



Parliamentary oversight of the security sector

**OFFICE FOR
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PARLIAMENTARY
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Parliamentary oversight of the security sector

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List of abbreviations

AFET	Committee on Foreign Affairs
AFSJ	Area of Freedom, Security and Justice
CFSP	Common Foreign and Security Policy
CIVCOM	Committee for Civilian Aspects of Crisis Management
CMPD	Crisis Management and Planning Department
CoE	Council of Europe
CPCC	EU Civilian Planning and Conduct Capability
CSCE	Commission on Security and Cooperation in Europe
CSDP	Common Security and Defence Policy
DCAF	Democratic Control of Armed Forces
EC	European Commission
ECHR	European Court of Human Rights
EDA	European Defence Agency
EEAS	European External Action Service
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EP	European Parliament
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
EU	European Union
EUMC	EU Military Committee
EUMS	EU Military Staff
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Police Office
EUSC	EU Satellite Centre
FRA	European Union Agency for Fundamental Rights
Frontex	European Agency for Management of Operational Cooperation at the External Borders
GDP	Gross Domestic Product
ICC	International Criminal Court
ICJ	International Court of Justice
INGO	International Non-governmental Organisation
IntCen	EU Intelligence Analysis Centre
IPC	Inter-Parliamentary Conferences
IPIs	International Parliamentary Institutions
IPU	Inter-Parliamentary Union
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MENA	Middle East and North Africa
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organisation
NED	New and Emerging Democracies
OECD	Organisation for Economic Cooperation and Development
OECD DAC	OECD Development Assistance Committee
OPPD	Office for Promotion of Parliamentary Democracy
OSCE	Organisation for Security and Cooperation in Europe

PACE	Parliamentary Assembly of the Council of Europe
PMG	Politico-Military Group
PMSC	Private Military and Security Companies
SEDE	Subcommittee on Security and Defence
SSG	Security Sector Governance
SSR	Security Sector Reform
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNDP	United Nations Development Programme
UNSC	United Nations Security Council

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Preface

This paper represents a further addition to the series of publications on issues in parliamentary practice from the Office for Promotion of Parliamentary Democracy (OPPD).

The European Union (EU) is founded on the principles of liberty, democracy, respect for human rights, fundamental freedoms and the rule of law. The European Parliament (EP) has always been a staunch defender of these principles. Through its standing committees, inter-parliamentary delegations, plenary resolutions, debates on human rights and involvement in monitoring elections, the Parliament has actively sought to give high priority to democratisation in all its external actions.

In 2008 the European Parliament set up the Office for Promotion of Parliamentary Democracy to directly support new and emerging democracies (NED) beyond the borders of the European Union. The OPPD assists in the establishment and reform of parliaments and aims at strengthening their capacity to implement the chief functions of lawmaking, oversight and representation.

Members and civil servants of NED parliaments can benefit from tailored training and counselling provided by the OPPD as well as networking with members and relevant services of the European Parliament.

The OPPD seeks to establish a continuing dialogue and partnership with NED parliaments worldwide and to support their participation as fully fledged members of the democratic community. It facilitates sharing of experiences and best practices of parliamentary methods, and fosters research and study of these practices.

Ensuring the external and internal security of contemporary societies has become increasingly complex, leading to the emergence of an at times ill-defined 'security sector'. Reconciling the operation of these modern security sectors with democratic standards has come to constitute a challenge in itself, not only in Western states but all the more so in states where the political culture has not yet fully internalised the notion of parliamentary control over the executive.

This brochure's main objective is to provide an overview of the main issues affecting parliamentary oversight and, more generally, democratic governance of the security sector in new and emerging democracies. The Geneva Centre for the Democratic Control of Armed Forces (DCAF) has made an important contribution to the content of this publication.

Introduction

In recent years, parliamentary oversight of the security sector has attracted much attention from politicians, parliamentary practitioners and academics alike. Fuelled by today's rapidly evolving security environment, new challenges have emerged to re-state in new and often pressing terms what is a perennial issue: how to ensure that our individual and collective security - that most essential public good - is provided in accordance with the will of the people, as expressed through our democratically elected representatives in parliament? The issue refers us to the principles, policies and practices by which our military as well as our police and intelligence forces are held accountable to parliament. Accordingly, this publication reviews the organisation of parliamentary oversight over the security sector, building on the important work already done in this regard. In doing so, it will focus more specifically on security sector oversight in so-called emerging democracies.

This brochure's primary objective, however, is not so much to provide a handbook for parliamentary oversight of the security sector - at least one such handbook already exists, co-authored by the Geneva Centre for the Democratic Control of Armed Forces and the Inter-Parliamentary Union, which offers a concise and accessible overview of the ways in which security issues and parliamentary oversight interact. Rather, the brochure seeks to convey an awareness of the very real importance of democratic accountability of the security sector - as an issue which concerns all parliaments regardless of their size, nationality or history. Essentially, security sector accountability matters for three main reasons.

Security sector accountability as a necessity

Security sector institutions - armed forces, police and intelligence services - are central to our lives and, by extension, to the social fabric of our societies: their mission is to protect us against physical threats originating either beyond or within national borders, thus creating the basic conditions for viable societies freely pursuing democratically chosen ways of life. Security sector institutions are also agents of the democratic state: they must subject themselves to various forms of transparency and accountability designed to verify that they respect the mandate given to them. Accordingly, security sector institutions can be called functional when they perform their role in ways that are democratically accountable. Conversely, a security sector that eschews democratic accountability will not perform functionally: instead of providing security, it will end up harming the interests of the society which it is supposed to serve, thus becoming itself a source of insecurity. Security sector accountability is, in other words, intimately bound up with the functioning of the democratic state. New developments in our security environment have only reinforced the relevance of security sector accountability as a basic democratic requirement. First, recent years have witnessed the emergence of new threats to what is now called 'human security' which transcend the nation state and escape national control: international terrorism, cyber attacks, transnational criminal networks, environmental calamities. In order to combat these threats effectively, national govern-

ments have sought to join forces. In the process, they have created new patterns of intergovernmental cooperation which tend to be problematic from the point of view of democratic accountability. This is certainly the case for new policies and instruments being deployed in the fight against international terrorism, such as international rendition practices and the use of armed aerial vehicles ('drones') for the purpose of 'targeted killings'. Due to the transnational environment in which they are employed, and the secrecy surrounding them, these practices in effect sideline the traditional mechanisms for security sector oversight and accountability. Another new practice adopted by governments consists of privatising security-related functions in order to make the most cost-effective use of ever tightening defence budgets. Outsourcing these functions to the private sector - private military and security companies - amounts to a corresponding loss in democratic oversight. Such outsourcing is particularly worrisome in emerging democracies, where the privatisation of security can be an endemic problem anyway. Because of the trends mentioned above, we are being confronted with a potential or real oversight deficit which calls for a broadened concept of security sector accountability that responds to today's new security environment.

Security sector accountability as a democratic advance

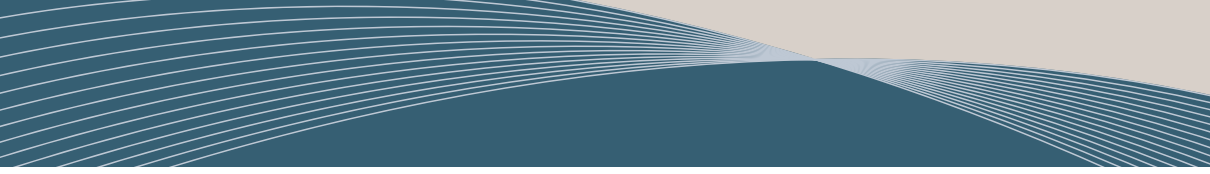
Broader security sector accountability should not be seen as an additional burden being forced upon

unwilling governments and executive agencies. Instead, both the legitimacy and the quality of executive policies and actions arguably stand to gain from broader security sector accountability.

First, if all areas of the security sector were to be subjected, in one form or another, to a system of interlocking oversight mechanisms, this would benefit people's understanding of, and support for, security sector policies and actions. Second, seeking to integrate the many facets of today's security sector into a broad, comprehensive approach to security sector accountability can lend a new quality to government action. It promotes closer coordination, if not synergy, between security policies hitherto pursued in relative isolation of each other, thereby promoting overall policy coherence and responsiveness - between internal and external as well as between national and international aspects - in the face of today's complex security challenges.

Security sector accountability: a deliverable for parliaments

How achievable is the broad-based security sector accountability which today's challenging security environment seems to call for? Clearly, there is no script or blueprint in this field. Generally speaking, it will be for each individual parliament to take up the challenge, bearing in mind its own strengths and weaknesses as well as the specific political environment in which it operates. Thus, traditionally strong parliaments will probably consider broad



security sector accountability to be a less distant goal than parliaments which are just emerging from a transition towards democracy and, more likely than not, are going to have to struggle a while longer before being able to assert their authority definitively. This is not to say that each parliament is on its own in its pursuit of broad security sector accountability. With multilateral inter-parliamentary cooperation now well established, parliaments will also assist each other, acting through a wide variety of bodies which are best grouped under the term 'international parliamentary institutions' (IPIs). These range from the venerable Inter-Parliamentary Union (1889) to regional parliaments, legislative networks or transnational parliamentary assemblies which came into being after 1945.

International parliamentary institutions can help compensate an oversight deficit concerning the security sector which may affect national parliaments. Also, under the umbrella of these international parliamentary institutions, experienced parliaments have launched technical assistance programmes designed to build up the capacities of emerging parliaments and their staff. Such programmes provide a main avenue for addressing the specific requirements for strengthening parliamentary oversight of the security sector. One promising form of inter-parliamentary cooperation, for the purposes of strengthened security sector accountability, could be a joining of forces between international parliamentary institutions and national parliaments. The European Parliament and the parliaments of the EU Member States offer a case in point. This has

already been initiated through Inter-Parliamentary Conferences since September 2012 with two additional Conferences in March and September 2013. As the EU and its Member States develop their political governance - including the progressive framing of a common security and defence policy - securing the cooperation of Member State parliaments seems essential if the European Parliament, as the world's only elected transnational parliament, is to extend its democratic oversight over the Union's security sector as a whole. Finally, parliaments may derive inspiration from civil society organisations, the activities of which can work for strengthened security sector accountability.

If the European Union wants to strengthen international security as it has stated, it must become a much more effective security provider. Approximately €200 billion a year is spent on defence and better pooling and sharing, concerted innovation projects and improved coordination will help in spending this money better. Parliaments have an essential role to play in this debate. This will become even more paramount if the EU puts in place a proper European Capabilities and Armaments Policy (ECAP) as provided for in Article 42 of the EU Treaty.

Emerging democratic parliaments and the security sector

Nowhere are the challenges of establishing effective parliamentary oversight of the security sector

more apparent than in the case of emerging democracies. We are referring to still fragile democracies which find it difficult enough to satisfy the basic requirement of civilian and democratic rule over their armed forces and security services, which often continue to claim a special role for themselves within the state and in society at large once the formal transition to democracy has been completed. This democratic fragility tends to be compounded by the proliferation of additional security actors responding to often shadowy interests which escape the fledgling control of the new democratic institutions. This specific, and less appreciated, problem area will be mapped out in Part III. To summarise, in seeking to strengthen their

oversight of the security sector, parliaments can draw on a range of cooperative structures, instruments, as well as activities of other actors which, together, do work to create a momentum in favour of reinforced democratic governance of the security sector. This should constitute enough encouragement for parliaments worldwide to deliver on this important democratic requirement.

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PART I: WHAT IS 'PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR'?

The Paradox of Security in Open Societies

In a democracy, security sector institutions play a complex role. While they wield special powers in order to safeguard the integrity of the democratic nation state, these same powers may also lead to the corrosion of democratic standards, human rights and freedoms.

The security sector is responsible for protecting the nation from internal and external threats. Its objective is to **maintain peace and stability** so that the public institutions can function properly and in accordance with the fundamental principles of a democracy, including the rule of law, the division of powers and respect for human rights. In order to carry out their mission effectively, security institutions are often invested with **special powers** enabling them, for instance, to gather otherwise inaccessible information, to work in secrecy and to use force legitimately. However, precisely because of the power which they confer, these powers carry with them the **risk of misuse or abuse**. Wherever such risks become reality, security sector institutions deviate from their legitimate mission and threaten to undermine the democratically elected government which they are expected to serve.

While misuse or abuse of the powers conferred on the security sector can occur in any democracy, emerging democracies tend to be particularly at

risk. Having only recently overcome a history of internal strife, emerging democracies often have not had the time to internalise the essentials of a democratic culture such as the notions of effective oversight of the executive and political neutrality of the armed forces. As a result, emerging democracies remain vulnerable to attempts to draw security institutions into destabilising a still fragile democratic order.

Ensuring public security and stability whilst upholding democratic standards constitutes one of the major challenges of democratic society. Achieving a balance between these two objectives essentially requires **democratic accountability of the security sector**. The exercise of their special powers does not excuse security sector institutions from remaining within the purview of the laws adopted, and the policies pursued by, a democratic government. In discharging their responsibilities, security sector actors must therefore remain subject to control and review by organs which represent the public interest as formulated in the course of the democratic process. Although such control and review are exercised by a variety of actors in society (including non-state actors), the role of parliament herein is particularly important. The people should be the ultimate deciders of their security policy, and parliament is the institution that represents them most directly.

As we know, open societies are not the universal norm. Today, many states continue to suffer through the lack of political pluralism, democracy, human rights, and the rule of law. Where these basic democratic requirements remain unfulfilled, establishing and reinforcing parliamentary oversight of the security sector may seem distant goals indeed. However, instituting such oversight should be seen as part and parcel of any democratic breakthroughs, whenever these may actually be achieved.

1. Democratic security sector governance: actors, mechanisms and tools

Although the security sector has unique characteristics given its central role in guaranteeing the state's legitimate monopoly on the use of force, it nonetheless shares many common features with other areas of public service delivery and should therefore – as former UN Secretary-General Kofi Annan put it – 'be subject to the same standards of efficiency, equity and accountability as any other [public] service'. Ensuring that the security sector is subject to the same standards of good governance as the wider public service, is an important element that links the state's ability to provide security effectively and efficiently to the need to do so in an accountable manner.

Although no single model of security sector governance (SSG) exists, according to the UN Sec-

retary-General's report on SSG, effective and accountable security sectors have a number of common attributes. These include:

- a. A legal and/or constitutional framework providing for the legitimate and accountable use of force in accordance with universally accepted human rights norms and standards, including sanctioning mechanisms for the use of force and setting out the roles and responsibilities of different actors;
- b. An institutionalised system of governance and management: mechanisms for the direction and oversight of security provided by authorities and institutions, including systems for financial management and review as well as protection of human rights;
- c. Capacities: structures, personnel, equipment and resources to provide effective security;
- d. Mechanisms for interaction among security actors: establishing transparent modalities for coordination and cooperation among different actors, based on their respective constitutional/legal roles and responsibilities;
- e. Culture of service: promoting unity, integrity, discipline, impartiality and respect for human rights among security actors and shaping the manner in which they carry out their duties.¹

Security sector governance generally refers to the principles, policies and practices which, together, determine the way in which society deals with its security-providing institutions - essentially the armed forces, the police and the intelligence

¹ Heiner Hänggi, 'Security sector reform : Concepts and contexts', in : 'A security sector reform reader', INCITEgov, Pasig City, 2012, 11-40.

services. **Democratic SSG** - the subject of this brochure - refers to a specific set of mechanisms and tools which must ensure the accountability of the national security actors. The two main mechanisms are complementary: control and oversight. **Control** refers to the provision of political guidance and operational direction to security sector institutions. **Oversight** means (1) verifying compliance by security sector actors with general policy and established laws and regulations governing their operation; (2) scrutinising effectiveness and efficiency of security sector institutions. These two competences - control and oversight - are exercised at two principal levels. First, the security sector will be subjected to its own, *in-house* control and oversight, as exercised by the executive branch (government, ministries, armed forces commands, police and intelligence chiefs). Oversight within the security sector can take various forms:

- Introduction of internal codes of conduct that clarify rules in the interest of fostering a democratic internal culture and respect for fundamental values, rights and obligations;
- Adoption by management of models of good governance and professionalism;
- Accountability of staff for breaches of discipline and, conversely, procedures ensuring that staff complaints will be dealt with in a timely, impartial and professional way.

Complementing this *in-house* control and oversight, come the external forms of control and oversight - as exercised by, primarily, parliament but also other actors: the judiciary, independent bodies, civil society and international institutions.

Key Principles of Democratic Accountability

For it to achieve its purpose, democratic accountability must take account of a number of fundamental principles: **transparency, legality, responsibility, accountability, participation and responsiveness to the people**. The legislator will seek to secure adherence to these principles within the overall context of the rule of law. It is up to the executive, the parliamentarians and, ultimately, the people themselves to promote a political culture which will sustain the observance of these principles.

Actors: A Divided Responsibility

Democratic accountability can be achieved through a plurality of methods. Mechanisms of democratic control vary according to a number of factors such as the country's historical context, its cultural traditions, its form of government (i.e. monarchy, parliamentary republic or presidential system), its constitutional-legislative framework and, last but not least, its socio-economic condition.

Across this diversity of political systems, it is possible to identify a number of actors which perform similar types of oversight activities. These actors traditionally include various executive, legislative, judicial and independent state bodies, alongside non-state protagonists from civil society (see Box 1). It is often unclear which of these various bodies, if any, will oversee the activities of the numerous 'autonomous' agencies to which governments have more recently devolved the exercise of various public functions.

Of all state branches, the **executive** exercises the most direct form of control on the security sector by drafting the budget and setting out the

Box 1: Actors & Mechanisms

	Actors	Mechanism
Executive	Head of state, government, chief of general staff, advisory and coordination bodies.	Ultimate command authority, setting policies and priorities, promulgating subsidiary legislation and regulation, budget management, investigation powers, appointment of main commanders, proposing laws and arms procurements, international negotiation.
Legislative	Parliament, parliamentary oversight bodies.	Enacting laws, budget approval, investigations, hearings, participation in major decisions.
Judiciary	Courts and tribunals (civil, criminal, military).	Adjudicating cases against security institutions/staff, reviewing the constitutionality of laws, safeguarding the rule of law and human rights, monitoring special powers, reviewing security policies in the context of prosecutions.
Independent bodies	Ombudsman, audit offices, human rights bodies, inspector general, public complaints bodies.	Receiving complaints and investigating abuses and failures, raising awareness of human rights, verifying compliance with the law and correct use of public funds.
Civil society	Media Think-tanks, NGOs Individuals	Informing the public, investigative reporting. In-depth analysis and expertise, dissemination of alternative views, recommendations, lobbying, monitoring. Addressing issues through the judiciary and the media.

	Actors	Mechanism
Security sector institutions	Police, military, intelligence agencies, private security companies, etc.	Internal mechanisms of supervision, review, monitoring, complaints, discipline, codes of conduct, freedom of information, human resources.
International level	Treaty bodies, intergovernmental institutions (UNSC, Council of Europe, NATO, OSCE, EU), inter-parliamentary assemblies, courts (ECHR, ICJ, ICC), iNGOs.	Monitor human rights violations, create norms and standards in the security sector, adjudication, fostering cooperation in the security sector.

general policy, as well as by managing the security sector on a daily basis. The extent of executive power varies, depending on the form of government - monarchy, parliamentary or presidential democracy - and on the respective powers of the institutions making up the executive branch - head of state, government, chiefs of the armed forces and the intelligence services.

Whereas in parliamentary regimes the government will be the main actor, presidential regimes often designate the president as commander-in-chief, president of national councils and committees, and/or nominating authority of military vacancies. Some constitutions, as is the case in Romania, provide for the executive branch to be headed by collegial bodies. Such a Council for National Defence coordinates the overall security policies and in some cases also reports to parliament. An important role for defence and other security sector ministers is to interact with parliament by, in the most visual sense, appearing before parliament to set out government

policies and positions and/or by responding to parliamentary questions.

At the **legislative** level, parliament exercises its powers of oversight at various stages, alone or in conjunction with the executive.

Upstream

Parliament will examine, modify and endorse the general policies governing the security sector, as proposed by the executive. Parliament also discusses and adopts legislative proposals emanating from the executive which further define and regulate the security sector. Paramount in this context is parliament's competence to determine both the level and the content of security sector expenditure. According to the type of implementation procedure in force - mere possibility to accept/reject budget or right to amend it; amount of mandatory budgetary information to be submitted by the government to parliament - parliament will have more or less leverage at its disposal when approving the budget.

Midstream

Parliament will, on its own initiative, verify the ongoing operation of the security sector, by examining whether security sector activities comply with the general policies and agreed budget and other relevant legal provisions. To this end, parliament has an array of instruments at its exclusive disposal. It will refer issues to its standing committees - armed forces committee, internal affairs/police committee, justice committee, intelligence and security committee - for examination and recommendations. Such *specialised parliamentary committees* constitute an effective tool for parliament to make its views felt. Their expertise can provide for better substantiated and more effective decisions. Parliament may also convene ad hoc meetings: a hearing, a select committee/committee of inquiry in which witnesses can be invited to testify.

Downstream

As part of its budgetary powers, parliament will grant discharge for security sector policies pursued by the executive. Before doing so, parliament may wish to conduct discharge hearings. Parliament can avail itself of this power of discharge to lay down requirements for the future management of security sector institutions. *Downstream* oversight may not limit itself to the implementation of the budget. Thus, parliament may discuss and evaluate the conduct of military operations after their conclusion.

Parliament and the executive acting together

Apart from acting on its own, parliament may also directly associate itself with certain decisions, giving it a measure of control over, for instance, the

appointment of senior officials; declaring war or a state of emergency; the ratification of treaties; the procurement of arms; or the deployment of troops abroad. At its strongest, this association with executive decision-making takes the form of mandatory and prior parliamentary authorisation.

The **judiciary** monitors the security sector by performing three distinct functions within the overall governance of it:

- It authorises *ex ante* and/or reviews *ex post* the use of special prerogatives of the security sector institutions;
- It adjudicates in criminal, civil, constitutional and administrative law cases that concern the activities of security sector institutions;
- It provides the membership - in a personal capacity - of independent expert bodies and special, ad hoc boards of inquiry.

Next to the three established branches of state, **additional actors** such as an ombudsman (whether or not specialised in defence matters), human rights committees and public complaints bodies may, on an independent/autonomous basis, perform control and oversight functions with regard to the security sector. They do so either on a routine basis through regular investigations and special inquiries, or in response to specific cases by unveiling and dealing with irregularities. Audit offices and courts of auditors which control the legality and appropriateness of public spending play a crucial role in securing democratic accountability to the people.

The security institutions themselves, i.e. the armed forces, the police and the intelligence serv-

ices, have internal mechanisms for their own control and oversight: review boards, military tribunals, complaints procedures, codes of conduct. While undoubtedly insufficient as means of control and oversight, these amount to ‘first line’ supervision which may help inhibit undemocratic opinions or behaviour within security sector institutions.

Civil society also contributes to the oversight of the security sector, and increasingly so. Despite being hampered by the fact that their access to information will usually be restricted to public sources only, investigative journalists and ‘whistle-blowers’ repeatedly manage to uncover facts that otherwise may have escaped democratic scrutiny. Think-tanks and non-governmental organisations (NGOs) conduct research, give recommendations and, together with the media, focus public and political opinion on certain issues. When appropriate, individuals can take action, by raising matters before the judiciary or before an independent complaints body such as the ombudsman.

At the **international level**, some oversight mechanisms do exist (International Criminal Court, ad-hoc tribunals), although not all of them seem to be robust. Nevertheless, as international cooperation continues to increase, forms of oversight are taking root internationally. As such, international courts can be involved in instances involving human rights breaches, whilst intergovernmental

organisations, regional parliaments (such as the European Parliament), inter-parliamentary assemblies and international non-governmental organisations (iNGOs) contribute to the drafting of regional codes of conduct and other documents setting basic standards of democratic oversight of the security sector.²

The importance of parliament’s role in security sector governance

Amongst this plurality of actors in the realm of security sector governance, parliament’s role remains pre-eminent for the following reasons:

Representative role

In formulating national security policies and priorities, parliament represents the views of the electorate.

Preserving democracy

Security services wield special powers which are regulated by law but can nevertheless be highly intrusive and occasionally involve the use of force. The necessary secrecy rules designed for these services to be able to function effectively increase the risks of misuse of their powers. In exercising its right of oversight, parliament (1) verifies that these powers are applied in compliance with national and international law and (2) asserts itself vis-à-vis the executive, thus pre-empting potential misuse of the secret services to thwart political opponents.

² Main international documents containing norms and standards related to Democratic Oversight of the Security Sector: Human Development Report 2002 (UNDP); OSCE Code of Conduct on Politico-Military Aspects of Security (1994); Council of Europe Parliamentary Assembly Recommendation 1402 (1999); Joint DCAF-IPU Handbook on Parliamentary Oversight of the Security Sector (2003); OECD DAC Guidelines (2004); UN Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2010).

Democratic control over public resources

Considerable public money is allocated to the security sector and parliamentary oversight must ensure that spending is lawful, effective and efficient. Budget approval is one of parliament's most important means to exert democratic control over the executive.

Adoption and implementation of legislation

Generally, legislation concerning the security sector will be drafted by the executive. Nevertheless, the more access parliament has to expertise and the more attentive it is to security issues, the better it will be able to influence a bill through judicious amendments to fit the views of the elected representatives of the people.

Proximity to civil society

With regard to civil society, parliament plays a dual role. On the one hand, it is expected to be sensitive to the concerns of voters and will therefore seek to act as a bridge between these concerns and the laws and policies designed to respond to them. On the other hand, intrusive parliamentary oversight can counteract the democratic deficit because, due to confidentiality and secrecy rules, civil society actors cannot play their watchdog role fully vis-à-vis the security sector.

Principles of democratic accountability

Democratic oversight of the security sector entails a form of interaction between two worlds of a very different nature. First, there is a well-defined institution - parliament - that exercises oversight. It is civilian by nature, composed as it is of elected representatives of the people. Second, and standing

apart somewhat from ordinary society, is the multifaceted, uniformed and non-uniformed security sector, the constituent parts of which (armed forces, police, intelligence services) are subject to oversight. A number of **principles** form the basis for democratic accountability of the security sector:

- Security sector institutions are answerable to the democratic authorities - meaning, among other things, that the use of force by security sector institutions must be democratically legitimised;
- The executive is accountable to parliament for the way in which it conducts overall defence and security policy;
- The constitution entrusts parliament with the competence of scrutinising and authorising security sector expenditure;
- Parliament sees to it that judicial or administrative sanctions are taken by the oversight actors, once it has determined that security sector institutions have committed transgressions; these sanctions must be robust enough to discourage future transgressions;
- Parliament takes part in crucial decisions such as declaring a state of emergency or war;
- Good governance principles and the rule of law apply to the security sector just as much as to other governmental institutions. This means, for instance, that military courts, as with ordinary courts, are subject to the rule of law;
- Security sector personnel are accountable, on an individual basis, for breaches of national and international laws in matters of civil and criminal misconduct;
- Security sector institutions are politically neutral.

2. From narrow military security to comprehensive security

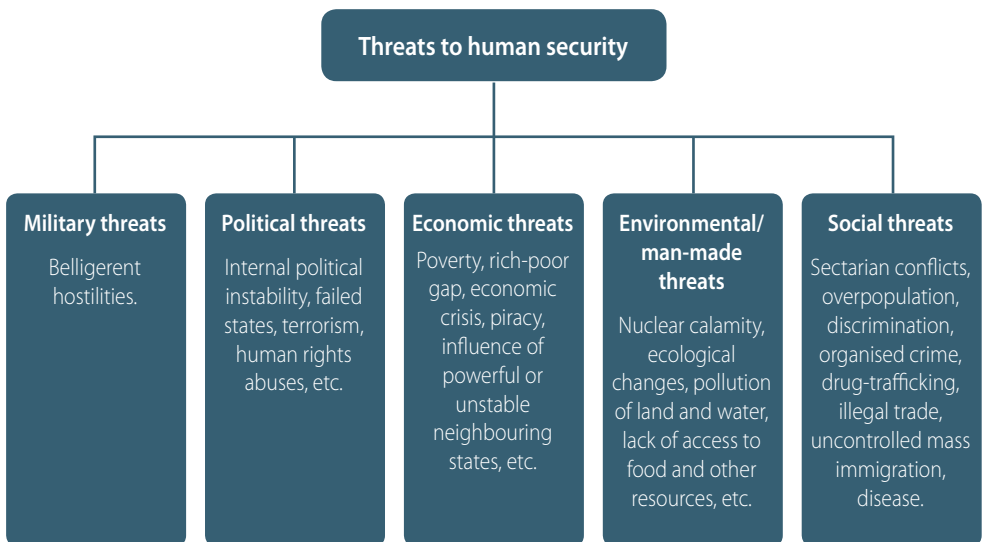
With the rise, during the nineteenth century, of the nation state as the main form of societal organisation, ensuring its physical protection from external aggression on the part of other nation states became the prime security concern, along with domestic policing. For over two centuries, standing armies created through conscription had the restricted task of defending the nation state, alone or in alliance with other nation states.

As a result of human progress (scientific, technical, and economical) but also two devastating world wars, nation states nowadays are no longer

the sole agents of international relations. Other actors have emerged, be they international organisations - intergovernmental or supranational - or sub-national groups. Similarly, threats to the international system no longer emanate from states alone: so-called non-state threats - terrorists, computer hackers - are making their impact felt. The forces of internationalisation and globalisation have thus loosened the link between security and the nation states. As the notion of "state security" broadened into "human security", including economic, environmental and societal aspects, the range of threats to security has expanded too (see Box 2).

The United Nations Millennium Declaration states that men and women have the right to live

Box 2: Threats to human security

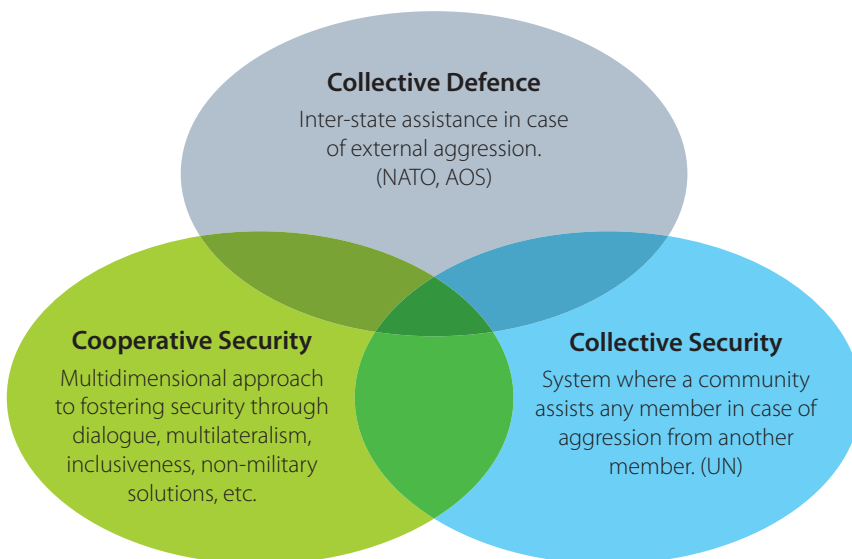


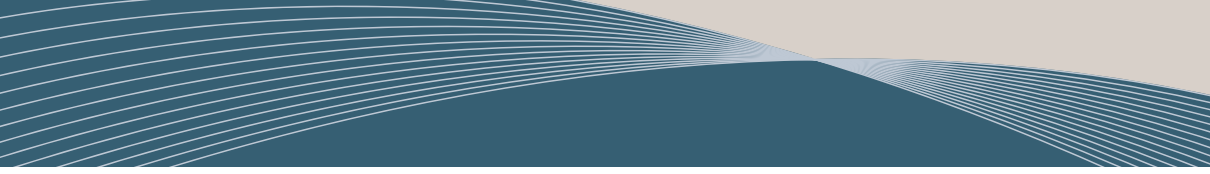
their lives and raise their children in dignity, free from hunger and the fear of violence, oppression or injustice, which illustrates the broadening of today's common understanding of security. Accordingly, the classic use of military force at best only partially addresses emerging security challenges, the complexities of which require multi-disciplinary approaches. Combating terrorism, for instance, means dealing with varying combinations of religious extremism, ethnic antagonisms, separatisms, economic exploitation and poverty, and other factors. In discussing the security sector and its oversight, we therefore must go beyond military factors alone and seek a wider approach which will capture the multi-faceted make-up of contemporary security.

3. From individual state security to security cooperation among states

Partly as a consequence of the Second World War, partly in response to the emergence of new and complex governance challenges which often cross borders, states have adopted various forms of collective security and defence. From international peacekeeping and humanitarian operations to collective defence mechanisms such as NATO and the European Common Security and Defence Policy (CSDP/ESDP), these partnerships can be bi- or multilateral, global or (sub-) regional. These various security arrangements will display different degrees of interaction between the states participating in them, ranging from occasional intergovernmental

Box 3: Types of security arrangements





cooperation to permanent joint consultation and policy-making as well as structural pooling, and even integration of national resources.

A good example of cooperative security at the regional level is the Organisation for Security and Cooperation in Europe (OSCE). Building on the accomplishments of its predecessor, the Commission on Security and Cooperation in Europe (CSCE), the OSCE has developed over the past three decades into the world's largest regional security organisation, stretching from Vancouver to Vladivostok. It brings together 57 'participating states' into a common security community through dialogue based on the concept of security which is both comprehensive (including politico-military, economic and environmental aspects) and indivisible. Its various activities encompass an array of security-related issues, ranging from arms control, confidence- and security-building measures, human rights and democratisation, national minorities, policing, counter-terrorism, as well as economic and environmental concerns. The parliamentary dimension of the OSCE is discussed in Part II of this brochure.

Legitimacy of international security cooperation: a democratic deficit?

It would be premature to determine that the development of security cooperation among states, and the concomitant rise of international organisations, have ushered in the decline of the nation-state as the pre-eminent actor in the web of international relations. However, growing international interdependence does seem to have privileged, at the level of the nation state, the executive over the legislative branch of government. This is not surprising as such, since the development of what could be called 'international governance' has primarily taken place along intergovernmental lines. The result is a 'democratic deficit', characterised by an increasing number of security related decisions at the international level without proper parliamentary participation and scrutiny.³ One important way of countering this democratic deficit is to bolster cooperation on security issues between national parliaments and international parliamentary organs, such as the European Parliament.

³ See Dick Toornstra and Emilie Sickinghe, *International Parliamentary Institutions - Bringing Citizens to the Global Stage*, European Parliament - Office for Promotion of Parliamentary Democracy (OPPD), 2013, p.38-40.

PART II: PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR - EXISTING BEST PRACTICES

In the course of the past centuries, nation states have developed into the primary providers of public goods. Security is probably the most crucial of these public goods: without a reasonable degree of security, neither individuals nor communities can function properly. As states gradually embraced democratic governance, the idea that the provision of security by the state should reflect the will of the people became commonplace in Europe and the Western world at large. For security institutions to be effective, they must be politically accountable to the legitimate authorities of the state and to the democratically elected representatives of the people through parliamentary oversight.

There are no quick fixes for establishing, within a given nation state, both effective and accountable security institutions. Different nation states will have distinct historical, socio-economic and cultural factors, the interplay of which will tend to condition the degree to which national security institutions will be amenable to democratic governance. This being said, the experience which European and Western nations accumulated in gradually democratising their respective security institutions by now does translate into a body of *good practices*, the observance of which has been shown to benefit the democratic quality of oversight of security institutions.

The section below concentrates on best practices in parliamentary oversight of security institutions, the legislature being the most essential element of democratic governance of the security sector in general. The other elements of that broad democratic governance include the executive, the judiciary, independent bodies, and civil society: they too perform important, often complementary oversight roles which in turn have produced further sets of good practices. Taken together, these good practices constitute the living 'fabric of democratic security sector governance'. They also provide essential guidance for setting up security sector reform programmes.

1. Best practices among selected states

Best practices in exercising parliamentary oversight of the security sector are not born overnight. Rather, they constitute the accumulated wisdom from more than 150 years' experience in trying to establish, and refine, the democratic governance of the sword and shield of the state. Starting with the liberal revolutions which introduced parliamentary democracy in most European states from 1848 onwards, the elected representatives of the people and governments have interacted to evolve generally accepted principles and ground rules aimed

at safeguarding the responsiveness of the security sector to the views of the people. This interaction has by no means been a straightforward process: more often than not, the executive and parliament have had to go through successive contentious rounds before settling on a cooperative relationship based on a clear division of responsibilities and agreed patterns of accountability. This evolution has culminated into today's broad consensus that real security cannot be achieved without the acceptance of democratic values and institutions and the observance of fundamental human rights - the notion of democratic security. Even so, today's fast changing security environment leaves no room for complacency: as security services are constantly challenged to respond to new demands, so are the rules and practices shaping parliament's prime role in exercising democratic oversight of the overall security sector. For best practices to remain true to their name, they must remain relevant and, therefore, must be adaptable to changing circumstances.

Best practices, correctly speaking, derive from a set of four common principles governing the democratic governance of the security sector in general and the role of parliament in particular:

- Checks and balances between the institutions of government which ensure that parliament will not be overruled by the executive or the judiciary;
- Transparency, without which informed democratic debates are not possible;
- Responsiveness, whereby the security sector heeds the wishes of the people as formulated by its elected representatives;

- Accountability, which ensures that parliament, and other oversight actors for that matter, are able effectively to fulfil their role through (1) the timely provision of sufficient information; (2) the allocation of the necessary competences to the oversight actors; (3) the availability of credible sanctions to the oversight actors.

Based on the above principles, they provide both a yardstick by which to measure the capacity of oversight actors to hold security services to account and strands of democratic governance to which oversight actors will want to aspire. Best practice extends to the whole range of oversight and control of the security sector:

- internal control within the various security sector actors;
- executive control;
- parliamentary oversight;
- judicial review;
- independent oversight;
- oversight by civil society.

Nowadays, an additional, *de facto* form of oversight would be the one exercised by the media. Together, these seven 'interdependent pillars of oversight and control' constitute the fabric of democratic security sector governance. The section below will focus on the most essential of these pillars: parliamentary oversight. What are the most important good practices shaping the legislature's grip on the security sector - the armed forces, the police, and the intelligence services?

Different venues for parliamentary oversight

In addition to representing the people, the role of parliament entails three other fundamental functions: enacting legislation, controlling the budget and overseeing the executive. Whereas the first two tasks - adopting and amending laws, approving the budget - are circumscribed, parliamentary oversight is exercised in a more diffuse way, through different channels and with different tools. Thus, the first two functions mentioned, i.e. legislation and budget control, constitute by themselves

important instruments for parliament to exercise its crucial oversight function. Next to this, a number of parliamentary prerogatives are specifically designed to facilitate oversight. These may take the form of special oversight bodies; mechanisms for participation in decision-making; provisions enabling privileged access to information; and the prescribed reporting to parliament of independent oversight organisations (including the ombudsman, human rights bodies, supreme audit office and anti-corruption bodies).

Box 4: Tools for Parliamentary Oversight

Legislative powers

- Setting the legal framework for oversight;
- Influencing government policy on a broad level.

Budget control

- Oversight/verification of the respect of the allocated budget;
- Sanction in case of excesses/illegitimate conduct by the executive.

Direct oversight

- Oversight organs
 - Parliamentary committee(s);
 - Independent oversight bodies to assist parliament.
- Involvement in important decisions
 - Prior approval in case of: foreign missions, war, state of emergency, international treaties;
 - *A posteriori* control of decisions (with possibility to revoke or substitute);
 - Appointment of senior officials;
 - Defence procurement.
- Access to (classified) information
 - 'Obtaining document'/Proactive disclosure
 - Summons/Hearings
 - Information/Consultation
 - Secrecy safeguards
- Investigative powers

The above venues for the exercise of parliamentary oversight are nowadays complemented by various international parliamentary institutions (IPIs) such as the parliamentary assemblies of the Council of Europe, NATO, the OSCE or the European Parliament. These and other IPIs in and beyond Europe may or may not have all four core parliamentary powers - legislative, budgetary, oversight, and consultative - at their disposal. Thus, of all IPIs, the European Parliament has the widest range of powers, while most others have fewer - generally the consultative power, sometimes complemented by the oversight power - which they exercise with less diligence than the European Parliament.⁴ Despite their varying impact on decision-making, IPIs are nevertheless increasingly shaping the international dimension of parliamentary oversight.

Legislative powers

The legal framework for democratic governance of the security sector is set by the constitution; laws regulating the various security providers (armed forces, police, intelligence services); laws on public financial management; and laws on public oversight institutions. By enacting and/or amending security sector legislation, parliament in principle shapes the mission, structure, functions and competences of security actors, thereby setting the parameters for the country's security policy and its implementation. In practice, parliament's freedom to determine this legal framework will vary. Thus, constitutional provisions regarding democratic

governance of the security sector will be primarily for parliament to determine. More often than not, these provisions offer only general guidance. The French constitution, for instance, includes only one constraint on the use of French armed forces, namely the prohibition to employ the armed forces for the purpose of "conquest" or for actions "against the freedom of any people"⁵. Only in a few European countries (Germany, Spain) do constitutions explicitly regulate the permissibility of certain military missions in greater detail. Below the level of the constitution, parliamentary input tends to be more limited: security sector legislation will be drafted by the executive, which will also tend to dominate the parliamentary approval process thereafter.

Next to dealing with the three main pillars of the security sector - the military, the police, and the intelligence services - laws regarding the security sector will address issues as diverse as freedom of information; border security management; private security; budgeting and accounting; anti-corruption; criminal procedures; fire arms; states of emergency; privacy protection; and an ombudsman.

The power of the purse

Parliamentary power over the general budget also encompasses security sector-related budgetary items. Through its decisions on the allocation of (often important) financial resources to infrastruc-

⁴ Dick Toornstra and Emilie Sickinghe, *International Parliamentary Institutions - Bringing Citizens to the Global Stage*, pp 22-26.

⁵ Parliamentary Assembly of the Council of Europe (2008), European Commission for Democracy Through Law (Venice Commission, 2008), *Report on the democratic control of the armed forces* - adopted by the Venice Commission at its 74th plenary session, Venice, 14-15 March 2008, p. 48.

ture, projects and equipment, parliament partakes in shaping the security sector. Parliament may use this crucial prerogative to impose conditions upon the executive or to sanction the latter in case of abuse. Usually, the government proposes a budget which it submits to parliament for approval. The effectiveness of parliament's oversight role in this process depends on its degree of access to relevant information (detailed knowledge of budgetary items), as well as on its formal competences to modify the budget.

In this respect, three broad categories of legislatures can be identified:

- *Budget-making legislatures*, such as the US Congress, are able to amend, reject and even formulate alternative budget proposals. The legislature is highly involved in security budgeting, policy and oversight, and is accordingly staffed with the necessary expertise.
- *Budget-influencing legislatures*, as most European parliaments will be, can amend and reject bills but may not present their own proposals. This does not prevent them from examining proposed budgets in detail and producing numerous amendments, as can be observed in Germany and in the Netherlands.
- *Legislatures based upon the British Westminster system* (Australia, Canada, India, South Africa, New Zealand, Zambia and the UK) are authorised only to reduce existing budgetary items, but not to increase nor add any items.

The latter legislatures tend to focus on *ex post* oversight, or budget auditing, through hearings, inquiries and public reports in order to raise awareness among the public. In performing their financial review functions, these legislatures will often avail themselves of inquiries already conducted by independent national audit offices. They may also take into account insights gained from parliamentarians' participation in international parliamentary institutions - insights which tend to benefit the capacity of national parliamentarians to legislate and exercise effective oversight over their government's policies.⁶

Oversight

Next to representation and legislation, parliamentary oversight constitutes the third main parliamentary function which is crucial for ensuring democratic accountability of the security sector.

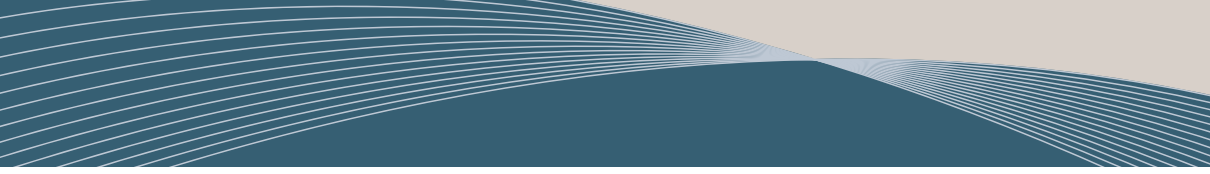
Oversight organs

Parliamentary committees

While an ideal system of parliamentary oversight has yet to be devised, it should be possible to ensure that all areas of the security sector are in practice subjected to one form or another of oversight.

Parliaments will set up committees mandated to assist its proceedings with a view to ensuring best possible subsequent decision-making. Generally, security sector issues will be dealt with by a

⁶ Dick Toornstra and Emilie Sickinghe, *International Parliamentary Institutions - Bringing Citizens and Democracy to the Global Stage*, p.62.



range of parliamentary committees responsible for: internal affairs; foreign affairs; constitutional affairs; justice; human rights; security; defence; and the budget. Next to these general committees, parliament may have several committees specialised in the security sector, addressing the military, the intelligence services and/or the police. These allow for more in-depth democratic oversight of the sector and its agencies. Parliamentary practices at the committee level tend to vary greatly. In theory, committees would be expected to pronounce on compliance with the law; effectiveness and efficiency of policies; administration and finance of security agencies. They may investigate specific issues and will publish their findings in reports that are sometimes made public in the interest of overall transparency.

Most parliaments have, at the very least, a committee for defence, which in some cases is also mentioned in the constitution. Many democratic countries also have a dedicated parliamentary body for the oversight of intelligence agencies and/or the police. Parliamentary oversight practices will vary, ranging from having one single specialised body (or one for each house in the case of a bicameral legislature) to having separate committees for each security sector agency. The latter approach, applied in Romania and Slovakia, enables the overseers to concentrate their time and resources on more circumscribed sets of issues. However, dividing up oversight competences entails the risk that certain, perhaps unforeseen dimensions of oversight will end up not being covered, resulting in an oversight deficit. With regard to the composition of oversight organs, it is considered good

practice to include members of the parliamentary opposition in oversight committees, as a safeguard against the misuse of classified information by the party/parties in power. Another best practice, seen in France and in the US, is to include members of other relevant parliamentary committees in the interest of ensuring adequate coordination between committees dealing with crosscutting issues.

The defence committee of the German *Bundstag* is an example of good practice and is mentioned in Germany's Basic Law. Its composition must reflect the entire political spectrum and it works on legislation in cooperation with the foreign affairs and budget committees. It influences preparations for the budget and scrutinises government policy and actions through investigative powers that are greater than those of other committees.

The effectiveness of these parliamentary committees is influenced by various factors: the scope of their mandate; the personnel and material resources on which they can draw (staffing, expert support, research capacity, access to information); and their formal powers. Committees have a wide range of formal powers at their disposal: the right to conduct hearings and investigations; to request information and audits; to examine complaints; to summon Ministers, civil servants, external experts, and representatives of civil society organisations to testify; to initiate or to amend legislation. German and Polish committees are for instance able to legislate, unlike those of Hungary and the United Kingdom which may only scrutinise executive action.

Independent oversight bodies

In conducting oversight, parliament will be assisted by a number of independent external bodies. These generally include an Auditor-General, an inspector-general and an ombudsman. Some countries may also have specialised non-parliamentary bodies for oversight of the security sector, as well as an anti-corruption unit. These bodies provide for enhanced expertise, oversight and transparency.

Belgium, the Netherlands, Portugal as well as Croatia and Norway have independent, non-parliamentary committees dedicated to overseeing the intelligence services. The fact that their members are not directly elected may be perceived as a democratic deficit. Their actual independence vis-à-vis the government will depend on such factors as the quality of the individuals appointed by parliament and/or the government; the appointment process; security of tenure; their legal powers and budgetary independence. Whatever may be the case in practice, such bodies do present a series of advantages. Their members are expected to maintain at all times an impartial stance. As professionals, they should not be exposed to the fluctuations of political life. Chosen on account of their expertise, they will apply their expert knowledge and experience to the full-time conduct of thorough oversight.

Ombudsman institutions play a crucial role in ensuring that the security sector operates with integrity and in a manner which is both accountable and transparent. By handling individual com-

plaints, as well as through the exploration of thematic and cross-cutting issues, ombudsman institutions help to prevent human rights abuses, eliminate waste and malpractice, and contribute to the overall good governance of the security sector. In certain countries (Germany, Netherlands, Spain, Sweden and Serbia), the national ombudsman has general competence to receive individual complaints, including those against the security sector. Many other countries have established specialised bodies dealing exclusively with complaints against a specific security sector institution, such as the police complaints commissions in France and the United Kingdom and the independent oversight bodies for the armed forces in Austria, Germany, Ireland, and the United Kingdom.⁷

The impact of such bodies varies according to their mandates and powers. National ombudsmen can usually be consulted directly. Their wide remit allows them to examine both the legality and the quality (maladministration) of security sector institutions. In France, however, a complaint to the police complaints commission can only be made indirectly (via a member of parliament), while its powers are limited to investigating respect for the code of conduct; professional behaviour; and ethical standards. The Hungarian civil rights commissioner may only address fundamental rights violations. In contrast, the German Parliamentary Commissioner for the Armed Forces has wide-ranging powers to ensure that the rights of armed forces personnel are protected. They can take action upon instruc-

⁷ See Hans Born, Ben Buckland and Aidan Wills, *Comparative Perspective of Ombudsman Institutions for the Armed Forces*, DCAF Policy Paper no. 34, Geneva, 2001.

tion of the German Bundestag or the German Bundestag Defence committee or on their own initiative. The Commissioner has access to all pertinent information, may hear witnesses and experts, and has access to all relevant premises.

Sweden may well maintain the most far-reaching model, where parliament relies heavily on the ombudsman - Sweden's best-known contribution to good governance - to conduct oversight of all public agencies. The ombudsman is competent to take complaints directly from private persons, and has the right to initiate cases. These oversight activities are then actively followed up by parliament, which will take remedial action by either improving the regulatory framework or by initiating proceedings before administrative or criminal courts.

Involvement in important decisions

Prior approval

Prior parliamentary approval of certain executive decisions will sometimes be prescribed, for instance for decisions to deploy military and/or police personnel abroad in the context of national operations or of internationally mandated missions. For example, in Denmark, Finland, Germany, Spain and Sweden, prior consent of parliament is mandatory. In the Netherlands, Italy or Hungary, prior approval is in principle required but is subject to a number of derogations, which may detract from parliaments' grip on deployments. Lastly, France, Greece, Poland and the United Kingdom do not require prior parliamentary approval. Lack of such formal competences will sometimes be compensated, at least in part, by consultation of parliament throughout all

stages of the decision-making process, and/or by *a posteriori* oversight mechanisms (hearings, inquiries, questions, visits to troops, etc.).

Other important decisions in the security sector for which parliament bears responsibility are: declaring war (although this is increasingly rare), declaring a state of emergency, and the ratification/modification/renunciation of international treaties. In France, Germany, the Netherlands, Spain and Sweden, these decisions usually require the consent of both parliament and the relevant executive body.

A posteriori control of decisions

Through various oversight mechanisms (hearings, inquiries, questions, visits to troops, etc.), parliament can monitor the way in which executive policies and decisions, sanctioned by parliament itself as appropriate, are carried out.

Certain parliaments have the right to revoke decisions by the executive or to substitute them with a new decision. In Poland, parliament may annul a declaration of a state of emergency within 48 hours of its issuance. The German *Bundesrat* has the power to cancel certain urgent decisions taken in emergency situations.

Confronted with very serious cases of proven illegal conduct by the executive, some parliaments have the right to resort to impeachment procedures.

Appointment of senior officials

Some legislatures must give their consent to the appointment of senior security sector officials (gen-

erals, admirals, police and intelligence chiefs), as is the case in Estonia, Lithuania, Romania and the US. However, this prerogative is not widespread, as it entails the risk of politicising senior posts, at the expense of appointing the professionally most able candidates. More generally, for oversight to be effective it must maintain a certain distance vis-à-vis the security sector, including the sector's top managers. An alternative way to secure an adequate degree of parliamentary involvement is to keep the relevant parliamentary committee(s) informed of top level appointments and enable them to hold a hearing with a nominee, on the basis of which the committee may issue a non-binding opinion or recommendation.

Defence procurement

Armament programmes represent a large portion of the security sector budget. Given their generally long lead-time, armaments programmes' budgetary impact tends to extend over several years. In addition, assessing armaments programmes nowadays tends to be challenging, as they often involve sensitive military technology and highly complex issues such as cyber security. In other words, ensuring proper parliamentary scrutiny in the field of defence procurement can be difficult. Parliament can influence defence procurement policies through its budgetary powers, a solid legal framework, and ex post oversight of the transparency and legality of the procedures. In practice, parliamentary oversight of defence procurement varies from hardly any monitoring in Greece to intense scrutiny in Germany. In many countries - Germany, Poland, the Netherlands and the United Kingdom amongst them - approval of the parliamentary

committee of defence is mandatory for contracts above a certain amount.

Access to (classified) information

'Obtaining document'/Proactive disclosure

The more relevant information parliament has at its disposal, the better parliament will be able to perform its essential legislative, budgetary and oversight functions. Parliament's requirement to be sufficiently informed is particularly difficult to meet in the case of the security sector, where much information will for understandable reasons be treated as 'sensitive' and therefore will not be readily available. Democratic states will seek to reconcile parliament's right to know with confidentiality requirements dictated by national security concerns.

How to reconcile these two imperatives will depend on what different states will consider to be politically acceptable. Accordingly, parliamentary access to classified information will be regulated in a variety of ways. Ireland is the only EU member state where parliamentarians have no access to any secret information. The confidentiality regimes adopted by most other European states will be situated somewhere on a scale between two basic and contrasting approaches: providing much and highly classified information to a very restricted group of parliamentarians versus providing smaller amounts of classified but less sensitive information to a large group of parliamentarians, if not all of them. Among the resulting variety of regimes there is no single one which would be intrinsically better than the others, due to the fact that their effectiveness in practice comes to be affected by other, seemingly unrelated factors.

For instance, in the Netherlands only party leaders happen to have access to secret information. In Poland, on the other hand, it is the Speaker of parliament who will have such access. Their manifold responsibilities may well prevent these public figures from making proper use of their privileged access to information in the interest of meaningful parliamentary oversight. This suggests that there are no hard and fast best practices in this area. Rather, best practices will have to prove themselves in the daily application of given regimes for access to classified information.

Best practices can be found in the differing ways in which classified information is made accessible to specialised oversight bodies - as opposed to parliament. In the Netherlands and Canada, overseers of intelligence agencies have access to all classified information that they deem necessary for the accomplishment of their task. This approach yields the undoubtedly good practice whereby the oversight bodies themselves will be free to judge what information is relevant to their work. Not all oversight bodies enjoy that degree of liberty: in Italy and the UK, the directors of executive agencies have broadly formulated rights to refuse disclosure of classified information to oversight bodies. This does not necessarily mean that they will always make use of these rights in practice.

Care must be taken to filter out frivolous and/or mainly politically-motivated requests for information. This can be achieved in cases where a request emanates from a parliamentary committee/oversight body, by including members of the opposition in the committee/body, together with the

requirement that, as in Hungary, the request must be approved by a majority of the committee/body. But such a procedure may not necessarily coincide with actual parliamentary practice, which will vary depending on the country in question and the specific circumstances.

Procedures for requesting classified information have the disadvantage that they hinge on prior overseer knowledge of the existence of certain relevant documents. In the absence of prior knowledge, such procedures must remain inoperative. This obvious flaw can, at least in part, be offset by proactive disclosure on the part of the executive of certain categories of information. Such disclosure can take place on a voluntary or mandatory basis.

Summons/Hearings

Whether a formal right or an informal practice, it is standard practice for parliaments to summon ministers, senior officials and experts to testify before parliament. Parliament may also hold hearings on security sector issues.

Information/Consultation

In some countries, the executive systematically informs and/or consults parliament before taking certain decisions. The Constitution of the Netherlands, for instance, stipulates that the government will comprehensively inform parliament beforehand of troop deployments abroad, including humanitarian operations, in the context of the 'upholding or promotion of the international legal order'. This constitutional provision - which codifies a good practice by the Dutch executive and legislature that has evolved over a number of years - serves a

twofold purpose. On the one hand, it enables parliament to discuss and give its consent before actual deployment takes place and, on the other, it helps the executive to secure the necessary degree of bi-partisan political support for the deployment.⁸

Secrecy safeguards

Lawful access to highly sensitive and classified information should not result in unintended and undue disclosures. Various arrangements exist which are designed to secure the access to confidential information. First, in most parliaments, access to classified information will be governed by the 'need-to-know' principle: a parliamentarian may only access information if this is strictly necessary for the exercise of their professional duties. In addition, parliamentarians may be required to submit to a prior security clearance by the intelligence services, although this is the exception among democracies. In other countries, in order to avoid unfair treatment of the opposition, a security clearance can be asked by all and will be granted almost automatically, as is the case in the Netherlands. Alternatively, members are sometimes required to sign a non-disclosure agreement. A

failure to comply with the prohibition of unauthorised disclosure may lead to administrative and/or criminal sanctions. Clearly, overall professional behaviour on the part of parliamentarians will be a *sine qua non* condition for these arrangements to function.

Investigative powers

Parliamentary committees dealing with the security sector have powers - collecting evidence, hearings, testimonies, inspecting installations, direct access to an agency's documents, or subpoena powers - to investigate, to various degrees, issues requiring the committees' attention. Committees then publish their findings in public reports, which may stimulate both parliamentary action and public debate. An oversight body will achieve significantly greater impact if it has the right and independence of mind to start investigations on its own initiative. This is the case in Belgium, Germany, the Netherlands and Norway. Some parliamentary committees are not allowed to take evidence themselves. By contrast, the committees of the US Congress have almost unlimited power to collect evidence from external sources.

⁸ See Article 100 of the Constitution of the Netherlands. Formally, the article does not apply to troop deployments in the context of individual and/or collective self-defence, which merely need to be 'notified' to parliament.

Box 5: Best practices in parliamentary and presidential systems

Different democratic cultures may observe different best practices for overseeing the security sector. Thus, best practices may vary, depending on the political system in which they are being applied: parliamentary or presidential.

Parliamentary system

Conceptually, democratic legitimacy resides in the legislature/parliament ('parliamentary supremacy'), which in most European countries will therefore be central to democratic oversight of the security sector - not only constitutionally but also in terms of the quality of oversight being exercised. Parliament controls a civilian defence ministry which, as part of a civilian government, in turn controls the military. The more effective standing parliamentary (sub)committees for defence and internal affairs, the stronger democratic oversight and accountability will tend to be. A good yardstick for measuring the effectiveness of parliamentary (sub)committees are the best practices which they may or may not be following: frequency of meetings; composition; statutory powers; degree of access to confidential information for members; resources at their disposal. In everyday life, the best practices outlined above appear to be somewhat unevenly applied among European parliaments, resulting in different degrees of scrutiny.

Presidential system

Democratic legitimacy rests with the legislature and the executive, as both are elected. An elected president will govern, assisted by the administration that he appointed, while the elected legislature will seek to check and balance the separate power of the president on the basis of its own constitutional prerogatives. In the United States, the president is commander-in-chief of the armed forces and other security sector institutions such as the intelligence services. He has broad constitutional power to take military action when he deems necessary. Accordingly, in such a system, oversight exercised by the - civilian - executive is all the more important. Thus, different American presidents have exercised varying degrees of civilian control over the armed forces at their disposal, with military commanders sometimes enjoying much freedom of action or, conversely, being removed for constituting a (perceived) threat to civilian control of the military. The United States Congress, for its part, has the constitutional power to declare war; to determine the defence budget; to set laws and regulations for the armed forces and other security sector institutions; and to confirm all appointments of generals and admirals by majority vote of the Senate.

Separation of powers thus being generally more pronounced in presidential than in parliamentary systems, oversight mechanisms, and the best practices that go with them, will also be more separate in presidential systems. Staying with the United States as an example, 'presidential' best practices will complement 'congressional' good practices - the latter of course displaying many similarities to the good practices adopted by European parliamentary committees.

Civilian control

Both parliamentary and presidential systems are based on the principle of civilian control of the military (general staff, military commanders) and other security sector actors - a principle which the two systems will translate differently in institutional terms, as outlined above. Meanwhile, civilian control does not guarantee democratic oversight, although it will often be associated with it. Thus, in Communist regimes - most of which no longer exist - the military used to remain explicitly subordinated to the political control of the Party.

2. Multilateral arrangements for democratic oversight in the European region

Nowhere is the growing interdependence of nation states as the primary actors in the security field more visible than on the European continent. In reaction to the devastation caused by the Second World War, and concomitant with the wider internationalisation of security, European states have increasingly sought to develop cooperative approaches to the maintenance of peace and security in their part of the world. This first led to the establishment of the North Atlantic Treaty Organisation (NATO) for the purposes of collective defence. After the Cold War, a drastically changed security environment called for a new European security architecture whose building blocks came to be provided by a series of interlocking multilateral organisations, each dealing with aspects of a broad and inclusive concept of European security:

- Collective defence, crisis management, peace support: North Atlantic Treaty Organisation (NATO);
- Relations between states, conflict prevention, good governance, election monitoring, protection of national minorities: the Organisation for Security and Cooperation in Europe (OSCE);
- Rule of law, protection of human rights, democracy: the Council of Europe (CoE);
- European integration - including the intergovernmental development of a common foreign,

security, and defence policy, eventually leading to a common European defence: the European Union (EU).

The parliamentary dimension⁹

All four organisations - NATO, OSCE, CoE, EU - include a parliamentary dimension: NATO, CoE and OSCE have their respective parliamentary assemblies. The EU has the European Parliament, which started as an inter-parliamentary assembly and became a directly elected assembly in 1979. Involvement of these four autonomous bodies with the security sector will vary, depending on (1) the degree to which their 'mother organisations' are engaged in intergovernmental cooperation geared towards maintaining peace and security in Europe and beyond and (2) the amount of influence which they exercise over the executives of their respective mother organisations. Thus, the parliamentarians sitting in the Parliamentary Assembly of the CoE feel free to address the political aspects of defence, devoting in-depth studies to security sector issues. Their valuable work, however, does not translate into proper oversight of the security sector. On the other hand, the aim of their colleagues in the NATO Assembly since 1989 has been *to assist the development of parliamentary mechanisms and practices essential for the effective democratic control of armed forces*.¹⁰ While not binding on the NATO Allies, resolutions of the NATO Parliamentary Assembly do receive considered responses from NATO's secretary-general as part of the close working relationship between NATO and the NATO

⁹ This section is based in large part on W.F. van Eekelen, *Democratic Control of Armed Forces: The national and International Parliamentary Dimension*, Occasional Paper - No.2, Geneva: DCAF, October 2002.

¹⁰ van Eekelen, p. 44

Parliamentary Assembly. In relative contrast, the impact of the OSCE Parliamentary Assembly does not go much beyond parliamentary diplomacy, with the Assembly so far being unable to hold the OSCE Permanent Council or any other part of the OSCE executive to account.¹¹ This has not prevented the Assembly from consistently working to strengthen democratic control of the security sector - by repeatedly reminding the OSCE participating states of the commitments which they entered into, notably through their adoption of the 1994 Code of Conduct on Politico-Military Aspects of Security - see Box 6. As ex-Communist states sought to transform themselves into democratic societies willing and able to join NATO and the EU, the Code of Conduct became the norm-setting benchmark for democratic reform and good governance of their armed forces and other security institutions. It provides detailed instructions to governments and parliaments alike of the OSCE participating states, with a view to ensuring that military and security forces are used in conformity with national and international legal norms (humanitarian laws of war, human rights and disarmament/arms control conventions) and operate under adequate executive civilian control and political and financial supervision of national legislatures.¹² The OSCE

Parliamentary Assembly acts as the conduit through which the values, norms and best practices set out in the Code of Conduct are relayed to the national legislatures of the OSCE participating states, thereby helping them to exercise their right of oversight more effectively.¹³ Parliamentary control of the security sector has become a key theme within the OSCE Parliamentary Assembly, which in more recent years has focused on oversight of the police and intelligence services.¹⁴ In 2011, the Assembly called for 'enhanced implementation' of the Code of Conduct,¹⁵ thereby signalling the continuing importance which it attaches to the further strengthening of democratic control of the security sector throughout the OSCE area. Having meanwhile established itself as 'the most coherent regional instrument to promote democratic civilian control in a multilateral regional framework',¹⁶ the Code of Conduct also provides a model for other regions of the world such as Africa or the Arab Spring countries in the Middle East. Some argue that the OSCE provides a 'major platform contributing to the domestic legal implementation of democratic control of armed forces',¹⁷ thereby creating a precedent for the establishment of similarly dedicated, multilateral, cooperative organisations elsewhere.

11 Statements and resolutions adopted by the OSCE Parliamentary Assembly at its annual sessions will be communicated to the OSCE Permanent Council and the OSCE Chairman-in-Office. The latter, as well as the secretary-general and senior OSCE officials will report to the Assembly twice a year, on which occasions they will answer questions coming directly from the floor of the Assembly. Interestingly enough, OSCE field offices will often run parliamentary assistance programmes.

12 Ibid., pp 50-51

13 Andreas Nothelle, *The OSCE Parliamentary Assembly - Driving Reform*, p.348

14 See the *Brussels Declaration and the Resolution on Strengthening Effective Parliamentary Oversight of Security and Intelligence Agencies*, which the OSCE Parliamentary Assembly adopted at its 15th annual session in Brussels on 3-7 July 2006.

15 OSCE Parliamentary Assembly, *Belgrade Declaration*, 20th Annual Session, 6-10 July 2011.

16 Alexandre Lambert, *Implementation of Democratic Control of Armed Forces in the OSCE Region: Lessons Learned from the OSCE Code of Conduct on Political-Military Aspects of Security*, Occasional Paper - No.11, Geneva: DCAF, July 2006, p.12

17 Lambert, p. 45.

Box 6: The OSCE Code of Conduct on Politico-Military Aspects of Security (1994): key features

- Broad concept of security and armed forces that includes: armed forces, intelligence services, paramilitary forces, 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);
- Parliamentary approval of the defence budget and encouraging 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 individuals' human and civil rights or deprive them of their national, religious, cultural, linguistic or ethnic identity (paragraph 37).

Source: OSCE Code of Conduct on Politico-Military Aspects of Security, Sections VII and VIII, 3 December 1994, website: <http://www.osce.org/fsc/41355>

The European Parliament and democratic control of the security sector

Since its inaugural meeting in Strasbourg in 1958, the European Parliament's (EP) composition has greatly changed while its powers have increased considerably. Since 1979, Members of the EP are directly elected. Since its entry into force on 1 December 2009, the Lisbon Treaty has considerably strengthened the legislative and budgetary competences of the EP as well as its political control (including consultation rights). The security sector remains the one area where the EP's formal decision-making powers remain subject to constraints. Enhancing these powers should benefit the democratic legitimacy and accountability of the Euro-

pean foreign, security and defence policies, thereby contributing to the international credibility of the EU as a 'force for good', acting in accordance with its declared values and principles.

Is there a European security sector for the EP to oversee?

The EU does not have its own armed forces, police, and intelligence services, which should mean that there is no such thing as a 'European security sector'. However, upon closer examination, the EU appears to have equipped itself with competences, policies and organs which would suggest a dynamic process leading to the eventual emergence of a real European security sector. Feeding this process

is the steady development of common policies for the EU's internal and external security.¹⁸

Internal security

The internal security of the European Union is an integral part of the EU's so-called Area of Freedom, Security and Justice (AFSJ).¹⁹ While there currently is no EU equivalent of European national police forces, the elimination of internal borders between EU member states ('Schengen Agreement') has nevertheless imposed the need to cooperate on external border management; preventing and combating serious international organised crime; judicial cooperation in criminal matters. A number of EU agencies have been set up to deal with these issues, the most important of which are: (1) the **European Agency for the Management of Operational Cooperation at the External Borders of the EU Member States (Frontex)**, 2004), which promotes, coordinates and develops European border management; (2) the **European Police Office (Europol)**, 2009), which fosters cooperation between national police authorities in the fight against organised crime; (3) **Eurojust** (2002), which enhances coordination between the national judicial authorities regarding organised trans-frontier crime. As formal EU agencies, Frontex, Europol and Eurojust are subject to control by the EP (regular

legislative and budgetary powers as well as oversight). There is also a gradual increase in the EP's profile in areas not strictly limited to the Union's internal security: disaster management and humanitarian aid. These are areas where the EU, and indirectly the EP, through its (possible) ownership or management of required, CSDP-type assets and capabilities (intelligence, surveillance, reconnaissance, logistics, mobility), can exert indirect influence on the further development of member state capabilities.²⁰

External security

After the failed attempt to set up a 'European army' (the supranational European Defence Community) in the 1950s, external security remained firmly within the sovereign domain of European nations working together in the framework of NATO and, as of the 1970s, the European Political Cooperation (EPC). The EPC has since evolved into the Common Foreign and Security Policy and the Common Security and Defence Policy (CFSP/CSDP). Under the aegis of CFSP/CSDP, the EU member states adopted a security strategy (2003); equipped themselves with organs for joint political-military planning and decision-making; since 2003, launched no fewer than 23 military operations and civilian missions in the Western Balkans, Africa, Afghanistan and the

18 The distinction between EU internal and external security should not be read as implying a strict separation, but rather a permeable border. Therefore, the EU's Intelligence Analysis Centre (IntCen), which provides information and analysis related to crisis situations outside the EU, and is placed under the authority of the EEAS, also deals with internal security issues when assessing terrorist threats. Conversely, the agency competent for internal police cooperation - Europol - also deals with external security when, for instance, police officers are needed to staff security missions in third countries.

19 TFEU, art. 3(2): *The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.*

20 See Ulrich Karock, *Strengthening the European Parliament's Profile in the Common Security and Defence Policy*, Quick Policy Insight, Policy Department, Directorate General for External Policies, European Parliament, 28 October 2011.

Middle East in support of such diverse objectives as stabilisation; strengthening the rule of law; building up modern and democratically accountable police forces; security sector reform; anti-piracy.²¹ These various achievements have been, essentially, of an intergovernmental nature, as the EU member states are highly reluctant to give up their security and defence competences as the core element of their national sovereignty. Decisions are taken by intergovernmental bodies (see the pyramid in Box 7) that function under the ultimate authority of the European Council, which brings together the European heads of state. In contrast to its involvement in internal security matters, the EP has no direct competences in this field. Thus the EP has no role in approving the deployment of EU member state troops on foreign operations and missions, which remains a jealously guarded prerogative of national parliaments. However, the EP does exert indirect influence on CFSP/CSDP activities, notably through its budgetary powers.

**External security and defence:
does the EP matter?**

The notion that the EP has no formal power over the external component of the European security sector requires qualification. The EP does have at its

disposal a number of 'entry points' which enable it to influence decision-making processes in the field of external security. Important entry points are:

- *The power of the purse:* the EP's increased, Treaty-based budgetary competences as well as the growth of the EU budget have, by themselves, strengthened the EP's oversight role. This is certainly the case for the EU's internal security sector, the funding of which depends directly on positions taken by the EP. Similarly, the trend toward a more itemised presentation of the budget benefits the quality of accountability and EP oversight. In the case of the EU's external security sector, its power of the purse still allows the EP to wield indirect influence on security issues, primarily through the funding of the civilian CSDP missions out of the Union budget.²² No such influence can be exerted by the EP in regard to the military CSDP operations, the common costs of which are funded out of a dedicated budget which the EU member states keep separate from the EU budget.²³ The EP will determine the size and composition of financial instruments (European Development Fund, Instrument for Stability) being deployed by the EU in the framework of its development aid, including its security-

21 So far, CFSP/CSDP activities have not included parliamentary assistance as such - an objective which could of course help build up the capacity of parliaments to exercise democratic control over the security sectors in their respective countries. Parliamentary capacity building has, however, become an important component of European Commission programmes designed to support good governance. The European Parliament has its own democracy assistance programmes, run by the Office for Promotion of Parliamentary Democracy.

22 The so-called common costs of civilian CSDP missions are borne by the CFSP budget, which is part of the EU budget. The European Commission is accountable to the European Parliament for its management of the EU budget. The other costs fall to the states - EU member states and third states - participating in these missions.

23 This separate budget - usually referred to as the *Athena mechanism* - is funded by the EU member states using a GDP key. Costs which fall outside the common costs definition fall to the states - EU member states and third states - participating in the operation.

related components. Thus, its support for security sector reform projects in various parts of the world has sensitised the European Commission and, through it, the EP to issues pertaining to the democratic control of the security sector.

- *The EP's legislative powers:* the EP may derive some indirect influence from its Treaty-based legislative powers, for instance in the area of defence procurement. Defence-related research not being excluded from the Union's general competence for stimulating research and development, the EP will be directly involved in Union-level decision-making on defence-related research.²⁴
- *Political accountability to the EP:*²⁵ the head of the European 'diplomatic service'²⁶ - under whose responsibility the CSDP military operations and civilian missions are conducted - has committed to cooperate with the EP. They and their officials will regularly attend meetings of the EP plenary and its (sub)committees to answer questions, with the MEPs often using these sessions to bring political pressure to bear on the executive regarding issues of concern. These 'soft power' mechanisms (under the Lisbon Treaty: information and consultation powers, leading to the adoption of non-binding resolutions) generally will be more effective than using the EP's investigative

powers, the scope of which at present remains limited in the case of security sector issues.

- *Access to information:* MEPs can gather information from a variety of sources. The EP's current access to classified information is to be enhanced in the near future.
- *Targeted EP cooperation with national parliaments:* The Lisbon Treaty envisages an intensified dialogue between the EP and EU national parliaments,²⁷ as illustrated by the recently launched inter-parliamentary conferences for the CFSP/CSDP. Two such inter-parliamentary conferences (IPC) have been held so far, the first in 2012 and the second in 2013. The next IPC is scheduled for September 2013 in Vilnius. Referring to the CFSP/CSDP, the first two conferences among other things (1) recalled the need to ensure parliamentary scrutiny of the political and budgetary decisions taken at national and European level; (2) recognised the necessity of close cooperation between national parliaments and the EP; (3) stressed parliaments' crucial role in promoting accountable systems of good governance and, in this context, the need for an enhanced role of parliaments; (4) indicated the IPC's resolution to enhance the democratic engagement in the CFSP/CSDP through, among other things, inter-parliamentary engagement.²⁸ While essentially declaratory, these and subsequent conclusions

²⁴ Ibid.

²⁵ Declaration by the High Representative on political accountability, annex to Council decision 11665/1/10 establishing the European External Action Service (EEAS) and setting out its organisation and functioning, 26 July 2010.

²⁶ The High Representative for the CSDP and Head of the European External Action Service - who is also a vice-president of the European Commission.

²⁷ See Lisbon Treaty, Protocol on the Role of National Parliaments in the EU, and Article 10 in particular.

²⁸ Conclusions of the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy, Paphos, 9-10 September 2012/Dublin, 24-25 March 2013.

adopted by IPCs for the CFSP/CSDP should in time create a momentum in favour of well-targeted cooperation between EU national parliaments and the EP, effectively bringing all areas of the European security sector under some form of parliamentary control - national or European. Such cooperation should enable MEPs and their colleagues from national parliaments to share, to mutual advantage, their respective knowledge of, and experience with, security issues. On the one hand, such exchanges help national parliamentarians improve their - hitherto limited - grip on their governments' decision-making processes concerning matters pertaining to international security governance, such as the launching and conduct of the CSDP's civilian missions and/or military operations. On the other hand, these same exchanges will tend to raise the EP's own oversight profile. Interacting with national parliaments, especially in those areas of the security sector where these parliaments remain - for the time being - the prime democratic oversight actor (armed forces/military operations, police forces/maintenance of public order and security) will benefit the EP's own understanding of the security sector. Third, as the EP - working in tandem with national parliaments - raises its profile in the realm of external security, it also puts itself in a position to counteract an unmistakable deficit in the democratic oversight of international security governance. There is a growing need,

at the level of international security governance, for an accountability regime which the EP, as a directly elected international parliamentary organ, could help put in place.

Framing a strategic and forward-looking approach to the EU's foreign, security and defence policies: the EP's contribution and its implications for enhanced parliamentary oversight

While important in themselves, the 'entry points' outlined above together do not amount to full-blown EP engagement with, and oversight of, the EU's external security and defence policies. An entry point of a more far-reaching, strategic nature is, however, found in the Lisbon Treaty, where it states that *the Union's competence in matters of CFSP shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence policy* (Article 24.1 TEU). Clearly, direct and, mostly, indirect parliamentary scrutiny exercised by the EP has now come to cover much of the security sector, with the one but important exception of CSDP military operations.²⁹ Acting upon the declared ambitions of the Lisbon Treaty, the EP in an innovative resolution³⁰ offered its own contribution to the kind of conceptual effort which it had been calling for in earlier resolutions. In formulating its comments on the various items of the annual CFSP report, the EP as systematically as possible pursued

29 See Elmar Brok, MEP and Roberto Gualtieri, MEP, Note on parliamentary scrutiny of EU external action, including the common foreign security policy (CFSP) and the common security and defence policy (CSDP), following the entry into force of the Lisbon Treaty, version 07.11.2010.

30 Resolution of 12 September 2012 on the 2011 Report from the Council to the European Parliament on the Common Foreign and Security Policy (12562/2011 - 2012/2050 (INI)).

a comprehensive approach, linking together the different components of the Union's external action into a forward-looking and strategic framework. With this initiative the EP not only sought to improve the coherence of the Union's external policies, but also gave further evidence of its determination *to play the fullest possible part* in this area which includes: EP discussion and oversight of policies, actions and actors pertaining to the Union's external security: CFSP mandates and strategies; CSDP missions (civilian) and operations (military) and their embedment in wider Union security strategies; planning, implementation and evaluation

of CSDP missions and operations; conflict prevention and peace-building actions; and management of the European Defence Agency. The affirmation of the EP's active role in these areas is documented by well-researched, detailed resolutions - 'own-initiative' resolutions in particular - adopted by the Committee on Foreign Affairs (AFET) and its Subcommittee on Security and Defence (SEDE) as well as the Committee on Civil Liberties, Justice and Home Affairs (LIBE). While such resolutions are not legally binding, they certainly have the force of political documents setting out the EP's considered views and recommendations.

Box 7: The European Union: Main Security Sector Institutions

I. INTERNAL SECURITY

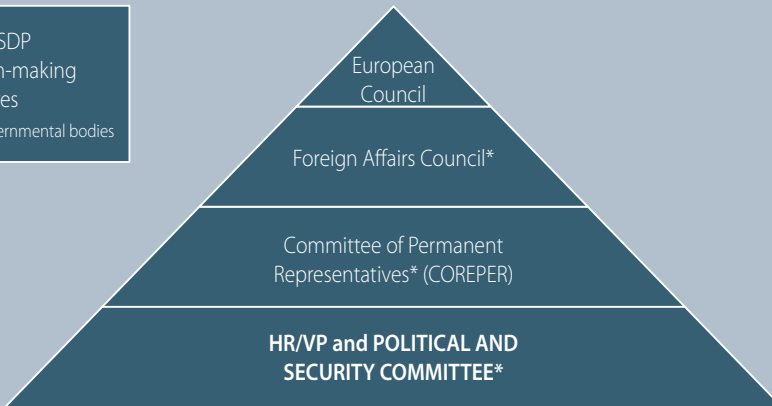
Area of Freedom, Security and Justice (AFSJ)

- European Police Office (Europol)
- European Union's Judicial Cooperation Unit (Eurojust)
- European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)
- European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)
- European Union Agency for Fundamental Rights (FRA)
- European Commission, DG Home Affairs (initiator of legislation)

II. EXTERNAL SECURITY

Common Foreign and Security Policy (CFSP/CSDP)

CFSP/CSDP
decision-making
structures
*intergovernmental bodies



Common Security and Defence Policy (CSDP) Art. 42-46 TEU

HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY AND VICE PRESIDENT OF THE EUROPEAN COMMISSION (HR/VP)

- *External Action Service (EEAS), which encompasses:*
 - Crisis Management and Planning Department (CMPD)
 - EU Military Staff (EUMS)
 - EU Civilian Planning and Conduct Capability (CPCC)
 - EU Intelligence Analysis Centre (IntCen)
- *European Defence Agency (EDA)*
- *President of the Foreign Affairs Council*

POLITICAL AND SECURITY COMMITTEE (PSC)*

- *Committee for Civilian Aspects of Crisis Management (CIVCOM)*
- *Politico-Military Group (PMG)*
- *EU Military Committee (EUMC)*

Other institutions

- *European Union Satellite Centre (EUSC)*
- *European Union Institute for Security Studies*

PART III: PARLIAMENTS AND SECURITY SECTOR GOVERNANCE (SSG) IN EMERGING DEMOCRACIES

1. Introduction

Only if democratically elected office-holders and their appointed officials control the security sector, can democratic rule and process persist. However, civilian control of the security sector, including the armed forces, police and intelligence, is contested in many states that have recently made the transition from an authoritarian regime to a democratic form of government. Part III deals with the challenges to the supremacy of parliamentary oversight over the security sector and seeks to identify good international practice of parliaments that have effectively mastered civilian control of the security sector.

Relevance

The successful transition to democracy depends on establishing democratic accountability and civilian control of the security sector. For three reasons it is important to strengthen the role of parliaments in security sector governance in emerging democracies:

First, in emerging democracies, short-term pressures to provide security may understandably lead some security sector reform programmes to focus on increasing the operational capacity of security institutions. Indeed, in states that are transitioning from armed conflict to peace or from revolution to political stability, it is often necessary to start to stabilise the situation by deploying peacekeeping

forces or by supporting local security forces. However, recent evaluations of security sector reform in emerging democracies have shown that it is necessary to develop both effective and accountable security institutions.

Second, if security structures are not subject to democratic accountability, the danger exists that they become a “state within the state.” This can lead to a situation in which:

- the security structures exercise undue influence over political processes and security is not delivered according to the wishes and requirements of the people;
- unaccountable security structures show little respect for the rule of law and are often involved in systematic human rights violations; and
- without external oversight by parliament and independent bodies, the security structures may be misused by those in power to pursue their own private and/or party purposes. Consequently, security sector institutions become instruments for protecting and promoting regime security instead of human security.

Third, an essential element of the rule of law is that all individuals are treated equally before the law. In many emerging democracies, some figures within the executive and the military may act with impunity, which may stall or set back democratisation efforts. Parliaments play an essential role in

strengthening the rule of law and respect for human rights since they are tasked with adopting the legal frameworks to govern the security sector and with holding the executive to account for their compliance with such laws. This task is never more pressing than in emerging democracies. Building a sustainable legal foundation will provide the government with the appropriate tools to regulate and oversee security institutions.

2. Emerging democracies

Democracy, defined as government of, by and for the people, spread dramatically over the last quarter of the twentieth century, when over 100 states underwent a process of transition from authoritarian rule to democracy (see Box 8).

While the developments mentioned in Box 8 show that an impressive number of states have emerged and transitioned from authoritarian regimes towards democracy, there are also signs that many emerging democracies are still in a very fragile situation and have still not successfully completed their democratisation processes. A large number of emerging democracies are not well-functioning. Some have fallen back into authoritarianism (e.g. Belarus, Uzbekistan); others are still in a grey zone between dictatorship and democracy due to serious democratic deficits, such as irregularities in the election process, low levels of political participation, non-enforcement of the rule of law, poor performance and delivery by state institutions, and wide spread corruption.³¹

Box 8: Third wave of democratisation

The democratisation processes that took place in nearly 100 countries across the world after the beginning of the 1970s, is known as the third wave of democratisation. The first wave took place after general suffrage was established in Western democracies at the end of the nineteenth and beginning of the twentieth century. The second followed the allied victory in World War II. The third wave took place in many regions of the world due to several factors:

- Downfall of right-wing authoritarian rulers in Southern Europe in the 1970s;
- Removal of military dictators in South America in the 1970s–1980s;
- Decline of authoritarian rulers in Asia starting in the 1980s;
- End of communist regimes in Central and Eastern Europe in the late 1980s;
- Collapse of the Soviet Union and the creation of the newly independent states in the early 1990s;
- Decline of authoritarian regimes in Sub-Saharan Africa in the 1990s; and finally
- Arab revolutions in the early 2010s.

Source: Thomas Carothers, "The end of the transition paradigm", *Journal of Democracy*, 13, 1, 2002.

³¹ Thomas Carothers, "The end of the transition paradigm", *Journal of Democracy*, 13, 1, 2002, p. 9.

It is important to have a good understanding of the circumstances prevailing in emerging democracies, as these will affect the extent to which par-

liaments in these democracies will be able to play their role in security sector governance (see Box 9).

Box 9: Benchmarking for parliaments and security sector governance

The powers and functions of legislatures vary significantly: achieving consensus on what a democratic parliament actually is (or should be) therefore has proved difficult. Attempts have nevertheless been undertaken to identify what makes a parliament effective and how to get there, using benchmarks and self-assessment frameworks for legislatures. The latter can thus help raise public confidence in parliaments; strengthen the capacity of parliaments to manage increasing demands put on them; and help parliaments assert core legislative and oversight functions as well as greater institutional independence. Evaluating parliaments against the most commonly used international benchmarks yields, generally speaking, three broad types of legislature:

- Emerging parliaments – these are legislatures in their initial stages of existence or legislatures which have been underway for a brief period. Applied to security sector governance (SSG), emerging parliaments will only have begun setting up the institutional and legal framework enabling them to exercise their legislative, budget and oversight functions with respect to the security sector.
- Developing parliaments – these are legislatures which have already acquired some experience of parliamentary procedures and practices and which possess more than minimal professional proficiency. In the context of SSG, these parliaments are aiming to fulfil their constitutional functions with respect to the security sector, through the further development of their capacities and expertise.
- Mature parliaments – these are legislatures possessing comprehensive technical, administrative and political competences: they will generally meet internationally recognised benchmarks and will seek to go beyond them. With reference to the the security sector, mature parliaments can be expected to systematically check and improve their functioning with respect to security sector oversight. A good example of such ‘improvement’ would be the efforts to establish (forms of) parliamentary oversight over evolving governmental responses to new, cross-border security threats. Confronted with (the threat of) international terrorism, cyber attacks, or the need to intervene militarily in response to the imminent destabilisation of an entire country or an impending humanitarian disaster, governments will have recourse to swift cooperative action that, more often than not, will not have been subjected to (prior) parliamentary scrutiny. Mature parliaments, then, will want to establish some form of democratic control and judicial scrutiny over the legality of intergovernmental instruments and methods used in the course of such action (e.g. eavesdropping by intelligence agencies, extradition/ secret rendition practices, arms transfers).

Source: “Benchmarking for parliaments: self-assessment or minimum criteria”, Office for Promotion of Parliamentary Democracy, European Parliament, Brussels, 2012

Four important issues related to emerging democracies are relevant for parliaments and security sector governance.

First, the transition to democracy can be seen as a process consisting of three stages:

1. Opening: a period of protest against and disintegration of the authoritarian regime;
2. Breakthrough: the collapse of the regime followed by free and fair elections and the establishment of democratic institutions;
3. Consolidation: the long and slow process by which the new democratic structures are institutionalised and build respect through the reform of state institutions, further elections and the strengthening of civil society.

However, it appears that the transition to democracy is not a linear process that follows these stages step by step. The reality of emerging democracies shows that sometimes they slide back to previous phases due to political conflict between different factions or resistance from the public to the new regime. For example, in Egypt, because of political conflict between the new parliament and the constitutional court, the parliament was abolished. In Lebanon and Palestine, the functioning of democratic institutions is hampered by severe disagreements between various political factions. Thailand witnessed a setback in democratisation because of the military coup in 2006. These conflicts can turn parliament and the security sector into dysfunctional institutions as they become polarised or marginalised.

Second, many emerging democracies are not only engaged in a process of democratisation, but are also undergoing a process of economic reform and restructuring many sectors of government. Indeed some emerging democracies are starting from scratch (e.g. Kosovo was not a state before declaring independence in 2008), or display the features of a fragile state (e.g. Timor Leste or Burma/Myanmar). Therefore, we cannot assume that democratisation takes place in an ideal situation in which the state delivers and meets all needs of its people, including healthcare, work, transportation and education. Consequently, security sector reform is but one of many government priorities competing for attention and resources with other state sectors.

Third, behind the facade of electoral democracy, the governments of various emerging democracies may have a tendency to monopolise power and use it for personal benefit. Through a pattern of abuse of the rule of law and systematic corruption, the elite seek to limit political and economic competition in order to consolidate their power. Under these conditions, the democratising country becomes a 'predatory' state in which politicians, through the power of the state, bribe election officials, and attack or assassinate political opponents, civil society activists and journalists. In this context, the government conducts security sector reform (SSR) only to the extent that it leads to further protection and consolidation of their political power.³²

Fourth, the initial transition to democracy can take place either via a pacted or a non-pacted tran-

32 Larry Diamond, 'The Democratic Rollback: The Resurgence of the Predatory State', in *Foreign Affairs*, March/April 2008.

sition. In pacted transitions, the opening to democratisation was the result of a deal between the old regime and the new leaders, whereas in non-pacted processes, the opening to democracy was the consequence of armed or unarmed revolutions. In the case of a pacted transition, the old regime still tries to hammer out the best deal to preserve its interests and to maintain the so-called reserved domains. Reserved domains may refer to far-reaching or even exclusive decision-making powers of the security sector over politics, economics, society as well as the internal organisation and operations of the security sector. These decision-making powers may include:

- Political prerogatives such as the representation of high-ranking security sector personnel in the executive (cabinet and civil service) or the legislature (military parliamentarians);
- Businesses run or controlled by the security sector;
- Control over the defence budget;
- Immunity for human rights violations and other crimes committed under authoritarian rule;
- The prerogative over procurement;
- The control of recruitment and promotion of officers:

For example, in Myanmar, the generals negotiated in 2011, among other deals, that 25% of all parliamentary seats would be assigned to the military. Another example is Indonesia where the military secured immunity from prosecution for human rights violations committed during authoritarian rule.³³

Consequently, the security sector is often stronger in pacted transitions as they may be able to safeguard their political and institutional prerogatives.

3. Security sector governance and reform in emerging democracies

There is a wide range of challenges that typically afflict security sectors in emerging democracies. These challenges may include the following:

- inflated security establishments that are difficult to support financially, but frequently constitute a major political and economic force;
- lack of transparency and accountability leading to mismanagement, waste and corruption;
- inadequate defence planning, poor management and budgeting capacity in both civilian and military institutions;
- a long history of human rights abuses by security forces and a tendency for them to act with impunity;
- an insufficient number of civilians able to manage security matters and provide oversight;
- inadequate professional development of security officials;
- political interference by the security forces;
- politicisation of security forces by civilian actors who abuse the police system, the intelligence services or military to act for the sake of regime security instead of national security.³⁴

33 Jürgen Rüländ and Maria-Gabriela Manea, 'The Legislature and Military Reform in Indonesia', in : Jürgen Rüländ, Maria-Gabriela Manea and Hans Born (eds.), *The Politics of Military Reform: Experiences from Indonesia and Nigeria*, Springer Verlag, Berlin, p. 139.

34 Heiner Hänggi, 'Security Sector Reform – Concept and Contexts', in Transformation: A Security Sector Reform Reader, Pasig City, Philippines, INCITEGov, 2012.

Box 10, below, gives an example of SSR problems as they occurred in Egypt after the January 2011 revolution.

The factors mentioned above, as illustrated by the case of Egypt, reflect major deficiencies leading to a dysfunctional security sector in emerging democracies.

Ultimately, a security sector is dysfunctional if it does not provide security in an effective way, or worse, if the security sector itself is a source of insecurity and violent conflict - this can be called the security deficit. Moreover, while authoritarian states may also have effective security sectors for the purpose of regime security, a security sector must be considered dysfunctional if it is poorly governed

Box 10: Challenges of security sector reform in Egypt

The brutality of the internal security services and police force of the ousted president Mubarak initiated the revolution in January 2011. In particular, they were notorious for their record of torture, extrajudicial killings, unlawful detention as well as rigging elections or suppressing demonstrations for the sake of regime security.

To date, after transition, the record of SSR is mixed at best. Civil society, government, parliament and the president have all attempted to start SSR projects:

- Initiated by civil society, projects have begun to reform the police with the help of reformist police officers. However, while the goals of these projects are laudable, it has yet to be seen whether they will deliver results, in particular because the Ministry of Interior is firmly opposed to reform.
- Government-led reform projects are not faring much better. The new interior minister abolished the old internal security service, but the “new” successor service have continued abuses and human rights violations while the former officers go unpunished for their previous crimes under Mubarak.
- In addition, the new parliament took up the cause of SSR and started to enact a new legal framework for the police forces. However, this initiative came to a premature end following the dissolution of parliament by the Constitutional Court.
- Lastly, the new President Morsi had to deal with the Supreme Council of the Armed Forces as the biggest opponent of SSR. His move to claim full presidential executive powers while curtailing the Supreme Council of the Armed Forces, marked a first and important step to pave the way for civilian control of the armed forces. It is still too early to judge whether the new president will be able to extend civilian control over the entire security sector, including its many layers.

Source: Omar Ashour, 'From bad cop to good cop: the challenge of security sector reform in Egypt', Stanford University/Brookings Institute Paper Series nr. 3, November 2012.

in terms of civilian control and democratic accountability – this can be called the governance deficit of the security sector.

From this point of view, emerging democracies are faced with the dual challenge of addressing both the security and the governance deficits. Limiting SSR to addressing the security deficit – without paying attention to the governance deficit – leads to the danger that the security sector either becomes a state within a state or will be politically abused by the government of the day. Therefore, any SSR should include parliament – both as a beneficiary and supervisor of reform programmes. Consequently, SSR programmes are not only technical but also deeply political processes.

4. Parliaments and security sector governance in emerging democracies

The overall role played by emerging democratic parliaments in the governance of the security sector does not differ, in principle, from that of well-established parliaments backed by solid democratic traditions. At a minimum, these parliaments should fulfil three functions:

- Legislative function: parliaments enact the legal framework of the security sector;
- Budgetary function: parliaments approve, amend or reject the budget of the security sector and grant discharge in respect of the implementation of the budget of the security sector;

- Oversight function: parliaments exercise oversight over the policies and activities of the security sector.

These three functions will be discussed in the remainder of this chapter, including challenges and options for improving the position of parliament in security sector governance.

The legislative function of parliament in security sector governance in emerging democracies

In terms of the *legislative function*, after transition to democracy, parliaments have the important task of enacting or revising the legal framework, notably the constitution as well as statutory laws that detail the mandate, functioning, powers and organisation of the security sector. While the exact composition and nature of the legal framework will differ from country to country, Box 11, below, gives an overview of possible pieces of legislation that are relevant for the proper functioning of the security sector in accordance with rule of law and respect for human rights, under the supervision of democratic institutions.

It goes beyond the scope of this publication to discuss all relevant laws in detail. However, in any case and most importantly, after transition, parliaments (or a constituent assembly) need to review, discuss and most likely amend and adopt a new constitution ensuring that the security of the state is effectively maintained in accordance with the rule of law, respect for human rights and in subordination to democratic institutions. The drafting process of the constitution differs from country to country. In some cases, the old regime

Box 11: Legal framework for the security sector: selected issues and laws

Key issues to be addressed in the Constitution:	
<ul style="list-style-type: none"> • Command over the armed forces • State monopoly of force • Federalism and security sector • Exceptional situations and state of war • Foreign and defence policy 	<ul style="list-style-type: none"> • Sending troops abroad • Authorisation of the use of public funds • Appointment of senior personnel • Human rights protection • Domestic use of the military
<p style="text-align: center;">General Laws for Security Sector:</p> <ul style="list-style-type: none"> • Law on ex-service personnel (including veterans) • Law on pay and allowances of service personnel • Law on pensions of service personnel • Law on parliamentary oversight of the security sector • Protection of population, critical national infrastructure and civil defence law • Official state secret law • Laws on ombudsman in security sector • Laws on budgeting and accounting in the security sector • Laws on procurement in the security sector • Freedom of information law • Law on state of emergency • Law on fire arms • Anti-corruption law • Criminal code • Law on criminal procedures • Law on lustration • Laws on private and military security providers 	<p style="text-align: center;">Military:</p> <ul style="list-style-type: none"> • Law on armed forces (organisation) • Law on military service law and duty • Law on obligatory military service (conscription) • Law on conscientious objectors and alternative service • Authorisation of sending troops abroad law • Martial law • Law on military justice • Law on reserve forces/guards • Law on military training and exercise • Law on gender and armed forces • Law on ethical minorities in the armed forces
<p style="text-align: center;">Police:</p> <ul style="list-style-type: none"> • Police law • Police organisation law • Law on the use of public force against persons and goods • Police disciplinary law • Law on policing abroad (peacekeeping) 	<p style="text-align: center;">Intelligence:</p> <ul style="list-style-type: none"> • Law on foreign intelligence services • Law on domestic security services • Law on military intelligence and security
<p style="text-align: center;">Border security management:</p> <ul style="list-style-type: none"> • Law on border security/ guards • Law on Customs • Laws on air, land and sea traffic of persons and goods 	<p style="text-align: center;">Private Security:</p> <ul style="list-style-type: none"> • Law on private security • Law on data protection and privacy
<p>Subsidiary regulations (operationalising the legal framework)</p>	

appoints a committee that paves the way for the transition to democracy, as was the case in Nigeria in 1999. In other instances, a provisional assembly or council including representatives of various factions in society will deal with the drafting of a new constitution (e.g. in Egypt).

While no single legal norm or standard exists, many constitutions regulate the following areas of security sector governance:

1. Prevent the country from returning to authoritarian rule through a coup;
2. Protect and promote human rights;
3. Codify the constitutional roles of the state institutions tasked with security oversight and provision of security;
4. Detail any emergency powers of the executive.

First, some emerging democracies with a history of authoritarianism have adopted special provisions in the constitution that would prevent the country from sliding back to authoritarian rule through unconstitutional means, for example with the help of the military. For example, Nigeria's Constitution of 1999 starts with the so-called 'anti-coup' article:

The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution. (Constitution of Nigeria, 1999, Art. 1.2)

While a constitutional article like the one mentioned above most certainly will not stop the military attempting a *coup d'état*, this and other

constitutional provisions help to undermine the legitimacy of future *coups*.

Second, another important task is to codify the protection and promotion of human rights in the constitution. The constitution should specify which human rights can and cannot be limited in the name of national security and safety. Indeed, while some rights are absolute such as the right to life and the prohibition of slavery, others such as the freedom of assembly or the freedom of speech can be limited in the interest of public safety and national security, as regulated by the UN International Covenant on Civil and Political Rights and regional human rights conventions such as the European Convention on Human Rights. After the adoption of the constitution, further legislation needs to stipulate how, when and by whom these constitutional rights can be limited.

Third, the constitution usually codifies the role and place of the security-providing institutions in society, in particular the role of the armed forces. It is also good practice that a constitution outlines the system of subordination between the security-providing institutions on the one hand and the executive, parliament and judiciary on the other hand. Constitutions will normally lay down the general mandate and powers of, respectively, the legislature, judiciary, executive and high offices of state. Constitutional provisions on the relationship between these branches of government to the security sector will, however, vary in the degree of detail which they provide. For example, the 1987 Constitution of the Philippines affirms the general principle of civilian sovereignty over the armed

forces as well as prescribing the constitutional role of the armed forces:

Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State, Its goal is to secure the sovereignty of the State and the integrity of the national territory (Constitution of the Philippines, 1987, Art. 3).

Fourth, states may use emergency powers in order to deal with extraordinary situations such as war, insurgency, terrorist attacks or other severe aggressions and calamities that threaten the existence of the state. These emergency powers can have far-reaching consequences for the normal functioning of democratic government and the

enjoyment of human rights. For example, a state of emergency may involve a night curfew and censorship, in addition to other special powers of the executive to deal with emergency situations. Many authoritarian rulers, however, have abused these exceptional powers and have declared a more or less permanent state of emergency in order to curb protests and criticism of society against the regime. For example, for 31 years - since the assassination of President Anwar Sadat in 1981 until 2012 - Egyptians lived under a state of emergency, which gave the security forces sweeping powers against their own people. Recently, some autocratic states have used emergency powers to curtail access to the internet. Denying access to the internet is seen as an effective way to curtail freedom of speech and the freedom of assembly.

Box 12: Securing democracy: the constitutional regulation of emergency and exceptional powers

While each state regulates its states of emergency differently, one can observe some patterns and good practices which can help shield democracy in severe crisis situations. These good practices are:

- The constitution prescribes a differentiated system of emergency powers, commensurate with the seriousness of the crisis;
- Stringent rules are in force for the proclamation, prolongation, and termination of emergency rule, in each case involving parliament and with qualified majority vote on these issues;
- There is a requirement of periodic prolongations of emergency rule by parliament;
- Provisions exist for fast legislative processes in times of emergency instead of bypassing parliament; and
- There is a prohibition to dissolve parliament, to change the role of courts, and to change the constitution.

Source: Anna Khakee, *Securing Democracy? A comparative analysis of emergency powers in Europe*, DCAF Policy Paper nr. 30, Geneva, 2009.

Because emergency powers confer special powers to the executive and can severely limit human rights, many states have safeguarded in the constitution: a) the power of the legislature and judiciary vis-à-vis the executive; and b) the protection of the rule of law during states of emergency.

Box 12 gives an overview of good practices concerning the regulation of states of emergencies in the constitution.

The budget control function of parliament in SSG in emerging democracies

Often overlooked in democratisation processes is the importance of gaining control of the finances of the military, police and intelligence services. More often than not, reform processes are conducted that fail to curtail the level of discretionary powers of the security sector to deal with their own budgets.

As mentioned earlier, parliament plays an important role in gaining budget control and the oversight of expenditure, and in procurement for major projects. Budget control is a very difficult task for parliaments in emerging democracies because they have to fulfil this constitutional duty under very challenging circumstances. Four such challenges to parliamentary budget control of the security sector in emerging democracies are:

1. The secrecy surrounding security sector budgets;
2. The lack of effective internal accounting and financial reporting procedures as well as internal audit capacity within the security-providing institutions;

3. The lack, or absence, of a comprehensive legal framework for public accountability as well as the lack of effective and independent financial oversight bodies;
4. Off-budget funding of the security sector;
5. The military-industrial complex.

First, before the transition to democracy, the budget of the security sector was in most countries a black box for parliament and the public at large or even an economy unto itself. In some cases, the civilian ministries had no access to budget and expenditure information. The case of Egypt's military illustrates this problem quite well (see Box 13).

In other emerging democracies, security sector budgets are not accurate and do not reflect the real expenditure of the military, police and intelligence services. Most notably, the budgets of the security sector in various emerging democracies may include expenditure on salaries, pensions and social allowances for large numbers of 'ghost' soldiers. These are soldiers who have already retired, are deceased, or are no longer working in the military. Because the salary system of the security sector in many emerging democracies is not automated, salaries are paid in cash to the unit commanders who are supposed to hand over the money to the soldiers of their unit. In the case of ghost soldiers, however, the unit commanders can pocket the money. This is also a major problem when deciding on the scope of disarmament, demobilisation and reintegration programmes.

Second, external budget control by parliament or other bodies cannot work without properly-

Box 13: Secrecy surrounds the budget of the Egyptian military

No one knows how many personnel are employed by the Egyptian military, somewhere between 300 000 and 400 000. The exact figures are not published. While the Egyptian military has received nearly 40 billion USD from the United States in the last thirty years, its yearly budget for the military is unknown. Even the Egyptian parliament does not know the size of the budget. The military keeps the books closed.

Source: William J. Dobson, The Dictator's Learning Curve: Inside the global battle for democracy, Doubleday, New York, 2012, p. 209.

functioning programming, planning and budgeting systems within the security-providing institutions. As long as the military, police and intelligence services do not have internal accounting procedures, it makes little sense to exercise external control. The establishment of these internal accounting procedures can be a long process that may include the adoption of internal procedures, automated accounting systems, hiring of financial experts as well as changing the mindset of security officials away from secrecy to transparency and accountability.

Third, after transition, parliaments need to adopt the legal framework for not only parliamentary control of the budget of the security sector, but for the entire system of financial management and public accountability of government expenditure.

A comprehensive system of financial management of the security sector not only pertains to parliaments but also to independent bodies such as supreme audit institutions and anti-corruption bodies. Therefore, parliament needs to set up financial oversight bodies that are both institutionally

and operationally independent of the executive. This can be achieved by enacting laws for supreme audit offices and anti-corruption bodies which detail the mandate, staffing, funding and functioning of these financial oversight bodies.

Fourth, in the context of emerging democracies, it might be the case that the budget for the security sector does not cover all its expenditure. The treasury only covers a certain percentage of the expenditure of the security sector. Consequently, the under-funded military, police, intelligence and other components of the security sector need to look for other revenues from sources other than the treasury. These can be legal commercial activities, e.g., running a business such as a shopping mall or trading company, or criminal activities which may vary from corruption, supplying weapons to rebel movements, drugs, kidnapping or illegal timber logging.

It needs to be stressed that funds generated through commercial or criminal activities do not necessarily disappear into the pockets of individual security employees. They are often also used to

pay for expenses, whether big, small, regular or unexpected (e.g., petrol for police patrol cars, uniforms, equipment or food).

Off-budget funding creates both security and governance deficits. The security deficits are created because commercial and criminal activities distract the security sector from their official mandate and, therefore, diminish the level of professionalism within the security sector. Additionally, it undermines the sovereignty of parliament because the security sector not only receives funds as approved by parliament, but also from other sources, without the knowledge of, or approval by, parliament. This is a dangerous development: these off-budget funds can be used by the military, police or intel-

ligence to finance covert operations against legitimate civilian authorities, as shown by the Iran-contra affair in the United States, where off-budgets were used to conduct covert operations.

Emerging democracies have been able to push back off-budget funding with different degrees of success. Indonesia is a good example of an emerging democracy where civilian authorities were able to reduce off-budget funding (see Box 14).

Lastly, the oversight task of parliament is compounded by the fact the military are heavily involved in the economy and industry of emerging democracies. Not only have they factories that produce military equipment, the militaries have also acquired

Box 14: Off-budget financing of the security sector: the case of the Indonesian military

Until the fall of the Suharto regime, off-budget sources provided around 70% of the armed forces total funding. The heavy involvement of the armed forces in legal and illegal commercial activities – including plantations, shopping malls, timber, fisheries, transportation, hotels and real estate, private protection services – ve the armed forces a great deal of independence vis-à-vis the civilian authorities. To stop this practice, a law was passed in 2004 to end the military's involvement in private business. Specifically, enacted by parliament, law no. 34/2004 stipulated that within five years the "government must take over all business activities that are owned and operated by the military, both directly and indirectly." It also stipulated that "professional soldiers ... do not do business." In 2009 President Susilo Bambang Yudhoyono signed a presidential decree that formally announced the take-over of military private business. However, to date, a portion of military expenditure is still funded through off-budget sources, with experts estimating it to be between 1.5% and 20%. The case of Indonesia shows that it is important but difficult to curb private financing of the security sector. It also shows that pushing back off-budget funding requires the back-up and support from the highest levels of the executive and parliament.

Source: Marcus Mietzner and Lisa Misol, Military business in post-Suharto Indonesia : Decline, reform and persistence, in: Jürgen Rüländ, Maria-Gabriela Manea and Hans Born (eds.), The politics of military reform: Experiences from Indonesia and Nigeria, Springer Publishers, Berlin, 2012.

major stakes and often leading roles in the economies of emerging democracies. During the times of the authoritarian regime, militaries were entrusted with principal responsibilities in key sectors of the economy, because, in the eyes of the authoritarian rulers, e.g. in Egypt, the military was the only functioning state agency capable and to be trusted with setting up and managing economic sectors, varying from producing consumer goods, to infrastructure and agriculture. This poses the parliament of emerging democracies with the challenging task not only to push out of politics back into the barracks, but also to demilitarise of the economy.

Therefore, after transition, parliament must start a long process of negotiating and adopting new pieces of legislation on access to classified information, public accountability, and public procurement of security sector-related equipment. In addition, the security sector must embark on a programme of structural and cultural adaptation to public accountability of finances. It must also ensure that new institutions are set up that are mandated to independently review expenditure, such as supreme audit institutions and anti-corruption bodies.

The oversight function of parliament in SSG in emerging democracies

As in established democracies, parliaments of emerging democracies need to oversee a wide range of issues related to the security sector: implementation of the budgets, laws and security policies as well as top appointments, human rights records, weapons procurement, and sending/with-

drawal of troops abroad. In addition, parliaments of emerging democracies need to pay attention to an extra set of oversight issues, which we can refer to as the reform of the security sector. As we have seen before, the purpose of security sector reform is to improve the effectiveness and accountability of the security sector in order to address the security and governance deficits. Security sector reform consists of two phases, i.e. first generation and second generation security sector reform. First generation reforms refer to the establishment of the legal framework of the security sector, including, notably, constitutional and legal provisions that guarantee democratic accountability and civilian control of the security sector. Box 11 gives an overview of selected issues and laws of the legal framework of the security sector. Parliamentary oversight should ensure that the legal framework is comprehensive and that it regulates the measures to assure that security sector is effective and accountable. The second generation reforms refer to measures that deal with the capacity of the security sector to fulfil its mandate. Second reform measures may refer to capacity building projects, reorganisations, new human resources management processes, training and awareness raising project. It is important that parliamentary oversight also pertains to the second generation reform because the security and governance deficits of the security sector cannot be addressed by laws alone. Parliament needs to oversee that the legal framework is properly implemented and enforced.

Two additional issues pertaining to security sector reform merit further attention in the context of emerging democracies. These are private mili-

tary and security companies (PMSC) as well as transitional justice.

In the broadest sense, military and security services are services intended to manage force – on land, sea or in the air. Commonly these services include personal security, protection of buildings and valuable objects, military training, security consulting, technical support for the operation and maintenance of military equipment, procurement, brokering of military equipment, explosive ordnance disposal, logistical support for military operations and bases, and intelligence collection and analysis. “Private” military and security services are those either financed or delivered by a body other than a government. Companies that deliver a range of these services are often called private military and security companies or PMSCs. PMSCs can operate both domestically as well as trans-nationally, across various jurisdictions. Those which only deliver security services are referred to as private security companies or PSCs. Parliamentary oversight of PMSCs should address the following questions:

1. What are the limitations to the role of PMSCs and to what extent are they allowed to take over security tasks from the state?
2. What are the limitations of PMSCs? (for example, are they allowed to bear arms, to arrest individuals, interfere with privacy?)
3. Is a comprehensive regulatory framework for PMSCs in place? Does the law also cover activities of transnational PMSCs?
4. To what extent should PMSCs be subject to self-regulation?
5. Which body should oversee the practices of

PMSCs, e.g. compliance with the law or issuing licences for the establishment of PMSCs?

6. What are minimum standards for hiring PMSC employees, e.g. the absence of a criminal record?
7. What should be the relationship between the police and PMSCs?

Another important issue for parliamentary oversight in emerging democracies is the relationship between security sector reform and transitional justice. The aim of transitional justice is to avoid recurrence of human rights violations, establish a form of accountability and enhance reconciliation of war-torn nations. Prosecution of crimes committed during the past regime, amnesties, reparations, truth commissions and lustration processes are closely linked to security sector governance. For example, lustration processes not only affect transitional justice but also the governance of the security sector. This example is further elaborated upon in Box 15.

Challenges for strengthening parliaments in SSG in emerging democracies

Parliaments in established democracies face formidable challenges in overseeing the security sector (including a lack of expertise, resources, and sufficient time and a lack of access to classified information); in addition, parliaments in transition states are confronted with an additional set of challenges.

By way of example, Box 16 gives an overview of these general challenges to the proper functioning of parliaments in emerging democracies in the Middle East and North Africa region.

Box 15: In search of security, justice and coping with the past: Lustration of the security sector after the transition to democracy

A very important area of scrutiny for new parliaments is the lustration of existing security structures. Lustration literally means 'cleansing' and comes from the word *lustratio*, the Latin word for purification rituals. In the context of emerging democracies, it refers to policies that limit the participation of supporters of the former regime in the security sector, in particular those who were involved in crime and human rights violations. The key process of lustration is vetting. In the context of transition to democracy, there are three reasons to initiate lustration:

- Security: to check whether the security structures are staffed with supporters of the previous regime who want to destabilise the young democracy;
- Justice: as much as transitional justice requires the rehabilitation of the victims of the former regime, it also requires the sanctioning of the perpetrators of crimes under it;
- Coping with the past: investigations, opening files and narrating the history of the security sector under the old regime is a way for a new democracy to come to terms with the past.

There are different ways to deal with lustration, including: granting an amnesty from prosecution to security officials engaged in criminal activities; abolishing entire security structures; and replacing only the top leadership while continuing to employ the middle and lower level staff of the security sector institutions.

At a very minimum, parliament needs to explore the issue of lustration of the security sector for the sake of securing the new democracy, establishing justice and coping with the past. It also needs to take into account the specific challenges surrounding the vetting process, including: clarifying the legal framework; making sufficient resources available to monitor that those in charge of lustration processes are of high integrity; the availability of records, reliable data and witnesses; requirements of due process for the individual who is denied clearance; securing the necessary political support.

Source: DCAF Backgrounder Vetting and the security sector, Geneva, 2006; Vladimira Dvořáková and Anđelko Milardović (eds.), Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe, Political Science Research Centre Zagreb, 2007

Below, four challenges to the functioning of parliaments in SSG in emerging democracies are briefly discussed.

The first challenge to parliaments in emerging democracies is to establish or re-establish their

own parliamentary institution. In many countries affected by authoritarian rule, parliament was closed down (e.g., in Nigeria), or was reduced to a rubberstamping machine (e.g., in most of the communist states). Alternatively, it was able to play a role in bringing down the old regime (e.g., in Indo-

Box 16: Challenges to parliaments in the Middle East and North Africa (MENA) region

While parliaments in the Arab world are facing serious challenges to perform any kind of functions in the context of SSG, the exact situation is dynamic and varies fundamentally from state to state. Specifically, parliaments in the MENA region are struggling with the following problems:

- Some states are in the process of democratic institution-building, forming new parliaments after the Arab Spring. These states need to build parliaments from scratch (e.g. Libya);
- Other states are in the process of reforming existing parliamentary structures and are engaged in ongoing negotiations with the executive concerning power sharing and executive-legislative relations (e.g. Egypt, Jordan, Morocco and Tunisia);
- In some states, while parliaments are paralysed by political and armed conflict, members of parliament and their staff still try to contribute to the political debate on key issues such as national reconciliation and democratic oversight of the security sector (e.g., Palestinian Territories);
- Parliaments in other MENA states have meaningful powers, but are struggling with divisions along sectarian lines (e.g., Iraq and Lebanon) or divisions between secular and religious politics (Kuwait);
- In a last group of states, parliament is still reduced to a rubberstamping entity (e.g. Algeria or Saudi Arabia).

nesia). In most cases, this means that parliament has either no or incomplete experience with SSG. Notably, in most authoritarian regimes, the governance of the security sector was a matter of the executive alone or, worse, the security sector governed itself and was not subject to any form of external accountability. Parliament would have no role and no decision-making power regarding the security sector.

A second challenge requires the new parliaments not only to set up sufficient parliamentary structures, but also to address the attitude and mindset of parliamentarians - with a view to their developing the ability to critically oversee the security sector. As they emerge from periods of author-

itarian rule during which opponents were often tortured or killed, parliamentarians quite understandably are rather uneasy and uncertain about their new role of overseeing the security sector. In addition, the willingness of parliamentarians to scrutinise the security sector can also be hampered by party politics. In some emerging democracies, the country is utterly divided across political, religious, class or ethnic lines. This politicises or, worse, paralyses any issue of oversight and always ends up in a stalemate between political parties, as is the case in Lebanon, Palestine and Thailand. In other emerging democracies, there is only one dominant ruling party, (e.g., in Russia) which marginalises or excludes the opposition from any role in the governance of the security sector.

The third challenge is that parliaments of emerging democracies often lack the ability to play a meaningful role in the governance of the security sector. Often they do not have expertise on, and experience with, SSG. This is exacerbated by the fact that by the time parliamentarians have become familiar with SSG, they often must leave parliament because their term comes to an end. For example, after the parliamentary elections in Indonesia in 2009, approximately 70% of MPs were not re-elected which led to a big loss of experienced MPs.³⁵ Furthermore, parliamentarians often do not have enough and sufficiently qualified staff to support their work. In some emerging democracies, the opposite is the case, with parliamentary staff being recruited from security sector institutions, which creates the risk of co-optation

Compounding staffing problems is the lack of a working committee structure that comprehensively and actively monitors developments in the security sector - the fourth challenge confronting parliaments in emerging democracies. Some of these parliaments will have no specialised committees for the security sector at all (in Malaysia for instance), while other democratising states have the opposite problem - too many committees dealing with the security sector, thus leading to a fragmentation of oversight. For example, the Nigerian parliament maintains a fragmented structure of eight committees in both houses of parliament dealing with the defence sector alone. Furthermore, while committees may exist on paper, it is still not a guarantee that they

will function in practice. For example, in some states, committees do not convene for many years in a row, for instance in Albania, while in other states, members of parliament are imprisoned and cannot perform their duties, as is the case in Palestine.

From theory to practice

For democratisation to succeed, it is important that an emerging democracy be able to hold the security sector to account by strengthening the role of parliament in security sector governance. The list below is a non-exhaustive summary of possible initiatives which parliamentarians can take in this respect.

As a member of parliament, you can:

- *Work for constitutional and legal reform*
The reform process starts with drafting the constitution and giving parliament a sufficient role in the governance of the security sector. It also includes adopting the legal framework for the governance of the security sector, including a strong role for parliament.
- *Ensure non-discrimination and equality before the law*
Parliament needs to ensure that the security sector treats every individual as equal before the law and that no one is discriminated against on the basis of race, age, sex, sexual orientation, nationality or national origin, religion or

³⁵ 'Indonesian parliament in SBY's second term', *The Jakarta Post*, 24 August 2009

belief, political affiliation, social origin or birth. This would require parliament to enact appropriate legislation; to set up independent complaints mechanisms (e.g., an ombudsman institution for the security sector); and to verify that legislation and policies are properly enforced.

- *Set up a working committee system*
A third recommendation is to establish the working procedures and methods of parliament. With regard to the security sector, this would require setting up a committee system that comprehensively covers the security sector.
- *Strengthen expertise and staff*
Parliament can only play a meaningful role in the governance of the security sector if it is backed up by sufficient expertise and staff. Parliamentarians need to have the staffers who are able to understand and process the various legislative and policy proposals coming from the government, e.g., procurement proposals, draft bills, budget proposals, as well as various policy initiatives. Qualified staff is essential and needs to be managed according to professional standards of selection, recruitment and promotion. In addition, parliaments need to make use of expertise available in civil society, for instance in universities, think-tanks and the media.
- *Hold inquiries*
It is vital that parliaments have the ability to hold inquiries on any topic or institution related

to the security sector. This would include the legal power to set up committees of inquiry, to subpoena relevant persons (as well as to hear them under oath), to access premises and all classified information. It would also mean that parliament has the resources to carry out investigations. It is important to grant to a minority in parliament the power to initiate an inquiry, (i.e., 30% of the members of parliament), thus preventing the majority or government party from blocking investigations

- *Transparency of parliament*
In the interest of parliamentarians' accountability to the people, their activities should be as transparent as possible. This would include the attendance and voting behaviour; debates in the plenary and in committees; declaration of assets; domestic and foreign visits; expenditure for maintaining parliament, etc. In addition, civil society initiatives aimed at monitoring the conduct of parliamentarians in the plenary and committee structures, in principle, deserve support.
- *Help build up capacity within the security sector*
Parliament can only succeed if the security sector itself has the structures in place that allow for parliamentary oversight (e.g., planning, programming, and budgeting systems). In addition, security sector employees need to be aware, accept and understand both the concept and the reality of parliamentary control. This requires SSR within the security sector to also pay attention to the relevance and role of parliament in SSG.

- *Enlist external support*

External support can play an important role in the strengthening of parliament in relation to SSG in emerging democracies - provided such support adheres to the following principles:

- Act on a demand-driven basis: for instance, a mandate of parliament itself or other relevant institutions;
- Maintain political neutrality: no exclusion of specific political parties;
- Seek local ownership: cooperation with local NGOs, experts and organisations;
- Ensure accountability: transparency about methods, goals and finances.

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ANNEX: COMPARATIVE OVERVIEWS OF PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR IN SELECTED EU MEMBER STATES

1. Parliamentary oversight of the armed forces

(Source: Wim van Eekelen, Democratic Control of Armed Forces, DCAF, Geneva, 2002, pp: i-viii)

POWERS OF THE DEFENCE COMMITTEE

	The Committee has a legislative function	To amend or to rewrite proposed defence laws	To summon and question the minister, military and other civil servants to committee meetings to justify
France	Yes	Committee	Committee
Germany	Yes	Committee	Committee
Hungary	No	Committee	Committee
The Netherlands	Yes	Parliament	Committee
Poland	Yes	Committee	Committee
Spain	Yes	Parliament	Both
United Kingdom	No	Parliament	Parliament

	To summon experts from society (NGOs/ universities/ think tanks) to committee meetings to testify	To obtain documents from the ministry of defence and military	To carry out investigations (parliamentary inquiries) on defence issues	To hold hearings on defence issues	Does the plenary of the Parliament often change draft laws submitted by the Parliamentary Committee on Defence?
France	Committee	Committee	Both	Committee	No
Germany	Committee	Committee	Committee	Committee	N.A.
Hungary	Committee	Committee	Committee	Committee	N.A.
The Netherlands	Committee	Committee	Committee	N.A.	No
Poland	Neither	Committee	Neither	Neither	N.A.
Spain	Committee	Committee	Committee	Committee	No
United Kingdom	Committee	Committee	Committee	Committee	Yes

BUDGET CONTROL OF DEFENCE ISSUES

	Does the Parliamentary Committee on Defence and/or the Parliament (plenary) have the following powers or procedures?					
	Has access to all defence budget documents	Has the right to amend and to allocate defence budget funds	Control the defence budget by programmes	Control the defence budget by projects	Control the defence budget by line-items	Has the right to approve or disapprove any supplementary defence budget proposals
France	Committee	Both	Both	Both	Committee	Both
Germany	Committee	Both	Committee	Committee	Committee	Committee
Hungary	Committee	Committee	N.A.	N.A.	N.A.	Plenary
The Netherlands	Committee	Plenary	Committee	Committee	Committee	Plenary
Poland	Committee	Plenary	Committee	Committee	Committee	N.A.
Spain	Committee	N.A.	Committee	Committee	Committee	Both
United Kingdom	Neither	Neither	Neither	Neither	Neither	Plenary

POWERS CONCERNING SECURITY AND DEFENCE POLICY DOCUMENTS

Is the defence committee or plenary involved in decision-making about the following policy documents?	National security policy	Strategic defence concept
France	Both	Both
Germany	N.A.	N.A.
Hungary	Plenary	Plenary
The Netherlands	Committee	Committee
Poland	Neither	Neither
Spain	Neither	Neither
United Kingdom	Neither	Neither

POWERS CONCERNING PEACE MISSIONS

	Participation in peace mission decisions before troops are sent abroad
France	Neither
Germany	Both
Hungary	Both
The Netherlands	Both
Poland	Committee
Spain	Neither
United Kingdom	Neither

2. Parliamentary Oversight of Intelligence services

(Source: Aidan Wills and Matthias Vermeulen, *Parliamentary oversight of security and intelligence services*, EP, Brussels, 2011)

QUESTIONNAIRE ON OVERSIGHT OF THE INTELLIGENCE SERVICES

	Competent parliamentary (sub-) committee(s)
France	Délégation Parlementaire au Renseignement (DPR)
Germany	Parliamentary Control Panel of the Bundestag and G10 Commission
Hungary	Committee on National Security
The Netherlands	Committee on Home Affairs and Kingdom Relations and Committee on Intelligence and Security Services (ISS)
Poland	Special Services Oversight Committee
Spain	Secret Funds Committee
Sweden	Committee on the Administration of Justice (JuU) and Committee on the Constitution (KU) and Parliamentary ombudsman
United Kingdom	Intelligence and Security Committee (ISC) (and judicial commissioners with authorisation prerogatives for the use of special powers)
United States	Subcommittees of the Appropriations Committees

	Powers of the parliamentary (sub)committee(s)	Access to classified information
France	Hearings, visits	Very limited access
Germany	Hearings, inspections, investigations, subpoena	Wide access
Hungary	Subpoena, inspections	Wide access
The Netherlands	Hearings, inspections, investigations, invite experts	Unlimited access
Poland	N.A.	Restricted
Spain	Hearings, investigations	Very limited access
Sweden	Hearings, investigations, consultations with political party leaders	Limited access
United Kingdom	Visits, investigations, invite experts, see the budget (but not publish it)	Very limited access
United States	Hearings, inspections, investigations, subpoena	Wide access

3. Parliamentary Oversight of the Police

Source: Questionnaire on parliamentary oversight of the police, distributed by the European Parliament among parliaments of EU member states (2013).

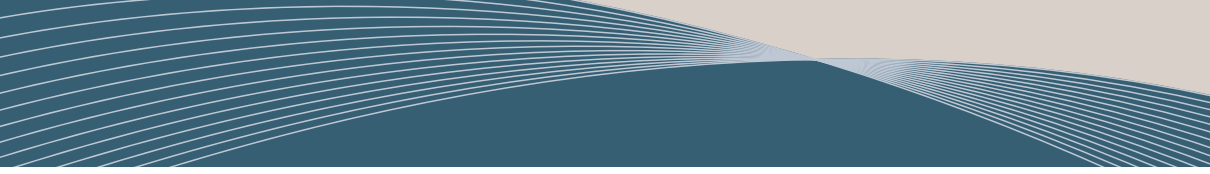
	Structure		Internal oversight		External oversight	
	Police are organised centrally	Oversight is structured along its model of organisation	Conducted by the Ministry of:	Conducted by other agency or body:	Competent parliamentary committee	Oversight below national level
Germany	No	Yes	Federal or Länder Ministry of Interior		Committee of Interior	Committees of Interior of the Länder parliaments
Greece	Yes	Yes	Public Order and Citizen Protection		Committee for Public Administration, Public Order and Justice	No
Hungary	Yes	Yes	Interior	National Police Board	Defence and Internal Security Committee	Independent Police Complaints Board
The Netherlands	Yes	Yes	Security and Justice	National Police Board	Standing Committee for Security and Justice	Public Order and Safety Inspectorate
Poland	Yes	Yes	Interior		Internal Affairs Committee of the Sejm	No
Spain	No		Interior	National Police Board	Home Affairs Standing Committee	Yes. Regional supervision
Sweden	Yes	Yes	Justice	National Police Board	Committee on Justice	No
United Kingdom	No	No	Home Office	Her Majesty's Inspectorate of Constabulary	House of Commons Home Affairs Committee	Yes. Police and Crime Commissioners in each area

	External oversight		
	Specialised commissioner for complaints against the police	National ombudsman for complaints	Brief description
Germany	Not at federal level. Some states have it.	No	Committees of Interior deal with policy issue. Furthermore, annual report to the parliament on those cases when the police intercepts and records private speech on private premises without the knowledge of the person concerned. Police misconduct is punished via disciplinary rules. Exceptions in some Länder, like Rheinland-Pfalz and Baden Württemberg
Greece	General Inspection of Public Administration	Yes	The General Inspector of Public Administration orders ex officio inspections, audits and investigations of bodies in the public sector. The Ombudsman mediates between people and public services. Finally, the Office for the response to Incidents arbitrariness will investigate alleged acts of torture or other violations or offenses against human dignity committed by the Greek police.
Hungary	No	Yes	
The Netherlands	Yes	Yes	The Minister of Security and Justice is ultimately responsible for the proper functioning of the police. The Public Order and Safety Inspectorate supervises police. The inspection examines whether government policy is properly implemented and reports her results to the minister.
Poland	No	Yes	The police is overseen by the following independent bodies: the Internal Affairs Committee of the Sejm, the Supreme Audit Office and the Ombudsman.
Spain	No	Yes	There are 2 police bodies: the Civil Guard (mix of military and civil nature) with national competences and the National Police, with competences in those communities which are not self-governing, which have their own police.
Sweden	No	No	The National Police Board is responsible for carrying out inspections to see that the police work is conducted in accordance to its mission. Other bodies, like the Parliamentary Ombudsmen, the Swedish National audit Office, the Chancellor of Justice, the Data Inspection Board and the Commission on Security and Integrity Protection will also play a role in the supervision of the police.

	External oversight		
	Specialised commissioner for complaints against the police	National ombudsman for complaints	Brief description
United Kingdom	Yes. Independent Police Complaints Commission	No	There is a “tripartite” system of control. Home Secretary is ultimately accountable to Parliament; Police and Crime Commissioners within each area have the mandate to hold the police accountable. The Chief Constable of each force is responsible for maintaining the Queen’s Peace. The respective roles of each of these three partners are set out in legislation, The Police Protocol Order 2011. The Independent Police Complaints Commission investigates the most serious complaints.

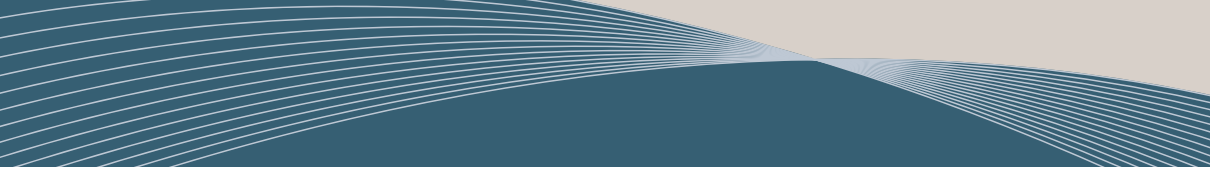
Country	Combating corruption	Nomination of police chief/ commissioner		Police budget	
	Corruption within the police dealt with by independent body	Nominating authority	Approval/ confirmation by Parliament	Deciding authority	Specific oversight by Parliament
Germany	Not at federal level. Some states have.	Executive	No	Parliament	No
Greece	Yes. Internal Affairs Directorate	Executive	No	Parliament	Yes
Hungary	Yes	Executive	No	Parliament	Yes
The Netherlands	Yes. National Police Internal Investigations Department	Minister of Security and Justice	No	Parliament	Yes
Poland	Yes	Executive	No	Parliament	Yes
Spain	Yes	Executive	No	Parliament	Yes
Sweden	Yes. Internal Investigation Unit	Executive	No	Parliament	Yes
United Kingdom	Yes. Independent Police Complaints Commission	Each Chief Constable	No	Parliament for government grants and The Police and Crime Commissioner for the rest	Only government grants

	Leading Policing principle	Does the police force include paramilitary formations?	Deployment of police personnel in peace mission subject to prior parliamentary approval
Germany	Community policing	No	No
Greece	Community policing	No	No
Hungary	Maintaining public security, public order, control and security of national borders	No	No
The Netherlands	Community policing	No	Yes
Poland	Community policing (although not literally mentioned)	No	No
Spain	Community policing	Yes (for the Civil Guard when they are abroad)	Yes
Sweden	Crime prevention adjusted to local circumstances	No	Yes
United Kingdom	Community Policing	No	No



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