of parliament either to a minister to explain something his department has done or to the head of the government on a matter of general policy. An interpellation has two essential features: first it gives rise to a general debate; and secondly it carries a political sanction, because the debate culminates in a vote on a motion expressing either the satisfaction or the dissatisfaction of the house with the explanations furnished by the government. An interpellation is a most effective procedure because ministers are called directly to account. It is not simply a device to obtain information, but a direct form of control (...).”

▷ **Adjournment motion**

“In the British system the procedure of interpellation is unknown, though the “adjournment motion” is not unlike it. The adjournment motion moved immediately before the beginning of a recess gives an opportunity for raising a series of matters with the government, but no vote is taken (...).”

▷ **Questions**

“The procedure of questions’ (...) purpose is to elicit concrete information from the administration, to request its intervention and, where necessary, to expose abuses and seek redress. It is also used to obtain detailed facts which will help members to understand the complicated subject matters of bills and statutory instruments laid before parliament (...). [T]he procedure provides the opposition with a means of discovering the government’s weak points and because of the publicity given to them they have a salutary effect on the administration. (...) The popularity of this procedure can be attributed to the fact that in making use of his right to ask questions, the member of parliament is a completely free agent (...).”

▷ **Committees of inquiry:** See Box N° 32.

Source Parliaments, by Michel Ameller, Inter-Parliamentary Union, 1966

Parliamentary questions and interpellations relating to security

Questions – either written or oral – form part of the parliament's inquisitorial function and are one of the most widely used parliamentary procedures to oversee government's action.

Questions can dramatically contribute towards an effective oversight of the security sector, given the essential function they perform. With regard to security, in general, parliamentary questions:

- ✓ Provide members of parliament with an opportunity to obtain timely, accurate and up-to-date information about the government's defence and security policy and about security issues in general;
- ✓ Help parliament to control the implementation of security-related statute laws adopted by parliament;
- ✓ Help to focus public attention on defence and security issues, especially when the question is oral and the response is broadcast or televised and/or otherwise reproduced in parliamentary debates or the national official bulletin (clearly, the informative function of parliamentary questions is not limited to the area of the parliament itself; questions are also aimed at providing information for a larger audience including the media, NGOs and civil society as a whole);
- ✓ Can be instrumental in influencing or reorienting the government's political agenda on security issues;
- ✓ Allow members of the opposition to raise questions on security issues of concern to them or regarding which they had not been able to obtain satisfactory information so far.

Parliamentary questions with regards to the security sector are, for the most part, very sensitive. The minister who holds the responsibility for answering parliamentary questions often show little willingness to do so. Such reluctance often derives from the confidential character of the activities of the security sector. Often documents concerning national security are classified and therefore available to neither parliamentarians nor the public.

Box N° 31

Suggestions for effective questioning

- ▷ **Thorough preparation:** it is impossible to improvise when questions asked relate to security issues, especially technical ones. Informal contacts with military personnel (or a personal military or paramilitary background) can also be of great help.

- ▷ **Unequivocal language:** a lack of clarity in the formulation of the question that may give rise to some form of misunderstanding can entail an inadequate or insufficient ministerial answer.
- ▷ **Timing:** the moment in which a question is raised is, of course, crucial to its effectiveness and its impact, including in terms of publicity.

However the power of the executive to classify documents is limited by law. Moreover, the process of classifying documents has to be transparent, so that it is known who is responsible for deciding, which documents can be subject to classification, the time length of the confidentiality period, as well as the conditions for classifying and declassifying.

As far as the institutional context is concerned, the following factors appear to contribute to the effectiveness of parliamentary questions:

- ✓ The possibility for parliamentarians to present complementary questions whenever they are not satisfied with the answer or need further clarifications;
- ✓ The possibility for parliamentarians to initiate a debate on issues raised during question hour;
- ✓ The will of members of parliament to avail themselves of the procedural possibility to ask questions;
- ✓ The possibility for the public to attend parliamentary question time, or follow it on radio or television;
- ✓ The publicity surrounding the debates that follows and, in any case, the publication of the questions and answers in documents accessible to the public.

Special parliamentary inquiries on security

Apart from their role in the legislative process, parliamentary committees also take part in the effective supervising of government policy. Government activities can be monitored by means of temporary information assignments, which may involve more than one committee and usually result in the publication of an information report. Special parliamentary inquiries should have subpoena powers of judicial inquiry.

Main advantages and characteristics of committees of inquiry

With regard to security/defence issues, *ad hoc* committees of inquiry have a specific importance and their advantages are numerous. In particular:

- ✓ Their very setting up may be viewed, by the public especially, as a positive political signal;
- ✓ They may be an adequate tool for detailed scrutiny of politically sensitive issues related to the security sector;

- ✓ They may allow a precise evaluation of the government's policy on specific security issues and propose, where appropriate, means of redress or reorientation likely to be accepted by the entire house and the government.

Box N° 32

Key characteristics of parliamentary committees of inquiry

“(…) Committees of investigation are widely used to study specific issues. For this purpose, parliament instruct a number of its members to collect such information as it needs to enable it to exercise proper control, and to make a report on which the house will, if it thinks fit, hold a debate and come to a decision.

The right to institute an inquiry is a natural corollary of the principle that parliament must be fully informed of any matter on which the Executive takes action (…).

In some countries, it is difficult for committees of inquiry to make an effective inquiry. Often they have no power to compel persons to attend except by ordinary process in the courts. This entails the intervention of governmental authorities, slows down the committee's proceedings and mutes the effect of its inquiry. (...) Yet the best way of making a parliamentary inquiry effective is by taking evidence on oath. (...)

Evidence given by civil servants to committees of inquiry raises a special problem because they are subordinate to the minister in charge of their particular department. How far can the government order them not to reply to questions put to them by parliamentarians? (...) In [some countries] the consent [to give evidence] of the department concerned is always required; but it may not be withheld unless to furnish the information required would be “prejudicial to public security or liable to jeopardise or make difficult the carrying on of the public service (...).

It should be noted that, whatever the system, the committee set up to conduct an inquiry is nothing more than an investigating and fact-finding body whose sole function is to make a report to the house which has set it up. It is always a matter for the house itself to draw the necessary conclusions from the inquiry and data elicited by it (...).”

Source: : Parliaments, by Michel Ameller, Inter-Parliamentary Union, 1966

Another important feature of such committees of inquiry is their composition. The proportion of opposition MPs involved as opposed to those of the majority is, of course, of crucial importance to the outcome of the inquiry.

The inquiry powers vary substantially from one parliament to another and from one committee to another. The core powers include, notably, the power:

- ✓ To choose the topic and scope of the parliamentary inquiry;
- ✓ To carry out visits to army bases and other premises of security services (see Chapter 17);
- ✓ To collect all relevant information, including classified and top secret documents, from the presidency, governmental administration or the general staff;
- ✓ To take evidence under oath from members of the presidency, government administration or the military as well as civil society;
- ✓ To organise public or closed hearings.

Canada's inquiry into the deployment of Canadian soldiers in Somalia offers a good illustration (see Box N° 33).

Box N° 33

The Commission of Inquiry into the deployment of Canadian forces in Somalia: an illustration of the public impact of parliamentary reports on security issues

During the deployment of Canadian troops in Somalia in 1993, events transpired that shocked most Canadians – the shooting of Somali intruders at the Canadian compound in Belet Huen, the beating to death of a teenager in the custody of soldiers from 2 Commando of the Canadian Airborne Regiment (CAR), an apparent suicide attempt by one of these Canadian soldiers, and, after the mission, alleged episodes of withholding or altering key information. Videotapes of repugnant hazing activities involving members of the CAR also came to light. The military board of inquiry investigating the events was considered insufficient by the government to meet Canadian standards of public accountability, thus the Canadian Parliament under the Inquiries Act established an open public inquiry.

Scope and authority – The Inquiries Act gives the authority to subpoena witnesses, hear testimony, hire expert counsel and advisers, and assess evidence. The power to compel testimony was the principal mechanism for determining what transpired in Somalia and at National

Defence Headquarters. Some 116 witnesses offered their evidence to the Inquiry in open sessions broadcast on television across Canada. The scope was not only limited to the events in Somalia itself, but also to the context, including elements such as the chain of command system, discipline, operations of the Canadian Forces, and on the actions and decisions of the Department of National Defence. The second part of the terms of reference required the Commissioners to look at specific matters relating to the pre-deployment, in-theatre, and post-theatre phases of the Somalia operation.

Not a trial – The Inquiry was not intended to be a trial, although the hearings did include an examination of the institutional causes of, and responses to, incidents that had previously resulted in the charge and trial of individuals. The Inquiry's primary focus was on institutional and systemic issues relating to the organisation and management of the Canadian Forces and the Department of National Defence, rather than on the individuals employed by these institutions. However, this focus inevitably required the Inquiry to examine the actions of individuals in the chain of command and the manner in which they exercised leadership.

The results – The result of two years work was a lengthy report covering a wide range of issues including: the structure and organisation of the Canadian Forces and the Department of National Defence at the time of the Somalia mission; the importance of the chain of command in the Canadian military; a discussion on military culture and ethics; civil-military relations in Canada, etc. It ended with a series of major recommendations for change in a wide range of government and Canadian Forces activities and policies. Many of these recommendations are in the process of being implemented.

*Source: Prof Dr. Donna Winslow
Technical Adviser to the Canadian Parliamentary Inquiry, 1996.*

Parliamentary defence or security committees

Given the complexity of the security sector, a well-developed committee structure is crucial if the parliament is to exert real influence on the executive. The parliamentary oversight of the security sector involves not just one committee but several committees which may be found under different names in different parliaments (and may sometimes have their mandates combined).

Most commonly these committees – which may at times be called to hold joint sessions – are the following:

- ✓ **Defence committee** (sometimes found under the name of armed forces committee or national defence and security committee or security and external affairs committee) which generally deals with all issues related to the security sector, e.g. the mission, organisation, personnel, operations and financing of the military and with conscription and procurement;
- ✓ **Committee for foreign affairs, which** deals with, for example, decisions to participate in peace missions, or accept their presence on national territory, international security, international/regional organisations, treaties and arrangements;
- ✓ **Budget or finance committee**, which has a final say on the budgets of all security sector organisations; possibly the public accounts committee which reviews the audit reports for the entire national budget, including the defence budget;
- ✓ **Committee (or sub-committee) on intelligence** services and matters, which often convenes behind closed doors;
- ✓ **Committee for industry and trade, which is** especially relevant in matters of arms procurement and trade (compensation and off-set);
- ✓ **Committee on science and technology** (for military research and development);
- ✓ **Committee of interior** (or home affairs), which deals with the police, border guards and, often, other paramilitary organisations.

Powers and means

The power to collect and receive evidence from external sources of parliamentary committees varies largely. Some parliamentary committees, such as the *ad hoc* standing committees of the British House of Commons, are not entitled to collect

evidence themselves whereas other committees, such as those in the US Congress, have nearly unlimited power to take evidence from external sources (under oath).

Some parliamentary committees have the capacity to legislate – adopting or even drafting new laws or proposing amendments to existing legislation – while other committees are only entitled to scrutinise action by the executive and the budgetary appropriations without being able to legislate.

The level of means and expertise available to a committee will be crucial to allow it to perform its mandate effectively: i.e. the number, capacity level and stability of the staff servicing the committee; the research capacity and its nature (specialised versus general; separate versus part of the broader parliamentary research unit); data access and relevant support documentation (capacity to obtain and reproduce it); capacity to call on experts; capacity to hold hearings and to carry out inquiries. (For more information see Chapter 14 on parliamentary mechanisms and tools).

Box N° 34

Possible key functions of a parliamentary committee on defence or security issues

Security policy

- ▷ To examine and report on any major policy initiative announced by the ministry of defence;
- ▷ To periodically examine the defence minister on his discharge of policy responsibilities;
- ▷ To keep under scrutiny the ministry of defence's compliance with freedom of information legislation, and the quality of its provision of information to parliament by whatever means;
- ▷ To examine petitions and complaints from military personnel and civilians concerning the security sector.

Legislation

- ▷ To consider and report on, any draft legislation proposed by the government and referred to it by the parliament;
- ▷ To consider international or regional treaties and arrangements falling within the area of responsibility of the ministry of defence;
- ▷ If appropriate, to initiate new legislation by requesting the minister to propose a new law or by drafting a law itself.

Expenditures

- ▷ To examine, and report on, the main estimates and annual expenditures of the ministry of defence;

- ▷ To consider each supplementary estimate presented by the ministry of defence and to report to the parliament whenever this requires further consideration;
- ▷ If necessary, to order the competent authorities to carry out an audit.

Management and administration

- ▷ To consider and, if appropriate, to take evidence and report on each major appointment made by the relevant executive authority (leading military commanders, top civil servants);
- ▷ To consider the internal organisation of the defence sector, eventually through external bodies relating to the parliament (e.g. ombudsman), and to draw the attention of the parliament to possible malfunctioning.

Source: Based on the Report of the Hansard Society Commission on Parliamentary Scrutiny, United Kingdom, 2001

The following Box N° 35 on the working method of the Norwegian Parliament is presented as an example.

Box N° 35

Joint sessions of the committee on foreign affairs and the committee on defence of the Storting (the Norwegian Parliament).

“The task of the Enlarged Committee on Foreign Affairs is to discuss with the Government important foreign policy, trade policy and national security policy issues. These discussions should take place before important decisions are made. In special cases the Enlarged Committee may put recommendations before the Storting.

The Enlarged Committee consists of the ordinary members of the Standing Committee on Foreign Affairs, the President and the Vice President of the Storting (if not already members), together with the chairman of the Standing Committee on Defence, and up to eleven members appointed by the Election Committee. When the appointments are made, the proportional representation of the party groups must also be taken into account.

According to the same principle, the Election Committee appoints deputies who shall be summoned in any case of absence, including leave.

The Committee is convened when the chairman finds it necessary, or at the request of the Prime Minister, the Minister of Foreign Affairs, or one-third of the members of the Committee.

The business of the Enlarged Committee shall be kept secret unless otherwise expressly provided. The same applies to joint meetings between this Committee and other Committees. The chairman may decide that even the summons to meetings of the Committee shall be secret.

A matter on the Agenda of a meeting of the Enlarged Foreign Affairs Committee shall be put before a meeting of the Storting when at least six members of the committee so request in a meeting where the matter is on the agenda. The Committee shall consider whether the conditions for consideration by the Storting are present and in such event notify the Presidium of this. The Storting shall decide in camera whether such a meeting shall be held in public or in camera. Consideration by the Storting shall be introduced by a statement by a member of the Government. Debate concerning the matter shall be held either immediately after the statement or during a subsequent meeting according to the decision of the Storting. Proposals may not be submitted for consideration by committees”.

*Source: Section 13 of the Rules of Procedure of the Norwegian Parliament
(Storting: <http://www.stortinget.no/g>)*

What you can do as a parliamentarian

**Areas covered by a committee dealing with defence issues in
your parliament or chamber**

- ▷ Review the mandate of the committee and its possible sub-committee(s) so as to make sure that:
 - It is well defined;
 - It allows the committee to cover all areas in depth;
 - It is consistent with the security policy and policies of other ministerial functions that may have security implications such as foreign affairs, aviation/maritime security, industry, power supply, etc.

An effective parliamentary committee

- ▷ Ensure that the competent committee and sub-committee in your parliament or chamber are provided with – both by law and in practice – the mechanisms described in Box N° 34.
- ▷ Consider setting up sub-committees for specific fields of defence, such as the budget, procurement, personnel and peace missions.
- ▷ Initiate legislation for security sector information policy and a review process specifically related to defence expenditure, and
- ▷ Make sure that the committee enjoys the adequate level of resources, including access to expert advice.
- ▷ Examine and review internationally collected best practices for parliamentary oversight of the security sector.

The ombudsman

Among independent institutional actors monitoring the security sector, the ombudsman occupies a special position. There are countries where the ombudsman has general competence and deals with all problems generated by a malfunctioning of the administration. Some countries have another body which performs a similar role, such as the Commissioner or the Public Complaints Committee (in Nigeria). In other countries, however, specialised ombudsmen were introduced to deal with the armed forces.

Box N° 36

The ombudsman

"(...) An ombudsman deals with complaints from the public regarding decisions, actions or omissions of public administration. The holder of this office is elected by parliament or appointed by the head of state or government by or after consultation with parliament. The role of the ombudsman is to protect the people against violation of rights, abuse of powers, error, negligence, unfair decision and maladministration in order to improve public administration, and make the government's actions more open and the government and its servants more accountable to members of the public. The office of ombudsman may be enshrined in the country's Constitution and supported by legislation, or created by an act of the legislature (...).

To protect people's rights, the ombudsman has various powers:

- 1) to investigate whether the administration of government is being performed contrary to law or unfairly;
- 2) if an objective investigation uncovers improper administration, to make recommendations to eliminate the improper administrative conduct; and
- 3) to report on his activities in specific cases to the government and the complainant, and, if the recommendations made in a specific case have not been accepted by the government, to the legislature. Most ombudsmen also make an annual report on their work to the legislature and the public in general.

The ombudsman usually does not have the power to make decisions that are binding on the government. Rather, the ombudsman makes recommendations for change (...). Generally, the public sector ombudsman has a general jurisdiction over a broad range of governmental organisations. For some, the range may extend to include the judiciary, police and military, while in other countries, one or more of these are specifically excluded.”

Source: *The International Ombudsman Institute Information Booklet on* <http://www.law.ualberta.ca/centres/oi/>

See also: *Office of the United Nations High Commissioner for Human Rights, Fact Sheet N° 19, National Institutions for the Promotion and Protection of Human Rights*

The ombudsman for defence

As a separate institution, the ombudsman for defence appears in several legislations under different names, such as the Ombudsman for Defence in Finland, Norway, Portugal and Germany, the Military Soldier’s Complaints Commissioner in Israel, the Ombudsman of the Department of National Defence and of the Canadian Forces in Canada, and the Australian Defence Force Ombudsman in Australia.

Box N° 37

Overview of defence ombudsmen in selected countries

<i>Country</i>	<i>Competences</i>	<i>Functions</i>	<i>Reports to and position vis-à-vis political authority</i>
Australia	<ul style="list-style-type: none"> - Defence Force Ombudsman - Appointed by ministerial decision 	Any maladministration by members of the Australian Defence Forces.	<ul style="list-style-type: none"> - Submits annual reports to the minister for presentation to the parliament.
Canada	<ul style="list-style-type: none"> - Defence Ombudsman - Appointed by Ministerial decision 	To protect human rights of employees of the Department of National Defence (DND) and members of the Canadian Forces (CF).	<ul style="list-style-type: none"> - Reports to the DND or CF on specific cases. Annual reports to the minister on its activities. - Neutral and objective board. Independent from the management of the Minister of

<p>Norway</p>	<p>– The Ombudsman for defence – Under the framework of the Norwegian Parliament</p>	<p>Securing the well-being of the individual soldier; central role in solving conflicts and maintaining atmosphere of trust and openness within various sectors of the defence establishment.</p>	<p>Defence. Makes recommendations, assessments and criticisms which relevant public bodies voluntarily comply with.</p>
----------------------	---	---	---

The ombudsman represents an additional mechanism for monitoring the military, on behalf of citizens and/or parliament. The main task of the military ombudsman is to investigate alleged arbitrary decisions or misdemeanours committed on behalf of the responsible minister(s) of the security services, notably the military.

The institutional embedding of the military ombudsman in the political system varies from country to country. Defence ombudsmen can be appointed by parliament and report to the parliament (Germany, Sweden), or can be appointed by the minister of defence (Israel, Canada). Some ombudsmen have their office within the parliamentary precincts (as is the case of the German Parliamentary Commissioner for the Armed Forces, see Box N° 38) or it can be institutionally located outside the parliament (Sweden).

Citizens or servicemen who were mistreated by the military can ask the ombudsman to start an inquiry. In addition, parliamentarians can ask the ombudsman to investigate alleged abuses and complaints. Often the cases investigated by the ombudsmen deal with exemption from, and postponement of, obligatory military service, transfer and re-posting during military service, diet, demobilisation, leave of absence, disciplinary and punishable offences. If the ombudsman finds that a complaint was justified, he/she can make recommendations, including demanding the institution in question change or reconsider its decision.

The ombudsman and secrecy

Bearing in mind the nature of the security sector, some information cannot be disclosed to the public for reasons of national security. Many countries have established specific provisions in law as to how the ombudsman should operate in matters of national security. Generally speaking, even where rules of top confidentiality apply, the ombudsman is allowed to carry out whatever investigations are necessary, and to have access to military bases and all relevant documents for any specific case. The ombudsman, however, cannot disclose the findings of the investigation to the general public.

Box N° 38

The German Parliamentary Commissioner for the Armed Forces

Re-establishing armed forces in the 1950s, Germany attached particular importance to its parliamentary control. In order to ensure that the values enshrined in the Constitution that take the individual human being as its centrepiece applied to the armed forces, article 45b was added to German's Basic Law. This stipulates that:

"... a Parliamentary Commissioner shall be appointed to safeguard the basic rights of members of the Armed forces and to assist the Bundestag in exercising parliamentary control." All details relevant for the implementation of this article are set out in the "Law on the Parliamentary Commissioner for the Armed Forces".

The Parliamentary Commissioner is an auxiliary organ of the Parliament (the Bundestag) and thus as a member of the legislative. He/she can investigate specific matters upon instruction by the Bundestag or its defence committee or can take action on his/her own determination when circumstances come to his/her attention.

Commensurate with the principle of separation of power, the commissioner exercises control over the minister of defence. He/she may demand information and access to records from the latter and all his subordinate agencies and personnel. He/she may, at any time, visit any unit, headquarters, agencies and authorities of the armed forces and their institutions, even without warning. He/she may initiate investigations, notably when complaints of members of the services, whatever rank and position, are received. Anyone in the armed forces is entitled to take his/her case directly to the Commissioner without going through official channels and the risk of being disciplined or discriminated against because of the petition.

Source: <http://www.bundestag.de/>

The ombudsman: a source of enhanced trust in the military

The record of military ombudsmen, for example in the case of the Swedish Military Ombudsman (created in 1915), shows that this institution has become a powerful tool in enhancing public confidence in the defence sector. In addition, the ombudsman provides essential protection to individual servicemen and women against abusive treatment within the military. It may in general be stated that the major achievement of the ombudsman with regard to the security sector is to contribute to increased trust in the military sector by creating greater transparency in the entire administrative process, without challenging the military hierarchy or decreasing military readiness.

What you can do as a parliamentarian

The institution of the ombudsman

- ▷ If such an institution does not yet exist in your country, envisage taking action with a view to promoting its creation.
- ▷ In that connection, keep in mind the guidelines and reference documents and lessons learned that may be found with ombudsman international
<http://www.ombudsmaninternational.com>

A defence or security sector ombudsman

- ▷ If such an institution does not yet exist in your country, envisage taking action with a view to promoting its creation.
- ▷ Obtain information on lessons learned from the experience of a number of countries which have a Defence Ombudsman.
- ▷ If your country has had a Defence Ombudsman for some time, request a review of its terms of reference, functions, general procedures including reporting to parliament, impact, resources and budget as compared to the corresponding institutions in other countries with comparable security situations.

Visiting the premises of security services

Relevance

Becoming thoroughly familiar with the security sector is important for all parliamentarians. Theoretical knowledge should be sustained by practical and field experience with a view to a better understanding of the security services' needs. From that perspective, parliamentary visits to the premises of the security services can be regarded as a way to develop a dialogue and build trust and understanding between political and military leaders. These visits of parliamentarians enhance their awareness of the soldiers' daily problems and demonstrate to the military that the political leadership is interested in and committed to soldiers' mission and well-being.

Box N° 39

The Argentine case

Politicians visit military bases and units with the aim of exchanging opinions with military personnel. These visits take place with the knowledge of armed forces authorities and help to diminish mistrust and prejudice between these two institutions. A better understanding of military problems is achieved as a consequence of contacts between parliamentarians and members of the armed forces. Rules and timing are different when it comes to security sector issues and visits help politicians to understand this.

Source: Pablo Carlos Martinez, "The restructuring of the armed forces and the role of the parliament: the Argentine experience", <http://www.pdqs.org>

In detention centres and prisons the inmates are entirely in the hands and under control of security personnel. This special situation makes them particularly vulnerable to all kinds of human rights abuses. Unfortunately, cases of torture and mistreatment in prisons and detention centres are widespread. Therefore those institutions should be subject to special oversight and control mechanisms. A very useful tool in this regard is the visiting of these sites by parliamentarians and experts with the aim of uncovering cases of mistreatment and preventing further abuses.

Box N° 40 describes the mechanism providing for visits to detention centres in the additional protocol to the UN Convention Against Torture.

Box N° 40

Optional Protocol to the Convention Against Torture enlarges possibilities for visits to premises of security services

In December 2002, the United Nations General Assembly approved an Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol obliges states to open up their detention centres to visits by independent national and international experts entrusted with making recommendations to reduce the risk of ill-treatment.

For more information refer to www.unhchr.ch

Conditions for successful visits

Needless to say, parliamentary visits to the premises of the security services, such as troops or military bases, should be coordinated with the relevant ministry (for example the ministry of defence). Unexpected or non-coordinated visits could have severe counterproductive consequences as they could be interpreted as a lack of trust in the military, as by-passing the hierarchy and they could disturb the normal functioning of the military. Visits should also involve representatives of various political parties and be well prepared from the substantive point of view.

The limitation of such visits is that the parliamentary committee only gets to see what the commanders of the security services want them to see. Such visits do not reveal the real nature of the problems but potentially give the military the opportunity to spin the situation towards their viewpoints, particularly in the case of budget demands. This can be remedied to an extent by agreeing on three types of visits: visits recommended by the military, visits recommended by parliament and announced in advance, and visits recommended by parliament at short notice (e.g. one day).

**What you can do as a
parliamentarian**

Legislation regarding visits to premises of the security services

- ▷ Push for parliamentary visits to premises of the security services (including troops deployed abroad) to be provided for by law.
- ▷ In the absence of a law providing for parliamentary delegations to visit the premises of security services, verify whether parliamentarians are nevertheless included in visits to premises of the security services, ascertaining on what basis and under what procedures, what the criteria are as to the selection of the parliamentarians concerned, and with what impact.
- ▷ Ensure that regulations are in place specifying:
 - which premises of the security services may be visited;
 - under what circumstances and conditions such visits can take place, e.g. whether visits may be arranged at all times;
 - the actual practice and frequency of parliamentary visits to national military units or bases;
- ▷ Make sure that detailed written reports on such visits are presented to parliament or the relevant committee and subjected to debate;
- ▷ Assess the impact of those visits already performed.
- ▷ Check whether your state has ratified the UN Convention against Torture and its additional protocol.

Membership of visiting parliamentary delegations

- ▷ Make sure that parliamentary delegations are non-partisan, comprising a fairly representative proportion of members of the majority and the opposition in parliament.
- ▷ See to it that visiting delegations, to the extent possible, are gender-balanced.

Preparation of the visit

- ▷ So as to avoid counterproductive effects, make sure that the parliamentary visit has been coordinated with the ministry of defence.

Reporting to parliament

- ▷ Make sure that a detailed report is presented to and debated by parliament/ its competent committee(s).
- ▷ Make sure that the competent security authorities have access to the report early enough to be able to present observations.

Impact and publicity

- ▷ Make sure that the findings and recommendations of the delegation and the corresponding decision of parliament are acted upon and that the appropriateness of making them public is addressed and decided upon.

Section V

Overseeing security services in action: special circumstances and operations

States of exception

There are exceptional circumstances, such as a war, an internal conflict or other types of emergencies, in which a state has to apply special powers and procedures for solving the crisis. Such responses ought to be applied without affecting the democratic system of government.

War and several types of emergencies call for a military response or even the declaration of martial law. In these instances, the military and the security sector at large remain subject to a series of international principles and guarantees, such as the rules of International Humanitarian Law, and must also remain under democratic control. Human rights must also be upheld to the extent possible. Those considered to be non-derogable can never be curtailed, as clearly underlined by the United Nations Committee on Human Rights in its August 2001 General Comment No 29 on Article 4 of the International Covenant on Civil and Political Rights.

State of war

Article 2.4. of the United Nations Charter states:

"The members of the Organisation shall abstain, in their international relations, from resorting to the threat or use of force (...)".

The use of force against another state is thus severely restricted. One role of parliament is to monitor whether the executive branch is respecting these international restrictions on the use and threat of war and not exceeding its powers in times of conflict. Neutral countries such as Switzerland ostensibly renounce the use of war as a means of settling disputes in their external relations. There is also at least one country, Japan, whose constitution (1946) explicitly prohibits the maintaining of an army. Other countries, such as Hungary, present their renunciation of war as a means of solving disputes between nations.

In times of war, depending on the constitutional provisions, parliaments can be involved in the decision-making process in at least three different ways (in diminishing order of importance):

(1) The constitution may provide for parliament itself to declare war and peace.

In practice nowadays, though, this requirement may prove rather hypothetical as war often starts without warning and events may pre-empt the ability of parliament to come to a decision.

(2) The constitution may require the executive branch to receive express authorisation from parliament before engaging in any act of war or making peace. Such provision will allow parliament to debate the question prior to engaging in any concrete act of war and more broadly in any military intervention abroad.

(3) The constitution may provide for parliament to be notified of the decision of the executive to engage in acts of war without requiring the executive to obtain prior consent from parliament. Most constitutions in fact require that parliament be notified.

State of emergency

A state of emergency or state of national crisis may occur in a wide range of situations. National constitutional and legal orders foresee a number of situations when a state of emergency can be proclaimed, ranging from an armed action threatening the constitutional order or public order to a natural disaster, an epidemic, or a national financial or economic crisis.

The declaration of a state of emergency can only be made in exceptional circumstances and should follow certain key principles so that democratic principles are not jeopardised: see Box N° 41. The definition of these exceptional circumstances will depend on each national constitutional and legal order. The constitution and laws should prevent the executive from declaring a state of emergency for a party's political motives. In addition, the constitution and relevant laws should stipulate that military coups are constitutionally invalid.

Box N° 41

States of emergencies: purpose and principles

"All legal systems provide for special measures to cope with emergency situations. However, any derogation or suspension of rights which is necessary to cope with a crisis can only be of a temporary nature and can only have as its purpose the restoration of normality and the preservation of the most fundamental rights. (...)

International principles

"The international principles which have emerged with regard to states of emergency may be summarised as follows:

The principle of legality, which concerns the accord that should exist between the declaration of the state of emergency and the emergency measures adopted, on the one hand, and between the declaration of the state of emergency and the internal legislation of the country, on the other. This principle further seeks to ensure that internal law conforms with international law.

The principle of proclamation, which refers to the need for the state of emergency to be announced publicly.

The principle of communication, which refers to the obligation duly to inform the other states parties to the relevant treaty, through the latter's depositaries, as well as the Special Rapporteur of the United Nations on the human rights situation during states of emergency.

The principle of temporality, which refers to the exceptional nature of the declaration of a state of emergency and its necessarily limited duration in time.

The principle of exceptional threat, which requires the crisis to present a real, current or at least imminent danger to the community.

The principle of proportionality, which refers to the need for the gravity of the crisis to be proportional to the measures taken to counter it.

The principle of intangibility, which concerns specific fundamental rights from which there can be no derogation.

"It is particularly important that parliament, which is the guardian of human rights, should not be the first victim of the declaration of a state of emergency, either as a result of a straightforward dissolution or suspension, or a drastic reduction in its legislative powers and its powers to oversee the executive. It is also essential for parliament to be able to play its role both as regards the declaration and the lifting of the state of emergency (...).

Legal nature of the state of emergency

" (...) The legal nature of [the state of emergency] is such that the acts which constitute it (proclamation, ratification, etc.) and the measures which are adopted when it is in force (suspension or restriction of certain rights, etc.) must lie within the framework of the principles governing the rule of law and are thus subject to controls. (...)

Functioning of the parliament

"It is recognised that the principle of the independence and balance of the various powers in a state (...) is part and parcel of the rule of law. That is why most legal systems throughout the world provide for parliament to be actively involved either in the proclamation of a state of emergency or in its ratification once the executive has decreed it.

The objective is to prevent the executive from having sole competence for the adoption of a measure of such gravity. (...)

Rank of legal provisions relating to states of emergency

“Experience shows that it is highly desirable for the provisions governing states of emergency to have the rank of constitutional measures. Most legislations explicitly provide for this, although others set it out in an indirect manner by laying down that “*no authority may assume the legislative functions on the grounds of the existence of a state of emergency*”. (...).

Excerpts from a report by the UN Special Rapporteur on Human rights and states of exception, Mr. L. Despouy, to the IPU Symposium on Parliament, Guardian of Human Rights, Budapest, 1993

Long lasting and de facto states of exception

Long lasting states of exception, periodically renewed by parliament over years or even decades, can also lead to a situation where the principle of civilian supremacy over security sector organisations is at risk and where these organisations may even acquire a sense of impunity endangering democracy. This places parliament in a very weak and vulnerable position. De facto and rampant states of exception, as existing in a number of countries, clearly represent a direct threat to parliamentary oversight of the security sector, which, *de facto*, enjoys great latitude in all its activities.

What you can do as a parliamentarian

Legislation on states of exception

- ▷ Make sure that the different types of state of exception are well defined in the constitution or the law.
- ▷ States of exception should automatically lapse in three or six months time unless expressly renewed by a parliamentary debate and vote for renewal.
- ▷ Push to have the international principles of legality, proclamation, communication, temporality, exceptional threat, proportionality and

inviolability enshrined – and satisfactorily so – in the national legislation regarding states of exception.

- ▷ Make sure that humanitarian law, constitutional guarantees and the applicable human rights law are respected during states of exceptions.
- ▷ Make sure further that the respective competence of the executive and parliament with regard to the proclamation and lifting of a state of exception are explicitly and thoroughly defined in the constitution or the law.

Parliament during a state of exception

- ▷ Make sure that the existence of certain states of exception does not completely inhibit the powers of parliament to oversee the action of the executive with regard to security and respect for inalienable human rights.

Preserving internal security

Internal (or public) security and public order are a key public good. They are meant for the general public, without any possible form of discrimination, including immigrants and foreigners on national territory. They should not be diverted to serve the contingent purposes of a political leader or force, or the interests of the security sector itself, whose mission is exclusively to be an instrument to preserve them.

General rationale and features of such legislations

All legal systems have some form of legislation to address situations that do not call for the declaration of a state of exception but nevertheless represent an actual threat to, or could endanger internal security and public order.

To varying degrees, such legislations confer special powers on the executive and provide for the provisional restriction or even suspension of certain rights with a view to protecting certain other, more fundamental, rights which may be in jeopardy under certain circumstances that themselves need to be clearly defined by the law in question.

Most commonly restricted, or even suspended, rights include the right to freedom of information, the right to public demonstrations, the right to liberty and the right of asylum; international law clearly prohibits the suspension of inalienable rights such as the right to life and the right not to be subjected to torture or any form of corporal punishment or degrading or inhumane treatment. Those most usually placed under special scrutiny are migrants, journalists, political activists, human rights defenders, asylum-seekers and refugees as well as religious and ethnic minorities.

Inherent related risks

Risks inherent to legislation on the preservation of internal security and public order include:

- ✓ A loose definition of the nature of the threats, allowing for interpretations fitting the circumstantial needs of the executive;
- ✓ Providing the executive – and through it a number of organisations of the security sector – with excessive and lasting powers without proper checks and balances and without proper administrative and judicial sanctions;
- ✓ Sometimes the preservation of internal security and public order is abused to protect the exclusive interest of one or various sectors of the population, the

political leadership or the security sector itself, and as a means of restricting the rights and controlling the actions of the general public;

- ✓ A militarisation of the police force – the guardian of domestic law and order – blurs the distinction with the military – the guardian of external security. This is especially dangerous when such forces are under-funded and therefore are tempted to abuse the security circumstances to resort to corruption with impunity. Another danger of militarisation of the police forces is that those in power might use the police (and sometimes also the intelligence services and paramilitary forces) as an instrument not to protect internal security and public order, but to control and repress opposition. Additionally, frequent use of military force to control public order can lead to politicisation of the military.
- ✓ An inhibition of the action of parliament and of the judiciary, especially where they are not really in a position to challenge the authority of the executive.

Measures taken to address security and public order needs may thus lead to violations of human rights by members of the security forces and, in certain contexts and environments, they could even benefit from impunity for such acts. The following rights are the ones that are often violated in such a context: the right to life; the right not to be subjected to torture, inhumane or degrading treatment; freedom from arbitrary arrest; the right to a fair trial by an independent tribunal established by law; freedom of opinion, expression and assembly.

Box N° 42

Preserving both security and democracy

Throughout history and in many developing countries today, authoritarian governments have resisted or overturned moves towards democracy – arguing that democracy is incompatible with public order and personal security. But the record suggests that the opposite is true: democratic civil control over state security forces, far from opposing personal security, is essential to it. Without that control the supposed guarantors of personal security can be its greatest threat. (..)

Source: UN Human Development Report, 2002 (page 87)

In some countries, specific legislation to defend democracy has been adopted. In Argentina, for instance, the 1984 law N° 23.077 on "Defence of Democracy", modified the criminal code and created specific criminal offences against the democratic system, as for example punishing illicit association with the aim of endangering democracy or respect for the constitution.

Detention of persons on grounds of threat to internal security and public order

All legislations on the preservation of internal security and public order provide for the detention of persons suspected of threatening them. In that respect, at least two types of legislation exist:

- ✓ Legislation providing for the detention of any persons representing an actual threat to national security: such detentions, normally ordered by the judiciary, may, in specific cases, be ordered by the executive alone;
- ✓ Legislation providing for the detention of any persons whom the executive is satisfied could represent a threat to national security, i.e. legislation conferring upon the executive special powers with a view to controlling or preventing situations likely – in its own judgement – to put national security in jeopardy.

Most countries forming part of the British Commonwealth have some form of legislation belonging to the second category. Under such legislation, the executive is usually allowed to apply a series of extensive powers that suspend a number of constitutional guarantees, without having to seek the prior consent or involvement of either the legislature or the judiciary. One key issue is the capacity of the executive to order the administrative or ministerial detention of persons who could represent a threat to national security. These persons are placed at the disposal of the executive for more or less lengthy periods of time, renewable a set number of times or even indefinitely. Some, but not all, such legislation prescribes the existence of a review body, which may be of a consultative nature or, on the contrary, may have the capacity to order the executive to release the detainee. Its composition may to varying degrees be linked to the executive.

In many countries, such legislation – generally inherited from colonial times – is being widely discussed and even challenged nowadays owing to the extraordinary powers it confers upon the executive and the security sector organisations – especially the police – and the negative impact this often has on the enjoyment of civil and political rights.

Box N° 43

Distortions with serious consequences

Where governments rely on security for their power base, security forces are often the main cause of insecurity for their citizens and neighbouring states. (...) When interior ministry troops, paramilitary police and intelligence services are drawn into domestic political struggles, efforts to improve democratic civil control are often jeopardised.

UN Human Development Report, 2002 (pp. 87 and 92)

What you can do as a parliamentarian

Legislation to preserve internal security and public order

- ▷ Keep in mind that security and public order are for the people and are not meant to be used as an argument and an instrument for repressing the people or for pursuing party political motives. Ensure that the repressive use and excessive militarisation of the police is avoided;
- ▷ Make the executive accountable to parliament and provide clear legal limits to its powers;
- ▷ Provide for the security sector to be liable to administrative and judicial sanctions, as appropriate, in case of any excessive use of power or force;
- ▷ Analyse the applicability and convenience of a law of defence of democracy.

Parliamentary oversight

- ▷ Make sure that parliament regularly debates issues relating to internal security and public order and looks into the relevance of existing legislation in that field.
- ▷ Make sure that the competent parliamentary committee(s) uses all means and resources at its disposal to obtain appropriate information and exert as effective an oversight as possible with regard to internal security and public order. If need be, take action with a view to obtaining an enhancement of the means and resources, including expertise, available to the committee(s) in question.
- ▷ Wherever possible and whenever necessary, encourage public hearings relating to the issue.
- ▷ Establish a dialogue – institutional or private – with NGOs concerned with internal security and public order and the impact of action taken in that connection on people's enjoyment of human rights and fundamental freedoms.

Terrorism

"Terrorism is one of the threats against which states must protect their citizens. States have not only the right but also the duty to do so. But states must also take the greatest care to ensure that counter-terrorism measures do not mutate into measures used to cloak, or justify, violations of human rights"

"Domestically, the danger is that in pursuit of security, we end up sacrificing crucial liberties, thereby weakening our common security, not strengthening it – and thereby corroding the vessel of democratic government from within."

Kofi Annan, United Nations Secretary-General, 21 November 2001

Terrorism is one of the greatest threats to domestic as also to regional and international security. Responses to terrorism are complex, especially as terrorism is often linked to organised crime. They range from police action and border control to intelligence, from measures in the field of finance to measures in the fields of criminal law and information technology.

Since 11 September, many states have felt it important and necessary to reinforce their legislation in relation to the above fields. In addition, inter-state cooperation has also been strengthened, especially with regard to intelligence-sharing and information technologies. This is of course not without a series of risks for the enjoyment of human rights and civil liberties.

With regard to international cooperation to control terrorism, the UN Security Council resolution 1373 (adopted on 28 September 2001; see Box N° 44) placed special emphasis on the issue of the control of financial assets. Resolution 1373 also underlined the importance of border control and of control of identity cards and travel documents with a view to preventing the internal and trans-border movement of terrorists or terrorist groups. The resolution also contains a series of recommendations on ways to suppress recruitment of members of terrorist groups and the supply of weapons and sensitive material to terrorists, as well as on ways to foster preventative action, including through inter-state cooperation. It urges that those participating in the financing, planning, preparation or perpetration of terrorist acts or supporting terrorist acts be brought to justice and that, in addition to any other measures against them, such terrorist acts be established as serious criminal offences in domestic laws and regulations, and be duly punished. It calls for the exchange of information in accordance with international and domestic law and for cooperation on administrative and judicial matters to prevent the commission of terrorist acts. The resolution further established a Committee of the Security Council,

consisting of all the members of the Council, to monitor its implementation, with the assistance of appropriate expertise.

Box N° 44

UN Security Council's response to 11 September

The Security Council (...)

3. Calls upon all states to:

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
 - (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
 - (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
 - (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
 - (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
 - (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
 - (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists;
- (...).

Source: UN Security Council, Resolution 1373, S/RES/1373,

28 September 2001 <http://www.un.org/Docs/scres/2001/sc2001.htm>

The *International Convention for the Suppression of the Financing of Terrorism*, adopted by the United Nations General Assembly on 9 December 1999, requires all contracting states to extradite persons implicated in the funding of terrorist activities and to adopt measures to investigate suspicious financial transactions. As on 2 April 2002, 132 countries had signed the Convention, and 26 countries had completed the ratification process and become States Parties. The Convention entered into force in 2002.

Impact of 9/11

For parliamentarians it is important to oversee their government's adoption of a balanced approach to terrorist attacks, an approach that protects both security and human rights. From the view point of parliamentarians, the issues related to terrorism are legislation, a new comprehensive approach to security and anti-terrorism measures and finding a balance between security and liberties that ensure full respect for applicable international humanitarian and human rights law.

Defining terrorism legally

No internationally agreed definition of terrorism exists to date. Until the international community reaches an agreement on a common definition, terrorism will continue to be defined by what it is not. According to international jurisprudence, the struggle for national liberation and independence from foreign occupation is a legitimate right and such an objective does not in itself constitute a terrorist act. Furthermore, the international community, including the IPU, has repeatedly underlined the fact that terrorism cannot be attributed to any religion, nationality or civilisation or justified in its name. Another way of defining terrorism so far has been to describe the kind of attacks common to terrorists' acts, which the international community routinely condemns: indiscriminate violent attacks, particularly those involving innocent civilians, or any form of indiscriminate violence carried out by sub-national groups or clandestine agents.

Terrorist attacks are characterised by indiscriminate violence against civilians, disregard for humanitarian values and an extreme eagerness for publicity. Methods commonly employed are hijacking, car bombs, suicide bombings, assassinations and mass murders. A sustained campaign of terror requires financial support, a continuous weapon and ammunition supply and often the backup of an international organisational network. Often a third country provides terrorists with assistance and a place to hide. Box N° 45 below cites some vital points of a balanced approach towards terrorism, stressing both the need for safeguarding the legitimate right to protest as well as the need for anti-terrorism measures. Point 37 in the box alludes to the necessity for anti-terrorism measures to be aimed not only at combating terrorism, but also at the social, political and economical development of those countries which are the cradle for new generations of terrorists.

Box N° 45

Fight against terrorism

34. (...) The Conference recalls that the struggle for national liberation and independence from foreign occupation is a legitimate right laid down in international resolutions and that this objective does not of itself constitute a terrorist act. The Conference stresses however that no struggle can justify indiscriminate attacks, particularly involving innocent civilians, or any form of organised state terrorism.

37. The Conference wishes to stress the vital need for anti-terrorism security measures to be backed by structural measures designed to further economic and social development and strengthen representative democracy.

Source: Final Document of the Third IPU Conference on Security and Cooperation in the Mediterranean, Valetta, Malta, November 1995

Various anti-terrorism laws, such as those of Austria (the draft paragraph 278b of the penal code), Germany (paragraph 129a of the penal code) and Canada (Bill C-36), include the following aspects:

- A limited list of terrorist activities, i.e. an act, omission or threat which constitute an offence such as murder, hostage-taking, unlawful seizure of an aircraft, terrorist bombing or financing of terrorist activities; mostly the list of offences refers to acts which are already illegal under existing laws (German, Austrian and Canadian anti-terrorism laws);
- Leading or supporting (financially or otherwise) a terrorist association is also illegal (Germany, Canada and Austria);
- The cause of the terrorist activities, which can be political, ideological or religious (Canada);
- The intention of the terrorist activity, which is to intimidate or threaten the general public or to compel the general public or government to act in a certain manner or to refrain from carrying out certain actions (Canada);
- The direct objective of the terrorist activity, which is to cause death or to harm people by means of violence, to endanger someone's life, to cause damage, or disrupt essential public or private services or systems (Canada).
- The exclusion of activities that are pursued towards the establishment or re-establishment of democracy and the rule of law as well as the protection of humanitarian laws (Austria). Such a legal provision prevents legitimate protests and struggles being criminalised.

Regarding these aspects of anti-terrorism legislation, the common denominator is that terrorism is related to violence and damaging individuals or institutions. Additionally, the laws have a restricted list of what constitutes an act of terrorism. Not only is it

illegal to carry out those terrorist acts, but in addition, being associated with a terrorist group (as a member, supporter or leader) is also regarded as an act of terrorism.

From the point of parliamentary oversight, it is crucial to ensure that a proper interpretation of terrorism is used in new anti-terrorism laws. On the one hand the approach should be not too narrow, as it might exclude possible acts carried out by terrorist associations. Yet on the other hand, the definition of terrorism should not be so broad that it threatens to criminalise lawful and legitimate democratic protests. The first question here is: to what extent is violence in a democratic society justified? Lawmakers of different countries answer this question in different manners as each society has established over time its own notion of legitimacy of violence. While considering this question one should bear in mind the legitimacy of the goals of violence. If violence is justified it has to be in proportion to the gravity of threat and its goals.

The second question is that the anti-terrorism measure should be proportional as well in relation to the terrorist threat itself. One should bear in mind that the purpose of anti-terrorism laws is to help the police and other security services to take effective action against those involved in terrorist activities. It is not intended nor should it be used to restrict genuine freedom of speech and association; neither should it lead to curbing lawful political opposition or change.

Three approaches against terrorism

The security services can provide three reactions in order to protect society and its state institutions against terrorist attacks:

- ✓ **Anti-terrorist measures:** making people, public life, buildings and infrastructure less vulnerable
- ✓ **Counter-terrorist measures:** preventing terrorists from attacking by identifying and stopping them.
- ✓ **Crisis management:** resolving and stabilising the situation (disaster, emergency) after a terrorist attack

Analysis shows that most anti-terrorism activities are related to (1) national legislation, coordination, allocating funds, (2) internal security, (3) aliens, (4) travel and border control, (5) finance, (6) international cooperation and (7) atomic, biological and chemical (ABC) threats. This non-exhaustive list should be considered as a catalogue of possible anti-terrorism measures.

National legislation, coordination and budget

- Adoption of special anti-terrorism laws or adaptation of existing legislation;
- Allocating extra funds to measures and organisations (for police, border control, national airlines, national health authorities, national post, the military);
- Increasing information sharing between domestic security services;

IPU and DCAF - Parliamentary oversight of the security sector, 2003

- Long-term personnel and coordination centres, responsible for harmonising and coordinating the various policies of the security services (police, military, intelligence services, border guards) at the local and federal/national level;
- Giving intelligence and law enforcement officials access to information records on individuals at customs and tax offices.

Internal Security

- Eavesdropping on internet, telephone and fax communications (without informing a relevant oversight institution, for example, the court);
- Demanding that telecommunication providers retain traffic data on their clients (e.g. for up to one year), enabling law enforcement agencies to have access to telecommunication data;
- Obtaining the electronic records on individuals from banks, internet providers and credit bureaux without informing the suspected individuals;
- Introducing more effective computerised searches by combining several databases with civil information;
- Allowing personal files in police data-processing systems to be consulted by other non-police officials;
- Detaining persons for longer periods in order to acquire more information;
- Establishing national tracking systems, e.g. introduction of ID cards

Aliens (immigrants, asylum seekers and foreigners)

- Giving security services access to databases on foreigners/aliens;
- Targeting individuals belonging to a specific ethnicity (racial profiling);
- Removing access to judicial review if the asylum seeker is suspected of involvement in terrorist activities;
- Enabling asylum claims to be rejected if the relevant authorities (minister) certifies that the person is a threat to national security;
- Retaining (for up to 10 years) fingerprints taken in immigration and asylum cases;
- Detaining those who represent a terrorist threat but cannot be removed from the country;
- Increasing identity checking within visa procedures; increased checking of political background of visa applicants and asylum seekers.

Travel and border control

- Tightening border controls;
- Arming civilian aircraft crews;
- Installing bullet-proof cockpit doors;
- Introducing a 100% scan of all luggage at airports;
- Adding biometric characteristics in identity cards/passports;
- Introducing more frequent and thorough inspections at vulnerable entry points (harbours, tunnels and airports)
- Profiling at entry points

Finance

- Monitoring financial transactions;

- Increasing supervision of banks and credit institutions in order to avoid money laundering and fraud; freezing bank accounts which are allegedly connected to terrorist activities;
- Requiring banks to give information on all their accounts and securities to central databases (bank account information exchange), including making it an offence for a bank not to report a transaction when it knows or suspects that the transactions are related to terrorist purposes;
- Creating or making more effective financial intelligence units (at the finance ministry)

International cooperation

- Increasing international cooperation, for example the European Arrest Warrant or fast-track extradition;
- Introducing international agreements on anti-terrorism issues into national legislation;
- Deploying troops as part of the International Security Assistance Force (ISAF) in Afghanistan;
- Signing and ratifying UN conventions on terrorism;
- Sharing information between sister security services internationally;
- Addressing the root causes of terrorism, that is providing development aid for countries which are havens or cradles of terrorism.

Atomic, Biological and Chemical threats

- Setting up or making existing centres on nuclear, biological, chemical and radiological warfare more effective; coordinating existing efforts in this field, manufacturing/stockpiling various vaccines (e.g. smallpox vaccine)
- Increasing the preparedness of health care authorities; ensuring adequate supplies of medicines;
- Improving protection of nuclear facilities (e.g. installing radar devices for detecting low-flying small aircraft)

The right balance between human rights and security

These measures, which are in place in various countries are not temporary measures, but are likely to be in effect for a long period. Therefore, anti-terrorism measures are not exceptional measures, but elements of normal life in society. This is especially important when the measures are affecting civil rights, such as freedom of speech, association and privacy rights. Regarding the enduring character of the anti-terrorism measures, a state of emergency or exceptional circumstances is not suitable as these measures have a long-term focus.

In addition anti-terrorism measures blur the traditional division of labour between law enforcement and intelligence. Law enforcement agencies, such as the police, and intelligence services have different purposes. Intelligence services collect relevant information on potential threats, whereas the role of the police is to maintain law and order. Normally, intelligence services do not stop or arrest suspects whereas the police are not practising 'preventative intelligence work' before they have convincing evidence that a crime has been committed. From the viewpoint of democratic governance, intelligence services should not be involved in the business of 'spying' on

its own citizens. This division of labour becomes increasingly difficult as the imperatives of the fight against terrorism in various countries cause a lessening of the limitation on the use of (foreign) intelligence methods to support domestic criminal investigations.

A third problem is that security services are increasingly allowed to put citizens under surveillance without notifying an oversight institution, such as a court. This could constitute a dangerous infringement of civil rights. It becomes difficult for citizens, ombudsmen and NGOs to hold governments and their agencies accountable for their activities as they are not necessarily informed about the surveillance activities.

Fourthly, immigrants, asylum seekers and foreigners are likely to be the target of anti-terrorism measures. The danger exists that these measures may heighten tensions between different ethnic groups in societies as well as eroding the legal norm that everyone should be treated equally by the law.

Although all of these measures may be required for an effective fight against terrorism, the parliament should ensure that they are consistent with international humanitarian and human rights law and principles. In other words, to strive for absolute security is not only unrealistic, but may even jeopardize the state's respect for international and national obligations. All the more as it often goes together with absolute authority, which is contrary to the very concept of democracy. This is why all legal systems set limits to the special powers granted to the executive. In light of the present fight against terrorism, the tension between liberty and security may present parliaments with a serious challenge. Yet, it is absolutely essential that balancing liberty and security should not be the exclusive responsibility of the executive and that, as a representative and guarantor of people's rights, the parliament should exercise close oversight in this respect.

What you can do as a parliamentarian

Combating terrorism

- ▷ Follow a broad approach against terrorism not only focusing on protection and security, but also addressing its root causes, such as internal conflicts, etc. Remember that resolving regional conflicts by peaceful means and fostering intercultural dialogue and understanding are crucial to preventing terrorism.
- ▷ The root of a number of regional conflicts is to be found in a number of majority-minority disputes which are ethnically defined

or along religious fault lines. The armed services can be used or misused in such disputes. Parliamentarians from minority communities should be members of committees of defence, intelligence and judicial affairs. Parliaments should set up special commissions and tribunals for the protection of minorities.

- ▷ Make sure that your state is a party to the relevant international conventions and protocols relating to terrorism, including the *International Convention for the Suppression of the Financing of Terrorism* of 9 December 1999. If appropriate, take action to secure ratification or adherence to these instruments and the adoption of the corresponding legislation and policies.
- ▷ Closely monitor action aimed at the adoption by the UN General Assembly of a Convention for the suppression of acts of nuclear terrorism and of a comprehensive convention on the elimination of terrorism.
- ▷ Work towards the adoption of legislative measures allowing for compensation of victims of terrorist acts, as an expression of national solidarity.
- ▷ Ensure that anti-terror legislation maintains a proper balance between security requirements and the enjoyment of civil and political rights; the potential impact of the said legislation in every related field; and its potential implementation costs.

See also the suggestions contained in the corresponding boxes in Chapter 18 on states of exception and Chapter 19 on preserving internal security and public order.

Security and information technologies: New tools and challenges

The introduction of a series of new information technologies has helped to safeguard security at the same time as posing serious new threats. United Nations Security Council resolution 1373 (2001) (see Box N° 44) – already referred to in the previous chapter – provides clear evidence of the awareness of the international community of this double application of information technologies in connection with international terrorism and the risks this represents for security and international peace.

In the last few decades, various international organisations have worked on ways to prevent the use of information technologies to support crime and acts threatening international security, and at the same time on guidelines for preventing states using such technologies in ways that represent a threat to human rights and freedoms.

The following may be of interest for parliamentarians in developing legislation that address these challenges.

Cybercrime

The definition of what constitutes a crime on the internet is still being developed, however the term commonly refers to a wide range of crimes and abuses relating to information technology, with the most commonly reported incidents being those involving hackers and computer viruses. Although the last few years have witnessed an explosion of interest in the area, the problem of computer crime is not new, and there have been incidents that could be placed in this bracket since the early days of computing. The difference now is the increased scope available to would-be attackers – largely due to the popularity of the Internet. The numerous benefits offered by the Internet and, in its turn, the World Wide Web have now led to their widespread public adoption. At the same time, however, the increased usage has served to fuel interest in the accompanying problems and it seems that not a day goes by without a cybercrime incident of some sort being reported.

On 23 November 2001, the Council of Europe adopted a *Convention on Cybercrime* that is now open to ratification and will enter into force once ratified by five states, including at least three states of the Council of Europe (in May 2002, the Convention had already been signed by 29 states of the Council of Europe and four non-member states). The Convention is based on a recognition of the need for a common crime

policy aimed at the protection of society, *inter alia*, by adopting appropriate legislation and fostering international cooperation.

Security of information systems

The explosive growth in the use of information systems in every possible field and for every possible purpose also led international organisations to become concerned with related risks. This eventually led the Council of the Organisation for Economic Cooperation and Development (OECD) to issue, in November 1992, detailed guidelines for the security of information systems that "are intended:

- ✓ To raise awareness of risks to information systems and of the safeguards available to meet those risks;
- ✓ To create a general framework to assist those responsible, in the public and private sectors, for the development and implementation of coherent measures, practices and procedures for the security of information systems;
- ✓ To promote cooperation between the public and private sectors in the development and implementation of such measures, practices and procedures;
- ✓ To foster confidence in information systems and the manner in which they are provided and used (...);
- ✓ To promote international cooperation in achieving security of information systems."

In adopting them, the Council of OECD stated that "the Guidelines do not affect the sovereign rights of national governments in respect of national security and public order, subject always to the requirements of national law".

Computerised personal data files

In December 1990, the UN General Assembly adopted *Guidelines concerning computerised personal data files*. Some years earlier, in September 1980, the OECD had adopted recommendations concerning guidelines governing the protection of privacy and trans-border flows of personal data. Also, the Council of Europe had adopted, in 1981, a *Convention for the protection of individuals with regard to automatic processing of personal data*. See Box N° 46.

Box N° 46

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS no. 108)

“This Convention is the first binding international instrument which protects the individual against abuses which may accompany the collection and processing of personal data and which seeks to regulate at the same time the trans-frontier flow of personal data. In addition to providing guarantees in relation to the collection and processing of personal data, it outlaws the processing of "sensitive" data on a person's race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. The Convention also enshrines the individual's right to know that information is stored on him or her and, if necessary, to have it corrected. Restriction on the rights laid down in the Convention are only possible when overriding interests (e.g. State security, defence, etc.) are at stake. The Convention also imposes some restrictions on trans-border flows of personal data to States where legal regulation does not provide equivalent protection”.

Source: Council of Europe, website <http://conventions.coe.int>

What you can do as a parliamentarian

Legislation on information technologies

- ▷ Make sure that adequate legislation is in place with regard to information technologies, cybercrime and, as such technologies evolve very fast, that the legislation in question is regularly reviewed and up-dated.
- ▷ Make sure that your state is a party to the relevant international and regional conventions, and adapt its domestic legislation and policies accordingly.
- ▷ Be attentive that domestic legislation and policies regarding the use of information technologies and cybercrime are elaborated and

applied paying specific attention to the importance of preserving human rights and fundamental freedoms.

- ▷ If appropriate, take action, including in the form of a parliamentary question to the government , a request for a hearing or a private member's bill, to remedy any unsatisfactory situation.

Parliamentary means and resources

- ▷ Make sure that a parliamentary committee or sub-committee is charged with following on a permanent basis developments and issues with regard to information technologies and their application.
- ▷ If need be, take action with a view to having such a committee or sub-committee established or to securing the inclusion of this issue in the mandate of an existing standing committee.
- ▷ Ascertain that the competent parliamentary body has the best possible level of resources and expertise to carry out its mission.
- ▷ Envisage, if appropriate, the setting up of an informal parliamentary caucus to follow developments and foster debate and action in the field. Such a caucus should be non-partisan and, where applicable, bi-cameral.

International peace missions

In the current international context, increasing efforts are being made to resolve conflicts by means expressed under the provisions of the United Nations Charter Chapter VI (Peaceful settlement of disputes) or Chapter VII (Action with respect to threats to the peace, breaches of the peace and acts of aggression). Based on these provisions, the United Nations has developed a series of concepts and operations (for their definition see Box N° 47) and also procedures for organising and carrying out such missions (see Box N° 48 on the process of UN peacemaking operations step by step and Box N° 50 on the training of UN peacekeepers). According to developments affecting international security, states may be called upon to take part in such missions.

Contributing to peace missions abroad

Peacekeeping, peace-enforcement or peacemaking operations depend on the participation of member states on the authorisation of the Security Council. Increasingly, states engage troops abroad in operations whose objective is to re-establish peace and security in destabilised regions. It is important to mention that every deployment has to be in accordance with international rules and principles. The most important of which are set out in Chapter 5, entitled National security policy and international regulations.

From a good governance perspective, it is proper and advisable that, within the system of checks and balance between parliament and government, the parliament should have the opportunity to participate in the decision of engaging armed forces abroad.

Box N° 47

Peacemaking, peacekeeping, peace-enforcement, peace-building: some useful UN definitions

Peacemaking

Peacemaking refers to the use of diplomatic means to persuade parties in conflict to cease hostilities and to negotiate a peaceful settlement of their dispute. As with preventative action, the United Nations can play a role only if the parties to the dispute agree that it should do so. Peacemaking thus excludes the use of force against one of the parties to enforce an end to hostilities.

Peacekeeping

Since 1948, there have been 54 United Nations peacekeeping operations. Forty-one of those operations have been created by the Security Council in the last 12 years. There are currently 15 United Nations peacekeeping operations in the field.

Peacekeeping initially developed as a means of dealing with inter-state conflict and involved the deployment of military personnel from a number of countries, under UN command, to help control and resolve armed conflict. Today, peacekeeping is increasingly applied to intra-state conflicts and civil wars. The tasks of United Nations peacekeepers – military personnel, civilian police and a range of other civilians – range from keeping hostile parties peacefully apart to helping them work peacefully together.

This means helping implement peace agreements, monitor ceasefires, create buffer zones and, increasingly, creating political institutions, working alongside governments, non-governmental organisations and local citizens' groups to provide emergency relief, demobilise former fighters and reintegrate them into society, clear mines, organise and hold elections and promote sustainable development. Member states voluntarily provide troops and equipment – the UN has no army – or civilian police. Election observers, human rights monitors and other civilians frequently work alongside uniformed personnel. The peacekeepers' strongest "weapon" is the impartiality with which they carry out their mandate. But peacekeeping is a dangerous business; over 1,650 UN military and civilian peacekeepers have died in the performance of their duties since 1948.

Peace-enforcement: is enforcement action the same as peacekeeping?

In the case of enforcement action, the Security Council gives member states the authority to take all necessary measures to achieve a stated objective. Consent of the parties is not necessarily required. Enforcement action has been used in few cases. Examples include the Gulf War, Somalia, Rwanda, Haiti, Bosnia and Herzegovina, Albania and East Timor. These enforcement operations are not under UN control. Instead they are directed by a single country or a group of countries such as Australia in East Timor (1999), NATO in Bosnia and

Herzegovina (from 1995), and in Kosovo (1999) where the NATO leads the troops and the UN heads the Interim Administration Mission.

The United Nations Charter provisions on the maintenance of international peace and security are the basis for both peacekeeping and enforcement action.

Peace-building

Peace-building refers to activities aimed at assisting nations to cultivate peace after conflict. Such operations have an extremely large mandate due to their state-building and reconstruction tasks.

Humanitarian missions

These missions aim to give humanitarian relief in the case of civil wars, famines and natural disasters – floods, droughts, storms and earthquakes. Many participants – governments, non-governmental organisations (NGOs), United Nations agencies – seek to respond simultaneously to this complex of emergencies where sometimes the logistic help of military forces is needed as the only way of implementing and ensuring the relief programmes.

Source: combined sections of the UN Web site <http://www.un.org>

It may be said that it is in the interest of the government and the people to engage the parliament as much as possible in the process of sending troops abroad as a parliamentary debate and vote enhances the democratic legitimacy of the mission and raises popular support.

Parliament's involvement in the decision process on sending troops abroad

Although sending troops abroad is more and more important in the context of dealing with new threats and possibilities of solving international crises, parliaments' role in some states is limited and sometimes non-existent when it comes to approving participation in peace missions. This can and should be changed, at least partly, in order to ensure democratic oversight of security issues.

Three different situations may be identified and, for each of them, the parliaments' role and direct participation could be improved with a view to good governance.

Parliament's *a priori* or *a posteriori* approval (strong role)

If an *a priori* approval is required, armed forces can be sent abroad only in accordance with a decision by the parliament. A slight distinction has to be made between a situation where the parliament has the power to debate and take a vote on

the topic (United States of America) and the case when it is compulsory to adopt a special law that sets the rationale and mandate for such a mission (Sweden). Both cases enforce the democratic legitimacy of humanitarian interventions and peacekeeping missions.

Timing is of the essence in defence matters and, parliamentary procedure being generally not expeditious, a criterion of prior approval is not always easy to implement. This is why, in most cases, it is only *a posteriori* that parliament is involved in the deployment of troops abroad. For example, under the United States "War Powers Resolution", the Congress should agree *a posteriori* on all engagements of troops abroad for more than 92 days. This stands mainly for instances when troops have already been deployed before the parliament was able to give its approval. In contrast, in the Netherlands, article 100 of the constitution calls for early cooperation between parliament and government when it comes to armed forces going abroad by providing for parliament to receive in advance all necessary information concerning the deployment or the disposition of the armed forces for the enforcement or the promotion of international law and order; this covers humanitarian aid in cases of armed conflict.

Parliaments with restricted – debating – role on sending troops abroad (restricted role)

The constitution or laws restrict the role of the parliament. The parliament is allowed to have a debate on sending troops abroad in a concrete case but cannot change the decision taken by the executive. Moreover, the parliament is not supposed to have a vote on this topic. In this case, the government only informs the parliament afterwards. Though the parliament cannot vote on the decision concerned, the debate as such enhances the democratic legitimacy of sending troops abroad.

In those cases where parliament's powers are very restricted, the parliament may not be associated formally with the procedure of sending troops abroad. However, customary practices may prescribe that the parliament and government debate on sending troops abroad and even, in some countries, vote on it.

Parliaments excluded from the decision process (no role)

This is when the parliament cannot even hold a debate on sending troops abroad and its *a posteriori* approval is not needed. Sending troops abroad is mainly regarded as a foreign policy decision and the decision belongs fully to the executive. The fact that the parliament does not take part in the decision-making process considerably limits its capacity to oversee the peace missions.

Other means available to parliament

Even when the parliament is excluded from the decision-making process or only can play a very limited role, the parliament can indirectly exert pressure on the government in at least four ways:

- ✓ The parliament can force the executive to explain its responsibility before the parliament for decisions regarding troops sent abroad. However, if the

parliament is not fully informed about the government's international agreements, it cannot effectively challenge the government's decisions.

- ✓ The parliament can challenge the executive when presented with amendments to the budget. In cases of unplanned and unexpected peace missions, the parliament has to approve additional funds that were not included in the existing budget. Hence the parliament has the possibility of expressing its opinions via the power of the purse (e.g. in France).
- ✓ Parliament's involvement is not only important during the debate and vote on sending troops abroad. During a peace mission, parliamentarians can put questions or use any question-time hour to tackle the government regarding the mission. Additionally, parliamentarians can visit the troops abroad (see Chapter 17).
- ✓ From the point of view of post-accountability, after the peace mission is accomplished, parliament can carry out a parliamentary inquiry or ask the government to assess the peace mission.

Box N° 48

The process of deploying UN peacekeeping operations step by step

The United Nations has no army. Each peacekeeping operation must be designed to meet the requirements of each new situation; and each time the Security Council calls for the creation of a new operation, its components must be assembled "from scratch".

The 15-member Security Council authorises the deployment of a peacekeeping operation, and determines its mandate. Such decisions require at least nine votes in favour and are subject to a veto by the negative vote of any of the Council's five permanent members (China, France, the Russian Federation, the United Kingdom, the United States). The Secretary-General makes recommendations on how the operation is to be launched and carried out, and reports on its progress; the Department of Peacekeeping Operations (DPKO) is responsible for day-to-day executive direction, management and logistical support for United Nations peacekeeping operations worldwide.

The Secretary-General chooses the Force Commander and asks member states to contribute troops, civilian police or other personnel. Supplies, equipment, transportation and logistical support must also be secured from member states or from private contractors. Civilian support staff include personnel assigned from within the UN system,

loaned by member states and individuals recruited internationally or locally to fill specific jobs.

The lead-time required to deploy a mission varies, and depends primarily upon the will of member states to contribute troops to a particular operation. The timely availability of financial resources and strategic lift capacity also affect the time necessary for deployment. In 1973, for example, elements of the second UN Emergency Force (UNEF II) were deployed in the Middle East within 24 hours. However, for some missions with highly complex mandates or difficult logistics, or where peacekeepers face significant risks, it may take months to assemble and deploy the necessary elements.

Source : United Nations Web site <http://www.un.org>

Box N° 49

Rules of engagement of peace missions

When the parliament authorises sending troops abroad, it may also define the level of force the troops are allowed to use and under what circumstances; in other words, the rules of engagement.

We understand by rules of engagement (ROE) the arranged limits to indiscriminate use of deadly force for a particular operation. They have to be decided on an individual basis and try to limit as much as possible the use of force while *at least* simultaneously allowing soldiers sufficient latitude to defend themselves. The fundamental premise of self-defence must be sustained. ROE are soldier support factors as well as operational or tactical parameters. They must be carefully tailored to comply with operational and political concerns, as well as international regulations such as UN Security Council resolutions.

ROE must incorporate criteria which clearly outline the application of a graduated use of force to provide the balance needed to defuse, escalate, or otherwise resolve confrontation. Defining ROE in terms of graduated levels of response enables tactical elements to apply the force necessary to meet varying levels of violence while minimising collateral damage. In this sense, ROE can stipulate the following levels of use of force (from minimum to maximum):

- Only for self defence of the troops

- Self defence of troops plus defence of life of civilians
- Self defence of troops, life of civilians and determinate objectives (i.e. a hospital, a bridge, etc.)
- The use of all necessary measures to ensure the aims of the operation are fulfilled.

At the same time, ROE should include reference to the kind of weapons allowed in a specific peace operation. The range might be from no weapons at all to heavy weapons including ships, planes and missile technology.

Training soldiers for peace

Participating in a peacekeeping operation is a demanding task for any military force and requires additional training and instruction on top of the standard preparation of the troops.

This is true at the operational level where troops may need, for instance, special knowledge on de-mining, the capability of interacting with civilians including practical mediation skills (as well as, in some cases, knowledge of the local language), knowledge about local custom and traditions, a clear understanding of human and humanitarian law and in particular a comprehensive knowledge of the rules of engagement of the specific mission. In regard to this last point, it is worth highlighting that in peace missions the use of force is usually very restrictive, and in some cases military forces do not carry weapons at all.

The need for special training is also relevant at the planning level, where armed forces involved in peace missions are often deployed far away from home in places never considered before as a possible working venue. In these circumstances, transporting and provisioning the troops becomes a particularly difficult challenge and in some instances overwhelms the material capabilities of certain states.

Lastly, extra training and preparation is also required at the commanding and logistic levels. As national troops of many countries may be operating in the same area under a unified control, the traditional straight line of command leading to a ministry of defence is changed. Coordination between the different national armed forces and organisations such as the International Committee of the Red Cross becomes fundamental.

In the case of peace missions run by the UN, the command of the troops is constrained not only by Security Council resolutions but also by rules of engagement, UN operating rules and the UN code of conduct, plus all administrative concerns related to a UN multinational force.

Box N° 50

UN training of peacekeepers

A Training Unit established in the Secretariat's Department of Peacekeeping Operations provides guidance, expert assistance and information to member states on peacekeeping training. The Unit develops training modules and other material aimed at spreading the cumulative knowledge and standard operating procedures gained through years of peacekeeping experience. The Unit works with military staff colleges, national and regional training institutions in many countries and with peacekeeping missions. UN Training Assistance Teams and "train the trainers" courses have been set up to assist member states in developing and implementing peacekeeping training programmes. A Code of Conduct and various manuals and handbooks have been devised to help achieve uniformity in basic standards.

Source: United Nations Web site <http://www.un.org>

Criteria for sending troops on humanitarian missions abroad

The parliament and government could develop criteria for sending troops abroad. Using a clear set of criteria increases transparency of the decision-making process which could, in turn, increase public support for peace operations. Two kinds of criteria are relevant (see following box). The first set of criteria refers to the political context and type of operation. The second set of criteria focuses on the mission itself, its mandate, command, duration and the types of troops.

What you can do as a parliamentarian

General criteria referring to the context and type of peace missions

- ▷ Make sure that parliament or its competent committee(s) looks into:
 - the international commitments of the state;
 - the appropriateness of sending/receiving troops as part of a peace mission;

- the rationale for or background to any specific intervention (e.g. a large-scale violation of human rights in the country concerned);
- the establishment of basic terms of reference for regional or global peace missions;
- the basic rules of engagement of soldiers in regional or global peace missions;
- the proportional use of military force;
- the provisions for effective political decision-making;
- the limits to the authority of the state;
- public support or hostility to the very principle of a national involvement in peace missions;
- assessment procedures and any principles with regard to possible follow-up issues;
- the need for parliament to receive full information at the end of the mission, in order to review the entire peace mission.

Specific criteria relating to a given peace mission

- ▷ Make sure that parliament or its competent committee(s) looks into the following:
 - the definition of the scope and mandate of the peace mission;
 - the type of military units involved;
 - the military feasibility of the mission;
 - the suitability and availability of the military units and material;
 - the potential risks for the military personnel concerned;
 - the expected duration of the operation and the criteria to be met for its prorogation in case of need;
 - the budgetary implications;
 - the public reaction to the matter.

Use of parliamentary procedures in connection with peace missions

- ▷ Make sure that, if necessary, parliament may:
 - conduct public hearings on peace missions;
 - conduct an inquiry further to the carrying out of a peace mission;
 - request that any personnel involved in a peace mission who are suspected of human rights violations are duly brought to book.
- ▷ Do not hesitate to resort to the procedure of parliamentary questions and hearings with regard to ongoing peace missions.

Section VI

Financial resources:

achieving effective budgetary control in
relation to security

Security and the power of the purse

Parliament and the budgetary process in relation to security

Everywhere in the world, parliaments have by law a key role to play in adopting and overseeing budgetary provisions relating to security, although the degree of political incentives and possibilities for performing that role may vary from country to country. Yet, in practice, all too often, they are poorly equipped to exert any decisive influence and their action is further hampered by secrecy and opacity in relation to certain security allocations and spending. A long-established culture of supremacy of the executive in the security sector often inhibits action by parliament which tends to leave virtually all initiatives in the defence budget-making cycle in the hands of the executive and the armed forces.

Yet, parliamentarians should not underestimate the power of the national budget as an instrument for security sector oversight and reform in accordance with society's needs. The "power of the purse" can and has to be used to ensure the best use of the allocations in a manner accountable to the public.

Box N° 51

The budget : a key instrument for democratic governance

- ▷ "The national budget is not just a technical instrument compiling income and [proposing] expenditure. It is the most important policy statement made by the executive in the course of the year. It reflects the fundamental values underlying national policy. It outlines the government's views of the socio-economic state of the nation. It is a declaration of the government's fiscal, financial and economic objectives and reflects its social and economic priorities. (...) The budget further provides a valuable measure of the government's future intentions and past performance.
- ▷ "The budget is a critically important document in insuring transparency, accountability, comprehensiveness and good

governance. By providing a detailed description of proposed expenditure, it allows parliament and the general public to “know where the money goes” and thus increases transparency. In addition, the budget requires approval by parliament before the government can spend money or raise revenue, making ministers accountable to parliament and its committees.

- ▷ “Transparency and accountability should be constitutional requirements, especially with regard to the national budgetary process. Together with transparency in the entire budgetary process, accountability is at the very heart of democracy.”

Excerpts from: General report of the IPU Seminar on Parliament and the Budgetary Process, Including from a Gender Perspective, Nairobi, May 2000

Parliament can in fact be attentive to security issues and the security sector in the four main phases of the typical budget cycle:

Budget-preparation: this phase is for the executive to propose allocations of money for several purposes but parliament and its members can contribute to the process through different formal and informal mechanisms.

Budget-approval: in this phase, the parliament should be able to study and determine the public interest and suitability of the money allocation and may in certain contexts complement security-related appropriations with specific guidelines.

Execution or spending: in this phase parliament reviews and monitors government spending and may strive to enhance transparency and accountability. See corresponding section below. In the case of extra-budgetary demands, parliament monitors and scrutinises these demands to prevent cost overruns.

Audit or review: in this phase, parliament scrutinises whether there was misuse of the money allocated by the government. Additionally, parliament evaluates periodically the entire budget and audit process to ensure accountability, efficiency and accuracy.

Box N° 52

Why should parliament take an active part in the budget?

- ▷ The opposition can use the budget debate to develop alternative proposals.

- ▷ The majority, in voting the budget into law, displays its confidence in the action of the executive by underscoring the points which justify that very confidence and the cohesion between policy implementation and the manifesto on which the majority was elected.
- ▷ Budget control is one of the most important ways to influence government policy.
- ▷ Under the Budget Review Act, it grants the executive a discharge, thereby ending the budget cycle.

Excerpts from: General Report on the IPU seminar on "Parliament and the Budgetary Process, including from a Gender Perspective", Bamako, Mali, November 2001

Defence expenditure

The box below gives an overview of defence expenditure in various parts of the world. A decline in defence expenditure can be observed in the post-Cold War era, illustrating that many countries are cashing in the so-called "peace dividend". However other countries, in Asia and Africa, have increased their defence expenditure in this period.

Box N° 53

Defence expenditures as % of the GDP of world areas and selected countries

	1985	2000	2001
NATO	4.0	2.2	2.2
USA	6.5	3.0	3.2
UK	5.2	2.4	2.5
France	4.0	2.6	2.6
Germany	3.2	1.6	1.5
Non-NATO Europe	4.3	2.8	2.3
USSR/Russia	16.1	5.0	4.3
Middle East and North Africa	11.9	6.7	7.2
Central and South Asia	4.3	5.2	3.8
East Asia and Australasia	6.4	3.5	3.3
Japan	1.0	1.0	1.0
Caribbean and Latin America	3.2	1.7	1.7
Sub-Saharan Africa	3.1	3.8	3.4
Eritrea	n.a.	30.0	20.9
Global Totals	6.7	3.6	3.5

Source: The Military Balance 2002–2003, IISS, London.

Effective budgeting with regard to security

Accountability and transparency are essential conditions for effective budgeting. The best way to realise accountability is through a transparent process of budget-making. Proper accountability and transparency can be developed from the principles of effective budgeting:

Prior authorisation – The parliament should authorise the executive to carry out expenditure.

Unity – All expenditure and revenue should be presented to parliament in one single consolidated budget document.

Periodicity – The executive is expected to respect a regular time-frame to present the budget every year to the parliament. Periodicity also involves the need for specifying the time-frame during which the money allocations will be spent.

Specificity – The number and descriptions of every budget item should result in a clear overview of the government's expenditure. Therefore the description of the budget items should not be vague and the funds related to a budget item should not be too large.

Legality – All expenditures and activities should be in keeping with the law.

User-friendly structure – The executive is expected to acquaint the parliament with a plan of estimated expenditure that is manageable and understandable to the wide and diverse audience that is usually present in parliament.

Comprehensiveness – The state budget concerning the different aspects of the security sector has to be all-inclusive and complete. No expenditure should go unaccounted for, including the budgets of all security services, i.e. the military, other state militarised organisations, police and intelligence services as well as private military companies hired by the executive.

Publicity – Every citizen (individually or organised) should have the opportunity to make or even express his or her judgement of the budget. This requires that all budget documents have a user-friendly structure and that they be made available for reading everywhere in the country (for example by sending copies to local libraries).

Consistency – Clear links should be established between policies, plans, budget inputs and performance outputs.

Means and ends – The budget explanation should be able to communicate clear understandings of the aims of the budget in terms of a) resource inputs; b) performance or capacity objectives to be achieved, and c) measurable results on plans. A flexible budget should allow changes in any of these three parameters.

These principles may in fact be considered to be quality criteria for modern proper budgeting. Where parliamentarians lack appropriate information on the security sector, they are unable to raise socio-economic and developmental concerns in the defence budget cycle.

Conditions of proper security budgeting

There are various elements of proper budgeting that enhance parliamentary oversight of the security sector budget. Among those, a clear constitutional and legal framework, value for money, budget discipline, timing and interaction with civil society appear to be prominent.

Clear constitutional and legal framework

The right of parliamentarians to oversee the security sector must be clearly spelled out in the constitution and additional laws. In addition, the parliament has to enact laws to obtain information from the government and the power to elicit information from the government must be exercised in accordance with those laws. Parliamentary oversight of the security sector through the budget further has to be ingrained in the political habits of the parliament. This requires considerable efforts.

Value for money

The budgeting process should apply the two basic rules of value for money:

- ✓ Effectiveness: realising the policy goals (“Doing the right thing”)
- ✓ Efficiency: realising the policy goals using the least resources possible (“Doing the right thing economically”)

Box N° 54

Planning, Programming and Budgeting System (PPBS)

“(…) Planning, programming, and budgeting system (PPBS) was firstly used in the United States [in the early 60s] for defence budget development [and is currently used in many other countries] (..). A typical PPBS cycle consists of an initial planning phase, in which the security environment, as well as national interests and threats are analysed in order to determine the tasks, the composition, and the structure of the armed forces. Considering these imperatives, programmes are developed. The programme, a form of business plan, identifies the concrete objectives to be met. It is a crucial link in the cycle as it works to relate the identified objectives to the financial resources. In this way, PPBS parts with the practice of allocating resources according to the stated needs and instead looks to plan and programme according to given and forecasted budgetary constraints. Hence, it is important that the programmes are developed on a priority basis, where the most immediate needs for the armed forces are met. Risk assessments dealing with the consequences of not meeting a given objective can be used for setting the priorities. Completing the cycle in the end is a performance measurement phase during which the ministry in particular and society as a whole can determine to what

extent the objectives have been met at the end of the year. An efficient distribution of resources can thus be achieved...”

Source: Defence Budget Transparency on the Internet, by Kate Starkey and Andri van Meny

Information & Security, Vol. 5, 2000. C4 in Defence of Reengineering.

In order to evaluate whether the defence budget is giving value for money, as per the modern budget theory, expenditure should be related to programmes and objectives (see Box N° 54) i.e. expenditures should be related to the relevant policy fields and goals (e.g. peace missions, education). Also all expenditures should be grouped together in functional clusters. Furthermore, parliament should be able to assess the level of value for money with the aid of auditors (see next chapter). This implies that the government present to the parliament an output budget instead of an input budget. Systematic budgeting systems, like PPBS, can be possible only if the security services makes their plans transparent in a manner consistent with confidentiality requirements.

Budget discipline

To make sure that the government sticks to the rules of the legal framework and to the budget as adopted by parliament, budget discipline is essential. Parliaments could consider the following elements of budget discipline:

- ✓ The relation between the defence budget (calculation of expenditure) and the development of the price level;
- ✓ Using norms for monitoring and setting limits for under- and overspending;
- ✓ Using measures during the budget implementation in order to avoid under- and overspending;
- ✓ In case of under- or overspending of the defence budget, the minister of finance and the cabinet should be notified;
- ✓ Rules for compensating defence budget overspending: compensation of defence overspending within the defence budget or compensation from other government budgets.

Timing and periodicity

To attain the utmost effectiveness of a proper budgeting of the security sector, it is necessary to allow sufficient time for examining the defence budget proposals before the vote. At least 45 days to three months in advance is the optimum required timing, enabling parliaments to review a complex defence budget thoroughly.

Provision of accurate, comprehensive and timely information on defence budget policies is also beneficial for several reasons, such as the following:

- ✓ This information is a prerequisite to public information and debate,
- ✓ It facilitates identification of weaknesses, need for reforms and trade-offs between security and other government expenditures;

- ✓ Transparent budget management of the security sector improves its public and parliamentary accountability and increases public confidence in the government.

Interaction with civil society

Parliament can draw budget and financial planning experts from civil society into the financial review and monitoring process; this may be particularly helpful when it comes to security-related budgeting which is not always straightforward or easy to follow. Transparency of the budget-making process should be based on, among other things, freedom of information legislation.

Training and expertise

Finally, many parliaments need to improve the capacity of both members of parliament and parliamentary staff through training and research opportunities for their specialised staff. To that effect, as part of its efforts to promote democratic governance and effective parliamentary work, the IPU is conducting regional and sub-regional seminars directed at both parliamentarians and parliamentary staff (see www.ipu.org) and has undertaken to prepare a handbook in the same series as the present one.

Box N° 55

Basic components of the defence budget: the Spanish defence budget 2002

Goods and Services

- Food
- Maintenance of infrastructure
- Petrol
- Services: electricity, water, phone, etc.
- Clothing
- Allowances
- Transportation
- Training
- Medical care
- Other operational expenditures

Other Financial expenditures

Current Transfers

- International Organisations
- Autonomous Organisms
- Other transfers

Real Investment

Modernisation of the armed forces
Maintenance of weapons and material
Research and development
Other investments
Capital transfers
Financial assets

Source: Spanish Defence Budget 2002, Ministry of Defence of Spain.

Transparency and accountability in security budgeting

Transparency versus secrecy

Transparency of decision-making is an essential way of ensuring that the outcomes of decisions are consistent with public intentions and policy objectives. Transparency in defence budgeting enables parliaments to play their oversight role in an efficient manner. It enhances the confidence of society in its security sector. A lack of transparency in defence budgeting is often connected to obsolete budget designs or poorly-defined security objectives. This is also related to the absence of multi-disciplinary expertise in the national statutory audit organisations, weak constitutional provisions for the provision of information for public scrutiny of decisions, and a bureaucratic attitude, which prefers confidentiality to accountability. The statutory audit authorities and legislators need to identify and address these broader systemic weaknesses (see next chapter).

Box N° 56

Key obstacles to transparent security budgeting

"The lack of transparency and accountability is particularly problematic in budgeting, where a select few individuals in the executive branch make decisions on security policies and resources. Key officials in the ministry of finance and other parts of the executive are often excluded from decision-making – or find their decisions circumvented. Parliamentary bodies – which may even have oversight authority in the national constitution – and the media and civil society are routinely kept in the dark." ...

"All spending on different security forces – their personnel, operations and equipment – should be included in their budgets. Those budgets should also indicate how this spending is financed. Yet, most security

budgets meet neither conditions. Intra-budgetary allocations are opaque, and total spending – which may include funds from a series of departments – remains unclear. In countries with extensive off-budget activities, governments themselves often lack accurate information. That is why a primary yardstick for accountability – comparing plans and execution – cannot be used. Officials in the ministry of defence and other parts of the executive branch need defence-specific technical knowledge to make appropriate decisions on defence policy, budgeting and procurement. Addressing the off-budget problem is often highly political, requiring fundamental long-term changes in civil-military relations."

Source: Human Development Report, 2002 (pp. 89 and 91)

Controllable and uncontrollable defence and security-related expenditures

If it is to oversee the security sector and be able to assess whether money should be spent on the security services or other fields of government, the parliament needs to have access to relevant budget documents to ensure financial probity. Giving parliament only grand totals would violate the principle of specificity, one of the principles of proper budgeting (see above). If it is not provided with specific information, the parliament cannot fulfil its constitutional duty of monitoring and overseeing the defence budget.

The parliament should have access to all defence budget documents. In some countries (e.g. Denmark and Luxemburg), the parliament is even provided with information on the line items of the budget, the most detailed level of budgeting. In other countries, however, (e.g. France, Greece and Poland), the parliamentary committee on defence is the only one to be presented with information on the defence budget items. From the point of view of good governance, it should be guaranteed that either the Committee (if necessary behind closed doors) or the parliament have access to all budget documents. The same procedure should apply to other security services, notably the intelligence services.

The classification of the budget of the security services should be in keeping with the law, and more especially the law on freedom of information (See Box N° 57).

While discussing and voting on the security budget, the parliament's freedom to change it is restricted by mandatory spending (e.g. a procurement contract signed in previous years) and entitlements programmes (e.g. pensions and health care for military people). These expenditures can only be changed in the long term.

Box N° 57

Three levels of classification in the security budget

Parliamentarians need to ensure a balance between the need for confidentiality of information in special circumstances, the related allocations in the defence budget and accountability. One way could be to have the budget proposals broken down to different levels of security classification as follows:

- ▷ General defence budget presented to parliament;
- ▷ Classified capital and operating expenditure, which may be scrutinised by a sub-committee on defence budget and military expenditure;
- ▷ Expenditure relating to higher levels of military classification which may be scrutinised by a representative group of members of a scrutiny committee. This group should be given access to classified documents according to established procedures set out in a national secrecy act.

Source: Ravinder Pal Singh, Arms Procurement decision making processes, vol 1, OUP, Oxford, 1998.

Transparency against mishandling of public funds and corruption

Parliaments play a key role in ascertaining that the government is not mishandling public funds. It has been demonstrated that such abuses can happen especially in respect of the budget that is allocated to the security sector given its specific nature – complex technical issues and requirements of strategic security.

Transparency and accountability in defence budgeting are a *sine qua non* to any effective parliamentary control of the security sector. Transparency is in turn a precondition to accountability, which itself is fundamental to good governance. Hence, these two concepts are key to the entire budget cycle.

“As the general lack of accountability and transparency in defence budgeting can [...] feed concerns about the size, capabilities and intentions of a country's armed forces, greater transparency will draw attention to military spending and reduce the potential for uncertainty and misunderstanding that lead to conflict.”

Paul George, "Defence Expenditures in the 1990's: Budget
and Fiscal Policy Issues for Developing Countries", 2002.

It is generally recognised that excessive military expenditure diverts valuable resources that could otherwise be used for poverty alleviation and social development. The representatives of the people are to be provided with information as to why and how the executive plans to organise the security of the society since this is being done through the public's tax contributions. Their misuse in developing countries is particularly damaging. The government, in terms of pursuit of objectives of good governance, is also obliged to consider public opinion in its deliberations relating to the security sector. Parliament has to ensure that the defence budget balances development and security needs. There are many problems that can hinder effective parliamentary budget control of the security sector as highlighted in the following box.

Box N° 58

**Main problems constraining effective
budget control of the security sector**

- ▷ **Absence of constitutional framework** – There are difficulties that might arise out of the absence of a clear constitutional framework that empowers parliamentarians to oversee the activities of the security sector.
- ▷ **Lack of information** – Closely related to a deficient constitutional framework is the shortage of legislation on freedom of information that facilitates the disclosure of sensitive information. Therefore, imperfection and ambiguity in the legal framework can hamper the efforts of the parliament in exercising oversight. The consequence is that the public and parliament are deprived of the accountability to which they are entitled in a sound democratic system.
- ▷ **Off-budget activities and incomes sources of the security sector** – The exact nature and benefits of the off-budget sources of income of the security sector for special activities (in particular activities of a commercial nature such as the profits of military companies or from providing services) are not always known to parliament or even to ministry officials. These activities should be accounted for to the parliament, just as any other way of financing the security sector.

- ▷ **Hiding defence expenditures** – Security sector expenditure on pensions, infrastructure, transportation etc. are quite often transferred to the budgets of other ministries/sectors such as welfare, housing, railways etc. This practice misrepresents the defence budget and it distorts the ability of the public and parliament to make valid assessments of the real defence expenditure.
- ▷ **Weak media** – Many countries have a weak media (in the sense of lack of expertise and resources) that does not closely follow the workings of the security sector and the parliament. This deprives the general public of current and up-to-date information on the activities of its representatives and the security sector parties.
- ▷ **Too little time for proper scrutiny** – As previously pointed out, little timing for scrutiny of the defence budget can represent a problem for effective parliamentary oversight.
- ▷ **Lack of infrastructure, expertise and staff** – Many parliaments lack infrastructure, expertise and personnel to carry out all the demands that are required to ensure that the executive is accountable to the people it serves.

Budget control in democratising countries

The democratic wave that swept across Europe in the 1990s, has demonstrated that the development of the idea and practice of parliamentary oversight is particularly relevant to democratising countries. Box N° 59 allows for a closer look at budgetary practices in South-East European states that have been active in integrating their political systems within a more transparent and accountable framework.

Box N° 59

Defence budget practices in selected states of South-Eastern Europe (as of 2001)

Albania: A budget management office was created in October 2000. The defence policy document has been published outlining defence requirements until 2008. The ministry of defence is responsible for the budgeting process.

Bulgaria: The defence budget has been discussed by the National Assembly (Bulgarian Parliament) for the last 10 years. There is a general expectation that the Assembly has been gradually improving

its oversight capabilities towards full-fledged parliamentary oversight of the security sector.

Croatia: The budget is proposed by the government and then submitted to the Parliament and published in the “Official Bulletin”. The budget-making process extends from July to November, passing through the ministries of finance and defence. The parliament decides only on the total amount of the defence budget but has no authority regarding its structure.

F.Y. Republic of Macedonia: The ministry of defence prepares the proposal that then goes to the ministry of finance. At this stage, dialogue is established with other ministries to match the country’s capabilities. Then the budget is submitted to the government. Once eventual corrections are made, the budget goes to the parliament. The minister of defence presents the proposed budget to the Committee for Internal Policy and Defence. After the vote, the budget is drafted into a decree by the president. The defence budget is 2.12% of GDP.

Romania: The Planning, Programming, Budgeting and Evaluation System (PPBES) has been implemented since January 2000 by the defence ministry. Among others, its goal is to enhance transparency concerning all activities of the defence sector. There are several committees inside the parliament involved in the budget-making process: Defence, Public Order, National Security, Budget, Finances and Banks. The relevant department inside the ministry of defence is called Relations with the Parliament, Legislation, Harmonisation and Public Relations. The main defence-planning document is published on the Internet.

What you can do as a parliamentarian

The security sector in the budget cycle

- ▷ Make sure that parliament is attentive to the security sector in the four main phases of the typical budget cycle: budget-preparation; budget-approval; execution; and auditing of expenses.
- ▷ Ensure oversight by statutory audit institutions.
- ▷ Audits by parliament and other monitoring institutions should link policy objectives with budgetary demands and outputs (performance audit).

Effective parliamentary action to secure transparent security budgeting

- ▷ Demand that the budget is prepared with respect for the principles for effective budgeting rehearsed in this chapter.
- ▷ Try to obtain the assistance of independent experts able to help parliament or yourself individually to assess whether the proposed security appropriations are relevant and appropriate and are presented in a transparent manner.
- ▷ Ensure that security services are using modern methods of financial planning and budgeting, which enables parliament to make valid assessments of defence expenditure and to understand the relations between objectives, financial inputs and performance outputs.
- ▷ Check the situation in your own parliament using as a reference the points listed in Box N° 58 and take whatever initiatives are possible in your political context with a view to remedying or curbing any specific weaknesses.

The audit of security-related national budgetary expenses

Parliament and the national audit office

Parliament's responsibility for the security budget is far from concluding once it is adopted. Parliament has to enforce its oversight and audit functions, keeping in mind that the presentation of fully audited accounts to parliament is part of the democratic process and that the auditing process should entail both the auditing of figures and the auditing of performances. The accounts and annual reports of the security services are an important source for parliaments to assess how money was spent in the previous budget year.

In its oversight functions, parliament should be assisted by an independent institution, a national audit office (sometimes called the Auditor General, National Audit Office, Budget Office or Chamber of Account), that should be established by constitutional law as an institution independent of the executive, legislative and judicial branches. The parliament should in fact make sure that the Auditor-General:

- ✓ is appointed by it and has a clear term of office;
- ✓ has the legal and practical means and resources to perform his/her mission independently
- ✓ has the independent authority to report to parliament and its budget committee on any matter of expenditure at any time.

Parliament should see to it that judicial sanctions are provided for by law and are applied in cases of corruption and mismanagement of state resources by officials and the political body. Parliament should also see to it that remedies are applied in case of fault.

Box N° 60

The Auditor General

“Regardless of whether it falls under the Executive, the Legislature or the Judiciary, it is imperative for the Audit Office to be completely independent and truly autonomous. It should also dispose of adequate resources to accomplish its mission. Its function is three-fold:

Financial oversight

The Audit Office must verify the accuracy, reliability and thoroughness of the finances of all organs of the Executive and public departments.

It must verify that all financial operations are carried out in accordance with the regulations on public funds. Within the context of this oversight function, the Audit Office must fulfil a mission of jurisdiction with regard to public accountants and officials who authorise payments. They must all be made accountable for the money they handle save in the case of a discharge or release of responsibility. In cases of misappropriation or corruption, the Audit Office is duty-bound to report its findings to the Judiciary.

Legal oversight

The Audit Office must verify that all public expenditure and income are conducted in accordance with the law governing the budget.

Ensuring proper use of public funds

A modern Audit Office which functions in the interest of good governance should ensure the proper use of public funds on the basis of the three following criteria :

- (i) *Value for money*: ensure that the resources used were put to optimal use, both qualitatively and quantitatively;
- (ii) *Effective*: measures to what extent objectives and aims were met;
- (iii) *Efficient*: measures whether the resources used were used optimally to obtain the results obtained.

This *ex-post* oversight is conducted on the initiative of the Audit Office or at the request of Parliament.”

Excerpts from: General Report on the IPU Seminar on Parliament and the Budgetary Process, Including from a Gender Perspective (Bamako, Mali, November 2001)

Auditing the security budget in practice

Auditing the security budget is in fact a rather complex process for parliament, involving an analyses of audit reports regarding matters directly related to security and matters that are indirectly related to it: e.g. trade, industry, communications or money transfers. The main challenge may consist of establishing links between apparently unrelated activities.

In practice, the ministries that are key with regard to security - traditionally defence, interior, trade and industry and more recently communications and finance - should regularly present to parliament fully documented reports on how they spend the money allocated to them. The parliamentary procedures used may include: departmental annual reports, review of each appropriation by parliamentary

committees, audited annual accounts of each ministry, specific debates on each department in parliament.

Ideally, the audit process should enable the parliament to evaluate whether the budget cycle has respected legality, efficiency in expenditure, and effectiveness in attaining the set objectives.

Box N° 61

The role of the UK National Audit Office in the parliamentary oversight of the security sector

Established as an independent body in 1983 and headed by the Comptroller and Auditor General (C&AG), the UK National Audit Office (NAO) reports to parliament on the spending of central government money. NAO conducts [financial audits](#), and reports on the [value for money](#) obtained.

▷ **Financial Audit**

By law, the C&AG and the NAO are responsible for auditing the accounts of all government departments and agencies and reporting the results to parliament. As with other auditors, the C&AG is required to form an opinion on the accounts, as to whether they are free from material misstatements. The C&AG is also required to confirm that the transactions in the accounts have appropriate parliamentary authority. If the NAO identifies material misstatements, the C&AG will issue a qualified opinion. Where there are no material errors or irregularities in the accounts, the C&AG may nonetheless prepare a report to Parliament on other significant matters. Such reports may be considered by the Committee of Public Accounts of the House of Commons.

▷ **Value for Money Audit**

Around 50 reports are presented to parliament each year by the Comptroller and Auditor General on the value for money government departments and other public bodies have obtained with their resources. The National Audit Office examines and reports on the economy, efficiency and effectiveness of public spending. Whilst the reports can reveal poor performance or highlight good practice, they also focus on making recommendations to help achieve beneficial change. NAO believes that, by implementing all the recommendations that it has made over the last three years, the government has saved

£1.4 billion. The defence value for money reports have recently covered such diverse subjects as Helicopter Logistics, Combat Identification, Overhaul and Repair of Land Equipment, Stock Reductions and the redevelopment of the ministry of defence's Main Building. NAO also reports on the progress of the 30 biggest acquisition projects.

▷ **Relations with Parliament and the cycle of accountability**

Relations with parliament, and in particular with its Committee of Public Accounts, are central to its work. The C&AG is, by statute, an Officer of the House of Commons and all his main work is presented to parliament. In this way, a cycle of accountability operates. Once public money has been spent by a central government body, the C&AG is free to report to parliament on the regularity, propriety and value for money with which this has been done. The Committee of Public Accounts can take evidence on this report from the most senior official in that public body, and can then make recommendations to which the government must respond. Additionally, the NAO responds to over 400 queries from individual members of parliament on issues affecting public spending.

Source: Tom McDonald, Senior Auditor, Defence, National Audit Office, UK, 2002

Essential elements of audit offices

An audit office is one of the most important instruments for parliamentary oversight. It should possess the following characteristics in order to be effective:

- ✓ The statutory audit authority reports to the parliamentary accounts committee, which should be different from the budget committee;
- ✓ It should have access to classified documents to understand decisions but must not make public reference to such documents;
- ✓ It should have multi-disciplinary capacities with expertise in the security sector, defence management, technical, financial and legal aspects.

Box N° 62

The Georgian parliament and budget control

At the end of the 2001, Georgian MPs resolved to postpone parliamentary debates on the 2002 budget bill for a month because of a disagreement on basic figures and a lack of time for debate because the government had submitted the draft of the budget too late. At the

same time, with the assistance of American experts, the ministry of defence worked out the first-ever defence budget programme. MPs had the opportunity to look into basic structural elements of the armed forces and give an informed opinion on defence spending. In addition, the draft of the budget complied with NATO standards – it divided all the expenses into three blocks: personnel, maintenance of combat efficiency, and investments.

From the viewpoint of parliamentary control, the main problem was that the parliament approved the budget in late January 2002 and that a) the president, the finance minister and the defence minister expressed different views on the optimal spending on defence; b) there were last-minute changes in the budgetary figures which were not explained to the legislators; c) the MPs were not informed about a proposed schedule of personnel cuts in the defence ministry and the consequent financial effects of this measure. At the same time, budget bills of governmental agencies, which are not included in the budget law, actually escaped parliamentary control.

In the end, the defence budget programme was substantially affected because the parliament approved only 38 millions GEL for defence spending, while the programmes required 71 millions GEL altogether. In this context, the president and the National Security Council will decide how to allocate budgetary funds among various governmental structures. The parliament could have taken advantage of this precious chance to exercise democratic control through parliamentary procedure to debate and approve the budget.

Source: David Darchiashvili, Head of the Parliamentary Research Department of the Parliament of Georgia, 2002.

What you can do as parliamentarian

Effective independent auditing

- ▷ Make sure that the establishment of a Supreme Audit Institution is provided for in the constitution or in legislation, outlining:
 - The nature and scope of the relations between the national audit institution and the parliament;
 - The necessary degree of independence of the national audit institution and of its members and officials as well as its financial independence;
 - That the parliament should review and monitor government's responses and measures following upon the reports made by the audit office and the parliamentary public accounts committee.
- ▷ Check whether the principles contained in the Lima Declaration of Guidelines on Auditing Precepts – to be found on the Website of the International Organisation of Supreme Audit Institutions, www.intosai.org – are reflected in your national legislation and practices.

Legality audit, regularity audit and performance audit

- ▷ See to it that the national audit institution covers these three aspects when it comes to security issues.
- ▷ Make sure that, even if the audit process of expenditure relating to security takes place post facto, parliament draws all the necessary lessons and takes them into account at the time of committing fresh funds in that field.
- ▷ Most audit reports are limited to auditing financial questions. The statutory audit authority should be able to conduct performance audits of specific projects in detail, or use consultants for independent evaluation if the organisation is handicapped in its own expertise.
- ▷ The statutory audit authority should also audit the functioning of the financial departments of the security services.

Section VII

Human Resources in the Security Sector: Ensuring professionalism and democratic oversight

Promoting democratic values within the security sector

The democratic education and attitude of the armed forces needs to be promoted so that the military can be properly integrated in society and not pose a threat to democracy. In various parts of the world, experience has indeed shown that a military that is not properly managed and democratically controlled or that is not fully integrated into the fabric of society can pose a variety of threats for democracy:

- ✓ exercising unconstitutional influence or even staging military coups d'etat;
- ✓ practising unauthorised military or commercial activities;
- ✓ consuming excessively high levels of resources which are needed for other sectors of society;
- ✓ misusing public funds;
- ✓ violating human rights (e.g. looting, robbing, using illegal violence and rape).

Mechanisms for generating a democratic disposition among personnel in the security sector

Promoting the democratic attitude of the armed forces implies creating mechanisms within the military organisation that contribute to raising awareness of and respect for democratic values and institutions as well as human rights principles. These internal mechanisms are necessary to complement parliamentary, government and civilian controls over the armed forces. The following elements can help in enhancing the democratic disposition of uniformed personnel.

Allegiance to the constitution and state institutions

Good governance includes inculcating the public service values and ethics of obedience to the rule of law and respect for the constitution and the national institutions, into the security sector. Soldiers and other guardians of a democratic society are to swear their oath of allegiance to the constitution and the state institutions, and not to a specific political leader. Such an "impersonal" oath of allegiance symbolises that the security services are not loyal to the particular government of the day, but to the constitution and the laws which are enacted by the legitimate representatives of the people. Civilian oversight of the security sector should include awareness of the precise nature of the military oath and of what is done in order to secure its enforcement.

A well-defined internal order of the security sector

It is crucial to consolidate the legal framework relating to the internal order of the security sector from the point of view of democratic oversight. This includes the following:

- ✓ limiting the constitutional rights of the officers;
- ✓ adopting or reviewing a conscription law, a military service act, a military penal code, establishing a legal framework in agreement with the Geneva conventions;
- ✓ making it a duty for personnel to disobey illegal orders.

In most states, while the constitution guarantees the rights and fundamental freedoms of all citizens, subordinate laws can limit these rights for servicemen, if required by specific military tasks. Therefore, in principle servicemen have the same rights as other citizens, as servicemen are citizens in uniform. However, applicable limitations concern freedom of speech as servicemen have access to classified documents, freedom of movement as far as military/security readiness is concerned, and the right to be elected to a political post. Not all democracies limit the civil rights of servicemen to the same extent. For example, in the Scandinavian countries, Germany and the Netherlands, servicemen have the right to form and join a trade union. In other states, servicemen are entitled to form and join representative associations only. In all cases, however, the limitations are precisely described in subordinate laws and are always directly related to the specific position of servicemen and national security.

Military representative associations and unions

In many states, it is forbidden to form and to join trade unions for the protection of the interests of volunteer and/or conscript military. The usual argument against unions for military personnel is that they might undermine discipline and order within the armed forces. Other states, however, in line with Article 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), allow their military personnel to form and to join representative associations or even unions for military personnel. These include Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Luxemburg, the Netherlands, Norway, Portugal, Russia, Slovak Republic, Slovenia, Sweden and Switzerland. In these states, the representative associations or unions for military personnel have different rights, depending on the type of association. They all have the right to consult the minister of defence and some of them even have the right to negotiate on their terms of employment. In either case, they promote the health and safety conditions of the servicemen and they provide support to individual members, for example in the case of legal disputes between the military personnel and their employer. Europe has two umbrella organisations for military personnel. In Brussels, EUROMIL is the only European organisation of military personnel, regardless of their status. The second umbrella organisation in Europe is the European Council of Conscript Organisations (ECCO) in Stockholm.

Box N° 63

Council of Europe Recommendation on the Right of association for members of the professional staff of the armed forces

1. The Parliamentary Assembly recalls (...) to grant professional members of the armed forces, under normal circumstances, the right to association, with an interdiction of the right to strike (...)

4. In the past years, armies from certain member states converted from a conscription system to a purely professional system. As a consequence, military personnel are becoming increasingly “regular” employees, whose employer is the Ministry of Defence, and should be fully eligible for the employees’ rights established in the European Convention on Human Rights and the European Social Charter.

5. Members of the armed forces, as “citizens in uniform”, should enjoy the full right, when the army is not in action, to establish, join and actively participate in specific associations formed to protect their professional interests within the framework of democratic institutions, while performing their service duties.

6. Military personnel should be entitled to the exercise of the same rights, including the right to join legal political parties.

7. Therefore, the Assembly recommends that the Committee of Ministers call on the governments of the member states:

i. to allow members of the armed forces and military personnel to organise themselves in representative associations with the right to negotiate on matters concerning salaries and conditions of employment;

ii. to lift the current unnecessary restrictions on the right to association for members of the armed forces;

iii. to allow members of the armed forces and military personnel to be members of legal political parties;

iv. to incorporate these rights into the military regulations and codes of member states;

v. to examine the possibility of setting up an office of an ombudsman to whom military personnel can apply in case of labour and other service-related disputes.

8. The Assembly also calls on the Committee of Ministers to examine the possibility of revising the text of the revised European Social Charter by amending its Article 5 to read: “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their

economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police and the members of the armed forces shall be determined by national laws or regulations.”

Recommendation 1572 (2002)

Council of Europe Parliamentary Assembly, 3 September 2002

Promoting education in key values and norms

The education of servicemen should aim at creating professional servicemen who are dedicated and prepared for their tasks. The education should be politically neutral and should not include in any way political ideology and elements of propaganda. It should include courses on democracy, constitutional, international and humanitarian law, and human rights. Providing the security sector with education and training in international humanitarian law and international human rights law is especially crucial for promoting democratic values in that sector. To become acquainted with international humanitarian law, members of parliament may wish to obtain the Handbook for Parliamentarians on “Respect for International Humanitarian Law” released in 1999 by the Inter-Parliamentary Union and the International Committee of the Red Cross (Handbook N° 1). Both the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Human Rights (UNHCHR) provide technical assistance to states wishing to strengthen their capacity to secure respect for, respectively, international humanitarian law and international human rights law.

Providing for political neutrality and non-active involvement

The security services are to be politically neutral and therefore political parties are not allowed to campaign within the barracks. Whereas in some countries, active servicemen are allowed to become members of a political party, in other countries, especially in post-communist states, military personnel are not authorised to join parties. For example in Poland, employees of the ministry of interior, such as intelligence service or the police, are barred from political party membership. In most countries servicemen cannot be members of the national parliament. In some, however, for example the Netherlands and Germany, active servicemen can become members of local or regional assemblies.

Security services as a mirror of society

In principle, all positions within the security services must be open to all citizens, regardless of gender, political affiliation, class, race or religion. The best man or woman in the best place is to be the main criterion for selection. Many states realise that the personnel of the security services, especially the police and the armed forces, should be a mirror of society at large. These states put specific policies in place in

order to encourage groups in society which are under-represented in the security services to apply for jobs there.

Legalising disobedience to illegal and abusive orders

The status, scope, operation, cooperation, tasking, reporting, duties and oversight of all security services are regulated by laws. Security services do not have powers unless set down by law. Concerning the military, specific legislation such as Military Personnel Acts or a Military Penal Code specify the limits of orders which soldiers are obliged to obey. In many countries, these laws oblige each commander to observe the rule of law, whenever issuing an order and, therefore, limit the commander's authority. It follows that servicemen have a duty to disobey illegal (criminal) orders; no serviceman can justify his/her actions by referring to an order that commands him/her to commit a crime; additionally, servicemen are not obliged to carry out an order if it is not duty-related or violates human dignity. This implies that servicemen themselves are always individually accountable for their actions, even when they were ordered by superiors.

The top military leadership should be encouraged to set an example and to make it known publicly that undemocratic, anti- or unconstitutional or immoral orders or acts of soldiers are not allowed. This is especially important for the armed forces of former military dictatorships. For example, after Argentina's return to democracy, top generals of the Argentine military declared that *"the end does not justify the means"* and that *"whoever gives immoral orders and whoever obeys immoral orders, breaks the law"*. By making these statements, the top leadership made it clear that every soldier would be held individually accountable for crimes and misdemeanours and would not be able to argue that they were obeying (illegal) orders from their superiors.

A related issue is that of preventing and fighting impunity by making sure that any professional misconduct and any violations of international humanitarian law and human rights are punished by the competent administrative or judicial organ.

Establishing criteria for the appointment of top security personnel

The top positions of the security services, such as the commander in chief of the armed forces or the director of the intelligence services, are appointed by the cabinet or minister of defence. In some states, these senior appointments are subject to parliamentary debate and/or approval. Though the top officials are appointed by the civilian political leadership, professional criteria are the most important in the selection process.

Civilians in top security management

Last but not least, from a good governance point of view, the security services, such as the armed forces, should have civilians in top management. The main reason is that the relevant minister should be advised not only by military generals, but also by civilians, in order to secure a balanced decision-making process.

Professional ethos

A professional work ethos is built on practices, regulations and policies. Servicemen should collaborate willingly with state institutions and respect the constitution, be dedicated to public service, perform their duties efficiently and effectively, and not abuse power or make improper use of public money. It is important that the professional ethos be characterised by willing compliance and not by forced compliance only. Willing compliance means that servicemen have a positive prejudice in favour of the constitution and national institutions because they have absorbed the democratic values of their society.

Many countries have adopted a code of conduct regulating the behaviour of their servicemen. The example of the German professional ethos for the armed forces is described in the Box N° 64.

Box N° 64

Leadership and civic education in the German Armed Forces: the principles of “Innere Führung”

“(…) During the debate over the establishment of the Bundeswehr after the Second World War, the concept of Innere Führung (moral leadership and civic education) was seen as a way of reforming the armed forces through a conscious departure from earlier traditions. (...) It is generally agreed that the principles of Innere Führung provide basic guidelines for the internal organisation of the Bundeswehr on the one hand, and for its integration into state and society on the other.

(…) Innere Führung serves to reduce to a tolerable level any tensions or conflicts arising between the individual rights and freedoms of service personnel as citizens on the one hand, and the demands of their military duties on the other. The leadership behaviour of superior officers must be imbued with respect for human dignity – the basis of our constitutional order (...).

Externally, the objective is to foster the integration into state and society of the Bundeswehr as an institution, and of all service personnel as individual citizens. (...) The aim is to dispel any worries that the Bundeswehr could become a “state within a state” – a danger inherent in all armed forces (...).

The objectives of Innere Führung are:

- ▷ To make service personnel fully aware of the political and legal bases of the Bundeswehr as well as of the purpose and meaning of their military mission;
- ▷ To promote the integration of the Bundeswehr and its service personnel into state and society and to create greater public awareness and understanding of their mission;

- ▷ To enhance the willingness of service personnel to carry out their duties conscientiously, and to maintain discipline and cohesion within the armed forces;
- ▷ To ensure that the internal structure of the armed forces is organised on the basis of respect for human dignity and for the legal and constitutional order, and to facilitate the effective performance of the armed forces' mission.

The actual substance and objectives of Innere Führung in everyday military life are laid down in a series of laws, orders and service regulations. (...)”

Source: Website of the German Federal Parliament www.bundestag.de

On the international level, two codes of conducts have so far been developed, setting out a reference framework for the professional ethos of servicemen of democratic societies. Firstly, in 1979 the General Assembly endorsed the International Code for Law Enforcement Officials: see Box N° 65. The code is of a general nature and is applicable not only to uniformed servicemen but to all public officials working in law enforcement agencies.

Box N° 65

Code of Conduct for Law Enforcement Officials

Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 1 – Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2 – In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3 – Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4 – Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5 – No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior

orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment .

Article 6 – Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7 – Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8 – Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Note: Each article of this code of conduct includes a commentary that was not reproduced in this section. For the entire document, please see: www.UN.org

The second code of conduct is the OSCE Code of Conduct for Politico-Military Aspects of Security (see Box N° 66). It is aimed at servicemen of all security sector organisations and provides guidelines for armed forces personnel. It establishes that the servicemen have to abide by the principles of legality, democracy, neutrality, respect of human rights and compliance with international humanitarian law. It points out that military servicemen can be held individually accountable for violations of humanitarian law. It does, however, cover issues that are usually considered to fall within the domestic jurisdiction of the state. Thus this code represents a crucial advance in an area of state power that had hitherto been carefully guarded. Since the OSCE states signed the Code in 1994, the OSCE states have continued elaborating norms on how to recruit, educate, train or command their troops. This is related to an important element within the Code stating that further professionalisation of the armed forces should be adjusted to a proper democratic control of the armed forces.

Box N° 66

The OSCE Code of Conduct on Politico–Military Aspects of Security (1994): key features

- ▷ Broad concept of internal forces that includes: intelligence services, paramilitary, and police. These provisions assert the duty of states to maintain those forces under effective democratic control through authorities vested with democratic legitimacy (paragraphs 20 and 21);
- ▷ Provision of legislative approval of defence budget and encouragement of the exercise of restraint in military expenditure. Transparency and public access to information related to the armed forces (paragraph 22);
- ▷ Political neutrality of the armed forces (paragraph 23);
- ▷ Armed forces personnel can be held individually accountable for violations of international humanitarian law (paragraph 31);
- ▷ Armed forces are, in peace and in war, commanded, manned, trained and equipped in accordance with the provisions of international law (paragraph 34);
- ▷ Recourse to force in performing internal security missions must be commensurate with the needs for enforcement. The armed forces will take due care to avoid injury to civilians or their property (paragraph 36);
- ▷ The use of the armed forces cannot limit the peaceful and lawful exercise of citizens' human and civil rights or deprive them of their national, religious, cultural, linguistic or ethnic identity (paragraph 37).

Source: OSCE Code of Conduct, Sections VII and VIII. See: OSCE website:

www.osce.org

and OSCE Code of Conduct website:

<http://www.osce.org/docs/english/1990->

[1999/summits/buda94e.htm#Anchor_COD_65130](http://www.osce.org/docs/english/1990-1999/summits/buda94e.htm#Anchor_COD_65130)

Military jurisdiction

The requirements for military discipline are based on a number of conditions that stem from the unique nature of the military mission. For example, the military community has a different perspective on criminal behaviour from that of the civilian community.

A civilian employee is not subject to criminal prosecution for walking away from a job assignment or failing to perform that job properly. The employer may fire the employee for poor performance and refuse a recommendation for employment elsewhere, but the employer does not have recourse to a criminal court. Service personnel, on the other hand, subject themselves to criminal prosecution for leaving their post or not completing an assignment according to specific standards and requirements. Such behaviour not only constitutes dereliction of duty, it also jeopardises the safety and welfare of other military personnel. Other examples of military offenses not recognized in civilian society include fraudulent enlistment, desertion, absence without leave, missing movement, disrespect toward superior commissioned officers, mutiny, aiding the enemy, and sleeping on duty.

This issue raises a key concern about what crimes should come under military jurisdiction and what under civilian jurisdiction. As a principle, military courts should be used in a restrictive way and the jurisdiction of civilian courts should prevail as much as possible. The military jurisdiction should be limited for those crimes committed in the exercise of military functions, and military codes should overlap with the civilian criminal law as little as possible.

It is important to highlight that, in most countries, military courts are not part of the judiciary but administrative tribunals in the sphere of the armed forces, being part of the executive. This means that the military judges are often not appointed through the constitutional provisions and requirements for appointment of judges. However, it is fundamental to bear in mind that in all cases military courts should be monitored by the judiciary. In many countries this is done through the establishment of civilian appeal courts as appeal instances for the military jurisdiction.

What you can do as a parliamentarian

Make sure that:

1. Military personnel swear an oath of allegiance that is to the constitution, the rule of law and the state's institutions, but not to individuals.
2. Education is promoted in key values and norms of democracy, civil rights and humanitarian law, as standard part of any military training.
3. Military officers are not allowed to be members of parliament.

4. Selection of new soldiers and officers is based on professional criteria.

5. The duty of servicemen to disobey illegal (criminal) and abusive orders is legalised.

6. The military ethos is characterised by willing compliance, supported by appropriate codes of conduct.

7. The competence of the military jurisdiction is as restrictive as possible and that the decisions of military courts can always be appealed before civilian criminal courts.

8. The security services are held accountable – both in law and in practice – to each of the main constituent elements of the state (see earlier in this chapter for individual accountability of servicemen) and that the internal accountability mechanisms for the security services have to be provided by law, allowing for an internal review of alleged misconduct and public complaints, and for punishment of those responsible; oversee that such mechanisms are applied and effective. See to it that parliaments require independent investigations and make sure that suspects are brought to book.

Civil rights of servicemen

- ▷ Limit by law the civil rights of servicemen in order to ensure (military) readiness and the political neutrality of the services.
- ▷ Keep in mind, however, that any curtailing of civil rights has to be directly linked to the unique character and tasks of the security services, i.e. the monopoly of force in society.
- ▷ Acceptance of limits on civil rights should be compensated in efficient channels for redress of grievances.

Obedience

- ▷ Provide by law that servicemen, including conscripts, have the duty to disobey illegal and unethical orders and orders that contradict international human rights and humanitarian law norms
- ▷ Make sure that this duty is enforced by the disciplinary system within the security services.

Abuses and corruption

- ▷ Act swiftly if scandals or excesses, such as corruption and violence, happen within the security workforce.
- ▷ Make sure that the appropriate in-depth inquiries are carried out and, if appropriate, sanctions are decided upon by the competent body and applied without delay.
- ▷ Enact legislation that prohibits the military and other security services personnel from being employed in second jobs or involved in commercial practices individually or as a group/organisation.

Personnel management in the security sector

Working for the military is an occupation with some special features such as physical risks, regular relocations, being often apart from families, etc. Parliaments should be aware that the military is “not just another job”. Proper personnel management – including proper recruitment, selection, staffing, remuneration, education and rewards system – is crucial to the development of a professional security sector that adheres to democratic principles and respects the rule of law and civilian supremacy.

Parliaments have to oversee the creation and maintenance of the professional security services. They should ensure that personnel management plans are developed and implemented, leading to a democratic and professional workforce. They should further monitor whether the state behaves as a fair employer towards the servicemen in terms of salary, labour conditions, allowances, pensions, etc.

Box N° 67

Personnel management: focal points for parliamentarians

Parliaments should be informed about the following points of the government’s proposals concerning the personnel management of the security services.

General policy issues

- ▷ Is parliament called upon to approve the personnel management policies for the security services, either as part of the yearly budget proposal or as a separate document?
- ▷ Are the personnel management policies and force structure policies realistic and affordable from the point of view of the budget and the national economy?

Strength and general conditions

- ▷ Does the parliament fix the maximum number of servicemen, such as for the armed forces, the police or intelligence services?
- ▷ Does the parliament decide upon ceilings per rank?
- ▷ Are all personnel management policies available to the public?
- ▷ Does the parliament receive all relevant information: total

numbers per rank, salaries, functions, vacancies, etc.?

- ▷ Are security sector reform policies addressing the social consequences of lay-offs of servicemen?

Recruitment and selection

- ▷ Are all positions open to every citizen, women included, if so laid down by law?
- ▷ Is an open personnel recruitment system for the security services in place, as opposed to a closed recruitment system, in which only specific segments of society can apply for a position?
- ▷ Are professional criteria used for the selection of candidates?
- ▷ Are there many vacancies within the security services?
- ▷ Is there a high dropout rate after the initial selection?

Staffing

- ▷ Is the leading principle that servicemen are to be recruited and promoted on the basis of merit and quality adhered to in practice?
- ▷ Is a professional periodic appraisal system in place?
- ▷ Is this system transparent, objective and fair?
- ▷ Does the security service provide for attractive and motivating career opportunities?
- ▷ Are servicemen banned from having another salaried job?
- ▷ Do leading commanders have field experience and do they serve in peace missions abroad?
- ▷ Is the parliament or the relevant parliamentary committee consulted by the minister of defence (or other relevant ministers) in the case of high-ranking appointments, such as the commander-in-chief?

Remuneration

- ▷ Are the salaries of the servicemen high enough compared with salaries of other professions, enabling the security services to compete with private companies on the labour market?
- ▷ Are salaries paid in time?
- ▷ Are servicemen rewarded on the basis of merit and quality?
- ▷ Does the real performance of servicemen influence their remuneration?
- ▷ Is the remuneration system transparent for its users and for the general public?
- ▷ What are the concerns about the retirement and pension systems?

- ▷ Related to the salaries and benefits of the men in service, is the retirement scheme satisfactory? What do servicemen gain or lose when they retire?

What you can do as a parliamentarian

Tasks and size of the security workforce

- ▷ Make sure that the tasks assigned to the armed forces, as well as the size of its workforce, are consistent with national economic resources.

Remuneration of the security workforce

- ▷ Make sure that the servicemen's salaries are economically sustainable while at the same time being as competitive as possible in the labour market and sufficient to provide a decent living.
- ▷ Make sure that the salaries are paid regularly.
- ▷ Bear in mind that inadequate salaries may render the security services unattractive and discourage qualified young potential servicemen.
- ▷ Bear in mind that in a given environment an inadequate level of salaries and/or erratic payment of them may lead to the security services turning towards acts of corruption or even extortion and violence.
- ▷ The financial advantages and privileges of servicemen and their leaders should not be such as to create an entrenched interest and encourage the security services to seek to maintain political influence. They should be public knowledge and balanced with the financial advantages and privileges offered to other government employees. The privileges should be consistent with the unique conditions and hazardous service required of servicemen in operational areas.
- ▷ Make sure there is a satisfactory retirement scheme.

Military conscription and conscientious objection

Constitutions of nearly all states include a provision to the effect that defence of the state is a duty and moral responsibility incumbent upon every citizen. In some states, this duty is made compulsory by law through military service with the aim that every citizen be prepared to serve in the armed forces whenever considered necessary by the national government. Conscription, compulsory military service by citizens (mostly male), is often provided for in the constitution and is always covered by a law that specifies:

- ✓ Who is liable for compulsory military service
- ✓ The duration of service
- ✓ Postponement/exemption arrangements
- ✓ Recruitment procedures
- ✓ Penalties for draft evasion, and
- ✓ The minimum and maximum age.

In addition, most countries include in law the right to refuse to bear arms, i.e. conscientious objection and alternative service.

Usefulness and desirability of conscription

Many countries continue to have a conscript army. One important reason is that they view conscription as a valuable element of democracy and national culture. Yet today, conscription is being challenged in countries all over the world. The debate questions the usefulness and desirability of conscription in a modern army owing to the new nature of armed conflicts. Several countries have already abolished or intend to abolish conscription in the near future; even France, the country that 'invented' conscription in modern history, abolished it in 2001. Some predict the end of the mass army, and that it will be replaced by all-volunteer forces which are small, high-tech, and mobile.

Box N° 68

Military service around the world

Liability for service: in most countries the age for starting military service is 18 years, however in some countries it is 16, 17, 19 or 20. Nowadays, several countries accept women as conscripts.

Length of the service: it normally ranges from six months to up to three years.

Conscientious objection and alternative service: about half of all countries accept cases of conscientious objectors and have alternative service in place.

In most cases, the penalty for refusal of military service is imprisonment.

Source: Report of the Secretary-General prepared pursuant to Commission resolution 1995/83, UNCHR, 1997. E/CN.4/1997/99

Positive and negative aspects of conscription

When analysing the positive and negative aspects of conscription, parliamentarians may wish to keep in mind the following:

Why maintain conscription?

Arguments in favour of conscription include the following:

- ✓ Conscription is often associated with the idea of democracy because it is a legal obligation and a moral responsibility for each (mostly male) citizen and because it places all those concerned on an equal footing: all have the obligation to serve regardless of class, religion or race; in some countries, the obligation is also regardless of sex, as conscription concerns women as much as men.
- ✓ Conscripted soldiers are also citizens in uniform and their presence helps prevent the armed forces from becoming a state within the state. Conscription can thus be regarded as a democratic link between society and the armed forces.
- ✓ Generally speaking, conscript armies are cheaper than all-volunteer armies as the wages of the conscripted soldiers are much lower than the salaries of volunteer soldiers.
- ✓ Conscription brings together people from all layers and corners of society. Conscripted soldiers thus bring a variety of educational backgrounds and work experience to the armed forces, ranging from an accountant or an engineer to a plumber or a farmer. The armed forces can use these educational qualifications and work experience very well, including during peace missions – wherever conscript soldiers may be involved in them – in which the armed forces contribute to building up the infrastructure and institutions of post-conflict countries.

Why end conscription?

Our study of conscription around the world points to the following principal reasons for the end of the mass army and therefore the conscription system:

- ✓ In the past 25 years, especially after the end of the Cold War, the armed forces of many countries have become smaller and this has led to a smaller proportion of conscripts being needed for serving in the army (this in turn has sometimes led to public dissatisfaction about the unfair spread of the conscription burden). Countries in the Euro-Atlantic area in particular have reduced their armies. Countries in Africa and Asia seem to make less use of the peace dividend for downsizing their armies after the Cold War.
- ✓ Armed forces are becoming more and more professional and dependent on advanced technology. Often a long training is needed before soldiers are capable of handling complex, modern weapon-systems. As conscripted soldiers generally do not serve long enough to become familiar with these systems, armies tend to rely more and more on professional volunteer soldiers.
- ✓ Peace missions require not only basic military skills but also negotiating and other skills. Many conscripts serve too short a time to acquire the level of skill and experience that is desirable to carry out complex peace support operations in post-conflict societies.
- ✓ In some countries, the constitution confines the use of conscripted soldiers to the defence of national territory, outlawing the deployment of conscripted soldiers abroad.

Box N° 69

Harassment of conscripts

In military service an informal hierarchy often exists between young and old conscripts. Such an informal hierarchy is important because the older conscripts teach the younger conscripts the rules and traditions of the military. It contributes to the social fabric of the military. In many cases, however, the older conscripts abuse the informal hierarchy for their own private benefit, forcing younger conscripts to take over duties and harassing them. If not sufficiently controlled by the officers, this informal hierarchy can get totally out of control, resulting in a situation in which the younger conscripts are confronted with harassment, physical violence and intimidation. According to the European Council of Conscript Organisations (ECCO), harassment is one of the main problems for young conscripts, sometimes resulting in major injuries that may at times be followed by permanent injury or even death or suicide. For the sake of the protection of conscripts and the reputation of the military service, harassment should be prevented by applying strict control from the

officers. Additionally, internal and external oversight institutions have to prosecute extreme cases and restore the rule of law within the military service.

Source: Ilona Kiss, Rights of conscripts in peace time, 2001 on www.dcaf.ch and ECCO (see Black Book on rights of conscripts in Central and Eastern Europe, 1996, on <http://www.xs4all.nl/~ecco/>)

Conscientious objection (CO) and alternative service

Some people question their duty to defend the motherland based on other moral imperatives such as religion ("thou shalt not kill") or personal conviction (non-violence). As a consequence, it is not uncommon for these people to suffer severe punishment, including capital punishment, for disobeying the state's orders.

During the last half of the last century, the idea of a right to refuse to join the armed forces and bear arms has emerged and became widely accepted; in a number of states, it even became anchored in law. This trend coincided with the end of compulsory military service in certain states (Britain, Germany, Ireland, the Netherlands, Belgium, Luxembourg, France, Spain, Italy and Portugal).

Conscientious objectors (COs) can be defined as people who oppose bearing arms or who object to any type of military training and service. Although all objectors take their position on the basis of conscience, they may have varying religious, philosophical, or political reasons for their beliefs.

A parliamentary decision

With cases of COs becoming more common, the parliaments of some states have decided to legislate under what circumstances citizens called up for conscription could escape this obligation. This has been the case of the USA and all West European states, with Greece the last to recognise the status of CO in 1997.

In states where COs are not recognised, they are usually exposed to prosecution on grounds of desertion or treason, two crimes that usually involve very high penalties. In other states a special criminal category exists ("persistent disobeying") and is usually enshrined in military codes.

Being recognised as a CO: who decides and on what basis?

The procedure for being classified as a CO usually includes an explanation on how the person arrived at his or her beliefs, the way in which these beliefs have influenced his or her life and how these beliefs clash with the military service. Decisions about whether to accept CO status for a recruit is usually made by a commission

subordinate to the labour ministry (Switzerland, Bulgaria), the interior ministry (Slovenia) or the justice ministry (Croatia).

CO as a human right

In April 2000, following the principles stated in its resolution 1998/77, the United Nations Commission on Human Rights adopted without a vote resolution 2000/34 recognising the right of every individual to object on grounds of conscience to military service as a legitimate exercise of the right of freedom of thought, conscience and religion, as described in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In 1993, the UN Committee on Human Rights had already acknowledged that CO is a right deriving from article 18 of the Covenant "in as much as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief". The UN Committee had further stated that "When this right is recognised by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service."

Box N° 70

UN Commission on Human Rights resolution 1998/77: conscientious objection to military service

The Commission, (...)

Bearing in mind that it is recognised in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person, as well as the right to freedom of thought, conscience and religion and the right not to be discriminated against, (...)

Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives, (...)

1. *Draws attention* to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights;
2. *Welcomes* the fact that some States accept claims of conscientious objection as valid without inquiry;
3. *Calls upon* States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in

a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;

4. *Reminds* States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature;
5. *Emphasises* that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls that no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each State; (...).

Resolution 1998/77, UNCHR

Alternative service

Most of those states that recognise the status of CO provide by law for a national service to be carried out as an alternative to military service. This alternative service may take two main modalities:

- ✓ To serve in the armed forces without bearing arms;
- ✓ To work in social welfare institutions such as hospitals, nurseries, institutions for the disabled, etc. and sometimes in NGOs or IGOs (inter-governmental organisations).

Alternative service is usually longer than military service. For example, in France it used to be 20 months whereas military service was only 10; in Austria it is 12 months whereas military service is only seven; in Bulgaria it is 24 months whereas military service is only between six and nine months.

Box N° 71

Alternative service: the case of Switzerland

Switzerland is one of few West European states, which still has conscription. It is regulated by the Constitution (art. 59.1), the 1995 Law on Military Organisation and the 1995 Law on Military Service. It applies to all men aged 20 to 42, and up to 55 for the higher ranks.

Military service lasts four months initially, plus three weeks every two years, plus yearly shooting exercises.

The 1996 Law on Alternative Service recognised the right to conscientious objection due to ethical, moral–philosophical and religious reasons. The Ministry of Industry and Labour receives the applications, which are decided by a three–person Commission selected from 120 commissioners recruited through newspapers ads. Approximately five per cent of those of conscription age are registered as COs. Those whose right to be considered COs is not recognised but still resist conscription can face between four and five months of imprisonment.

COs have to perform civil service instead of the military service. It consists of service for 450 days in any public or private body which serves the public interest. It can be performed in hospitals, youth centres, research at universities, forestry, etc.

Source: European Bureau for Conscientious Objection (EBCO),

What you can do as a parliamentarian

Conscription or no conscription?

- ▷ Balance carefully all pros and cons in your own national context.
- ▷ In that connection, keep in mind the indicative elements referred to in this chapter and see to what extent they are relevant to your own national context.

Conscripts being exposed to abusive or degrading treatment

- ▷ Act swiftly if any conscripts are reportedly exposed to abuses, vexations or violence.
- ▷ Make sure that in–depth inquiries are carried out and, if appropriate, sanctions are decided upon by the competent body and applied without delay.
- ▷ If a Defence Ombudsman does not yet exist in your country, consider recommending that such an institution be created and

empowered to address issues of abusive or degrading treatment of conscripts.

Status of COs

- ▷ Verify the legal status of COs in your country and if appropriate consider taking action with a view to having it defined by law or to improving the existing legislation.
- ▷ In that context, make sure to obtain up-to-date information on the approach to the matter and the legal and practical situation in other states.

Alternative service

- ▷ Verify if alternative service is provided by law in your country and if appropriate consider taking action with a view to having it defined by law or to improving the existing legislation.
- ▷ In that context, make sure to obtain up to date information on the approach to the matter and the legal and practical situation in other states.

Section VIII

Material resources: realising effective oversight of arms transfer and procurement

Arms and military equipment procurement

Procurement policy should be derived from “higher” plans and policies such as the national security concept or defence strategy. All demand for new weaponry or military equipment should be examined bearing in mind its impact and relevance to the national security policy.

A national security concept helps achieve stability in the defence management process and increases predictability in long-term defence policy-making. It is essential to keep the objectives of national defence policy aligned with the resources allocated for the defence sector and maintain a balance between the defence sector and society.

Transparency in arms procurement

In any consolidated democracy, budget-making activities in general, and arms procurement in particular, must be transparent and accountable to the public. From the point of view of public accountability, there should be a rational link between policy, plans, budgets and arms procurement. This is not taken for granted everywhere. Unfortunately in most countries parliament has a limited say in arms procurement, if any.

When allocating funds or authorising a procurement operation, it is essential that the parliament checks the legality of such an operation, in particular bearing in mind international regulations or agreements limiting production, trade or use of certain kinds of weapons, such as the Non-Proliferation Treaty (1968), the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction (1997), UN Security Council resolutions, etc.

Parliaments may also face difficulties in tackling the inherent complexity of calculating the cost of major defence equipment over a period of many years. This leaves post-conflict and developing countries especially vulnerable to external or internal arms suppliers who, by definition, are interested in selling their products at the best possible price and have little concern for democratic oversight requirements.

For these reasons parliaments have an interest in developing special committees or sub-committees concerned with arms procurement. By doing so, they can improve transparency in the arms procurement process and force the executive to be accountable to the people.

The problem for parliaments is that governments are reluctant to release figures relating to the possession of and need to buy major conventional weapons (aircraft, armoured vehicles, artillery, guidance and radar systems, missiles and warships) and, to a large extent, they are even less willing to make public their holdings and transfers of smaller categories of weapons (of a calibre smaller than 100 mm), which are known as small arms and light weapons.

When entering into the weapons procurement process, ideally the government will work together with the parliament in order to ensure that an over-ambitious arms procurement plan does not result in a financial burden for the country in the long run. Arms procurement programmes have to be understood in the context of other public priorities. Therefore, not only military priorities but also other priorities are valid in the decision-making process. The parliament must assess the impact and the financial burden of arms procurement on society.

Box N° 72

Why parliamentarians should care about arms procurement

- ▷ Public funds are involved;
- ▷ Deciding about weapon systems is not only a matter of technical expertise and security, but also about deciding whether money has to be spent on ‘guns or butter’, and if it is to be spent on ‘guns’, then which ‘guns’, how much and why.
- ▷ Arms procurement should not result in a financial burden on the country, in the short and long run (including overall life-cycle costs);
- ▷ Parliamentary oversight should balance the costs of arms expenditure against social sector needs.
- ▷ Transparent arms procurement processes, accountable to the parliament, avoid corruption, waste and abuse of public funds.
- ▷ Parliamentary and public oversight might lead to a reduction in the danger of a regional arms procurement spiral.

Do special circumstances justify secrecy?

The principles of good governance, especially transparency, must guide every aspect of public policy-making, including those relating to arms sales or procurement. Therefore there is a need to examine what special circumstances can make defence decision-making an exception and justify the need for secrecy.

Arms sales and procurement guidelines should be based on principles of transparency and public accountability. Reasons for secrecy in the decision-making process demanded by the recipient or the countries supplying arms should be stated explicitly. If such reasons lead to the possibility of corruption entering the deal, then these risks have to be identified by both parties and measures should be defined to avoid such a prospect.

Box N° 73

Weak or ambiguous arms procurement policies or highly confidential procurement processes may lead to ...

- ▷ Insufficient examination of the rationale for weapons systems procurement;
- ▷ Inefficiencies in government decisions with unhealthy consequences for national and regional security;
- ▷ Apprehension in neighbouring countries;
- ▷ Corruption in arms procurement and in all kinds of military-related procurement decisions;
- ▷ Serious damage to public confidence in the armed forces which may as a result be discredited and subjected to unnecessary controversies.

Comprehensive decision-making on procurement

In the case of purchases of major weapon systems, the decision-making process should identify and integrate methods employed for the following aspects:

- ✓ Threat assessment processes;
- ✓ Long-term concept of defence capacity-building;
- ✓ Identification of material need for new equipment;
- ✓ Budget allocation for arms procurement;
- ✓ Technical quality assurance and post-procurement performance audit processes;
- ✓ Entire life-cycle costs, including maintenance, updates, etc.;
- ✓ Assessing offers for compensation and off-set.

Establishing a parliamentary monitoring and reviewing process at all these stages will reduce the chances of waste, fraud or abuse creeping into the executive's decision-making system. In order to exercise effective oversight, parliaments should demand

that governments keep them informed about all stages of the arms procurement process. Moreover, parliaments should have the right to decide about all procurement contracts. The Netherlands' parliament is an example of a legislature that monitors all phases of the procurement decision-making process (see Box N° 74).

Box N° 74

**Netherlands policy on defence procurement:
the parliamentary oversight dimension**

The Netherlands has a long and solid tradition and practice of strict parliamentary oversight over defence procurement. In principle, all procurement decisions exceeding 25 million euros (roughly equivalent to 25 million dollars) have to pass through parliament. The vehicle for this is the so-called acquisition procedure. The government (in practice the State Secretary for Defence who has defence material in his portfolio) sends a letter chosen out of 4 types (A, B, C and D), depending on the phase of the acquisition. Without going into details, the different phases basically go from the requirement for a new weapon system (or a successor to a present one) to a concrete proposal to buy system X from producer Y.

Parliament is in a position to influence decisions at every phase of the acquisition process. So, when the government stipulates a need for replacement or acquisition (or suggests numbers of systems to be acquired) parliament may oppose or amend this. The final procurement decision (the 'go ahead') may also be opposed or amended, although in practice this does not often happen. Most of the time government intentions during the entire process are influenced by the 4 letters (A, B, C and D) which are discussed in parliament.

For major projects exceeding 100 million euro a special procedure has been set up ('Big Projects') involving even more detailed and frequent reporting to parliament. A typical example of this is the intention of the Netherlands government to participate in the development phase of the Joint Strike Fighter, an American successor to the F-16. But there are other major projects, e.g. the Air Mobile Brigade.

All in all, it seems that in the Netherlands the present situation is by and large judged to be satisfactory. There are discussions about the financial threshold and the wisdom of detailed parliamentary scrutiny of the sometimes very technical process. In this framework, questions

are raised on the quality and independence of government information and the desirability of 'counter-evidence' , e.g. by an independent defence institute. Finally, the role of industry and lobbyists and their access to defence committee members is often discussed. However, no major incidents, let alone scandals, have occurred in this respect.

Source: Jan Hoekema, former Member of Parliament, the Netherlands, 2002

What you can do as a parliamentarian

Overseeing arms procurement

- ▷ Parliamentary oversight of arms procurement needs to be legislated.
- ▷ Make sure that parliamentary oversight of the security sector is comprehensive and covers all aspects of procurement, paying careful and special attention to:
 - Security needs;
 - Regional political consequences in terms of likelihood of negative reactions leading to a regional arms race;
 - The burden for the budget (short and long term), and
 - Effects on the national industry in the private and public sector.

Transparency and accountability in arms procurement

- ▷ Make sure that parliament has a say in the process of arms and military equipment procurement.
- ▷ Demand that parliament or its competent committee is presented, whenever appropriate, with a detailed, up-to-date report relating to the possession and technical quality of major conventional weapons (aircraft, armoured vehicles, artillery, guidance and radar systems, missiles and warships) and smaller categories of weapons (calibre smaller than 100 mm), as well as the rationale for buying new ones.
- ▷ Make sure that parliament is presented with a long-term concept of defence capacity-building.

- ▷ Make sure that issues relating to secrecy in a procurement deal can be addressed and are addressed by parliament or its competent committee through a legislated process which ensures accountability while maintaining military confidentiality.

Procurement impact analysis

- ▷ Analyse the consistency of the procurement plan with the security policy.
- ▷ Make sure that parliament study and assess the financial burden of arms procurement in comparison with other public needs and social priorities, so as to prevent imbalances affecting the development and economic and social stability of the country.
- ▷ Use parliamentary procedure to prevent over-ambitious arms procurement decisions. Parliaments should ensure rationality in plans which do not result in a military burden to the country in the long run.

Procurement audit

- ▷ Monitor the consistency between the defence policy and plans, the defence budget and actual expenditure for arms and military equipment.
- ▷ Conduct a post-procurement performance audit of weapon systems, after the contract has been implemented (at least three points/stages in the weapon's life-cycle)

Parliamentary committee on procurement

- ▷ Unless an arms procurement committee or sub-committee already exists, set one up, thus raising the importance of linkage between policy planning, financial planning and audit, the defence industry and research and development.
- ▷ In this connection, request and study information on the terms of reference, procedures and outcome of similar bodies in other parliaments.
- ▷ Make sure that your parliamentary body is able to access and utilise expert advice.

Arms trade and transfer

Parliaments have a very important role to play in overseeing both arms trade and arms transfer. Rules and procedures guiding arms procurement must be consistent with those laid down by the national procurement law, the national budget and finance laws or contract and dispute settlement laws. Guiding features of arms trade and transfer policy and its legal framework should be based on principles of transparency and accountability.

Box N° 75

Arms transfer: a definition

Arms transfer is generally understood to cover all activities in which states and non-state players are engaged, in order to acquire or sell arms. Arms transfer includes the sale or trade, the purchase or procurement as well as the donation of arms.

National policy on arms trade and transfer

The government should lay down a policy and legislation on arms sales, which should be submitted to parliament for its approval. The policy ought to define the guiding principles of conventional arms sales, and should, more especially, be developed with the following in mind:

- ✓ The import and export of conventional arms should be subject to oversight by the relevant parliamentary committee(s);
- ✓ The arms trade regulations should be consistent with the principles of the UN Charter, international law or UN arms embargoes and should also take into account the economic, political, ethical and security concerns of the countries purchasing arms;
- ✓ The principle of transparency in the decision-making process to ensure probity and professional accountability.
- ✓ Mechanisms to prevent unethical sales practices should be legislated, based on UN and other relevant recommendations and on best practices in other countries; suppliers and recipients should formulate a code of integrity.
- ✓ The parliament should be able to ascertain that the nature and type of arms sold relate to the recipient countries' genuine defence needs as approved by the parliaments of those recipient countries.

- ✓ The parliaments of arms supplying countries should be able to ascertain that the recipient countries respect human rights and fundamental freedoms and have put in place effective accountability processes for arms procurement decisions;
- ✓ The parliament should be able to ascertain that the arms sale is not likely to endanger peace, exacerbate regional tensions or armed conflicts, generate spiralling arms sales in the region or contribute to regional instability through the introduction of a destabilising weapons system, or quantities of small arms and light weapons; if parliamentary defence committees start a regional dialogue on threats to regional stability, excessive procurement and related confidentiality leading to corruption become open to regional debate.
- ✓ Mechanisms should be set in place to prevent arms sold to a particular country being re-exported or diverted for purposes that are contrary to the conditions stated in the import certification.

The parliament has to establish an independent auditing procedure with statutory powers, to ensure that national arms sales processes are subject to independent scrutiny and oversight. This must be conducted according to the principles and guidelines defined by the parliament. Box N° 76 contains examples of international agreements and codes of conduct relevant for national policies on arms trade.

Box N°76

Regional arrangements on arms transfer

▷ **The European Code of Conduct**

The Council of the European Union passed a resolution on a European Code of Conduct on 8th of June 1998. This resolution was intended to prevent the flow of arms from European Union countries to unstable regions of the world where gross human rights violations may take place. The European Union member-states took this decision after being subjected to approximately eight years of pressure from several non-governmental organisations for the adoption of a responsible arms trade policy. The Code includes a list of sensitive destinations and provides a system of verifying and monitoring end-use provisions, as well as a system of mutual information and consultation on the granting and denial of export licences.

The European Code of Conduct is not legally binding for the states party to it and there is no mechanism to hold them accountable for failing to respect it. So it is up to the states which have more severe export legislation to restrict exports to perpetrators of human rights violations and then to exert pressure in the bilateral consultation mechanism.

The Code contains eight criteria which member states have to address in case of arms exports:

- 1) "Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council (...)
- 2) The respect of human rights in the country of final destination (...)
- 3) The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts (...)
- 4) Member states will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim (...);
- 5) The national security of the member states and of territories whose external relations are the responsibility of a member state, as well as that of friendly and allied countries (...)
- 6) The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law (...)
- 7) The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions (...)
- 8) The compatibility of the arms exports with the technical and economic capacity of the recipient country (...)"

Source: <http://europa.eu.int>

▷ **Organisation of American States and arms transfers**

Regional arms trade transparency for the Americas improved when 19 members of the Organisation of American States (OAS) signed an agreement on conventional arms transfers. The Inter-American Convention on Transparency in Conventional Weapons Acquisitions, which was adopted during the General Assembly in Guatemala City, requires signatories to disclose information on major arms exports and imports annually.

According to Article III, "States Parties shall report annually to the depositary on their imports and exports of conventional weapons during the preceding calendar year, providing information, with respect to imports, on the exporting State, and the quantity and type of conventional weapons imported; and information, with respect to exports, on the importing State, and the quantity and type of conventional weapons exported. Any State Party may supplement its submission with any additional information it considers relevant, such

as the designation and model of the conventional weapons (...). Additionally, the States inform each other on the acquisition of conventional weapons due to imports, national production and also if no acquisition took place (article IV).

Source: <http://www.oas.org>, 2002

Respect of international arms embargoes

Sanctions are a tool of the international community to signal disapproval of the behaviour of a state if that state is threatening international law, or international peace and security. The legal basis is provided by Article 41 of the UN Charter, which enables the UN Security Council to call upon member states to take non-armed action in order to restore international peace and security. From 1945 to 1990, the UN Security Council imposed sanctions on only two countries. Since 1990, the UN Security Council has imposed sanctions a total of 12 times.

In this regard, requesting an "end-use certificate", specifying where the weapons will eventually end up, may be a useful tool for the parliament as a part of the procedure for licensing arms transfers. However, there has been a lot of abuse involving false end-use certificates.

United Nations Register on Conventional Arms

On 6 December 1991, the General Assembly adopted resolution 46/36 L entitled "Transparency in armaments", which requested the Secretary-General to establish and maintain at United Nations Headquarters in New York a universal and non-discriminatory Register of Conventional Arms, to include data on international arms transfers as well as information provided by member states on military holdings, procurement through national production and relevant policies.

The Register comprises seven agreed categories of major conventional weapons, covering battle tanks, armoured vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships and missiles/missile launchers. It has been in operation with effect from 1992. The Secretary-General regularly presents reports to the General Assembly, containing data and information provided by 110 governments on imports and exports of conventional arms covered under the Register. The report also includes information provided by governments on procurement from national production and military holdings. See <http://disarmament.un.org/cab/register.html>.

Need for "smart sanctions"

The UN Secretary-General called comprehensive economic sanctions a "blunt instrument". They are not always effective and often hurt neighbouring countries as well as the ordinary people of the targeted countries. Therefore, some believe that smarter, more narrowly-focused sanctions are needed. Arms embargoes are a type of smart sanctions, next to financial and travel embargoes. Smart sanctions target the regime and the ruling elite of a country and spare the ordinary people or opposition

forces in a country. However, smart sanctions have proved extremely difficult to implement and not completely successful. They also need to be refined and improved (see Box N° 77).

Box N° 77

Making arms sanctions smarter: what parliaments can do

Parliaments of arms exporting countries should ensure that the following set of requirements are in place:

- ▷ Legislation, including required administrative guidelines and regulations, making violations of UN arms embargoes a criminal offence;
- ▷ Intra-governmental coordination, which designates a lead department for embargo implementation;
- ▷ Sharing of information and intelligence among government departments and between governments to identify suspect shipments, destinations, transit routes or brokers;
- ▷ Control lists which identify the goods under embargo;
- ▷ Powers for the seizure of shipments that are in apparent contravention of an embargo, rather than returning the goods to their point of origin;
- ▷ Provisions to freeze or seize assets from proceeds or illegal arms deliveries;
- ▷ Tracing and verification of arms shipments that are at possible risk of being diverted.

Source: based on website of BICC www.bicc.de, 2002

Post-Cold War legacies: Surpluses and transfer

The Cold War led to a reduction in the size of armies all across the world. This has meant that millions of weapons were considered redundant and rendered surplus. The lack of consistent management of surplus weapons worldwide resulted in millions of weapons being transferred from government to government, but also from governments to non-state groups in such a manner that the weapons escaped any public scrutiny. Clearly, many of these weapons were diverted into stolen arms pipelines, or directly stolen from insecure arsenals.

About two-fifths of all major conventional weapons traded in the 1990s came from surplus stocks. The main reason for the existence of surplus weapons, as a phenomenon of the international arms trade in the 1990s, is that the large arsenals belonging to the former Soviet bloc were suddenly freed from any central control authority. Given the existing harsh economic conditions and the huge availability of

surplus weapons, the excess arsenals became a source of hard currency that was needed to meet immediate financial needs. On the other hand, it is also true that many sales were organised by criminal networks that were or were not linked to the political leadership in place. However, the former Soviet bloc was not alone in converting its arsenals into sales. Several developed and developing countries did likewise.

Box N° 78

Trading surplus weapons: a negative by-product of disarmament

“Despite the decline of trade in new weapons, statistics indicate record levels of surplus second-hand weapons trade. A combination of push and pull factors has influenced the transfer of this surplus. Disarmament treaties, ceasefires and reduced deployments have created inventories totalling as many as 165,000 major weapons world-wide, more than 18,000 of which have been exported or given away between 1990 and 1995. For the first time, in 1994, the trade in surplus weapons was greater than the trade in new weapons. Increasingly available surplus weapons trade at lower prices or come free within aid programmes. Such trade is a problematic result of disarmament, reaching conflict areas and fuelling regional arms races.”

Source: Herbert Wulf, 1998, Bonn International Centre for Conversion
www.bicc.de

It is clear that the arms recipients were less prosperous countries, which generally possessed weaker parliamentary oversight structures. During the 1990s, at least 90 countries imported surplus major weapons. It is particularly important that small arms be placed under stricter controls and that legislation should obligate the government and the military to report annually their losses or thefts of small arms and ammunition to the parliament. Steps should be taken for conversion of small arms factories to manufacture non-military goods.

The five-year moving average level of global arms transfers fell in the period 1997–2001. This is explained mainly by a reduction in deliveries by the USA, which was the largest supplier in 1997–2001 despite a 65% reduction in its arms deliveries since 1998. Russia was the second largest supplier during this period. A 24% increase in arms transfers from 2000 to 2001 made Russia the largest supplier in 2001 (Source, SIPRI Yearbook 2002).

China was by far the largest arms recipient in 2001 after an increase of 44% from 2000. Imports by India increased by 50%, making it the third largest recipient in 2001.

The other major recipients in the period 1997–2001 were Saudi Arabia, Taiwan and Turkey (SIPRI Yearbook 2002).

Box N° 79

Estimated figures on the trade of small arms

“While the volume of small arms production is currently less than it was during the last years of the Cold War, millions of these weapons are still being produced every year (...). Based on estimations (...), the value of global arms production including ammunition, for the year 2000 was estimated to be worth at least US\$ 4 billion. In terms of volume, it is estimated that roughly 4.3 million new small arms were produced in 2000, (...) a decline of 30 per cent [compared with the average annual number during the Cold War]”.

“While the demand for new small arms may be declining (...), the supply side of the market seems to be expanding” (...). The number of companies has more than tripled in less than two decades, from 196 in the in 1980s to about 600 today”.

(...) The presence of new and increasing numbers of companies and countries that produce small arms – and who are willing to sell to anyone, anywhere, at any price – means that it is now easier for authoritarian governments, non-state actors, terrorists, and criminals to obtain weapons that are newer, more sophisticated, and more lethal than ever before. The need for governmental control of small arms production has become an urgent international security issue.”

Source: Small Arms Survey 2001, Oxford University Press

Box N° 80

UN Programme of Action against illicit trade in small arms and light weapons: focal points for parliamentarians

“To prevent, combat and eradicate the illicit trade in small arms and light weapons (SALW), the states participants in the United Nations Conference on the Illicit Trade in Small Arms and Lights Weapons in All Its Aspects [July 2001, New York] adopted a wide range of political

undertakings at the national, regional and global levels. Among others, they undertook to:

At the national level

- ▷ put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of SALW within their areas of jurisdiction, and over the export, import, transit or retransfer of such weapons,
- ▷ identify groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit SALW, and take action under appropriate national law against such groups and individuals;
- ▷ ensure that licensed manufacturers apply appropriate and reliable marking on each SALW as an integral part of the production process;
- ▷ ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW under its jurisdiction;
- ▷ ensure responsibility for all SALW held and issued by the state and effective measures for tracing such weapons;
- ▷ put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates;
- ▷ make every effort, without prejudice to the right of states to re-export SALW that they have previously imported, to notify the original exporting state in accordance with their bilateral agreements before the retransfer of those weapons;
- ▷ develop adequate national legislation or administrative procedures regulating the activities of those who engage in SALW brokering;
- ▷ take appropriate measures against any activity that violates a United Nations Security Council arms embargo;
- ▷ ensure that confiscated, seized or collected SALW are destroyed;
- ▷ ensure that armed forces, police and any other body authorised to hold SALW establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons;

- ▷ develop and implement, where possible, effective disarmament, demobilisation and reintegration programmes;
- ▷ address the special needs of children affected by armed conflict (...)"

Source: UN Department of Disarmament Affairs, website <http://www.un.org/Depts/dda>, 2002

Exacerbated by the aforementioned post-Cold War developments, the issue of transparency and accountability of arms export control procedures has become an area of significant debate in many countries about what parliaments could and should do.

Box N° 81 presents examples of measures taken in the EU member states. The increased awareness of the importance of transparency and accountability has led to significant improvements in the parliamentary oversight of arms exports in those states, but is still far from perfect in many countries.

Box N° 81

The role of the parliament in arms export controls: transparency and accountability in EU countries

Austria: There are no provisions under Austrian law for the disclosure of information to parliamentarians.

Belgium: A law adopted in 1991 makes it an obligation for the government to report to parliament on arms transfers on an annual basis. The law does not provide for scrutiny of who gets the licence to export arms and to whom. This is a key factor as exports should not contravene the EU Code of Conduct.

Denmark: There is no provision for parliamentary debate on arms exports, or a valid instrument for democratic oversight of the issue. However following growing public pressure, the minister of justice is attempting to release an initial report on arms exports, which will cover export controls, the value of exports and country of destination.

Finland: So far the ministry of defence has published two annual reports on defence material exports in accordance with the EU Code of Conduct. The reports are sufficiently comprehensive so as to enhance transparency. Nevertheless, a regular parliamentary debate on arms transfers is lacking.

France: The French parliament has made progressively more and more demands on the government to clarify and provide yet more details in its yearly report, such as the inclusion of information on small arms, police and security equipment, dual-use equipment and all military cooperation. In addition, there ought to be more debates about the report, within the parliament.

Germany: The first report on arms exports was published in 2000. It is expected that the following parliamentary committees will be involved in studying the next report: Defence, Foreign Affairs, Trade and possibly Human Rights. The role of parliament will be limited to retrospective scrutiny on what the government exports.

Greece: There are no reporting mechanisms that provide parliament and the public with information concerning the authorisation of arms exports. The only official information is that provided by the UN register on Conventional Arms.

Ireland: There is no provision under Irish law obliging the government to publish reports on arms-related exports. However, subsequent to the EU Code of Conduct, the Department of Foreign Affairs has, up to 2002, produced two annual reports. A custom is developing inside parliament for parliamentarians to put questions to the ministers regarding export licences.

Italy: The government has to report to parliament on authorisations and deliveries involving the import, export and transit of defence equipment. This is stated in a 1990 law, which contains a detailed report. However, the parliament has no formal role in scrutinising exports.

Luxemburg: There is no significant arms industry nor is there a system of accountability.

Netherlands: The first comprehensive report on arms exports was published in October 1998. There is an informal element of prior parliamentary scrutiny in the Dutch arms export system: the government confidentially informs the parliamentary Defence Committee of all sales of surplus stocks.

Portugal: Prior to the report that was first published in 1998, there existed no provisions for parliamentary scrutiny of arms export licensing decisions. There are no provisions for parliamentary debate either. Parliamentarians can ask questions retrospectively on arms export licences.

Spain: One report has been released since 1998. There is no prior

scrutiny of arms exports. Only the parliamentary official secrets committee is involved. Debate within parliament is growing.

Sweden: The first report was published in 1984, the year in which the parliament established an Advisory Board on Exports of Military Equipment as a benchmark for the other European countries. Parliament debates the report on an annual basis.

United Kingdom: The British reporting system is the most transparent. Since the first report was first published in 1999, a joint committee was established by the ministries of defence, foreign affairs, international development and trade and industry. This joint committee reports to the House of Commons and is entrusted with scrutinising exports.

Source: www.saferworld.co.uk, 2002

Parliamentary expertise

As previously mentioned, parliamentary expertise is key to ensuring that the parliament exercises adequate oversight of the arms trade and transfer process. Lack of professional skills is amongst the major reasons for decision-making being shrouded in confidentiality. Training of members of parliament, especially those belonging to the competent parliamentary committee(s), is crucial. Similarly, training of parliamentary staff in specialisations such as arms trade, procurement offsets, operational research, materials management, equipment costing and inventory control, helps to create a framework of experts who are competent to respond to questions by parliamentary defence committees. In addition, building up information data banks on various aspects of security sector decision-making, would enable the parliamentary defence committees to demand relevant information from the executive and the military for monitoring and reviewing decisions.

What you can do as a parliamentarian

Overseeing arms trade

- ▷ Push for control of the international arms trade to be high on the parliamentary agenda.
- ▷ Promote the implementation of the recommendations listed under Box N° 80, entitled “UN Programme against illicit trade in small arms and light weapons: focal points for parliamentarians”.

- ▷ Encourage your state to regularly comply with:
 - The reporting requirements of the UN Arms Register for conventional arms;
 - UN standardised instruments for reporting on military expenditure;
 - Relevant regional treaties concerning conventional arms.

National policy on arms trade

- ▷ Ensure an up-to-date national policy on arms sales, and ascertain whether it was duly presented to parliament for approval.
- ▷ Make sure that a mechanism is in place to oblige the government to present reports to parliament concerning arms trade issues.

Arms embargoes

- ▷ Ensure that the issues relating to embargoes are debated in parliament with regard to their appropriateness, their specific modalities and their impact.
- ▷ Promote the discussion of "smart sanctions" in parliament, having in mind, more especially, the points listed in Box N° 77.
- ▷ Press for your government to respect arms embargoes and secure redress and sanctions in cases of violation of arms embargoes.

Arms surpluses

- ▷ Push for parliament or its competent committee(s), including the committee addressing customs issues, to pay special attention to the issue of arms surpluses and take action with a view to preventing and controlling:
 - Any transfer of arms surpluses from or through your country;
 - Any procurement of arms surpluses.
- ▷ Press for your state to contribute to the inventory of such arms surpluses and to their destruction.
- ▷ Further press for your state to take action to identify those companies involved in the transfer of such surpluses and control their activities.

Small arms

- ▷ Ensure that parliament, or its relevant committee, receives detailed information each year on the national production and sale of small arms. Demand that the annual report include detailed information on the activities of those companies involved.
- ▷ Make sure that the sale of small arms produced nationally is subject to strict criteria such as those highlighted in this chapter.

What is the IPU?

Established in 1889, the IPU is the international organisation of parliaments of sovereign states. Its new observer status with the United Nations marks the latest step in its drive to bring a parliamentary dimension to the international arena and to make the voice of the elected representatives of the people heard in the international negotiating process.

As of January 2003, 144 national parliaments were members of the IPU. As the focal point of parliamentary dialogue and action the Organisation brings together parliaments to:

- consider questions of international interest and concern,
- contribute to the defence and promotion of parliamentarians' human rights,
- help consolidate representative institutions throughout the world.

Questions of peace and security have always featured high on the IPU agenda. On many an occasion, its full membership took action on security issues, including disarmament, embargoes and international sanctions, the International Criminal Court and terrorism. In 1994, it set up a special Committee for the purpose of promoting respect for international humanitarian law. In cooperation with the International Committee of the Red Cross, this Committee published in 1999 a handbook for parliamentarians on respect for international humanitarian law.

The IPU has also always had a keen interest in helping allay tension through political negotiation. Meetings of the IPU provide an opportunity for dialogue so as to defuse tensions and build confidence. The Organisation also has a parliamentary committee to help advance a satisfactory settlement in the Middle East and a Group of facilitators to promote dialogue between representatives of existing political parties in the two parts of Cyprus. The IPU also has a special mechanism to foster security and cooperation in the Mediterranean.

IPU Headquarters

Inter-Parliamentary Union
Chemin du Pommier 5
Case Postale 330
CH-1218 Grand Saconnex, Geneva
Switzerland
Tel: 41 22 919 41 50
Fax: 41 22 919 41 60
e-mail: postbox@mail.ipu.org
Website: www.ipu.org

Office of the Permanent Observer of the IPU to the UN

Inter-Parliamentary Union
220 East 42nd Street
Suite 3102
New York, N.Y. 10017
USA
Tel. (212) 557 58 80
Fax (212) 557 39 54
e-mail: ny-office@mail.ipu.org

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

In spite of the progress made in the past decade, the transformation and management of democratic civil-military relations remains a major challenge to many states. This is particularly true for the countries in transition towards democracy, war-torn and post-conflict societies. Armed and paramilitary forces as well as police, border guards and other security-related structures remain important players in many countries. More often than not, they act like “a state within the state”, putting heavy strains on scarce resources, impeding democratisation processes and increasing the likelihood of internal or international conflicts. It is therefore widely accepted that the democratic and civilian control of such force structures is a crucial instrument for preventing conflicts, promoting peace and democracy and ensuring sustainable socio-economic development.

The strengthening of democratic and civilian control of force structures has become an important policy issue on the agenda of the international community. In October 2000, as a practical contribution to this general and positive trend, the Swiss government established the Geneva Centre for the Democratic Control of Armed Forces (DCAF), on the joint initiative of the Federal Department of Defence, Civil Protection, and Sports, and the Federal Department of Foreign Affairs.

Mission

The Centre encourages and supports states and non-state-governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes international cooperation in this field, initially targeting the Euro-Atlantic regions.

To implement these objectives, the Centre:

- **collects information, undertakes research and engages in networking activities** in order to identify problems, to establish lessons learned and to propose the best practices in the field of democratic control of armed forces and civil-military relations;
- **provides its expertise and support** to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, academic circles.

DCAF works in close cooperation with national authorities, international and non-governmental organisations, academic institutions and individual experts. In its operational and analytical work, DCAF relies on the support of 42 governments represented in its Foundation Council, on its International Advisory Board comprising some 50 renowned experts, on its Think Tank and working groups. The Centre has

established partnerships or concluded cooperative agreements with a number of research institutes and with several international organisations and inter-parliamentary assemblies.

Work Programme

In order to be able to thoroughly address specific topics of democratic control of armed forces, DCAF has established or is in the process of establishing 12 dedicated **working groups** covering the following issues: security sector reform; parliamentary oversight of armed forces; legal dimension of the democratic control of armed forces; transparency-building in defence budgeting and procurement; civilian experts in national security policy; democratic control of police and other non-military security forces; civil-military relations in conversion and force reductions; military and society; civil society building; civil-military relations in post-conflict situations; criteria for success or failure in the democratic control of armed forces; civil-military relations in the African context. Planning, management, and coordination of the working groups is centralized in the Centre's Think Tank.

DCAF provides its expertise on bilateral and multilateral levels, and also addresses the interests of the general public. A number of bilateral projects in the areas of security sector reform and parliamentary control of armed forces are underway within the states of South Eastern and Eastern Europe. At the multilateral level, DCAF implements several projects in the framework of the Stability Pact for South Eastern Europe and the Organisation for Security and Cooperation in Europe. The Centre regularly produces publications, organises conferences, workshops and other events. It uses information technology, including its own website (<http://www.dcaf.ch>), to reach both target audiences and the general public.

Organisation and Budget

DCAF is an international foundation under Swiss law. Forty-two governments are represented on the Centre's Foundation Council*. The International Advisory Board is composed of the world's leading experts on the subjects of defence and security, who advise the Director on the Centre's overall strategy. DCAF is staffed by some 40 specialists of 23 different nationalities, divided into four departments: Think Tank, Outreach Programmes, Information Resources, and Administration.

The Swiss Federal Department of Defence, Civil Protection and Sports finances most of the DCAF budget, amounting to eight million Swiss Francs in 2002. Another

* Albania, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Moldova, Netherlands, Nigeria, Norway, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, United States of America, and the Canton of Geneva.

important contributor is the Swiss Federal Department of Foreign Affairs. Certain member states of the DCAF Foundation support DCAF by seconding staff members or contributing to the Centre's specific activities.

Contact

For additional information please contact:

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

Rue de Chantepoulet 11, P.O.Box 1360, CH-1211 Geneva 1, Switzerland

Tel: +41 (22) 741-7700; Fax: +41 (22) 741-7705; E-mail info@dcaf.ch; Website:

www.dcaf.ch

Thematic Index

- Accountability (see also *oversight*)
 - Internal accountability
 - Political accountability
- African Union
- Agreements (international)
- Aliens
- Alternative service: see *conscientious objectors*
- Armament
- Armed Forces: see *military*
- Arms trade/transfer
- Arms embargo: see *sanctions*
- Association of South East Asian Nations
- Auditing
- Audit office
- Best practices
- Border control
- Budget
- Budgeting systems (PPBS)
- Catastrophes/Crises
- Civic education
- Civil-Military Relations
- Civil rights
- Civil society
- Code of conduct
 - For politico-military aspects of security (OSCE)
 - For law enforcement officials (UN)
 - For arms transfer (EU)
- Collective security
- Committee
- Community policing
- Confidentiality: see *secrecy*
- Conflict
- Conscientious objectors/objection
- Conscription
- Constitution/constitutional framework
- Commonwealth of Independent States
- Cooperation
- Corruption
- Council of Europe
- Courts
- Customary Law
- Cyber-crime
- Decision-making
- Defence
- Defence budget
- Defence reform
- Democracy
- Democratic values
- Democratic control: see *oversight*
- Democratisation (of military)
- Deployment abroad
- Detention Centres
- Disarmament
- Disaster relief
- Disobedience
- Eavesdropping
- Emergency: see *exceptional circumstances*
- European Union
- Exceptional circumstances
- Executive: see *government*
- Expenditure (military)
- Expertise
- Freedom of information legislation
- Gender: see *women*
- Government
- Governance
 - democratic governance
 - effective governance
 - good governance
- Grassroots initiatives
- Harassment (of conscripts)
- Hearings

Human rights	Parliamentary Assembly of the Council of Europe
Human security	
Humanitarian law	Paramilitary units: <i>see other state militarised organisations</i>
Humanitarian missions	Parliamentary
Information warfare: <i>see Cyber-crime</i>	Debate
Innere Führung (leadership)	Hearings
Intelligence services (see also <i>secrecy</i>)	Inquiry
Inter-Parliamentary Union	Questions
International Organisations (<i>see also under the organisation's name</i>)	Powers
International peace missions: <i>see peace missions</i>	Resources
International regulations	Staff
International law	Parliamentary Committees
Internal security	Defence committee
Internationalisation (of the military)	Intelligence committee
Internet	Security committee
Judiciary	Peace-building
Law enforcement	Peace-enforcement
Legitimacy	Peacekeeping: <i>see peace missions</i>
Media	Peacemaking
Military	Peace missions
Military Unions: <i>see representative associations</i>	Pensions
Monitor/monitoring	Police
Nation	Principles
Non-Governmental Organisation	Prisons: <i>see detention centres</i>
North Atlantic Treaty Organisation	Private security actors
Ombudsman	Procurement
Opposition	Reform
Organisation of African Unity (<i>see also African Union</i>)	Defence reform
Organisation for Security and Cooperation in Europe	Police reform
Other state militarised organisations	Security sector reform
Oversight	Retirement: <i>see pensions</i>
Democratic oversight	Representative associations
Parliamentary oversight	Rules of engagement
Parliamentary Assemblies	Salaries (of servicemen)
NATO – Parliamentary Assembly	Sanctions
	Secrecy (<i>see also intelligence services</i>)
	Security
	Security Council
	Security policy

September 11
Servicemen / -women
Small arms
Society: see *civil society*
State of emergency/siege: see
exceptional circumstances
Terrorism (see also *internal security*)
 Definition of terrorism
 Policy
 Measures
 Legislation
Torture
Transparency
Treaties: see *agreements*
Troops: see *military*
United Nations
Value-for-money
Women
War
Western European Union
World Wide Web, see Internet
World Bank

All rights reserved. No part of this publication may be produced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the Inter-Parliamentary Union or the Geneva Centre for the Democratic Control of Armed Forces.

This publication is circulated subject to the condition that it shall not by way of trade or otherwise, be lent, sold, hired out or otherwise circulated without the publisher's prior consent in any form of binding or cover other than in which it is published and without a similar condition including this condition being imposed on the subsequent publisher.

ISBN (IPU)
ISBN (DCAF)

Parliamentary oversight of the security sector: Principles, mechanisms and practices

Published by:

Inter-Parliamentary Union
Geneva Centre for the Democratic Control of Armed Forces

Editors
Philipp Fluri, Switzerland
Anders B. Johnsson, Sweden

Lead Author
Hans Born, Netherlands

Executive publisher
Centre for Civil-Military Relations, Belgrade

Printed by

Geneva, 2003