G.S. Rakovsky Defense and Staff College
Sofia, Bulgaria

CIVIL-MILITARY RELATIONS AND DEMOCRATIC CONTROL OF THE SECURITY SECTOR

A Handbook for Military Officers,
Servicemen and Servicewomen
of the Security and Intelligence
Agencies, and for Civilian Politicians
and Security Experts

Plamen Pantev, Valeri Ratchev
Todor Tagarev, Viara Zaprianova

Edited by Plamen Pantev

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Editing and Concept: Plamen Pantev

Contributors:

Plamen Pantev, Ph.D., Associate Professor in International Relations and International Law, Law School, Sofia University "St. Kliment Ohridsky." Founder and Director of the Institute for Security and International Studies (ISIS), Sofia in 1994, www.isn.ethz.ch/isis ISIS is a member of the National Coalition of Non-Governmental Think-Tanks on the Reform of the Security Sector. He is Co-chair of the Study Group on Regional Stability in South East Europe of the PfP Consortium of Defense Academies and Security Studies Institutes and lectures at the Diplomatic Institute of the Ministry of Foreign Affairs of Bulgaria. He has lectured at the NATO Defense College, Rome, Henry L. Stimson Center, Washington, D.C., and the Diplomatic Academy in Vienna, Austria.

Todor Tagarev, Ph.D., Associate Professor at Rakovsky Defense and Staff College and Senior Research Fellow at the Bulgarian Academy of Sciences and Senior Researcher of ISIS. He was the first Director of the Defense Planning Directorate of the Bulgarian Ministry of Defense since its establishment in early 1999. Since May 2001 until late 2001, he served as Director for Armaments Policy and National Armaments Director. He is Editor-in-Chief of *Information & Security: An International Journal*.

Valeri Ratchev, Colonel, Deputy Commandant of Rakovsky Defense and Staff College, Head of the National Security and Defense Faculty at Rakovsky Defense and Staff College. He is a Senior Researcher at ISIS and has been member of the Secretariat of the PfP Consortium of Defense Academies and Security Studies Institutes.

Viara Zaprianova, M.A., a Research Fellow and Assistant Professor in the National Security and Defense Faculty at Rakovsky Defense and Staff College since 2001. She received her Master's Degree in Legal Studies from the New Bulgarian University in 2000 and focuses in her duties as a lecturer on constitutional, public and administrative law, as well as international humanitarian law and civil-military relations.

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Civil-Military Relations Curriculum Project

In early 2003, G. S. Rakovsky Defense & Staff College won in a competition with many foreign universities and research centers an institutional research grant for a project aimed to create a pattern interdisciplinary and multifunctional Civil – Military Relations curriculum. It was an honor for us to become the first Bulgarian official educational organization, awarded by such highly representative institution like the United States Institute of Peace.

The Project was managed in three main directions:

At the *First Stage*, the Project's team accomplished a thorough stocktaking research over the theoretical fundamentals and the existing educational programs in the field of Civil – Military relations. A particular attention was drawn on the practical needs of civil – military education in Bulgaria as a Case Study in accordance with the ongoing Defense and Security Sector reform in this country.

At the *Second Stage*, a basic *CMR Teaching Guide & Curriculum*, which corresponds to the contemporary educational models in NATO and EU countries, was developed. It was designed by appropriate dynamic core and elective modules adequate to:

A. Separate border scientific areas (i.e. Political Science, Law, History, Philosophy, Sociology, International Relations, Economics, Security and Strategic Studies, etc.);
B. Various educational forms (military and civilian education and postgraduate expert training);
C. Different education levels (BA, MA, PhD degrees).

The first draft version of a Postgraduate Civil-Military Relations program was discussed in May 2004 at an international evaluation expert seminar with representatives from nine countries, also taking into consideration the comments and proposals of several distinguished scholars and experts from Europe, the United States, and Canada. Furthermore, an experimental approbation of some basic components of the developed CMR curriculum was carried out at a Central & South Eastern European Junior Faculty Summer School in August 2004. A CMR Reader with more than 2,500 pages selected publications in a PDF Adobe Acrobat format, and 14 sample lectures in a MS Power Point format, included in a CD Volume as an additional interactive educational tool, were presented at the Summer Seminar, too. The edited version of the *Civil-Military Relations Teaching Guide & Curriculum* was published and presented in Vienna in early December 2004, in cooperation with the Austrian National Defense Academy (Landesverteidigungsakademie).

Today, when the elaborate CMR Curriculum Project has been completed, we are glad to present its final research and educational product – A Handbook on *Civil-Military Relations and Democratic Control of the Security Sector*. The Handbook corresponds very well to the main project's goals and aims and will be used as a significant educational tool during the next application of our Civil-Military Relations postgraduate program in Bulgaria and abroad.

Dr. Jordan Baev
USIP SG 042-02F Project Director
Associate Professor, G.S. Rakovsky Defense and Staff College

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Section One

Conceptual Developments in the Security Sector: The Responses of the Democratic Societies

Part I

THE NEW GLOBAL, REGIONAL AND SUB-REGIONAL SECURITY SITUATION IN THE BEGINNING OF THE 21ST CENTURY

Chapter 1
The Shift to Democracy

The wave of democratic consolidation before the end of the Cold War in Europe (Spain, Greece, Portugal) gained momentum with the collapse of the Soviet Union and the beginning of the democratic transitions in the former socialist totalitarian states. In the beginning of the 21st century it became a fact of life that two thirds of the countries of the world are democratic. The expansion of the civic democratic space to the former Warsaw Pact countries was simultaneously an enlargement of the security space. The shift to democracy coincided with the big changes in the security in its global, regional and national dimensions. The new security threat situation called for new responses. Preserving democratic contents of the changing systems of security turned into a major challenge for the democratic governments of the world.

The establishment, however, of the procedures, institutions, norms and culture that would guarantee accountability of the elected leaders could not happen overnight. The lack of recent democratic experience, economic difficulties and social suffering complicate the consolidation of democratic regimes in the former totalitarian states. Participation of the public in the effective functioning of democracy is a significant component of the new system of power. Confidence between the rulers and society is contingent on the transparent way power is exercised. Democratic civilian oversight of the armed forces and the entire sector of security, including intelligence are of crucial importance in the process of democratic consolidation of the transition countries. This requirement assumes a special meaning in the conditions of fighting terrorism. Effective functioning of the security sector turns into a major feature of the democratic society.

Chapter 2
The Security Threat Situation, the New Security Needs

The period of the decade before the fall-down of the Berlin wall was characteristic for the significant efforts to broaden the debate on security, introducing the so-called concept of comprehensive security. Following this trend, the security threat analyses were preoccupied with ecological, demographical, social, informational, cultural, and other soft threats issues. Then violent signs like the first attack on the World Trade Center or the preparation to destroy the Eiffel Tower were left without adequate attention.

With the end of the Cold War security debates provided a significant rearrangement of the hierarchy of threats. The reason was partly due to restructuring the existing system of threats that were produced and even carefully maintained by the bi-polar ideology-based blocks, and partly due to the fast appearance of completely new set of threats. There was a short period of time in the beginning of the 1990s when the focus was shifted strongly towards non-military instruments for risk reduction and threat prevention. The first sign that this was too optimistic to think – that the swords should be transferred into ploughs, came with the wars in the Western Balkans. With the 11 September 2001 this ambiguity was over at least for the predictable future.

The entire period could be characterized with two converging tendencies. On the one hand, the threat perception of the different countries around the world seems largely similar. Most of the countries, especially the leading ones in international relations, share the understanding that the trans-border terrorism and the weapons of mass destruction together with failed states are the key sources of security threats. Despite this, many countries prefer to keep the focus also on not yet resolved regional problems, trans-borders organized crime and illegal migration.

The rising threats: global terrorism and weapons of mass destruction. Terror is not a new phenomenon, but its current performance has not been met in the world history before. For the first time a combination between non-state actors, destructive technological capabilities, global maneuver opportunities, on one hand, and a new type of 'strategic partners' in the face of failed countries, radical governments and such sponsoring terror, on the other, exists in global context. The key characteristics of the new terrorism is that all of the actors – state and non-state - are attempting to wage mass destruction attacks with mass casualties and expected global reporting by the media. As it is stated in the European Security Strategy, "international terrorism is a strategic threat."

Simultaneously the risks resulting from the failure of the non-proliferation regimes pre-occupied the international attention. There is a paradox: in 2003 the list of the countries seeking for nuclear weapons and missile-technologies was shorter than in 1980. Now the situation is completely different. The combination of global terrorism, WMD including their non-traditional forms as "dirty bomb," "envelope-bombs" with biological components, etc. is complicating the counter-measures because they require a completely new system of approaches and instruments. The concentration of these elements of the entire threat picture in the so-called Greater Middle East makes the issue of primary concern for the European countries.

Traditional threats have new consequences. With the end of the incompatible ideological antagonism and the enhancement of the number of people who live under more or less democratic rules, the classic interstate conflicts have receded. Failed states and governments are an alarming phenomenon. They are the ground for both terrorist preparation and civil wars. Organized crime, trans-border and trans-continental trafficking successfully use every space, which is weakly controlled – especially between neighboring countries. The organized crime is exploring the growing capacity of illegal migration, which is also a target group for the net-based local terrorist groups. Concentration of such elements of the threat spectrum in specific areas is a precondition of turning them into regions of chronic tensions and longstanding disputes.

The primary purpose of the risk reduction and threat prevention policy should be to achieve an effective system of co-operative global governance, legitimated by representative institutions and the rule of law. Similar to a nation-state, global governance has to concentrate on core public goods like international stability and security, for which the great powers carry the main

responsibility; an open economic world system that meets the needs of all, especially the poorest, so as to enable all to participate fully in decision-making; an international legal order which should ensure the effective equality of all; global welfare as the global equivalent of national human security systems, and, finally, a shared commitment to settle regional conflicts.

Chapter 3

From Collective Defense to Cooperative Security of States

Today, in Europe many institutions are playing vital roles in making the continent more united, democratic, prosperous and secure. However, NATO has a unique position among them. Four decades ago the visionary "Harmel Report" described NATO as "a dynamic and vigorous organization, which is constantly adapting itself to changing conditions." It defined NATO's "ultimate political purpose" as the achievement of a "just and lasting peaceful order in Europe accompanied by appropriate security guarantees."

This definition has not lost its meaning over the past years. It fairly captures the purpose of the present day Alliance. Not only has the Alliance triumphed in the Cold War, the new NATO has played a major role in overcoming the division of Europe, imposed at Yalta. Moreover, it has emerged as the most effective instrument in bringing security and stability to the dramatically changed European security environment. Never has the North-Atlantic Alliance been closer to realizing its "ultimate political purpose" than today, at the beginning of the new century.

Established as an organization for collective defense, NATO today has missions changed in nature and scope, among which prevention of conflicts and settling crises, including far beyond the traditional definition of the area of responsibility. Important for a successful membership policy is to take into account the fact that both processes – of accepting new members and of internal transformation - are motivated and realized by the political imperatives of creating a new security environment, focused on democratization, economic relations, tolerance and integration. The events of September 11, 2001 not only did not change that paradigm, but also added further dynamics and strength to the processes. Since then one of the key areas in security policy not only in the USA, but also in NATO and the member countries has been to redefine the roles and tasks of the military and their transformation into an efficient tool of the war against terror. The new set of missions and tasks of NATO (NATO Summit in Prague in November 2002 and the subsequent documents and declarations) reflects a decisive shift from (not only) collective defense focus towards security guarantor and stability provider:

- ❑ Preservation and enhancement of the transatlantic link;
- ❑ Globalization of responsibilities and ability to respond to the threats and meet the challenges to security, from wherever they may come;
- ❑ Fight against terrorism;
- ❑ Policy of "open doors" and further expansion of the Alliance, including application and development of the *Membership Action Plan* mechanism;
- ❑ Continuity of the Alliance's responsibility for the Western Balkans;
- ❑ Non-proliferation of weapons of mass destruction;
- ❑ Missile defense;

- Control over conventional armaments;
- NATO – European Union relations regulation;
- Further development and bettering of NATO partnership with Russia and the Ukraine;
- Further development of the partnership with the states from the Black Sea, Caucasus and Central Asia regions;
- Expansion of NATO Mediterranean Dialogue.

The successful implementation of the Alliance's double role today depends both on the political will and the common perception of the threats to Euro-Atlantic security and on the degree of actual integration of the member-states. The good functioning of NATO as a security coalition and as a defense alliance depends on the conditions and perspectives of the transatlantic relations. These relations to a great extent determine the nature of the environment wherein countries like Bulgaria will realize itself as a member of NATO and EU. NATO's value will continue to increase for the transatlantic relations. For Bulgaria NATO remains a key factor in European security, it is a bulwark against the "re-nationalization" of national defense policies, and it is the principal institution for transatlantic, overall European, and regional security partnership. It is a stabilizing force throughout the continent. It helps to preserve the strategic balance in Europe and is a decisive factor for regional security.

Part II

DEMOCRATIC CONTROL OF THE SECURITY SECTOR: DEVELOPING THE TRADITION

The relationship between civilian authorities and the armed forces is critically important to democratic political stability, defense policymaking, and international security cooperation. Many nations, especially those that have emerged from authoritarianism only recently, face an urgent need to recast civil-military relations along democratic lines. Even many long-established democracies may face conflicts over such civil-military issues as defense budgeting, the roles and missions of the armed forces, and the mutual responsibilities of officers and civilians for effective democratic civilian oversight.

The process of shaping democratic environment and finding adequate to the standards and national specifics format for democratic control over the security sector organizations poses many questions: What paradigm of civil-military relations will prove sustainable for the country? Which form of control over the security sector and armed forces would be most appropriate? And how both the emerging civil-military democratic relations and civil oversight over the large security sector organizations and their activities will be maintained in coexistence with the emerging civil society?

Chapter 4

Traditional Requirements of Democratic Control Over the Security Sector in the Democratic Society and the New Challenges

The essential problem of civil-military relations is clear enough: one of society's institutions, the armed forces, is given a monopoly on the use of a large range of instruments of lethal force in order to protect the interests, external and internal, of that society. The problem that arises during a transition of power is that this monopoly on force endows the armed forces with at least the potential—though not necessarily the inclination—to dominate the other institutions and the governmental process.

To dominate does not necessarily mean implementing a military dictatorship; that is a frightening extreme attitude, and one that is completely inconsistent with the notion of liberal democracy. But being dominant could also mean having undue influence in domestic, economic, and international state and public affairs.

In cases where it can be said that a domestic political issue was decided in a particular way because of something the military either did or did not do, then it could be concluded that the military has exercised influence in that society. However, motives need to be looked at carefully. The potential for "soft" military intervention does not necessarily derive from a hunger for power. Instead, it can be attributed to some of the highest ideals inherent in the military profession: to provide stability where political institutions are weak or immature; to save a nation from itself; to overcome political deadlock; to prevent chaos; to continue provision of essential services in the face of social disruption, etc.

The classical requirements for democratic oversight on the security sector are related to the (1) consolidated democracy and effective constitutional and judicial arrangements for performing an effective democratic control.

Consolidated democracy is a political system under which democracy, in its capacity as a complex system of institutions, rules, and stereotyped behavior patterns, has been accepted, in preference to any undemocratic alternative, by the parties to political relations and by the citizens. It can be defined using three parameters: behavior, attitude, and constitutionality. From the point of view of *behavior*, the democratic regime in a given territory is consolidated if no significant national, social, economic, political, or institutional forces attract considerable resources for attaining their objectives by creating an undemocratic regime or forcible detachment from the state.

According to *attitude*, the democratic regime is a consolidated one when a considerable part of the society, even in the face of large-scale economic problems and deep disappointment with the government, continues to think that the democratic procedures and institutions are the most suitable method of government.

In terms of *constitution*, a democratic regime is a consolidated one when the governmental and non-governmental forces have to the same extent accepted the fact that conflicts are to be solved within the framework of the nation's laws, procedures, and institutions.

There exists no single type of consolidated democracy. It may develop and improve its quality by enhancing the minimum economic level accessible to all citizens and by expanding the participation of people in the political and public life of the country. Within the framework of the category "consolidated democracy" there exists a process of development, from a democracy with low-quality parameters to a democracy with high-quality ones. To Bulgarian society, however, which is only at the beginning of the process of consolidation of democracy, it is important that the specific conditions and requirements for its success are clearly understood.

The necessary conditions that have to be present, or need to be created to consolidate democracy are: an independent and viable civil society; a political society and culture which respects government procedures; a constitutional consensus that the democratic state embodies the rule of law; and a public administration system capable of being used by, and accountable to, democratic society. In short, this is a system of socially and politically elaborated norms, institutions, and rules that is constitutionally placed between the state and the market. Today, 118 out of 193 countries in the world are democracies. The greater part of the world population lives in them: 54.8%.

As an undisputed component of this process is the establishment of the classical judicial and managerial pre-conditions for effective democratic control over the security sector organizations and their activities. The principle list of requirements consists of the following issues:

- A clear judicial division of authority between the constitutionally prescribed political authorities – this is to guarantee the list of checks and balances that is designed by the constitutional democratic formula, especially during the transition period, paying attention to strategy and policy formulation, political control and management (of resources), emergency powers in crisis and the authority to introduce emergency or martial law and to declare war;

- Separation of the security organizations from the three functional areas: foreign security, internal security and fight against organized crime and terrorism - this is to be done so that security forces as a whole do not constitute a separate "government" or a "state in the state";

- Established capacity of civilian political leadership and specialized institutional bureaucracy that is serving to civilian leadership – this is to be done in order to create preconditions for development and implementation of effective policy giving the decisive control over the use of force (violence) and institutional resources (including promotions for senior uniformed ranks) in the hands of political civilian leadership;

- Officially prescribed, institutionalized and regularly and effectively executed legislative oversight of the security organizations' activities in both political and professional aspect – this is primarily but not exclusively to be exercised through 'the power of the purse', which (a) goes beyond perfunctory (rubber-stamp) approval of what the executive proposes, (b) engages, through committees, the main opposition parties, and (c) is supported by knowledgeable parliamentary staff and 'outside' expertise;

- Effective arrangements for public information and accountability and practically executed democratic oversight of the security sector– this is to be done to create conditions for public and non-governmental institutions involvement into security sector development and use;

❑ Established appropriate and independent judicial oversight (in accordance with the international judicial norms) over the activities of politicians and professionals from the security sector - this is to be done so as to have guarantees that the security forces leadership and staff need to act only in the frame designed by the laws and international humanitarian norms;

❑ Established security sector organizations with designed modern, effective capacity, adequate equipment and training and provided with satisfactory resources – this way to balance the professional interest of the security sector staff and to guarantee their non-resistance and contribution to enhanced democratic control;

❑ Developed and functioning system for education and training on issues related to democratic control over the security sector institutions – this is to be done to guarantee deepening the echelon of prepared political and experts staff for security system organizations and civil society monitoring capacity.

Chapter 5

'Division of Labor' for Democratic Control among the Legislative, Executive and Judiciary State Institutions, and Civil Society Bodies

The clear differentiation of responsibilities and rights between the centers of political power and related to division of labor legislation represents one of the key packages (together with these related to establishment of civil society and building professional corps within security services) of preconditions for successful building of democratic control practice. The constitutional system and judicial definition of relationship among the various centers of authority have a decisive impact on the character and tempo of building democratic practices of control. In Bulgaria political power is distributed in accordance with the Constitution of 1991 among four relatively independent institutions: Parliament, Government, President, and Judiciary. This formula is quite common in Europe. However, in Bulgaria it came as a result of the "round table," which carried out the "velvet revolution," overthrowing totalitarian socialism from power. As a result, a balance was sought among these centers. In regard to security, defense and armed forces, this balance is being more or less parity than optimal distribution of functions.

Parliament – President. In Bulgaria there are two centers of power elected directly by the people – the Parliament and the President. This makes them equal in terms of power, meaning that the Parliament does not exert control over the President. The President as a head of the state, signs treaties, appoints generals and admirals from the Armed Forces and Security Services, endorses strategic defense plans, etc. All these functions are elements of the strategic management of the state, which officially are excluded from the political process due to the specific status of the President. And being excluded from this process, they cannot be kept under Parliamentarian control.

The Constitution stipulates exactly in this direction. In order to effectively guarantee the balance among the centers of power, the round table of 1990/91 also distributed the security sector organizations among these centers of political power. Thus the National Security Service

(counterintelligence) and the National Guard Service (which provides protection to VIP personalities and strategic infrastructure such as nuclear power plant, ministries, etc.) are under the direct control of the President. And since the President himself is not under the control of the Parliament, his subordinates are also beyond this control. In view of the fact that the President has no right to take legislative initiatives, these organizations still have no legal framework of their own.

President – Government. Most of the President's activities are based on governmental proposals, but his own opinion on the issues can in one way or another influence the political process. The problem lies in the fact that the President has no apparatus to support him in making decisions. His administration includes several security sector secretaries - for foreign affairs, security and defense. Bulgaria's experience shows that in most cases problems emerge when the President and the Government represent different political powers. In such a case presidents have several times refused to sign decrees for promotion of generals, have generated alternative foreign policy priorities and even have voiced contradictory statements in regard to the reform and development of the armed forces.

Beyond this, another problem is the issue concerning the command and control authority in peacetime, in emergency, crisis and in wartime. According to the Constitution, the President is the Commander-in-Chief both in peacetime and wartime. But nowadays in-between peace and war there is a period of crisis, which might turn out to be long-term rather than flash. The current constitutional and legal structure does not provide an answer to such a complex issue as the transfer of power from one center of political power to another, like for example this is clearly outlined in the two different models of political system of Germany and the US.

Parliament – Government. In Bulgaria the Cabinet is endorsed by the Parliament, but ministers are not required to be Members of Parliament (MPs). This is reflected on the quality of management in different ways. On one hand, the bond between the Cabinet and the executive body is weakened, the result being more expertise and less policy. This becomes evident during the process of drafting various laws and approving the agenda for their adoption. In quite a few cases the different priorities of the MPs (due to their closer ties with the local electorate) and the experts in the Cabinet often freeze or delay the adoption of crucial acts of Parliament. On the other hand, this is a way to protect the Cabinet from *fractioning*, which usually emerges in the Bulgarian Parliament even among the majority.

The Ministers of Defense and Interior. The figures of ministers of defense and interior are core for establishing and practicing democratic control, transparency and initiating comprehensive defense or police reforms. From a professional point of view military and police staffs are traditionally conservative organizations where innovations of such type are not encouraged. Initiatives should come from the ministers and their political cabinets. They have both the authority and responsibility to initiate legal acts and to provide enough transparency on professional matters that permit effective engagement of the media and civil society institution in the oversight of the security sector. In some cases, like the Nichols-Goldwater act in USA significant professional reforms could be initiated by the members of the Parliament but, however, the implementation is in the hands of political leadership – of the ministries. In this context the traditional debate is on the capacity of ministers – should they be "pure politicians" or "experts on the subject"?

The ministers are key for the democratic control over the security sector deals with procurement and acquisition – usually the most significant state expenditures especially during transition. The main challenge in increasing transparency in defense procurement is providing a clear understanding of the relation between national security goals and acquisition decisions. The strengthening of coherent and all-encompassing program-based defense planning would eliminate parallel planning processes leading to non-coordinated procurement decisions. Transparency is the key precondition for effective prevention of corruption practices.

Judicial System – Government – Parliament. The relations between the judicial system, the executive, and legislative powers as a triangle in which the issues of democratic control are initiated, regulated and performed is usually the weakest element especially during the transition period. The good co-ordination in terms of common aims, approaches and timetable will provide the country with short trek towards effective democracy and rule of law. The opposite will open the door for corruption and erosion of the young democratic mentality and practices.

The role of the Constitutional Court is more specific. In regard to the control over the armed forces, the functions of the Constitutional Court are way beyond the surveillance of the constitutional legitimacy of legislation and international treaties in relation to national defense. In many cases decisions of the Constitutional Court served as precedent for adopting decrees within the framework of the armed forces. In such a way were resolved issues concerning the dispatch of Bulgarian troops and servicemen to international missions abroad, deployment of foreign military contingents in the country and others.

Chapter 6

Principles/Standards of Democratic Control. Internal and External Transparency of the Security Sector

The "democratic control over the security sector" is generally perceived as subordination of armed forces and other security organizations to democratically elected political bodies. It means that all decision-making on national security and defense has to be transferred to those who are in charge of the security and defense policy of a country. The operationalization of this thesis is related to the following questions: how should the civil control over the security sector be achieved, which structures and procedures are necessary for that, and what role should be played by the existing state institutions - the head of state, parliament, government, or civilian government servants of the executive power.

The political and judicial principles and the good practices (standards) in establishing democratic control could be summarized (Prof. Armin A. Steinkamm, 1998) in three groups. Firstly, the constitution must guarantee that the civil bodies have the ultimate power in the following fields:

- ❑ Decision making over war and peace (democracy does exist only in case the holders of power elected by people decide over survival of society in a decisive way);
- ❑ Management and control of the military, police, intelligence and other security sector organizations (the first rule of the democratic relation of the security sector and (civilian) society is that (elected) executive power applies its last word on where, when and how the

army and police will be used. In order to preclude incorrect interpretation, the command authority must be, in the ultimate instance, exercised by only one person (therefore the delegation of the command authority to the head of state, and at the same time to the minister of defense is constantly burdened by problems);

❑ The competence to define the kind of security sector organizations, their structures and size must be reserved for civilian holders of the power - and not for professionals.

Secondly, the democratic control must also have its limitations. In all three mentioned areas the civilian holders of power would be subject to legitimate criticism if they make decisions without advice of experienced officers/professionals. It applies first of all in the case the civilian party has only little professional military knowledge. The advice of experienced officers is therefore significant for the effectiveness of the security and defense policy - it is not meant that this advice is always correct, or that it should be followed. The mission of the military and security services is to defend society and democracy, not to design them. In particular, the soldiers must not become part of the governmental process. Citizens in democracy are aware of the necessity of the military - in case of a need it is the major instrument for preserving freedom. The military must therefore be effective, disciplined and obedient, and ready to die for the defense of their country. The missions of the military cannot be the basis of society.

Third, the effectiveness of the democratic control should be ensured by the state political structures under the constitutional-legal basis.

❑ The structure of the state power must ensure that authority over the army be divided between executive and legislative powers. No one of them can exercise complete control because neither executive nor legislative power must be capable of using the army against each other. The military must obey both of them and both of them have to co-operate in security and defense related affairs. Appropriate laws must ensure that.

❑ The military and police are part of the executive power. The government proposes the defense policy and budget. This is done through the civilian minister who is supported by civilian bureaucracy with knowledge on military issues, which is necessary for gaining trust from the military leadership.

❑ Educated and well-informed civilian staff is necessary. The loyalty ties of officers are so strong that civilian officials cannot fully rely on them as the only advisers (That is also the reason for an arrangement applied in the USA that an active or retired soldier can become a defense secretary only ten years after termination of their active service.). The government should establish institutions, where officers and civil servants study together. Many countries had a number of distinguished military theoreticians and practitioners, but almost no academically educated civilian experts. Isolation of soldiers from a study of the national security and unilateral stress that was put on the study of warfare made the tension between civilian and military officials of ministries of defense and foreign affairs more acute. But civilian officials must advise government.

❑ Not only the executive but also legislative power needs to have at its disposal the skilled staff of experts for making decisions on military related issues. The MPs need experts not only for parliamentary control but also for compiling the budget that the legislative power is responsible for.

Besides the state authorities, responsible for the civil control of the military, the necessary political and social arrangements should be made in support of the civil control of the military. The critical ones between them are the following:

- ❑ The most important elements for order in the state are the constitutionality and rule of law. It does not mean only that the state by its constitution sets and guarantees the legal order. It means also the guarantee of some, in western democracies historically developed, state legal principles, as the above mentioned division of power, guarantee of fundamental individual rights, link-up of legislation with constitutional order, and the link-up of executive power and the judiciary with law and right. But it is insufficient if legislation produces laws and the executive applies them. The constitutionality and legal order must be supported by the population and permanently required by education, the media, and a number of organizations. The constitutionality and legal state discourage soldiers from interfering into politics. An answer to the same question is considerably different in the case to which extent the constitutionality and legal state guarantees of civil rights and freedom of press are developed in former communist countries, how the system of education, the media, and civil society organizations support them.

- ❑ The second, quite substantial democratic institution of the democratic control of the military is the "civil force." The term includes members of the militia or the reservists who are "twice citizens" as once Winston Churchill has said. These soldiers identify themselves less with military than with the civilian part of society. During crisis they are important counterweight to the military, the counterweight to not following laws and order. In everyday life they are the most important element supporting integration of the military into the society.

- ❑ The third, it is the army itself, which can and must execute democratic control over itself. It would be the easiest if the army itself would adhere to the existing legal norms, its rights and duties, discipline order and order for complaints, and—when legal status allows for—regulations on personnel representation and spokespersons. The civil control is applied also in the principles of leadership (in Germany known as "Citizen in Uniform" and "Innere Führung"). The civil control begins where the military co-operate with the media, trade unions and other non-governmental organizations.

Conceptual Shifts in the National Security Policy: Continuing Need of Democratic Control over the Security Sector

The national security policy defines the attitude of the ruling government to security and the ways of reaching the latter's standards. This requires a learned process of perceptions about threats and security needs and priorities, solemn and responsible decisions by the state and society on a variety of internal and external issues, taking into consideration international legal and constitutional values, principles and other constraints. Once defined the national security policy serves as an orientation for the country's military doctrine and intelligence strategy. The end of the Cold War and the fight on terrorism caused substantial shifts in the national security concepts and policies around the world. However, the democratic control over the security sector remained an invariant need that required also adaptation and re-adjustments.

Part III

THE PROCESS OF FORMING, DEFINING, IMPLEMENTING AND ASSESSING THE NATIONAL SECURITY POLICY

The *formation* of the national security policy is a priority responsibility of the ruling government. In the process of its development, however, the government institutions can and should 'exploit' to the best the national expert potential – of academic, governmental and non-governmental experts, as well as to the extent they would consider it permissible – of foreign experts. The involvement of the competent commissions of the national parliaments in shaping the national security policy provides additional expertise, balancing of the eventual contradicting views of the ruling and opposition representatives and a critical assessment as to the level of reflection of the national needs and interests.

The *definition* of the national security policy at the decision-making phase has a key significance for the overall management process in this field of government. All starts with the adoption of the national security policy fundamental document – the 'concept', 'strategy', etc. Its confirmation by the national parliament takes place within the framework of the political programs of the winning and ruling parties or coalitions.

In any way the national security policy document – no matter how it would be named, needs to declare clearly the threats and risks that society and people need to be guarded from and which values are part of that protective system. A clear definition of what security is according to the government in charge must be provided in the strategic security document. Part of the national security decision-making process is the re-definition of threats and risks as they change and what additional elements to the very concept of security should be added with time.

The national security policy must reflect the conceptual approach to dealing with the threats and risks as well as the legal and institutional instruments – national, foreign and international that should be applied to cope with the task of neutralizing the threats. Membership in alliances is of key significance in that respect.

At the core of the instruments that should be at disposal of the governments to meet the security challenges are the national security institutions and, especially by tradition – the armed forces. The changing philosophy, roles and missions of the different components of the national security sector are a key question of the national security policy.

The phase of decision-making includes the measurement of the economic and financial implications of adopting a particular national security policy. The question is crucial to make the policy part of the motivation of the tax-collection policy and practice. The taxpayer is both the target and the source of the existence of the national security policy. National parliaments have a specific influence in the budget appropriations process. A mature democratic parliament exerts this influence through its specialized commissions and through its plenary meetings; on the budget as a whole and on the individual elements of the national security policy. The defense budget cycle should be timely to provide an opportunity for a transparent scrutiny by the public.

A fundamental criterion for orientation of the national security policy is the impact it has on the country's foreign policy, international engagements, obligations and image. A special accent in this respect has the regional repercussions of the security policy of a country.

The implementation phase should materialize the intentions of the national security policy, linking together the ends and the means of the corresponding strategy. Many state institutions – ministries, agencies and departments and a complex of national security laws and other documents need to be effectively put in action during this phase. This requires a detailed and comprehensive strategy of involving in an encompassing manner various actors and areas of security. A particular challenge today and in the years to come is the achievement of a synchronized and harmonized effort of different components of the security sector – military, police, intelligence, border and coast guards, customs and diplomacy, in coping with the new brand of security threats as organized crime, drugs, human and arms trafficking, and terrorism. This is not an easy question, it requires overcoming of traditional professional inclinations and reflexes, but missing to do it would compromise the goals and interests of the country's security policy. The role of parliaments in this aspect is growing not only from the point of view of taxpayer money's effective spending, but also from the perspective of democratic effectiveness. The restriction of certain freedoms and liberties of the citizens during the fight on terrorism requires an intensive parliamentary control that would guarantee preserving this activity within democratic constraints.

The decision-making phase should include also the periodic *assessment* or *review* of the implementation of the national security policy. This requirement of the democratic society is a guarantee for the effectiveness of the national security system and a way of keeping under democratic oversight those who have been bestowed with additional power. The regular review of the national security policy includes periodic reporting on the state of affairs in this field by the government and its competent security institutions (yearly reports of the executive branch to the parliament, white papers, etc.). The legislative branch may utilize the expertise of the national auditing agencies – on an encompassing or special case basis. Representatives of the security expert civil society are also eligible to carry out studies and assessments that would be reported to broader national and international public. The principle of transparency is of key importance in the activities of this phase of the national security decision-making process.

Chapter 7

Fundamental Requirements to the Definition of the Country's National Security Policy: Domestic and International Factors that Determine the Process. Issues of Democratic Control of the Process and Role of the Different 'Controlling' Actors – State, Civil Society, and the Media

Domestic and International Factors

The domestic factors that influence the process of the definition of the national security policy of a country could be classified into three main groups: a) national security environment; b) internal and external national security threats and their assessment, and, c) national security interests, goals and principles.

The national security environment depends on several issues. First, this is the level of political stability and public administration's capacity. The maturity of the political elite and of the public determines the level of political stability. The realization of the high significance of the national security is a motivating and deterring factor in a politically mature and responsible society. Since the state and regional levels of organization of the society practically influence the implementation of the functions of the responsible institutions the level of the administrative capacity and effectiveness is crucial for the achievement of the political stability. Second, the legal order and the effective fight on criminality is another key issue. The state of the national security environment is directly proportional to the existence and effectiveness of the legal order. The level of criminality strongly influences the national security environment too. Third, the state of the economic, financial and social systems strongly shapes the national security environment. Fourth, the energy and information potential are essential factors that define the state of the national security environment. Fifth, the existence, stability and effectiveness of the critical for the country infrastructure constitute another major ingredient of the national security environment. And finally, the state of the ecology completes the picture of the national security environment.

The internal and external threats and the system of their assessment are key domestic factors. The ability to perceive, find out new and monitor existing threats and risks is a fundamental problem of any national security system. Being late in correctly assessing the level of a particular threat to society and state may have dramatic or tragic consequences to a country's security. New challenges and risks, stemming from the processes of globalization, regional instabilities and conflicts, terrorism, failed or weak states, illegal migration, trans-border criminality, especially illegal drugs, human beings and arms trafficking, political and religious extremism – all they require a higher professional competence and public awareness. The task becomes even more difficult if the national security system has also to deal with issues of the transition from a modern to a post-modern state, with 'gray' economy, corruption and demographic problems.

A crucial stage in the definition of the national security policy is the formulation of the national security interests, aims and principles. The formulation of the interests has a decisive meaning. They are shaped under the influence of the whole system of domestic factors and international systemic influences and limitations. The international legal obligations of a country are priority factors, influencing the definition of a national security interest. The UN Charter is the basic source of imperative international legal norms and principles in the field of security that all members of the organization have the obligation to respect and implement. Other international treaties that have a defining function for the national security interests are the treaties of international humanitarian law that regulate any armed conflict (the four Geneva Conventions of 1949 and the two additional Protocols of 1977); the international treaties that deal with the regulation of the different types of armaments (Landmines Convention, etc.); international agreements of legal or political nature, creating regional organizations, dealing with security issues (the OSCE, Treaty of the EU, etc.), and regional agreements of military cooperation and mutual defense assistance (Washington Treaty for NATO, PfP Agreement, etc.). On the basis of these treaties and agreements the states take the obligation to follow certain principles of international behavior and obligations that would guarantee strengthening of regional and international security. Countries conclude bilateral agreements for friendship, military cooperation and assistance. The national security interests have different classification order in different countries, but generally they could be vital, strategic and essential. The aims could be short-, mid- and long-term.

Democratic Control of the Process of National Security Policy Definition by the State, Civil Society and the Media

The responsible ministers as representatives of the ruling cabinet carry out the civilian democratic control by the executive power on the process of shaping and formulating the national security policy. They may use different forms of assistance in carrying out the process, including seeking the advice of representatives of the civil society. However, the political parties that have nominated them bear a special moral responsibility in providing feedback on the issue.

The role of the individual national security ministries, agencies, services or departments is in providing a qualified internal professional control over the process of national security policy formation (and implementation, and assessment). The self-control of the individual national security servicemen and servicewomen matters significantly too.

The parliaments have a key position in the whole system of democratic control over the process of national security policy definition. They need to tie logically together the means and the ends of the strategic documents and doctrines in that area. The evolution of the various issues in the field of national security could be a reason for re-considering the existing policy and the relevant documents at the initiative of the parliament. The function of legislation and treaty ratification in the field of national security is uniquely belonging to the parliament. The parliamentarians have the right to require involvement at earlier stages of the drafting of an international treaty, mainly – in the process of negotiations. The parliamentarians can and should largely involve in their democratic oversight activity representatives of the civil society too.

The role of civil society, its expert institutions have become indispensable in implementing the democratic civilian control over the national security policy process in established democracies. This has arisen from the need to increase democratization of society and to deal with the rising complexity of the security issues, requiring additional competence and professional assessments. The public demands and expectations that their funds, provided to the state would be spent in the most effective way is a fundamental reason for civil society representatives to have a say on the issue of the national security policy definition. Thus vibrant civil societies, typical of established democracies, guarantee that the national security issues of the state do not turn into an area for selected groups of people. Apart from the expert think-tanks academic institutes, human rights activists and policy activist NGOs exert efforts to get involved into the process of shaping the national security policy. Their involvement into the issues of the armed forces, police, intelligence and other security sector institutions is a practical realization of the principle of transparency of the security sector in a democratic society. The civil society institutions can be producers of analytic information of various national security issues, educate the public, inform the international public about the country's national security policy, raise important security issues for public and expert discussion, add to the parliament's capacity to oversee the processes in the security sector, provide the governments with different views on the same security issues, provide an assessment on the implementation of the national security policy, etc.

The media play a key role in any democratic society. They provide the opportunity for informed national security decision-making process. The oversight of all branches of power takes place thanks to the capabilities of the 'fourth' power – the media. The security of the journalists, including those who contribute on national security issues is a 'must' for the freedom of the press. Strict legislation on the access to various types of information is a main feature of established and functioning democracies. Of course the news, provided by the media must meet certain criteria as truth, accuracy and fairness. The 'right to know' – a fundamental right in a democratic society, is largely guaranteed through the efficient work of the media. The parliaments have a key role in providing the effective functioning of the democratic media. However, professional organizations of the media also have a decisive role in fitting the profession into the democratic tissue of society and the state. Raising the competence on national security issues is a permanent task for the media representatives who volunteer to deal with the issues of national security. The media play a major role in the information of the public about the budget on national security. The joint work with civil society representatives and academic experts is a normal practice for developed democracies. The winners in the contest of ideas, opinions, assessments on national security issues channeled by the media, representing governmental, parliamentary, academic and NGO expert points of view are for sure the society and the state.

Chapter 8

Women in the Military, in the Security Sector and Intelligence Agencies, and in the Institutions that Implement Democratic Control over the Security Sector

The equality of genders in relation to security issues has gained public attention in recent years. On one side there is the question of the most affected majority of people in armed conflicts – the women, and on the other is the equality of men and women in working for a more secure world. The gender perspective on security issues bears also a 'good governance' motive: the women's capabilities to focus on and bring solutions to human security problems needs to be utilized for the benefit of society. Gender 'mainstreaming' is an established UN practice of achieving better social results by assessing the consequences of one activity or another on men and women. Furthermore, the respect of the rights of women, including in the security sector institutions, is a constitutional requirement in all democratic countries. Therefore, women's participation at all levels of national security decision-making and in all fields of providing the national security of a country is an essential principle of democratic societies.

Special attention is needed to women's roles in modern conflicts and post-conflict developments. Today women are part not only of the peace-enforcement operations, but also of the peacekeeping activities. The involvement of women in the planning of peace support operations and in the leadership of the post-conflict rehabilitation activities is still an inadequately tackled issue. UN Security Council Resolution 1325 (2000) highlights that women are often victims of violence and rape and are used as instruments in warfare, but their role as actors of dealing away with the conflicts, in peacekeeping and in peace-building must be increased. That is why the Resolution recommends that gender issues be considered in the planning phases of operations, in the national legislations and international treaty drafting.

Women have proved they play a creative and leading role in the making and implementing of international affairs and foreign policy of the states – a fundamental prerequisite for framing the security relationships of the contemporary world. Many women have passed successfully the trial of leaders of foreign and defense ministries, and intelligence agencies. Yet their number is low and appointing a minister or deputy minister of defense is a rare phenomenon. Involvement of women in the armed forces and intelligence services has become common and routine for many countries. In 2001 in the United States the women comprised around 14 per cent of the total military forces, in Hungary – around 9.5 per cent, in Poland, Turkey and in Italy – about 0.1 per cent, Greece – around 4 per cent, and in the UK – around 8.1 per cent. The gender issues are linked to such problems as ways of training for men and women in the military and police, regulating certain aspects of sexuality in behavior and clothes, requirements of discipline, the question of maternity and paternity.

The number of women in national security and defense commissions of the parliaments is generally low and they rarely occupy the position of chair-person or deputy chair-person. Parliaments and their competent commissions are the most powerful factors of the democratic civilian control in a democratic society and the change of proportions on gender issues in the

security sector should be driven by the example of the legislative bodies. Members of parliaments, including women MPs must realize that it is a democratic norm to get involved on an equal footing as a competent expert in implementing the functions of overseeing the security sector and that this is not "man's job" only.

The best gender situation is in the civil society organizations and in the media. However, competent and active think-tank and NGO women, and female journalists have still to prove the effective role of gender equality in tackling security issues.

Constitutional and Legal Framework of Civil-Military Relations and Democratic Control of the Security Sector. What is Security Sector: Military, Police, Gendarmerie, Border/Coast Guards, Intelligence Services, Private Security Organizations

The conceptual basis of the constitutional, legal and procedural framework of civil-military relations and democratic control of the security sector has been considered by the OSCE Code of Conduct. The countries that accept and follow the Code of Conduct declared, that

> The participating States consider the democratic control of military, paramilitary and internal security forces as well as intelligence services to be an indispensable element of stability and security. They will further the integration of their armed forces as an important expression of democracy.

The framework should also reflect the specific political and institutional arrangements of every particular country. In the case of Bulgaria they could be analyzed by approaching the relations at two levels. The first covers the legitimization and institutionalization of civilian control, and includes the laws, ordinances, and regulatory acts adopted in the areas of defense and the armed forces, together with the organizational structures and control mechanisms built. The second is socio-cultural, and is determined mostly by the political culture of the three elements of civil-military relations: the political elite, the military profession, and the citizenry.

In the last decade, Bulgaria has traveled the path of democratizing civil-military relations in company with other Eastern European countries. De-politicization of the military has been carried out; a civil and political governing body of the Ministry of Defense has been established. A new social status for the military, adequate to both the specificity of their labor and the principles of building a democratic society, has evolved. Undoubtedly, the criteria for membership in NATO and the EU have important organizing, directing, and stimulating roles in the development of policies for establishing democratic control over the military.

The existence of modern laws and democratic institutions, however, is only a prerequisite for effective civilian control. If such control is to be fully realized, much depends on the maturity of the political culture, of politicians, and of society itself. It is not an accident that the specialized literature of the last several years emphasizes the pervasive cultural dimensions of the problems of democratic transition. It becomes increasingly obvious that the borrowing of law, of adapting institutions, and applying external rules for civil-military relations from countries with developed democratic cultures does not lead to an *automatic* restructuring in values, psychological attitudes, and political behavior in post-totalitarian societies.

The reason why this is so often the case lies in the specific features of the prevailing political culture in question and in the conditions which have an impact on its functioning (Dr. Velichka Milina, 2003).

- ❑ *The political culture* characterizes the qualitative level at which political relations function. It includes political knowledge and values, plus the sustainable patterns of political behavior. One of the "objective laws" to which its action is subject is that of inertial cultural effect. This law suggests that each political generation inherits from the preceding one a certain volume of knowledge, values, and behavior patterns. A period of transition will tend to see the endurance of values and behavior patterns in civil-military relations that are typical of totalitarian society: the mono-logical nature of communication, the persistence of ideological fears, the tendency to place group (social, corporate, or political) interests above the national ones, etc.;

- ❑ Cultural determinism (this law by another name) lays stress on the roles of tradition and ethno-psychological features for the functioning of sustainable patterns of political behavior. The essentially nihilistic attitudes toward institutions, politicians, and law that are traditional

for the Bulgarians at the level of daily awareness would render any transitional efforts senseless. At the same time, the positive attitudes and traditions that ensure the high prestige of the Bulgarian armed forces could contribute to a relatively painless restructuring of relations between the civil and the military spheres. Since the end of the nineteenth century, the Army has arguably been a profoundly attractive institution for the most sincere patriots, a group that might be described as those seen as the most worthy Bulgarian men and women. The prestige of the military came above all from their contribution to the attainment of national goals under various historical conditions. In Bulgarian society, the conviction is held that, whether or not national goals have been achieved, the military have always performed their duty.

The OSCE approach to the civil-security relations was formulated soon after the transition towards democracy became a dominating process in Eastern Europe. Later the Stability Pact for South East Europe pointed out that the security sector comprises those state institutions charged with ensuring the safety of the state and its citizens and that they have authority to use or order the use of force, as well as those civil structures, that are responsible for their management and oversight. It therefore includes military and paramilitary forces, intelligence services, police forces, border and coast guards, and even customs services, judiciary, penal systems and civil structures that are responsible for the management and oversight of such functions.

The concept of the security sector has been designed in order to help countries in transition to better conceptualize and design the defense, police and other "special services" reforms (SSR). One of the working definitions for a security sector is this of the Geneva Center for Democratic Control of Armed Forces that is about the totality of institutions and processes of providing national, social and individual security. In accordance with it the security sector is the totality of institutions and processes of providing national, social and individual security as a public good. Against the background of the specific Bulgarian division of political power and related to that division of the security organizations, the following content of the "security sector" could be addressed:

- ❑ Subordinated to the Minister of Defense: the Bulgarian Army (traditional name for the Armed Forces) including Military Police and Counterintelligence and Military Information Service;

- ❑ Subordinated to the Minister of Interior: National Security Service (counterintelligence), National Police Service, National Service of Gendarmerie (paramilitary force with police functions), National Border Police Service (control of the ground and maritime borders), National Service for Combating Organized Crime, and National Service of Fire and Emergency Safety;

- ❑ Subordinated to the President of the Republic: National Intelligence Service (foreign intelligence), and National Guard Service (for guarding VIP and important civilian objects).

A detailed set of criteria for performance assessment should be debated and approved to reform and develop the security sector. The paradigm of this set should be that, while these institutions should be effective and efficient in carrying out their duties, they should do so on the basis of well-considered national security and defense strategies, be under democratic control, and operate on the basis of realistic, credible and affordable plans, programs and budgets.

What is really important is the set and definitions of criteria to be relevant, useful and understandable. The criteria should give to the actors of democratic control an instrument for objective analysis and decisions. For this purpose a set of criteria could be designed based on officially agreed or mutually accepted documents such as the OSCE *Code of Conduct* and the NATO PfP criteria from the *Study of NATO Enlargement* (1995) and also popular check-lists as presented by scholars and experts as Chris Donnelly, Marco Carnovale (*NATO Review*, March 1997), Jeffrey Simon (*Joint Force Quarterly*, 2000), admiral Henry Gaffney (Center for Naval Analyses *Professional Paper*, 1996) and others like the Center for European Security Studies' project as of 2001, entitled *Organizing National Defenses for NATO Membership – The Unexamined Dimension of Aspirants' Readiness for Entry* (here the criteria are integrated in so-called "Carnovale-Simon test").

Part IV

The Legal Norms and the Institutions, Providing the Leadership and the Democratic Control of the Security Sector in the Democratic Society

The establishment of the rule of law is at the very heart of a successful transition to and consolidation of democracy. The adoption and enforcement of constituent legal acts, such as the Constitution, is of central importance to the rule of law. The transformation of a whole series of state institutions to serve rule of law, rather than the agencies of repression, is one of the significant preconditions for both successful transition and progressive consolidation of democracy. While no single model is in offer, Simon Lunn (*Connections* no. 4, 2002) has summarized the best practices in building preconditions for effective democratic control over the armed forces as follows:

- ❑ Legal and constitutional mechanisms which clarify the relationships between the head of state, the government, parliament, and the armed forces in terms of the division of authority, command, and subordination in both peacetime and the transition to war;
- ❑ An appropriate mix of military and civilian personnel within MoD (including civilian Minister of Defense) to ensure that the military expertise is situated in appropriate political and economic context;
- ❑ Effective parliamentarian oversight to ensure democratic legitimacy and popular support;
- ❑ Maximum transparency and openness, including independent research institutes and an active inquisitive media;
- ❑ Armed forces at ease with their role in society.

Concerning the definition of democratic control over the armed forces and its mechanisms, the concept has two aspects. Once it is understood as "civilian" in the sense of "non-military," vested to the respective state authorities. In other instances – as "civil" in the sense of "non-

state," directed to the state bodies and institutions and their policy and activities. This and similar terminological deficiencies in the conceptual documents, besides the theoretical contributions, could be successfully overcome by examination of the legal regulations.

The absence of a single "law on the civil-military relations" (or a "law on democratic control of the armed forces") does not impede the description of the legal regulations on civil-military relations, since such provisions exist in the Law on Defense and the Armed Forces, the Law on Alternative Service, the Law on Protection of Classified Information and some others.

Chapter 9

The Constitution, the Laws, Division of Powers, Civil Society and Its Institutions: Fundamental Democratic Tools of 'Guarding the Guardians'

The most striking characteristic of modern statehood is a paradox: the separation of powers and the monopolization of force. Any modern democratic constitution ensures that the legislative power, as the one making laws, is clearly separated from the executive power, as the one who executes the laws. With the modern state, civil society has given itself a tool of coercion that assures the populace of security from both external and internal threats while, at the same time, giving them the opportunity to live out their freedoms and determine themselves within the boundaries of legal justice.

To achieve this aim, the use of force and the means of violence are monopolized and concentrated in the hands of the coercive tools of the state – the security forces, such as the military, the police force, border police and gendarmerie, etc. Given the task of the military to protect the country primarily from external threats, the monopoly on the use of a large range of instruments of lethal force rests with the armed forces. Since this almost exclusive monopoly on force endows the armed forces with the potential to physically dominate all other institutions and take over the political control of the state, one of the oldest challenges to a democratic society has persistently been of how to subordinate the armed forces to the civilian leadership and authority; a problem that has already concerned ancient Rome. It was the senator Juventus who raised the question in the Roman Senate, 'Quid custodit ipsos custodes?'(Who shall guard the guardians?)

The problematic is difficult because it involves balancing two vital and potentially conflicting interests. On the one hand, the military should be strong to prevail in war, to ward off attacks and protect the society against any external threats and support internally when non-military security forces are overwhelmed; on the other hand, the polity wants to make sure that the use of force remains a last resort and a means used only when legitimized by the elected political authorities.

In light of the military's capability to prevail under the exceptional circumstances of armed conflict and war, the uniqueness and distinctiveness of the military is an essential criterion influencing civil-military relations. Even under the conditions of modernity and the contemporary challenges to societies, there is a continuing need for the armed forces to remain apart from society in their distinctive organizational structure and military culture if they want to successfully

carry out assigned tasks and missions. This distinguishing characteristic makes it even more crucial to establish civilian political control over the military and, at the same time, to integrate the military in a social and political environment.

In modern civil societies the essential framework for the position of the military in the state as well as the mechanisms for the democratic civilian control over the armed forces are set forth in the Constitution. The political power of modern statehood is divided into three branches: The *Executive* (headed by the President or the Prime minister), the *Legislative* (usually exercised by the Parliamentary Assembly or Congress, with one or two houses), and the *Judiciary*. The strict rules of the constitutional and legal framework provide for a system of checks and balances that are intended to ensure successful governance. According to the Constitution, the armed forces are normally part of the executive and embedded in the system of the separation of powers. They are bound by law and justice, subordinated to the political leadership and, like the other executive branches of the state, the armed forces are subject to legislative and judicial control.

This set of constitutional regulations shall ensure that the sole legitimate source for the direction and actions of the military should be derived from civilians outside the military establishment. These legal arrangements also make clear that the armed forces are accountable to the legitimate democratic authorities. Although subject to national differences, democratic constitutions generally bestow the responsibility for national security and the overall guidance of the armed forces on the executive power. The Constitution designates the President (in some cases the Prime Minister) as the Commander in Chief of the Armed Forces of the nation, who exercises his power normally through a cabinet and an appointed civilian Minister of Defense. The executive power formulates and proposes security and defense policies and implements them after approval by the legislature.

The general role of the legislature in matters of defense and security is to pass respective legislation and to ratify procurement decisions, policies, and on the deployment of forces. The most important role for the legislature to exert civilian control, however, is the budgetary control, the 'Power of the Purse' function of the parliament, which gives it especially the competencies to pass the budget and to decide on appropriate funds for the personnel and material requirements of the armed forces. This task is reinforced by the entitlement to parliamentary oversight in all fields of national security and defense. In addition, the parliament establishes special committees on defense to carry out particular functions in monitoring the implementation of the security and defense policy by the government. Parliamentary Committees also participate in the preparatory work for parliamentary debates and decisions on matters of security and defense. The legislature may also subject the armed forces to control by a national auditing office regarding efficient, legal and transparent budgetary spending and lawful financial conduct of the armed forces. The legislature also provides an extensive set of legal rules and provisions pertaining to the internal order of the armed forces. Concrete military legislation is provided through laws on defense (such as Defense Acts), which, among other issues, regulate the legal status of soldiers and define basic rights and duties for military and defense personnel.

The significant role of the parliament in legislating on security and defense issues is also an important prerequisite for good civil-military relations. This role is crucial in the formulation of defense and security policies, the decision-making processes concerning defense budgets, and the controlling mechanisms for spending the resources.

The judicial power evaluates and interprets the constitutionality of laws and, by way of independent courts, monitors and ensures that the armed forces act in accordance with the laws. It also guarantees the members of the armed forces their rights and makes sure that they are always subjected to a constitutional consistent jurisdiction.

Firm constitutional foundation warrants a clear separation of powers and also defines the basic relationship between the state authorities and the armed forces. In essence, the constitutional provisions protect the state from two types of dangers: from politicians who have military ambitions, and from militaries with political ambitions.

Civilian political control finds its roots in the concept of representative democracy. The fundamental premise is that elected civilian authorities define and guide national policies concerning security and defense and maintain decision-making power over the military at all time. Civilian control and leadership, in the general sense, extends even beyond competence in a particular sense. Given the nature of modern societies, including the position of the armed forces as an instrument of politics, civilians are morally and politically authorized to make decisions. This holds true even if they do not possess the relevant technical competence in the form of a particular expertise. In a civil-military context this means that the military is tasked to help identify threats and appropriate responses, however, that beyond the military's advisory role the political decision-making power rests with the civilian leadership.

With respect to civilian control of the military and the stance of the armed forces in society and state, a conceptual distinction between two principle forms – *subjective* and *objective* - of civilian control of military power has been made by Samuel Huntington in his seminal work "The Soldier and the State." By *subjective* civilian control Huntington understood the maximizing of civilian power by both civilianizing and politicizing the military, by making it politically dependent, and denying the military a distinct professionalism remarkably different from other organizations in society; by *objective* civilian control he recognized the maximizing of military professionalism, making it a politically neutral tool of the state, and guaranteeing the military a distinctive existence as a professional body. Huntington's idea is that objective civilian control is preferable since the best guarantor for military subordination to political supremacy is a truly professional military. Only military professionalism would acknowledge the role of the military as an impartial instrument of national security, neither bound to engage in party politics nor prone to intervene in politics or assume governmental control.

Civilian political control, however, is only one aspect of democratic rule. The hierarchical responsibility of the military to the government through the establishment of a civilian minister of defense and a civilian administration in the ministry of defense do not exclusively provide for stable civil-military relations. The legitimization of civilian control by legal institutionalization in connection with the organizational structures and control mechanisms built into the legal framework is only one precondition for establishing democratic civil-military relations. Political control is necessary, but not sufficient. The second parameter of civil-military relations, the societal dimension, is necessitated by the major three political factors making up the environment of civil-military affairs: the political elite, the military profession, and the civil society.

Several influential scholars of civil-military relations theory came to emphasize the focus of societal rather than institutional state control as decisive in modern democratic civil-military relations. Among others, Morris Janowitz made clear that this side of civilian control refers to the incorporation of democratic ideas and values in the military culture as well as in the political

traditions of a nation. While the military and particularly the officer corps have to fully acknowledge the principles of democratic governance and ought to share the basic democratic and human values, a developed civil society has to have clear understanding of the democratic political culture, including the acceptance of the roles and missions of the military.

Together with the need for the armed forces to earn the understanding and respect of the society within which they exist, society itself has a reciprocal duty towards the armed forces. Society must be understanding and respectful if it wants to enable the armed forces to contribute efficiently to national security, without overstepping the boundaries of their constitutional entitlements. The soldiers have taken on a personal obligation for their nation that is almost unlimited – an obligation that may include fighting and even dying. In return, the societal community must recognize the consequences of military duty, e.g. the use of land for military training, airspace. Furthermore, if the nation's political leaders decide that conscription remains essential, society must accept the consequences of recruitment for individuals and families. Society also needs to acknowledge the expenses for defense and security including the right of soldiers to proper pay, appropriate living conditions, and its obligation to integrate soldiers and their families in the civil environment for which they are required to serve. Adequate education of military personnel also plays a major role in the societal integration of the armed forces and reveals the necessity to turn the guardians into fully cultured and developed members of society who carry out their duties in a deliberate and conscientious manner. This will also help to reintegrate the soldiers both socially and economically after they have finished their service. The skills in civil emergency and disaster relief operations soldiers and defense personnel have acquired during their service will add valuable technical and leadership competencies to society.

All of these considerations reflect the fact that finding an appropriate position of the armed forces within the society is not only a matter of establishing constitutional norms, but requires reflection and sustained efforts by all actors involved in civil-military relations. It demands the reciprocal sharing of duties and responsibilities in a joint venture of civil and military players.

The maintenance of national security, including efficient contributions from the part of the armed forces presupposes some amount of confidence and trust, which the armed forces must have in their political leadership. Political governance has to be provided in a consistent and coherent manner with clear initiating and implementing authority, even and particularly when defense decisions have to be made in complex situations or during crises. Representatives of the military establishment have to be heard in their advisory function and should be properly integrated in the counseling bodies established for political decision-making in security matters.

In open and democratic societies political processes take place under media scrutiny and the critical eye of the public. Transparency and legitimization of goals, objectives, and operative organizational procedures are constant challenges that have to be met by all organizations. The responsibility to explain defense policies and military needs to the public rests primarily with the government and the parliament. The military establishment contributes to these processes by presenting their tasks, roles, and missions openly to the community at national, regional, and local levels while observing political impartiality and without violating the principle of the supremacy of policy.

This makes it inevitable that academic circles, the media, the industry, and the society as a whole are being integrated into the processes of communication and dialogue on security and defense issues.

In a world of comprehensive security challenges, civil-military relations in a democracy is a wide-ranging, multifaceted, and interdisciplinary undertaking which involves all relevant forces of society and state.

Chapter 10

Accountability and Transparency of the Security Sector to the Parliament. Special Parliamentary Instruments and Methods of Democratic Control of the Security Sector

The Security Sector represents an area of national politics, which is particularly subjected to the system of checks and balances of governance in an open and democratic society. Since the security sector comprises the security forces themselves as well as the civilian authorities responsible for their use, the issue of security sector accountability and transparency leads far beyond mere civilian control over the military. The security sector, as encompassing the nation's human and material means to use force, is comprehensively interwoven with the overall fabric of society in a political, economic, and sociological sense and therefore touches upon all facets of civil-military relations. The necessity to ensure *accountability* of those who hold executive responsibility in security and defense affairs derives from the immense power that rests with this bestowment and is mostly directed toward the legislative authority, the parliament, as the representative body of the people. To provide *transparency* with respect to how the nation's means of force are administered rests with both major parts of national power, the executive and the parliament, and is primarily oriented toward the public.

While the responsibility for the overall guidance of the armed forces and the basic organization, formulation, and implementation of national security and defense policies resides on the executive power, the task to pass fundamental laws on defense and to ratify policies and the deployment of forces is normally conferred to the parliament. On top of the legislature's responsibility, however, we find the authority to exercise parliamentary oversight over the security sector including the budgetary control, the 'Power of the Purse' function of parliament as the most powerful tool of the legislature.

In this sense, the parliament has the power to influence the way in which the government designs, implements, and executes the security and defense policies of the nation. It does so by legislation, budgetary decisions, approval of major procurement and defense policies, establishment of committees, etc.

The constitution provides the basic legal provisions for the responsibilities and accountability within the security sector. It determines the rights of the executive authorities to guide and lead the organizations working in the security sector and holds the latter responsible for their actions toward their head executives and, at the same time, establishes the accountability of the executive to the parliament. The Constitutional provisions define the basic political and parliamentary instruments for control and provide the tools for securing democratic oversight of the security sector. The general powers of the Legislature are to initiate laws, to make amendments and appendages, to approve the budget for defense and security, to overview and amend the

budget funds, and discuss the appropriate numbers for funding and adequate policies for the security sector in committees.

From this context arises the Legislature's stake in the development of security policy concepts, its responsibility regarding force structures and defense strategies, personnel planning conceptions, and in certain cases the approval of major appointments in the defense establishment. The parliament also has the final authority in sending troops abroad and to decide on the participation of military forces in international missions. It approves their mandate, identifies the magnitude and duration of a mission, and defines the rules of engagement and the operational jurisdiction. Another general prescription concerns procurement decisions, the right to approve or reject contracts related to weapons, military equipment, supplies and armament.

Parliamentary oversight of the security sector is an essential element of the arrangement of checks and balances built in democratic constitutions, serves as a counterbalance to the executive power (which deals with security issues on a daily level), attributes to policy effectiveness, and monitors the executive on security matters. The members of parliament have to exert constant oversight on weapons procurement, arms control, and the preparedness of the armed forces. To fulfill that commitment, parliamentary factions designate defense speakers and establish defense committees. Legislative debates on defense issues contribute to the creation of an informed public ready to participate in a constructive and sophisticated dialogue on security policy issues. The transparency of this process of open debate and decision legitimizes both the armed forces and defense policy.

Good governance, as an effective cooperation between defense sector exponents and parliament, is a *conditio sine qua non* for democratic oversight of the security sector and demands "predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of public good, the rule of law, transparent processes and a strong civil society participating in public affairs." (The World Bank's Experience, World Bank 1994).

The debate on security issues is going through several phases: 1) the development of security policy, 2) the decision-making phase, 3) the implementation and evaluation of the pursued policy.

The role of the parliament in the development of a new national security policy is limited because this is primarily a competence of the government. However, an important role for the parliament lies in the task to make the process transparent to the public, and by doing so exerts indirect influence on the shaping of policies. Parliamentarians also have to argue the rationale of emerging new security concepts, have to make clear why change is required, and win the public's support and understanding. Parliamentary committees provide expertise on subject matters and are often consulted in earlier stages of policy development, when the draft is in process of elaboration or in order to provide time for reflection and consideration. Committees also use the discourse in order to get inputs for the development of associated legal norms.

The second phase commences with the official arrival of a proposal for amendment or the realization of a new legal provision at the parliament. Particularly when established defense committees reject or suggest changes to draft documents, the proactive and decisive role of the legislature in the decision making-process becomes visible. The passing of defense legislation and the parliament's approval of security policies are acts considered to be most important factors in democratic civilian control as they are supposed to represent the people's broadest

consent. The issue of transparency and accountability manifests itself fully when it comes to monitoring and scrutinizing public expenditures and financial demands of the government.

The instruments and mechanisms used by parliament to control policy execution and supervising the administration are common for most of the democratic system and usually include parliamentary debates, questioning and interpellations, and parliamentary inquiries as a means to obtain information from the executive.

Parliamentary debates on security issues are conducted when the executive reports on defense or foreign affairs, during the presentation of strategic reviews or other major defense documents as well as in connection with budget proposals and governmental programs concerning security matters.

The interpellation is a procedure of attending to members of the government, either ministers or representatives of concerned ministries and departments, and has two characteristics: to raise general debate and to carry political sanctions. The interpellation is the most direct form of control and ends with a vote expressing the approval or disapproval of the parliament with the explanations given by the executive.

The purpose of the procedure of questioning is to educe concrete information from head representatives of the executive in order to obtain detailed facts, which can clarify complicated bills laid before the parliament. The widely used practice of parliamentary questioning is normally preceded by a set of questions handed to federal ministers by parliamentary factions, which grant the executive time to carry out their own interagency investigations and prepare detailed answers. This should provide for timely, accurate, and updated information on issues of defense and security questions, help the parliament to control the implementation of the security related policy, keep executive bodies and organs answerable for their doings, and to generally provide transparency on security and defense subjects to the parliament in its entirety and via the media to civil society as a whole. The instrument of questioning also serves to redefine policies to exert further influence on political agendas.

Another common foundation for democratic societies in the implementation of democratic oversight is the establishment of specialized defense committees and, at times, intelligence committees to oversee government policies, as well as to examine operations and performances of security sector organizations in the field. The size and the special focus of committees allows for scrutinizing subject matters more closely and also offers a better opportunity to attain to compromises or find consensus among different political parties on important security issues. In this sense the committees are most influential on preparing new legislation or amendments, also providing expertise and advice for executive drafts or petitions before their submission to the parliament for full debate. Committee reports grant guidance to legislators on the floor regarding their discussions and their final on the issues.

The security clearances of parliamentarians serving on defense committees allow them to conduct secluded hearings when secrecy is required, however, beyond the boundaries of national security, committee representatives also provide for the essential level of transparency toward society and the public.

A number of legal provisions and mechanisms authorize committees to access and scrutinize the expertise necessary to exercise oversight of the security sector. These competencies include the right to request government documents, summon witnesses (including ministers and state secretaries), and hold public hearings. The nature of the security field often produces

bureaucratic unwillingness to reveal information – a phenomenon normally exacerbated when intelligence services become involved. In many countries of Eastern and South Eastern Europe the practice of policy makers and military representatives who have been historically accustomed to operating behind a curtain of secrecy and unaccountability constitutes a heritage which is still to be overcome.

In any event, parliament alone cannot guarantee effective oversight of all executive activities and policies within the security sector. Other national institutions also responsible for overseeing the security sector, such as the judiciary and the general auditing office, have to join in. An important role is being played by civil society mostly as far as the use of think-tanks, research institutes, and academic circles are concerned, all of whom are tasked to engage in public debate, contribute expertise on specific issues, and offer alternative courses of policy action. Stimulating the existence of a nongovernmental defense community supports the objective to foster transparency and accountability in the sensitive field of the security sector.

The media serve as the major link between state institutions and civil society at large, including the broad range of organizations and institutions dealing with security affairs. They help the public and their representatives to grasp issues and articulate their interests. They largely contribute to overseeing the action of the three branches of state power and raise the debate in the society on particular questions, which in turn could have an impact on the decision-making process in the government and among the legislators. From a democratic and good governance perspective, the media have the right to gather and disseminate information on security related issues in the interest of society and to contribute to transparency and public information following the principles of fairness and objectivity.

All procedures and mechanisms built in constitutional provisions and law to promote accountability of the executive toward the legislature and bind both to the constitutional principles are not an end in itself. They serve the overall goal of assuring the nation of most efficient security policies that contribute to the best interest of society while striking a balance between the need for security and the upkeep of democratic freedom and civil liberties.

Chapter 11

Accountability and Transparency of the Security Sector to the Government. The Civilian Minister of Defense of the Integrated Ministry of Defense

In democratic societies the government and the parliament, together with the judiciary, share the responsibility for the proper functioning of the security sector. Jointly, they are responsible for the continuous cycle of:

❑ Formulation of the national security and defense policies;

❑ Implementation of these policies;

❑ Regular reviews and audits of the implementation.

In the distribution of responsibilities, the executive exercises control, on a daily basis, over the implementation of policy into practice. For this purpose, a civilian head of a security sector

organization, who is often member of the Government,[1] bears the responsibility to elaborate the regulations for policy implementation, e.g., approving by-laws, to issue detailed guidance on the implementation of policy, set by the legislature or the executive, to elaborate priorities, to determine budget requirements, to account for the money spent, to recommend changes in policy. In addition, very often the head of the security organization is the only public official authorized to sign contracts for major procurement items, to give permission for particular spending, to nominate senior personnel for appointment and promotion, to propose changes in organizational structure and operating procedures, etc.

For their actions, achievements, and failures, the civilian heads of security sector organizations, who are also political appointees, are accountable to the Cabinet, the legislature, and, ultimately, to the people. However, in performing these functions, this civilian regularly interacts with experienced professionals of that security organization who are appointed at senior leadership positions. Ideally, these interactions are based on trust, open lines of communication and mutual inclusion.[2] Such interactions prevent the alienation between politicians and high-ranking professionals and, thus, facilitate democratic control and organizational stability. As a minimum, though, these interactions and their regulation should not create obstacles to information flows, efficient implementation of policies and effective spending of limited public resources.

In a defense establishment, it is generally acknowledged that the model of *integrated Ministry of Defense* provides good organizational environment for such interactions and, hence, for effective democratic civil-military relations. Two of the main views of this model, examined in the current chapter, are focused on the command relationships and on the specialized managerial functions in a defense administration.[3]

Command relationships in an integrated Ministry of Defense

In the integrated model of defense management the chain of command flows directly from the National command authority (NCA) or, particularly in wartime, the 'Supreme Command' (see Figure 1). The Minister of Defense is a member of NCA and exercises daily control over the forces in peacetime. The senior military officer is the Chief of the Defense Staff [4] and serves as

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[1] Known in some countries as *Cabinet*, *Ministerial Council* or *Council of Ministers*. As a rule, ministers of defense and internal affairs (interior) are members of the Cabinet. Often, the head of the national organization responsible for protection of the population in variety of emergencies is also Cabinet member, e.g., the Secretary for Homeland Security in the United States. On rare occasions, the head of intelligence, of the counterintelligence or another "special service" may be member of Cabinet.

[2] Hans Born, ed., *Parliamentarian Oversight of the Security Sector: Principles, Mechanisms and Practices*, Handbook for Parliamentarians No. 5 (Geneva: Geneva Center for the Democratic Control of Armed Forces and Inter-Parliamentary Union, 2003), p. 20.

[3] Other important aspects of the integrated defense management, in particular the formulation of a defense policy and the transition from peace to war, are analyzed by Velizar Shalamanov, Stoyan Tsonkov, and Blagovest Tashev, *Model of Defense Management of the Republic of Bulgaria in the 21st Century* (Sofia: George C. Marshall Association-Bulgaria, 2002), <www.gcmarshall.bg/projects/past_en/ gcm_integrmodel_eng.doc> (19 September 2004).

[4] And not of a "General Staff."

the senior military adviser to the NCA. He or she does not have direct command influence over operations or over the services.

In this model, the main functions of the services are to train, equip,[5] and sustain the respective forces, and to provide forces for planned and ongoing operations. The Chiefs of the services are members of the senior advisory body to the NCA. The combat command is exercised by an 'Operations Command' (or 'Combat Command'). It as a rule is a joint command. Usually these commands do not have subordinate forces unless an operation is pending or going on.

The direct link between the NCA and the operations commands allows for direct civilian input to any military operation. That may include elaboration and selection of a course of action, target selection, and even choice of the particular weapon systems to be used, described in the theory of civil-military relations as *assertive* civilian control.[6] And although the military usually detests such influences, often this is the only way to reflect politically sensitive issues and changing international obligations.
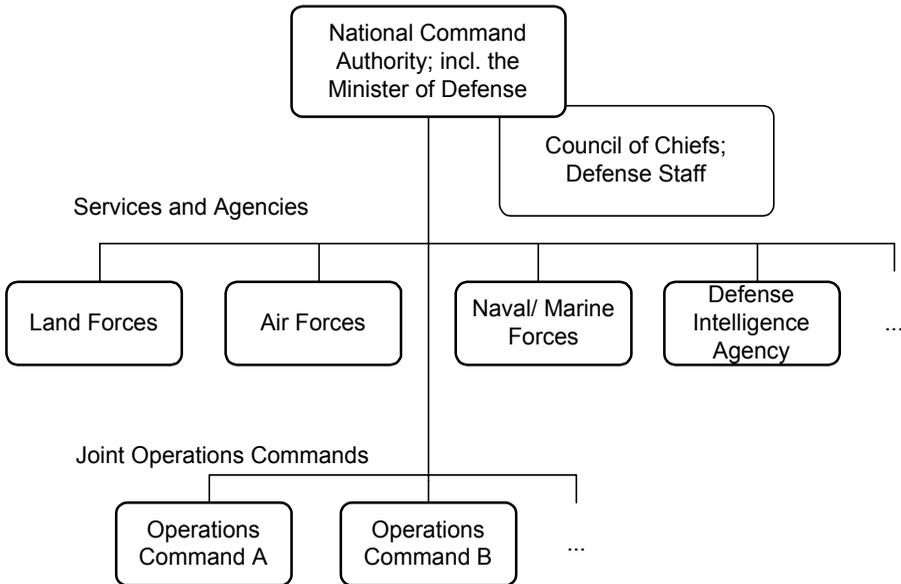
Figure 1. Command Chain in the Integrated Model of a Ministry of Defense

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[5]   This is the case in the US. In smaller countries the function of equipping the forces may be transferred to a central defense organization.

[6]   Peter D. Feaver, "Civil-Military Conflict and the Use of Force," in *U.S. Civil-Military Relations. In Crisis or in Transition?* eds. Don M. Snider and Miranda A. Carlton-Carew (Washington, D.C.: Center for Strategic and International Studies, 1995), pp. 113-144.

Defense and Force Management Procedures

The integrated model provides conditions for efficient defense management, with minimized redundancy among functions, organizations and advisory bodies. Defense and force management should be based on three complementary processes, implemented in a coherent manner:

- ❑ Definition of required operational capabilities (ROC), including managerial and defense support capabilities [7];
- ❑ Program-based defense resource management with distinct phases of planning, programming, budgeting, and budget execution, with clear procedures for review and re-distribution of the defense budget during the budget year, as well as annual reporting on program implementation and submission of these reports to the legislature together with budget execution reports;
- ❑ Acquisition management covering science, research and development programs, procurement of new weapon systems, equipment, and infrastructure, upgrades of existing weapon systems and equipment, and utilization of surplus weapons and equipment.

The respective specialized management procedures, together with the more conventional procedures of human resource management, logistics, and administrative support, should provide a clear link between defense policy, on one hand, and force capability and readiness, budget requests, expenditures and accounts, and major defense procurements, on the other. In addition, they should be designed and implemented in a manner that provides for comprehensive and transparent decision-making under rigorous control of the civilian Minister of Defense. To limit redundancy, defense management processes are supported by an integrated civil-military administration with integrated organizations (i.e., directorates) for programming, financial management, acquisition management, human resource management, administrative support, etc. Some of these organizations may report both to the Chief of the Defense Staff and to the senior civil servant, i.e., the Secretary of the Ministry of Defense. Finally, in order to manage the complexity of the defense establishment, the Minister of Defense may be advised to transfer decision-making responsibility to senior civilian or military officials who competently chair the senior councils [8] in the three specialized fields listed above:

- ❑ Required Operational Capabilities Board;
- ❑ Defense Resource Management Board;
- ❑ Defense Acquisition Board.

Such defense and force management arrangements, augmented by strict implementation of clear and comprehensive procedures, auditable decision sequences, and involvement of parliament and parliamentarian sanction in key phases in the decision process (e.g. in the acquisition of a major weapon system, in the budget drafting process, etc.), provide essential prerequisites for transparent functioning of military organization, accountable to a civilian defense min-

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[7] That includes capabilities for education, training, medical support, etc.

[8] The issue of the composition of these councils and the civil-military interaction is examined in the next chapter.

ister. Similar arrangements should be designed and implemented in other security sector organizations as a means of democratic civilian control.

Chapter 12

Military and Civilians in Defining Defense Policy, Needs, Budget, and Procurement

Civilian control over defense and armed forces, in order to be effective, requires good understanding of defense and force planning principles, comprehensive, clear, and auditable planning procedures, solid civilian participation and strict civilian oversight of every stage of the planning process.[1]

Figure 2 provides a simplified presentation of a defense and force planning process.[2] The outcome of this process is a vision or a blueprint of the defense organization and the force structure in long- or mid-term that is affordable (can be realized within expected defense budgets) and is acceptable in terms of defense planning risks. The same presentation may be useful in programming the development of the defense establishment [3]; yet, typically a higher level of detail is necessary (to that aim, the presentation on Figure 3 will be used later in this chapter).

In principle, it is not possible to sustain a dichotomous relationship between civilians and the military, i.e., one in which the civilians are responsible to define policy and to budget its implementation, and the military provide the answer – the armed forces. A good working model of civil-military interaction in defense and force planning should be based on [4]:

1. Goal-oriented, rather than rule-abiding, civil-military cooperation on working—expert—level where participation is commensurate to the available expertise and specific experience of the players in the planning process;
2. Distribution of decision-making authority according to specific expertise and vested interest [5]; and
3. Clear civilian control over defense policy and planning, including authorization of all milestone decisions by the respective civilian authority.

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[1] Velizar Shalamanov and Todor Tagarev, *Reengineering the Defense Planning in Bulgaria*, Research Report 9 (Sofia: Institute for Security and International Studies, December 1998).

[2] For alternative approaches to force planning the reader may refer to Henry Bartlett, G. Paul Holman, and Timothy E. Somes, "The Art of Strategy and Force Planning," in Richmond M. Lloyd, et.al., *Strategy and Force Planning* (Newport, RI: Naval War College Press, 1995), pp. 15-27.

[3] In other words, how to plan the transition from the current defense and force organization to the envisioned one.

[4] More detail is available in Todor Tagarev, *Control, Cooperation, Expertise: Civilians and the Military in Bulgarian Defence Planning Experience*, Research Report 14 (Sofia: Institute for Security and International Studies, April 2003).

[5] For example, the interests of the operational commander who potentially will be in charge of employing the planned forces.

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                    ┌─────────────────────┐
                    │  Objectives of the  │
                    │ national security   │
                    │      policy         │
                    └─────────────────────┘
                              │
                              ▼
                    ┌─────────────────────┐
                    │   Strategies for    │
                    │ contribution of the │
                    │   armed forces      │
                    └─────────────────────┘
                              │
                              ▼
                    ┌─────────────────────┐
                    │ Missions of the armed│
                    │    forces, 1...m    │
                    └─────────────────────┘
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Objectives of the national security policy

Strategies for contribution of the armed forces

Missions of the armed forces, 1...m

Tasks of the armed forces, 1...t

Allied and other external requirements

Capabilities, 1...c

Force mix, 1...f

Structure Manning Training   Weapons& Equipment Stockpiles   C4ISR Infra-structure   Doctrine Readiness

Costing the force structure

Assessing planning risk

Yes   No

**Affordable force structure &
Acceptable planning risks**

Figure 2. General force planning framework

This defense and force planning covers comprehensively personnel, organizational structures, weapon systems and equipment, command and control systems, infrastructure, training levels, reserve stocks, readiness levels, etc.; national defense and allied requirements; sustaining and modernization requirements.

Comprehensiveness means also that no planning issue is 'out of sight' or 'out of reach' of the civilian authorities. That includes any organizational and doctrinal development, force dislocation and readiness, training standards and levels.[6]

Defense Policy

The defense policy of a given country may be considered transparent if decision makers—the elected representatives of the people—are fully aware of and society is informed on the policy *goals*, existing and planned *means* to achieve the goals, and the *cost* of sustaining those means. A finer level of detail and, respectively, more transparent defense policy would provide an informed citizen with opportunities to assess various strategies to achieve the policy goals, alternative policy options, the cost and the risk associated with each option.

The general defense planning framework covers definition of national security interests and objectives, 'grand strategy' how the country intends to achieve these objectives, strategies for contribution of the armed forces, thorough definition of missions and tasks of the armed forces, definition of required capabilities, assessment of necessary resources, and assessment of risks associated with planned force structure. Importantly, this process is typically accomplished iteratively to balance defense needs with available and anticipated defense budgets.

A political body, supported by think-tanks, study teams, councils, study groups, etc., formulates the defense policy. This process is relatively autonomous. However, it needs a military input, but also a more open external expertise. The formulation of defense policy is the most important decision making element of the defense planning process. It includes strategic decisions and guidance articulated in white papers, political statements, ministerial guidance, decisions of Parliament, Cabinet, the Minister of Defense, and, in some cases, of his or her deputies. It requires the creation of legislation, concepts, and strategies.

Defense policy is implemented in practice through defense and force development plans, acquisition plans, defense budgets, personnel recruitment and management plans, etc., and their implementation, as well as audits of the implementation.[7]

Defining defense needs

The military expertise is primary in this phase of the defense and force planning process. For a certain mission and task of the armed forces, military experts elaborate mission needs and planning scenarios, assess required capabilities, and propose force structure and readiness levels.[8] Importantly, they propose a list of priorities among all *required operational capabilities*

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[6] Occasionally, more restricted role of political appointees and other civilians in current operations may be justified.

[7] Shalamanov, Tsonkov, and Tashev, *Model of Defense Management.*

[8] Other organizations, i.e., defense support agencies, military schools, etc., make similar proposals.

(ROC). As a rule, this list results from a prioritization process based on clearly stated assumptions, assessment of probability of occurrence of a given scenario [9] and simulation of performance of the planned force structure in that scenario.

Ideally, the military experts develop alternative force structures and provide pros and cons analysis for each alternative, and each of the proposed alternatives is fairly realistic, i.e., likely to be achieved under anticipated resource constraints.

Filtering defense needs

As a rule, in democratic societies not everything, defined by the military as needed, may be adequately budgeted. Therefore, the effective civilian control presumes availability of a rigorous defense resource management process. And although different countries use different terminology, it is generally recognized that resource *programming* is in the heart of effective defense resource management.

The *defense program* is the document that links long-term plans with budgets. Defense programming is the key tool available to the defense leadership for implementation of the defense policy into adequately organized, manned, equipped, and trained forces. It relates available and predicted resources to the full spectrum of required capabilities. Usually, the defense program links the defense resources to the required operational and other defense capabilities within a three- to six-year programming horizon. Furthermore, it attributes decision-making authority to the responsible and accountable persons and permits higher transparency of the planning process.

The defense resource management system is the underlying planning system in a defense establishment. In a comprehensive manner, it encompasses national defense and international requirements and obligations; people, weapons and infrastructure; sustaining and modernization requirements; and balances defense needs and resource constraints. It may be seen as a 'filter' in the overall defense planning and management system (Figure 3), since only sub-programs and program elements, considered of highest priority, are included in the final programming document, usually referred to as *Program Decision Memorandum* (PDM). In turn, upon authorization by the defense minister, the PDM serves as the sole authoritative document for budget planning, force development plans, acquisition plans, recruitment plans, personnel management plans, etc.

Programming allows maintain a clear audit trail from national security objectives to taxpayers' money. Therefore, meticulous defense programming is crucial for making the process transparent to decision makers. The preparation of the budget as a result of decisions made during programming allows translate the priorities of defense policy in practice.

Often the Minister of Defense is personally in charge of defense resource management. Alternatively, he or she may authorize a deputy minister to chair the Defense Resource Board and to serve as the 'principal defense resource manager.' The senior military officer advises the defense minister or the responsible deputy minister on prioritization and allocation of scarce resources to competing needs. The management framework and the supporting processes are

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[9] Outside organizations—diplomatic or intelligence services—may provide critical inputs to the assessment of probabilities and the features of a scenario, e.g., probable actions of an ally or coalition partner.
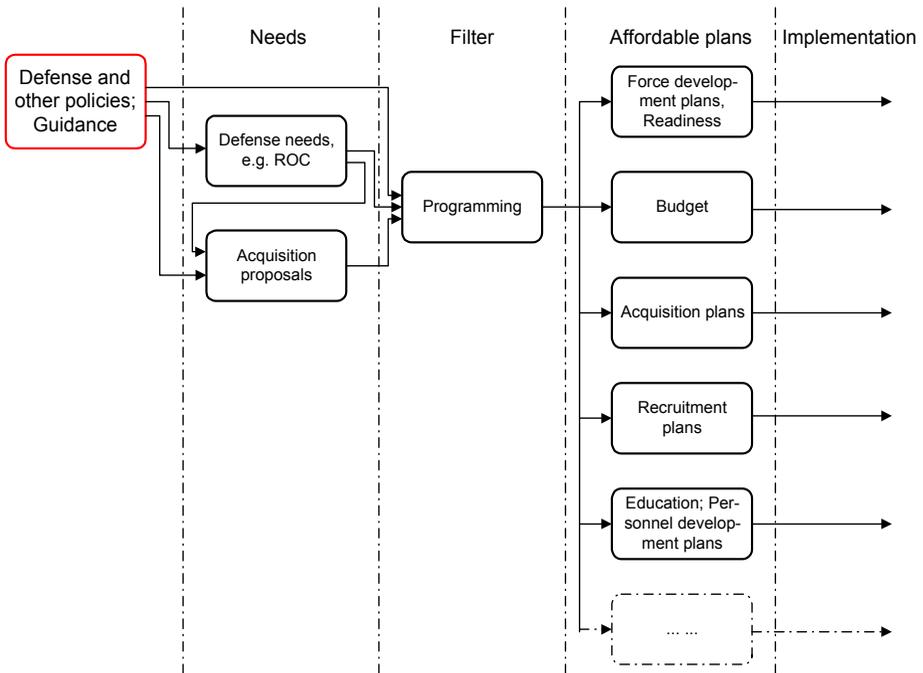
Figure 3. Links among defense planning disciplines and documents

based on an effective and efficient division of labor among the key leaders of the organization and their supporting staffs and management processes that facilitate integration of effort and rational decision-making.

One particular challenge relates to the implementation of risk assessment methodologies, techniques and tools. Proper assessment of the risk associated with each policy option and the related force structure may be of crucial importance in every important decision in the defense planning process. Assessments and debate should be based not only on what a force planner feels but rather on a structured approach to risk assessment, using the respective expertise of civilian and military planners.

Defense acquisition and procurement

The term 'acquisition planning' comprehensively covers the definition of:

- ❑ Plans to acquire weapon systems, equipment, and C4ISR systems [10];
- ❑ Science and technology, research and development, concept development and experimentation programs;

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[10] C4ISR – Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance.

❑ Infrastructure development programs;

❑ Plans for utilization of surplus weapon systems, equipment and infrastructure – in the context of a coherent process of defining mission needs, operational requirements, system and technical requirements, contracting, procurement, testing, fielding, maintenance support, upgrading and discharging military materiel.

Acquisition decision-making may be considered transparent only if decision makers are fully aware and society is informed to the maximum possible extent of the relation between national security objectives, missions and tasks of the armed forces, required defense capabilities, quantities and capabilities of major weapon systems, and the cost to acquire and sustain those weapon systems. On a finer level of detail, a modern acquisition management process relies on:

❑ Mission analysis and definition of mission deficiencies;

❑ Capability-based definition of operational requirements;

❑ Life cycle costing;

❑ Effective arrangements for acquisition project management;

❑ Incorporation of efficient acquisition risk management approaches.

It has to account for an elaborate definition of the term capability (see also Figure 2) that covers:

❑ Required manning levels;

❑ Operational and technical characteristics of major weapon systems, including expected availability (MTBF,[11] maintenance schedules, etc.);

❑ Training levels (implying good understanding of the cost of training using a particular weapon system);;

❑ Required quantities, sustaining costs, necessary stocks of ammunitions, spare parts, fuel, etc.

As a whole, an effective acquisition management should provide cost-effective technological solutions that clearly relate to the priorities of the national security and defense policy. In addition, in most established democracies the parliament is involved in key points of the life cycle of any major acquisition project. The parliamentarian sanction tends to guarantee long-term financial support for the project, as well as its correspondence with national economic, technology, and social policies.

Once a decision to acquire a particular defense item is made, it should be implemented in accordance with national procurement regulations. Most countries have public tenders' laws, aimed to increase efficiency in using taxpayers' money through provisions for transparency, implementing effective control of public spending, providing conditions for competition, and stimulating economic development. Very often, however, transparency requirements encounter secrecy considerations. There is no general recipe for overcoming this contradiction, other than

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[11] MTBF – Meantime between failures.

requiring justification of the need to circumvent the public tenders' law in each specific procurement case and involving parliamentarian oversight tools on a regular basis.

Military and civilians in defense planning

A complex defense and force management system, as the one described in this chapter, is best supported in an integrated defense organization, with joint civil-military structures responsible for defense policy, strategic planning (e.g., definition of required operational and defense support capabilities), programming, budgeting, acquisition management, etc. In addition, senior boards for each distinct process, e.g., Defense Capabilities Council, Defense Resource Board, Defense Acquisition Board, should carefully balance civilian and military expertise and vested interests. Also, organizational and procedural cross-links may provide complementary 'peer review' mechanisms. One useful example is the role of the 'Capability managers' in the UK defense establishment.

In conclusion, adequate defense transformation plans, and developments in defense in general, result from a defense planning process based on goal-oriented interaction between expert civilians and the military and rigorous political—that is also civilian—control over defense policy. The institutionalization of such defense planning process presumes relevant normative and organizational framework, as well as adequate qualification of the personnel involved. It may be further facilitated by implementation of information systems and decision support tools. Ultimately, however, the institutionalization requires organizational culture that not only tolerates, but also encourages differences in opinion and rationality, while promoting cooperative decision-making and individual responsibility for planning and implementation of plans.

Chapter 13
Democratic Control of the Intelligence Services

Notwithstanding the relative success of the debate on security and the instruments of exercising democratic control, a long way needs to be passed – both nationally and internationally, to reach a satisfactory level of democratic control of the intelligence agencies. There exist factors that complicate the knowledge of intelligence and of the civil democratic control of the intelligence institutions: the intermingling of constructive positive issues of the changing role and tasks of intelligence with overcoming the legacies of the past; the persisting presence of contradictory theoretic assumptions about democratic oversight and control over the security sector; the lower level of discussing this issue with NATO, EU and other Western partners; the issues of the intelligence and security agencies' activities are definitely the most specific and complex in the realm of security issues; no bold academic effort has been demonstrated to study the issues of civil democratic oversight of the intelligence agencies and shape the 'academic body of knowledge' in that field in Bulgaria, and, in the aftermath of the 9/11 events and the new security needs of fighting terrorism globally this subject turns even more difficult.[1]

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[1] Plamen Pantev (in Ivo Tsanev and Plamen Pantev), Democratic Oversight and Control Over Intelligence and Security Agencies, in Jan A. Trapans, Philipp H. Fluri, eds., *Defence and Security Sector*

Notwithstanding the relative success of the debate on security and the instruments of exercising democratic control, a long way needs to be passed – both nationally and internationally, to reach a satisfactory level of democratic control of the intelligence agencies. There exist factors that complicate the knowledge of intelligence and of the civil democratic control of the intelligence institutions: the intermingling of constructive positive issues of the changing role and tasks of intelligence with overcoming the legacies of the past; the persisting presence of contradictory theoretic assumptions about democratic oversight and control over the security sector; the lower level of discussing this issue with NATO, EU and other Western partners; the issues of the intelligence and security agencies' activities are definitely the most specific and complex in the realm of security issues; no bold academic effort has been demonstrated to study the issues of civil democratic oversight of the intelligence agencies and shape the 'academic body of knowledge' in that field in Bulgaria, and, in the aftermath of the 9/11 events and the new security needs of fighting terrorism globally this subject turns even more difficult.

There are fundamental questions that need answers in the would-be national debate on the democratic control of intelligence: what is intelligence; what does the 'right to know' of free and democratic people about intelligence include, and, what is the meaning for the democratic society of clandestine collection, counterintelligence, analysis and estimates, and covert action.

The popular definition of intelligence should be brought to the minds of the broader public and the understanding of the specific mechanism of democratic oversight – built-on this perception. Roy Godson, Georgetown University Professor, President of the National Center for Strategic Information and President of the US non-governmental Consortium for the Study of Intelligence describes intelligence as "that knowledge, organization, and activity that results in (1) the collection, analysis, production, dissemination, and specialized exploitation of information relating to any other government, political group, party, military force, movement, or other association that is believed to relate to the group's or government's security; (2) the neutralization and countering of similar activities by other groups, governments, or movements; and (3) the covert activities undertaken to affect the composition and behavior of such groups or governments."[2]

Godson describes four distinct elements of intelligence: First, clandestine collection which is obtaining valued information through the use of special, usually secret, human and technical methods (humint and techint). Second, counterintelligence, which is identifying, neutralizing, and exploiting other state's intelligence services. Third, analysis and estimates – that is assessing collection and other data, and delivering to policymakers a finished product that has more clarity than may be inherent in the data alone, and, fourth, covert action, which is attempting to influence politics and events in other states without revealing one's involvement. Godson underlines the symbiotic relationship, especially the operational one, between the elements.[3]

The "right to know" in democratic societies disqualifies the concerns about intelligence as the sole source of the debate on secrecy. Open government is an essential component of the

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Governance and Reform in South East Europe: Insights and Perspectives – *A Self-Assessment Study*, Volume I: Albania, Bulgaria, Croatia (Geneva/Belgrade: Geneva Centre for DCAF, 2003), pp. 234-236.

[2] Roy Godson, Intelligence and National Security, in: Richard Shultz, Roy Godson, Ted Greenwood (eds.), *Security Studies for the 1990s* (Washington, New York, London: Brassey's /US/, A Maxwell Macmillan Company, 1993), p. 213.

[3] Op. cit., p. 213-214.

democratic state's functioning. People in a democratic state have the right to know how the country's foreign policy reaches its ends as well as to what extent the country's protection from foreign intelligence services leads to intervention in the individuals' rights and freedoms. The dilemma of democratic oversight of the intelligence and security agencies is that without intelligence the country's national security is put at risk, but if intelligence is excessive in positioning or carried out in certain manner it may violate constitutional norms and civil liberties.

A blueprint of coping with this dilemma has not yet been invented, but in mature democracies specific issues are discussed in connection with the four elements of intelligence. An educated debate in Bulgaria on these issues may include the treatment of the following questions[4]:

1. On the issue of clandestine collection

Do democratic values necessitate specific limits on the collection techniques and are there incompatible with the democratic standards ways of collecting data? Apart from this issue society has the interest to know to what extent its own citizens and organizations are used with or without their knowledge as agents in recruiting both at home or abroad foreign agents. It is no less interesting to know and define legally as in the answers to the previous questions what are the limitations for using own citizens and organizations in the technical collection of intelligence information.

2. On the issue of counterintelligence

While the issue of surveillance of the citizens of Bulgaria has been regulated legally, there always remains room for discussing the extent to which a democratic government could target or survey its own citizens or resident aliens for counterintelligence purposes. Asking all that is necessary for the improvement of the legal basis of this activity, for getting closer to a consensus on effective protection of security while entertaining fully civil rights and liberties. A law cannot preclude the process of maturing of democracy. In a similar way should be treated the questions of the permissibility and appropriateness for democratic governments of the various counterintelligence neutralization and manipulation techniques against political groups with foreign connection and funding.

3. On the issue of analysis and estimates

A question that deserves the attention of society is the extent of hiring academics, media, or research institutions for classified work. What should be the parameters of such an involvement to protect national security, on one hand, and preserve the academic and media autonomy and liberty from the intelligence agencies, on the other? Should academic and media experts be hired to provide training for improved intelligence performance? Is the position of a lecturer and trainer in intelligence and counterintelligence courses compatible with the position of a professor in a university?

4. On the issue of covert action

What are the permissible and appropriate limits for the executive power to use its own citizens and private organizations without their knowledge to exert influence abroad? Are there levels of

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[4] See also on this issue Roy Godson, Op. cit., pp. 222-224.

compatibility of democratic values with specific techniques of covert actions as disinformation, assassination, etc.? Should officials from the legislative and/or executive branch be informed about covert action operations and if 'yes' – to what extent? This question is especially valid during the budget appropriations process. Is it permissible to recruit for covert actions criminals against another group of criminals abroad?

The "right to know" in the democratic society, applied to the intelligence agencies has also another aspect, encompassing all four elements: the right to know if the high professional criteria of joining these services are observed and implemented. Society has the right to know if professionalism in intelligence is adequate to its security needs and interests. For example, low-level professionals cannot recruit and effectively lead and train foreign agents of high quality. Intellectual equality and compatibility requires high level of professionalism of the intelligence servicemen in this area. This is why it is more than normal for society to ask are political appointments in the intelligence services at the expense of professionalism consistent with national security? How this requirement should be legally guaranteed? This particular issue becomes even more important when Bulgaria expects to work together in cooperative manner with allied intelligence services of NATO that will rely on Bulgarian professionalism in this field.

It would be a really responsible oversight of the intelligence and security agencies if the democratic public asks itself a very significant question: are the efforts of controlling the intelligence services raising their performance or not? Are the new legislative proposals, institutions for implementing the oversight, non-governmental controlling 'eye', etc. not causing also drawbacks on the creativity and efficiency of the intelligence services too? Debating these issues openly and reaching rational and consensus agreements should pay tribute to both democratic liberties and to national and international security.

Both theoreticians and practitioners of civil-military relations and security sector reform in Bulgaria are of the understanding that any further dealing with these issues are no longer a matter of philosophic acceptance of the principles of the democratic control over the military and the security institutions in general, but rather a question of management and effectiveness in that area.[5] It would be important to focus on several issues, concerning the relationship between state and intelligence agencies that constitute the essence of the problem of 'good governance' of intelligence:

First, what are the legal frameworks, bureaucratic hierarchy and accountability, executive and legislative control of intelligence?

It is no secret that an invariant problem of any country's intelligence services is to prevent them from turning into toys of their political masters – by tradition an effort with doubtful success. Furthermore, the effectiveness of the legal and institutional formulae of exercising civil democratic control of the intelligence agencies is largely dependent on the maturity of the respective democratic societies and states.

The Bulgarian tradition in that field in the last 15 years has experienced the influence of both contending efforts to preserve the political neutrality of the intelligence services and from opportunistically using them for narrow political purposes, and of a gradually though slowly evolv-

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[5] See: David Betz, "Democratic Civil-Military Relations in Practice: Implications for Theory," a paper presented at 'Taking Stock on Civil-Military Relations' Conference (The Hague, 9-12 May 2001), pp. 3-10.

ing democratic ethos. The reflection of these pressures on the legal and institutional aspects of the democratic control of the intelligence and security agencies is very curious. The democratic transition in Bulgaria was marked by an initial revision of the totalitarian constitution in March 1990. The revised text provided the Head of State with the right to lead and control the national intelligence service. The acting constitution of July 1991 did not provide this competence to the President of the Republic, but the tense and fluid political situation at that time did not motivate the Council of Ministers to claim and the then President of Bulgaria to provide the transfer of this activity to the Prime Minister. Since then the status of national intelligence continues to be linked with the Head of State who, according to the Bulgarian Constitution is not the chief executive. A funny situation has been created – the Prime Minister who bears the responsibility for the country's domestic and foreign policy is not the master of national intelligence, while the Head of State is practically on stand-by to pay for any failure in the risky activity of the intelligence servicemen. It is a fact that in the last 13 years the presidential leadership of national intelligence has contradicted the spirit and logic of the Constitution. Bulgaria witnessed a few clashes between the President and the Prime Minister in the first half of the 1990s because of this legal inadequacy.

A vigorous parliamentary debate has not started yet and a public discussion is yet to come on the issues of intelligence. There is an obvious need for a new public control of intelligence agencies and clear guarantees that the Prime Minister will not abuse his immense power granted by the Constitution in the field of leading the intelligence and security institutions. The present situation needs to be corrected – on one hand the Parliament should begin its regular control of national intelligence, and on the other national intelligence should get closer in touch with society and receive incentives for improvement. Executive power cannot be controlled adequately by the Parliament if intelligence is isolated from this control.

A new law on national intelligence should give clear answers to the following elements of the parliamentary mechanism of oversight and control:

First, the transfer of national intelligence into the domain of the Prime Minister.

Second, how planning, programming and budgeting are organized and what are the procedures of approving the yearly budget. National intelligence should clearly describe in its budget proposal what its activities and their objectives are in the coming financial year.

Third, the law should regulate the organization and process of parliamentary investigation and assessment of the national intelligence agency's activities with the aim of judging their effectiveness. For this purpose, a specialized and approved by the Parliament with the consent of the opposition body (Inspectorate, Expert Commission, etc.) should facilitate the work of the respective commission that would monitor the activity of the intelligence and security agencies.

Fourth, how the intelligence agencies will organize their activity to be able to propose through the Government appropriate draft laws that would facilitate the functioning of the intelligence system.

The direct involvement of the country's Parliament in the democratic control of intelligence will improve the chances of the non-governmental expert sector to develop an independent information and analytic basis in the area of intelligence and draw into the discussion in an educated way the broader public.

Second, who are the producers and consumers of intelligence, who and when has access to the produced information; what is the maturity of the intelligence community, how do they inter-

face and coordinate; what is the relation between counterintelligence and the collectors of information, and what is the policy and engagement of the state with the various forms of intelligence activities.

The production and utilization of the intelligence information is logically linked to the way the four intelligence functions are implemented, what is the place of collection and of analysis and estimates, and what budget is allocated to that activity. Of course, it is not enough to know the details and general trends of the regional situation, the active threats for the country, but to be able to check this information and knowledge with other, powerful partners and allies. Then the meaning of the produced and used intelligence information would be more realistic.

Another important issue is the professional nature of the producers of the intelligence information: civilian or military. Presently, the military intelligence is an integral component of the Ministry of Defense system and hardly can have bigger ambitions. Civilian intelligence is not in competition with their military colleagues and no tense issue has popped up in the period of the transition of Bulgaria to democracy. However, to take the best from both professional branches a better structured and organized role for the Security Council with the Council of Ministers should be legally established. There are no indicators that the military and foreign intelligence information is pooled, coordinated and treated by a higher authority in the national security decision-making process. Probably this happens incidentally in the Security Council with the Council of Ministers or with the National Security Council with the President (a looser and more political institution than a decision-making body), but not on a day-to-day basis with the philosophy of coordinating the country's intelligence potential and activity.

It is important to note that intelligence and counterintelligence are separated – legally, institutionally and in the decision-making process. The external intelligence tackles issues out of the borders of the country, while the National Security Service is responsible for domestic issues. What is particularly interesting, probably specific for part of the transition period, but may remain a permanent function of external intelligence, is that it was especially active in studying, researching and revealing information about potential big investors in the transforming its form of property Bulgarian economy. Bulgarian external intelligence was particularly helpful to different ministries, working on key privatization projects in the years 2002-2003.

A new and pragmatic concept of producing and consuming intelligence information evolved in the last years in Bulgaria[6]: intelligence does not exist for itself, but should be given orders by the employers – the consumers of the information. This interaction depends on the activity of both sides. Intelligence is searching its employers, to prove it can be helpful. The circle of the users of intelligence information has enlarged four times. The basic employers are the President, the Prime Minister and the Ministry of Foreign Affairs; they are the main consumers too. Apart from them the Speaker of the National Parliament – the third most powerful person in the country, also uses the results of the collection/analysis/estimates work of the National Intelligence Service. The information is used also by the Ministers of Energy, the Minister of Economy, Minister of European Integration, Parliamentary Commissions on particular issues. A new development in the intelligence consumption activity in Bulgaria is the Chief Secretary of the Ministry of Interior – a key figure in the fighting of organized crime by the authorized institutions;

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[6] Op. cit., p. 11.

the heads of services of the Ministry of Interior; Deputy Ministers of different ministries. External intelligence provides 10 to 20 information reports every day.

The chief of Bulgaria's intelligence or his deputy meets with the President and Prime Minister almost on a daily basis. When the chief of external intelligence demands a meeting with the President or the Prime Minister both are extremely responsive. They keep a mobile communication too. It is extremely important for the people to know that the decision-making process on key national security issues is going on permanently.

Third, what changes are required in national intelligence to fight effectively terrorism?

One of the most discussed issues in the last three-four years is the effect of the 9/11 on the missions of intelligence in the new security environment[7] as well as the new tasks for the democratic control over intelligence. The theoretic assumption that the issues of civil-military relations and the democratic control of the security sector institutions are becoming more of an international nature strongly influences these considerations.

The main targets of the intelligence in the last century have been foreign states, their political organization and the respective individual representatives. During the last decade non-state actors focused the attention of the intelligence services. Terrorist organizations and individuals, firms dealing with nuclear, chemical and biological material, arms trading companies, drug traffickers, organized criminal groups, organized violators of sanctions regimes, instigators of civil wars (so called pre-state groups), groups, driving the fragmentation and collapse of new states (so called post-state groups), some trans-national corporations – many of these formations were reflections of the tendency to globalization and intelligence services displayed an increased interest in their activity. This interest had a special additional focus if some of them interacted with the so-called 'states of concern' (formerly 'rogue states').

The whole period of the 1990s was marked by a search of intelligence targets and the respective missions that would clearly motivate the servicemen. However, though important, the service to international security and humanitarian support is hard to compare to the motivating factors in the intelligence activity in a wartime situation. The means of collecting information only in some of these cases did use the full potential of intelligence as in wartime. This ethical concern disappeared (almost entirely) after the terrorist acts of 11 September. The intelligence war on terrorism undoubtedly serves the international society, has the clear UN mandate and covert collection including the most intrusive one is the nucleus of this fight. The penetration of the terrorist enemy by humint and techint is absolutely legitimate and of high moral value. Bulgarian intelligence services may hardly stay away from this trend.

Another tendency that would also require a special view from the civil society and the parliament is the tendency of globalization of the activity of the intelligence. Especially the fight against terrorism demonstrates that the intelligence product serves global public good to an enlarging group of states, not only the own one. This tendency could be traced back in the Cold War period while verifying strategic arms agreements or as confidence-building measures. In the post-Cold War period the limitation of the spread of nuclear, biological and chemical weap-

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[7] Michael Herman, *Intelligence Services in the Information Age: Theory and Practice* (Frank Cass, 2001); Ethics in International Relations: The Role of Intelligence Services after September 11, CSRC, RMA Sandhurst, M24, November 2001.

ons would have been quite impossible without intelligence exchange. This is true also for the joint multilateral military peacekeeping and other operations, requiring a full range of wartime intelligence support. The International Criminal Tribunal for former Yugoslavia (ICTY) in The Hague as well as the new International Criminal Court require intelligence support in identifying execution and burial sites, planning and implementation of crimes, etc. The new European Rapid Reaction Force or the NATO Response Force can act only if supported by adequate intelligence information. The need of defending the national and European homelands, as well as the homelands of the USA, Russia and other allies in the fight against global terrorism requires global intelligence sharing and may pool intelligence resources to an incomparable in history magnitude. As Michael Herman writes these needs would require "some consensus on professional methodology, plus international assessment machinery whereby intelligence inputs can be tested and integrated."[8]

However, the creation of such a powerful intelligence pool would necessitate an adequate democratic control mechanism, for sure in the framework of an effective fight against terrorism. Bulgaria is part of all these international efforts and a democratic control by the country's Parliament and civil society is indispensable. The mechanism of interaction with other countries' parliaments and civil society representatives still needs to be worked out. This will guarantee a high social profile – national and international, of those who risk their lives in the fight with enemy number one – terrorism. It will also keep a public eye on what the exponents of information power are doing for the public's good and with citizens' money.

Concluding the case of good governance of intelligence institutions deserves a mention that a certain degree of professional qualification should be required for the leaders of the intelligence services. Another aspect of the good governance case of intelligence in the democratic Bulgarian society is to insist on Bulgarian media to perform in a more expert way as the public eye on the security sector, including intelligence. Though playing a very important role in educating to the need of accountability in the security sector during the democratic transition, the country's media have to develop their own expertise on intelligence issues. Otherwise they risk to be cleverly manipulated by the individual intelligence services. The same consideration holds true for the civil society institutions – NGOs, think-tanks, research and academic organizations.

Chapter 14
Civilian Courts vs. Military Courts in the Democratic State

An independent and impartial judiciary is an important factor in the republican concept of the separation of powers. A juridical system operating free from interference and pressure from other branches of government, guaranteeing the rule of law in all fields of statecraft, is vital for the democratic governance of a country.

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[8] Michael Herman, Ethics in International Relations: The Role of Intelligence Services after September 11, Op. cit., p. 5-6.

The military establishment of a country serves as an instrument of politics and is part of the executive power bestowed with the specific authorization to use violence under the supremacy of policy. The special task of the military and its embodiment of force make it particularly necessary that the military operates within the boundaries of the constitutional and legal framework of the state. The principles for a juridical system in a democracy – independence, impartiality, and fairness - must be extended to military jurisdiction as an integral part of the overall juridical design of the nation.

It also has to be taken into account that the strict hierarchical order of the military organization makes the theoretical distinction between disciplinary and criminal offenses inevitable. Consequently, the nature of soldiering and military duty subjects military personnel, particularly soldiers, to a twofold jurisdiction: as citizens they are subjected to the civilian code of laws; as soldiers and defense personnel they are subjected to a disciplinary system that covers all the peculiarities of military duty (e.g. defection from the troops, abuse of leadership authority, etc.). As far as the distinction between disciplinary and criminal offenses is concerned, non-criminal behavior on a mere disciplinary level is normally relegated to the juridical authority of military commanders and leadership personnel and does not immediately influence the military jurisdiction in the sense of establishing military courts. However, in order to make the juridical system on the disciplinary level transparent and subject to fair treatment according to the constitutional principles, sanctioned individuals can appeal to higher levels of military authority, independent institutions such as a board of complaint or a military ombudsman, or civilian administrative courts. In some countries, like Germany, the guarantee to appeal is given through the institution of an Independent Office of the Parliamentary Commissioner, charged also with the oversight of military disciplinary treatments.

On a conceptual level, the issue of military criminal courts can be resolved in two principle ways: a) Establishing a separate system of military courts and military justice; or b) Civilian courts as all-encompassing juridical institutions extending their jurisdiction also over the military sphere.

A variety of implications impacts the decision which system to choose. Among the most prominent are: The size of the military organization along with the predominant tasks and missions (exterritorial deployments); the history and tradition of the juridical culture; the complexity of the military world and the need to establish a specified juridical expertise; the maturity of the political system and the quality of civil-military relations.

The nations of the Euro-Atlantic community have placed their systems of military justice appropriately in their normal jurisdiction, but, have structured their systems differently. For instance Austria, Denmark, Germany, the Netherlands do not have special military courts while Bulgaria, Belgium, France, Poland, Spain, the United Kingdom and the United States do. The countries decide upon the aforementioned criteria and also how they assess the utility of their juridical system within the national circumstances.

The heterogeneous picture in the domestic legislation shows a wide variety of personal, territorial, temporal and subject-matter jurisdiction and varies in terms of functions, composition, and operation from one country to another.

In several countries, nevertheless, military jurisdiction has not yet reached the levels of democratic governance. Military courts in some Latin American countries, for instance, are not independent but rather organizationally and operationally dependent on the executive. Military

judges are often military personnel on active service who are subordinate to their respective commanders and subject to the principle of hierarchical obedience. The question if the military courts can observe the right to be tried and judged by an independent and impartial tribunal with full respect for judicial guarantees remains an open one. In some cases, military courts try juveniles under 18 years of age and also the right to conscientious objection is often undermined. In several Latin American countries the military have such broad powers that any offence committed by a member of the military falls to their jurisdiction so that military privilege becomes a true class privilege.

In some countries military courts are authorized to try even civilians in peacetime for violations of national security or anti-terrorist laws. However, many countries like Spain, Brazil, and Guatemala have eliminated military jurisdiction over civilians for political crimes. Military courts were and are still used to try members of the armed services of their nations, for instance police members, who have committed human rights violations.

It is mostly for these reasons that some experts argue that in a democracy civilian courts should have the jurisdiction over all criminal acts committed by military personnel and civilians, including common crimes and violations of civil liberties. The primary task of military courts should be limited and only observed when enforcing the implementation of the *military code of justice* in regard to military discipline and the effective performance of a mission. The need for military discipline should only criminalize offenses against military discipline, such as the abandoning of one's post.

The issue should, in any case, be approached from the perspective of whether or not military jurisdiction is compatible with the obligations incumbent under international human rights law with regard to both the administration of justice and gross violations of human rights.

In the European context, the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, offers directive in this regard. According to Article 6, the military justice system should seek to minimize disparities between the treatment of armed forces' members and civilians. Only original signatories to the European Convention may derogate from the provisions of Article 6 in their application of the military justice system while new signatories are obliged to meet the Court's requirements.

Another important dimension regarding civilian and military justice in democracies is the issue of peacetime and wartime jurisdiction. While the constitutional design of most states does not allow for military courts in peacetime, it does so for wartime periods. However, the problem remains the same. How can the requirement that courts should be independent and impartial and guarantee due process and the observance of human rights be met under all circumstances?

It is for this reason that the idea of implementing the so controversially debated International Criminal Court was brought up. Fair and impartial jurisdiction should be upheld for cases where national military justice could not be guaranteed for reasons of domestic instabilities, civil wars, or other rogue circumstances.

Irrespectively of the way in which military jurisdiction is organized, it has to be supported by proper legal education of officers and leadership personnel. The legal provisions help every commander to observe the rule of law whenever issuing an order, and assist him in exercising appropriate command authority. In Euro-Atlantic countries military justice is built upon the legal heritage, according to which individual responsibility stands at the core of legal regulations.

Servicemen have a duty to disobey illegal (criminal) orders or orders, which clearly and obviously violate human dignity and do not justify their actions by referring to committing them upon an order. The individual accountability of even servicemen and the rank and file in the military pose a tremendous responsibility on the shoulders of both officers and soldiers. Nevertheless, it is an important dimension in strengthening military jurisdiction and providing the highest possible level of lawful conduct of the military and defense personnel.

A strong and efficient system of military courts and military jurisdiction assuring impartial and objective enforcement of legal provisions also serve as an effective means to prevent professional misconduct and violations of international humanitarian law and human rights as they leave no doubt that such offenses will be persecuted by competent domestic and international judicial institutions.

In a world of comprehensive security, the mingling of military and non-military threats and challenges, and increasing civil-military cooperation in terms of national and international security affairs, the issue of military justice plays an ever more important role. The moral and legal challenges in an environment that features asymmetric warfare and confronts regular soldiers and military establishments with adversaries neglecting virtually all provisions of international humanitarian law are immense. When soldiers are carrying out their missions that demand flexibility and creative adjustment to rapidly changing conditions, legal protection, as well as enforcing legally appropriate behavior under all possible circumstances are of utmost importance.

In a democratic context, this can only be achieved if the system of military justice is a fully integrated and accepted part of national jurisdiction, irrespective of how the military legal scheme is detailed within the nation's juridical power.

Part V

THE ROLE OF CIVIL SOCIETY IN THE DEMOCRATIC CONTROL OF THE SECURITY SECTOR

Chapter 15

Civil Society Security Expertise. Role of Think-Tanks and Activist NGOs

From security of the state to societal security

Since the end of the Cold War the occurrence of interstate violent conflict is steadily diminishing. Instead, intrastate conflicts proliferate. Non-military security issues related to economy, environment and human rights are increasingly considered as essential components of the security agenda. Therefore, the international community largely recognizes that individuals and social groups need to be protected, and not just states.

Not surprisingly, the examination of the security sector from both a *security* and a *good governance* perspective identifies important roles for civil society actors. In a broad definition of the security sector some authors include 'non-statutory civil society groups,'[1] thus transcending the essentially state-centric concept of security.[2] The new security concepts of 'societal security' and 'human security' are steadily gaining momentum.[3]

The term civil society is used to refer to organizations positioned between state institutions and the private life of individuals and communities.[4] It comprises variety of social movements and voluntary organizations. They may be independent of government, in which case are referred to as NGOs, or to have links with government, e.g., through subsidies from the state budget. It is generally assumed that they are non-profit organizations.

Especially when the security sector is examined from the perspective of democratic governance, a wide range of civil society actors, such as media, research institutes and non-governmental organizations augment essentially the activities of state institutions tasked to manage and oversee the security sector.[5] These organizations of the civil society provide expertise, facilitate and promote alternative security agendas, and establish national, international and transnational networks.

Security expertise in civil society

Very often parliaments and political appointees in government lack sufficient expertise to deal with the increasing complexity of the security sector. In such cases NGOs and research institutes may contribute to the democratic control of the security sector by [6]:

- ❑ Complementing the expertise, available to political appointees in government through the respective administration;
- ❑ Assisting security sector expert formation through training and advanced seminars;
- ❑ Contributing to parliamentary competence;
- ❑ Providing alternative expert opinion on government security and defense policies, budgets, procurement options, etc.;

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[1] In addition to 'non-statutory security forces,' such as non-state paramilitary organizations, private military and security companies.

[2] Definition D, Table 1.1, in Heiner Hänggi, "Conceptualising Security Sector Reform and Reconstruction," in *Reform and Reconstruction of the Security Sector*, eds., Alan Bryden and Heiner Hänggi (Münster, Germany: Lit Verlag, 2004), pp. 3-18.

[3] Bengt Sundelius, "The Challenge of Security Threats and Emergencies in Modern Society," in *Societal Security and Crisis Management in the 21st Century* (Zurich, ETH Zurich and Swedish Emergency Management Agency, 2004), pp. 17-19. These conference proceedings are available in full text at http://e-collection.ethbib.ethz.ch/ecol-pool/inkonf/inkonf_249.pdf.

[4] Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 36.

[5] Heiner Hänggi, "Conceptualising Security Sector Reform," p. 7.

[6] Augmented and adapted from the list in Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 37.

❑ Broad dissemination, utilizing the potential of the Internet, of independent analysis and information on the security sector to the parliament, the media and the public;

❑ Providing feedback on national security policy decisions and the way they are implemented;

❑ Educating the public;

❑ Fostering public debate and formulating alternative policy options.

Parliaments and governments often encourage the participation of NGOs and research institutes in public debate on national security, the armed forces, police and intelligence services. In turn, such debates enhance the transparency of the security sector.

Activist NGOs

Informing the public, presenting unbiased assessments and sound alternative policies, civil society organizations may raise public interest and act as harbingers on issues of particular interest. They may put on the political agenda security issues of importance for the whole society. NGOs may monitor and encourage respect for the human rights and the rule of law within the security sector. They may promote transparency, ethnic and gender equality, etc.

In any of these ways NGOs may promote or facilitate the promotion and the implementation of particular security and defense policies. It is important though, that all such organizations, including 'lobbying groups' (for example, associations of defense industries) exercise their influence according to clear rules, with good understanding of the complexities in managing the security sector and adhering to the principles of democratic governance.[7]

Non-governmental organizations have better chances to achieve their objectives when they unite efforts. In addition to joining resources and expertise, that usually facilitates the links with government and parliament and increases the societal impact of their activities. In such cases NGOs and research institutes typically function in a network manner.[8]

Networks of NGOs may even have regional or international dimension. It is believed, that transnational civil society actors such as international NGOs are bound to find their way in a regionally or trans-regionally conceived security sector.[9]

In conclusion, NGOs, universities and research institutes have an essential impact in building a security community – within a nation, a region, and on an international basis. Their activity may have indispensable impact on the evolving 'security culture' of the society and, ultimately, for institutionalizing effective democratic governance of the security sector.

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[7] For details in regard to defense budgeting and procurement refer to Todor Tagarev, "A Means of Comparing Military Budgeting Processes in South East Europe," *Information & Security: An International Journal* 11 (2003): 95-125, <http://cms.isn.ch/public/docs/doc_556_259_en.pdf>.

[8] One example is the work of nine Bulgarian think-tanks and academic organizations on Bulgaria's membership in NATO. This three-year activity helped to shape a 'security sector reform coalition,' led by The Atlantic Club of Bulgaria <www.natoinfo.bg> and George C. Marshall Association-Bulgaria <www.GCMarshall.bg>. Several of its written products are available at http://www.gcmarshall.bg/pages_en/ projects_past.html.

[9] Heiner Hänggi, "Conceptualising Security Sector Reform," p. 7.

Chapter 16

The Role of Mass Media and Public Opinion in Implementing Democratic Control of the Security Sector

Western democratic experience convincingly proves that the free and independent media performs key roles in democracy. Providing reliable and comprehensive information, voicing diverse opinions, facilitating informed debate, and critically assessing the activities of the state, it serves as a vital transmission between society and its elected representatives in parliament and government.[1]

The media may assist governments and parliaments to explain their decisions and actions to the citizens. In addition, informing their audiences what is happening and providing sound alternative explanation, the media contributes substantially to making the policies and actions of government *transparent*. Also, placing these policies and actions under public scrutiny, it shapes public opinion and facilitates active involvement of civil society actors. Thus, media contributes to the implementation of the principle of *accountability* of politicians and the executive to the society.

However, in relation to the security sector, media performs these roles under constraints, caused by the need to protect information that may endanger national security interests, or by references of executive organizations to such needs. Therefore, media may assist the implementation of democratic control over the security sector only if law adequately regulates the procedures and responsibilities for classification of information, for protection of classified information, for access to information, and for the freedom of opinion and expression.

Freedom of the press

Article 19 of the *Universal Declaration of Human Rights* states that "Everyone has the right to freedom of opinion and expression: this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Notably, this principle is stated in unrestricted terms; there is no reference to possible generic restrictions related to security issues.[2]

Access to information and confidentiality

In democratic countries law usually guarantees the access of citizens and organizations, including media to governmental information. Such laws create prerequisites for implementation of constitutional rights of the citizen to be informed. However, the executive often may refuse to provide the requested information if that act may put at risk national security interests. Therefore, critically important for the democratic control of the security sector is how the classification of information and the access to classified information are regulated.

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[1] Marina Caparini, ed., *Media in Security and Governance: The Role of News Media in Security Oversight and Accountability* (Baden-Baden: Nomos, 2004).

[2] Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 40.

The general rule is that a particular piece of information, and not broad categories of documents, e.g., documents related to the secret services or the Ministry of Defense, should be classified following clear regulations, established by law. In addition, all such regulations need to be public and should leave very little room for discretion by the executive agencies. The executives should be obliged by law to respond to requests for information. If a portion of a related document is classified, that portion is withheld, or deleted, and the rest of the document is provided to the inquiring organization or person. Finally, any document or part of a document may be classified only for a limited period of time, e.g., 10, 15, or 30 years depending on the level of classification, and after that time expires, the document becomes public.

Expertise, freedom and self-imposed censorship

Every independent media dedicates one or more journalists to monitor continuously the developments in the security sector. The attitudes of these journalists and their impact on public opinion largely depend on their expertise and experience, the independence of the media, the traditions of the country, and the general level of the relationships between society and security sector organizations.

In democratic countries the media cannot be controlled. Practically every policy decision and every action of security sector organizations may become subject to public scrutiny. 'Embedded' journalists and TV crews are becoming invariable part of the 'order of battle' in current operations. This creates qualitatively new environment and puts a tremendous burden on the soldiers and other security service personnel.[3] Various attempts have been made to regulate the relationships between the military and the media, especially in the coverage of ongoing operations. None of these attempts may be entirely successful, unless journalists and media leadership have the expertise and the understanding what their actions mean for the success of the operation and the life of the soldiers and are willing to balance the freedom of information with self-imposed restraint and even self-censorship.

In the worst case, decisions and actions of the security sector organizations may be misrepresented and subjected to downright disinformation.[4] Free media does not necessarily equate with independence. Especially in developing democracies media may be linked with business cartels and may be used to strengthen their influence and to promote specific economic and political interests, and not to protect the public interest.[5] The creation of informed citizens and unbiased public opinion in such cases becomes an extreme challenge.

In addition, the challenges posed by the information revolution, call for a new culture of the relationships between the media and the security and defense organizations that is based on

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[3] Chris Donnelly, "Learning from Security Sector Reform in Central and Eastern Europe," in *Reform and Reconstruction of the Security Sector*, eds., Alan Bryden and Heiner Hänggi (Münster, Germany: Lit Verlag, 2004), pp. 53-54.

[4] Ibid.

[5] Stoyana Georgieva and Avgustina Tzvetkova, "Media, Civil Society and Public Policy," in Jan A. Trapans and Philipp H. Fluri, eds., *Defence and Security Sector Governance and Reform in South Easter Europe: Insights and Perspectives*, vol. I (Geneva/Belgrade: Geneva Centre for the Democratic Control of Armed Forces, 2003), pp. 269-280.

mutual respect and promotion of the principles of transparency and accountability of the security sector.

Democratic Control of the Security Sector in Special Cases

The special cases as emergency, crises, internal conflicts and war are inseparable component of both the design and implementation of civil supremacy and democratic control over security sector organizations. The essence of the problem here is in the requirement the package of legal texts to set conditions for highly effective institutional performance and, at the same time to keep the opportunities civil authorities to continue to take the key decisions and to perform control functions in accordance with the democratic principles. It does not matter how vital could be the situation around national or societal security in the exceptional cases – the national legislation should not completely inhibit the powers of the parliament to oversee the actions of the executive, the president (in the cases when he is supreme commander of the Armed Forces), and particularly of security organizations.

Part VI

DEMOCRATIC CONTROL OF THE SECURITY SECTOR IN WAR

Regardless of the statement of Article 2.4 of the UN Charter that "the member states of the Organization shall abstain, in their international relations, from resorting to the threat or use of force …," as well as of other international humanitarian law restrictions, military aggression and several types of emergency could require military response or even declaration of martial law. Such responses ought to be applied without affecting the democratic system of the country. Despite the fact that many people wish that war disappeared, it would continue to be a part of the lives of people, now, and in the years to come. Because the issue of democratic control of the security sector in war will continue to be essential for the military, for politicians, and for the general citizenry of the nation, the question then arises: how and under what circumstances is a nation justified in either going to war or refraining from participation in military actions?

Chapter 17

Democratic Control of the Security Sector in Time of War

One country could be in a war *de facto* or *de jure*. This is a post-Second World War phenomenon. The last declaration of war was made on September 3, 1939 when the ambassadors of France and the United Kingdom visited the German Ministry of Foreign Affairs to declare war in accomplishment of their alliance obligations to Poland. Since then more than 150 conflicts have occurred without formal declaration of war.

Despite this the regulations for keeping the democratic control effective during war remains an important democracy building block. During the extreme time of war the execution of democratic control over the armed forces is a source of national integrity and should be aimed at providing enthusiasm, readiness for sacrifice and support to the forces. However, any aspect of the democratic procedures should not diminish the effectiveness of the combat and other supporting operations.

One of the key issues of war-time preparation is the legal definition of the authority of one of the county's centers of power to declare war or to introduce martial law and this is important for establishing the democratic control regime too. Usually the issue is regulated by the Constitution and in accordance with the constitutional provisions the following cases are possible:

- The Parliament could have explicit right to declare war, state of war or to introduce martial law. In practice, this case could lead to effective democratic control over the process of engaging the country in war only if there is enough time for parliamentarian debates and decision. If there is no pre-war period or in case of an unexpected attack this rule could not work;

- The Constitution may require the Parliament to authorize the executive power or the Head of the State to declare war. The democratic control could be also compromised in case of an attack by surprise;

- The Constitution may provide automatic authority to the executive or the Head of the State to declare war or introduce state of war or state of emergency only and when the parliament is not in session. In this case, the Parliament has to be requested to approve (confirm) the decision.

In addition to the issue of declaring war in all circumstances, the Parliament should not cancel its work during national crises. This is important not only from political point of view but also for the post-conflict rehabilitation of the society.

The media and other civil society institutions should have opportunities to continue *to be free* but some restrictions are unavoidable. They could be introduced by self-control or by law mainly in order not to put the life of the soldiers and people under threat because of publishing combat information. Part of the responsibility of the Ministry of Defense during the wartime periods should be to keep the media engaged and provide opportunities to the media reporters to join and follow the forces. Good practice in this is to have a prepared document in advance of the events that makes clear the obligations of the three parts – the Government (Ministry of Defense), the media, and the armed forces. In the UK this is the so-called *Green Book*, which has a status of a 'gentlemen's agreement.'

In order to prevent deep damages on democratic society and its institutions any legitimization and operationalization of special wartime measures should be based on clear purposes and follow democratic principles:

- The principle of exceptional threat and legality should be applied in order to guarantee that internal law conforms to the international war and related laws. The key here is the adequacy between the declaration of war, state of war or other war-related status, and the paradigm that the war is the last unavoidable measure for self-defense only;

- The principle of proclamation refers to the need for the state of war to be announced officially to both national and international public. People should be informed clearly about the consequences of war on every aspect of their life, economic activities, freedoms and human rights;

- The principle of communication is related to the obligation of the state authorities to inform duly the other governments and international organizations about the act of declaring war

and the outcomes from it for the international relations of the country, the status of foreign citizens, trade, media activities, banking, etc.;

❑ The principle of intangibility should be applied to those human and citizenship fundamental rights that could not be derogated. This is particularly important to be applied to the Parliament and its mission to keep democratic values and traditions alive during the bloody and destructive war. Its capacity to decide the most important issues of the country's behavior during the application of war regulations and to oversee the war-time authorities performance is of crucial importance for saving democracy and limiting the enhancement and bitterness of combat operations.

In the case of Bulgaria, the Constitution as of 1991, followed by the new laws on defense, armed forces, internal security and intelligence services defined the war-time roles and responsibilities of the Parliament, the President, the Government and the General Staff of the Armed Forces, in accordance with the requirements of democratic checks-and-balances system.

The National Assembly (Parliament) has the authority to decide on the declaration of war and conclusion of peace; on a motion from the President or the Council of Ministers, introduce martial law or a state of emergency on all or part of the country's territory; ratifies or rejects by law all international agreements which are of a political and military nature.

The President of the Republic as the Supreme Commander-in-Chief of the Armed Forces on a motion by the Government declares general or partial mobilization for war. Whenever the National Assembly is not in a session and cannot be convened, he proclaims *a state of war* in cases of armed attack against Bulgaria or whenever urgent action is required by virtue of an international commitment. He proclaims martial law or any other state of emergency. The National Assembly is convened forthwith to endorse the President's decision. The Defense and the Armed Forces Law specifies that the President, acting on a proposal by the Council of Ministers, approves the strategic defense plans and alerts the Armed Forces or part thereof to an advanced alert; at a military conflict or war he co-ordinates the foreign policy efforts for participation in international organizations and security structures with the aim of terminating the military conflict or war; commands the Supreme Headquarters, issues acts for preparation of the country and the Armed Forces for war; brings into implementation the wartime plans; introduces a restrictive regime for the dissemination of information related to the defense of the country; introduces proposals for making peace to the National Assembly.

With the introduction of martial law, the declaration of war or with the actual start of military activities, the President forms the Supreme Headquarters (SHQ). The SHQ assists the Supreme Commander in leading the defense and the Armed Forces and includes the Prime Minister, the Minister of Defense, the Minister of Foreign Affairs, the Minister of Transport, the Minister of Territorial Development and Construction, the Chairman of the Committee for Post and Telecommunications, the Chief of the General Staff and other individuals, designated by the Supreme Commander.

The Council of Ministers (Government) is obliged to formulate and perform the state defense and military policy; to maintain combat and mobilization readiness of the Armed Forces; to approve mobilization plans and the General Wartime Plan of the state and the wartime draft budget; to determine the standards and the order for accumulation, preservation and use of raw

materials and materials for wartime; to command and mobilize the Armed Forces; to manage the transition of the country from peace to war.

Since the end of the Cold War, numerous developments have significantly changed the issue of war and related international and national legislation. Two of them are directly related to the democratic control over the forces in time of war. Firstly, among these developments is the fact that states no longer fight the vast majority of wars. Rather, today's wars and violent conflicts tend to have mostly inner societal causes. In this case the declaration of war is simply impossible.

Second, in the contemporary world every open, liberal and sovereign state faces the common threat of being subjected to, or used for, the purposes of terrorism. State sovereignty, independence and territorial integrity can be defended much more successfully through integration, participation in international cooperation and contribution to multilateral efforts. This is to be expected given that *the new enemy has no political sovereignty*. Terrorism threatens the political systems and ways of life of societies. It is not a case of threatening state sovereignty any more – neither is it territorial integrity and certainly not independence.

Chapter 18

Democratic Control of the Security Sector During the Fight on Terrorism

Main Features of Modern Terrorism

There is no formally recognized international legal definition of terrorism.[1] The US National Security Strategy for Combating Terrorism (February 2003) defines terrorism as: *"premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents."*[2] Magnus Norell, a Swedish expert on counter-terrorism, provides the following working definition: *"the systemic use of illegitimate violence by non-state or sub-state actors, specifically aimed at non-combatants and/or civilians to achieve specific objectives. These objectives could be political, social or religious depending on the group in question. Terrorism becomes international when it is carried out beyond the borders that define a specific*

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[1] At the Berne, Switzerland meeting of the PfPC ESSG on 22 April, 2002 Col. Nick Pratt, USMC (Ret.) said there are 109 academic definitions of 'terrorism'. On 2 April 2002 Islamic nations failed to come up with a common definition of 'terrorism' at a meeting of the Organization of Islamic Conference (OIC) in Malaysia. The obstacle was the diverging views on the nature of the Palestinian struggle against Israel – 'freedom-fighting' or 'terrorism' (FT, 3 April 2002, 2). Prof. Dr. Kemal Beyoghlow, a US counter-intelligence expert underlined on 16 September 2002 at a lecture to the Atlantic Club in Sofia that the best short definition of terrorism is 'a politically motivated attack on civilian non-combatants'. Chris Donnelly of NATO focuses on terrorism as a 'tactic' (Donnelly/CND/2002/090/Spain/26.04.2002, 5).

[2] 'National Strategy for Combating Terrorism' (Sofia: Wireless Files, US Embassy, February 18, 2003) 2.

group's country of origin, or when it is targeting foreign nationals within a specific group's country of origin."[3]

In addition it could be said that terrorism today is really global: terrorists are organized in networks and can operate from every corner of the world. The neutralization of one segment of the organization would not mean the end of the whole network. Next, we face terrorists who have highly religious motivation to strike, making them more fanatic and ready to act in an indiscriminate manner. 'Burning' all infidels, including by nuclear and/or other WMD is a very significant part of the thinking of the new terrorists. The deep satisfaction of the leaders of Al Qaeda with the large casualties in the WTC in New York was recorded and distributed over the globe by the terrorists themselves.

For the working purposes of this chapter, it will draw arguments from the following key features and perspectives to the phenomenon of terrorism:

a. It causes death to innocent and non-involved in the conflicts people
b. It is an instrument/tactic of waging military activity
c. It has an unclear territorial and legal subject identification
d. It is becoming more lethal
e. It demonstrates a large-scale 'suicide power', compromising the traditional rational approaches in applying military violence
f. It is global in magnitude
g. It is fanatic and religiously motivated
h. It is becoming more indiscriminate towards its victims
i. The use of WMD is a crazy but yet a direct purpose of terrorists.

The Risks and Challenges for the Democratic Society and State

No country with a democratic or democratizing society should stay aside of the effort of depriving terrorism from its blackmail and society-degradation capacity. People expect that the fight against terrorism would end with a victory and they could continue the normal way of democratic and free life as it was before 11 September 2001.

However, this is only one of the concepts on how democracy must react to terrorism. Other, also quite sober views reflect another thinking, closer not to discarding and crushing the phenomenon of terrorism, but because of its invariant presence in social life – adjust to it. The core of that thinking is that democratic countries with their open societies, freedoms and civil liberties are always going to be vulnerable to terrorism. These societies will never be able to protect *all* targets, *all* the time, against *all* possible attacks, which means that terrorism will always be attractive to the foes of democracy. Though the public's and individual's vigilance is constantly mobilized by the democratic state, fighting against terrorism, the expectations from that fight should remain realistic as well as about diminishing the vulnerabilities of the democratic open society.

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[3] Magnus Norrel, 'The Role of the Military and Intelligence in Combating Terrorism,' *Romanian Journal of International Affairs* 8:4 (2002): 42.

Both concepts have legitimate arguments and the way-out, posed by this dilemma of democracy, fighting terrorism, seems to be in following two parallel tracks of behavior:

First, despite the necessary limitations of certain rights and liberties of the democratic society during its fight on terrorism, protecting the fundaments of democracy and keeping all measures against terrorism within the confines of established, though more sophisticated democratic procedures, is a 'must' for any democratic state. Balancing principles with interests is not an easy job, but it is the only way to overcome tensions or crisis of a democratic society in fight with itself while targeting and struggling against terrorism. US Secretary of State Colin Powell warned on 1 August 2002 in Brunei against *"using the campaign against terrorism as a way to suppress legitimate dissent or as a way to suppress people presenting their views to government."*[4] Then he added that *"if we are going to prevail over terrorism, really going to prevail over this plague on the face of mankind, then we have to do it in a way that respects human dignity and the rights of men and women."*[5] An area, in which democratic governments and societies risk failing is an eventual excessive accumulation of power in any one too much centralized institution. Ellen Laipson asks a very legitimate question, concerning the US democracy: *"Should terrorism push the United States to revise its core belief in checks and balances?"*[6]

Second, efforts should be exerted to democratize Islam and prevent Islamic clerics from hindering the process. A bottom-line of discussing the issue is that Muslims are not the problem – radical Muslims are. Radwan Masmoudi, president of the Center for the Study of Islam and Democracy (CSID), a US-based think-tank, was quoted by the 'Christian Science Monitor' to say that *"the key to a viable future is a coalition of moderate Islamists and non-Islamists committed to representative government."*[7] The same paper in the same issue quotes Nadcem Kazmi of the Al-Khoei Foundation in London that there is a *"need for a diplomatic process to develop a 'cohesive authoritative fatwa' for delegitimizing terrorism."*[8]

Of course, embarking, working on and fulfilling these ambitious goals would require creation of civil societies with due respect of pluralism in the Muslim countries of the world. Muslims who study the integration of democracy into Muslim societies underline the key role of Muslim intelligentsia in changing public attitudes and in logically discarding medieval models preached by some Islamic clerics. It would be in the interest of Islam and all other religions of the world if it improved its internal religion's organization by establishing and strengthening supra-national leadership and control structures.

A fundamental strategic goal, however, of both Muslim and non-Muslim intellectuals should be de-politicizing the difficulties of the adaptation of Islamic fundamentalism to the requirements of globalization. In the last decade adapting to the needs of the global international environment

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[4] Colin Powell, 'Rights Must Be Protected in Anti-Terrorism Fight' (Sofia: Wireless Files, US Embassy, August 5, 2002) 10.

[5] Ibid.

[6] Ellen Laipson, 'While America ...' 146.

[7] 'Christian Science Monitor', May 29, 2003, 'Easing into Islamic Democracy (Convinced by their experience in the US, American Muslims are helping form democratic coalitions in the Muslim world and are building their case on Islamic principles)', by Jane Lampman, Staff writer to the CSM.

[8] Ibid.

became the main contents of the policy of the majority of states. Other states and non-state actors, however, perceived the new developments towards a global world as a danger for their existence. Hiding behind the existing differences of the religion and culture of the Middle East, which is also predominantly poor while the Western developed world is mostly rich, the proponents of radical Islam decided to attack. The terrorist act of 11 September 2001 aimed at defining politically the format of the clash of radical Islamic religion and the approaching economic, political and cultural globalization. The advantageous form of the clash was 'suffering Islam' against the 'Americanization of the world'. The 'clash of civilization' mentality, poverty in the Muslim world, failed states – especially Muslim ones are trends that terrorism tries to exploit. A major frustration of radical Islam is the readiness of individual Muslims all over the world to embrace globalization as an opportunity to improve their living standards and to have a better life – with more and better chances to have a choice. This readiness of Muslims to embrace globalization and to discard the conservative Islamic fundamentalist habits and relations very probably takes out of balance all who profit from manipulating the souls of the believers.

The success of globalization and democracy is the result of the victory of the struggle for democratic rights in the non-Western world and of the fact that state boundaries and sovereignty cannot save those who oppose social, political and technological progress. Another reason is the creation of more and more effective forms and institutions of global governance. The attack at and discouraging of the proponents of these tendencies and the attack on the global centers of governance of the evolving social processes is projected as the right way of saving Islamic fundamentalism and its extremist and aggressive interpretation. Killing anything that is 'global' remains the only option for the 'ultimate guardians' of the fundamentalist traditions – a very radical interpretation of social and religious life indeed.

Strategies of Dealing Away with Terrorism

Three concentric and simultaneous 'strategic circles' of dealing away with terrorism may be suggested. *First*, the long-term and broadest one: 1) Winning the hearts and minds of the potential victims of globalization. 2) Proving to them terrorism is not their way out of the difficulties and negative consequences of human progress. 3) Depriving terrorist networks from impoverished, desperate and hopeless people. 4) Proving clearly that globalization provides the civilized outcome from the hard situation, created during the adaptation to the needs of the new economic, technological and information environment.

Second, the mid-term one: 1) Helping failed states become prosperous. The region of South East Europe is a particularly important case, whose success will stimulate similar positive processes in the Black Sea-Caspian Sea area. 2) Involving Islam in civil society, secularism and democracy building, influencing religious reforms that would deprive fanatic terrorism from confessional motivation. 3) Improving the cooperation and coordination of the leading centers of power of the world in their anti-terrorism and counter-terrorism activity.

Third, the short-term, the direct one: 1) Preventing the performance of WMD-capable terrorism. 2) Creating the instruments, institutions and individuals who can effectively carry out all operational aspects of the anti-terrorist and counter-terrorist struggle.

The successful fight against terrorism will inevitably accelerate the constructive tendencies of the international system, boost globalization and its positive social and economic effects. The

successes of the fight will provide opportunities for the religions of the world to interact in a more creative and pro-human way than now.

Keeping an Effective Fight on Terrorism within Democratic Constraints

Taking adequate measures through democratic procedures can legally narrow the room for maneuver of the terrorist groups. Living in a democratic way today means finding adequate standards for privacy and security simultaneously. Better legal definitions must be found to the already strongly linked external and internal security. The potential of the international organizations dealing with security should be purposefully focused on this problem, mostly in connection with the fight on terrorism.

Equally important would be the institutional and legal formulae of the close, even integrated work of the armed forces with the police and intelligence services to crush the backbone of terrorism inside any country. Imagination and forward-mindedness would be needed to reach international agreements of closer cooperation of the intelligence and law-enforcement institutions of the anti-terrorist countries.

Special measures should be taken to raise the public awareness of the significance of vigilance by society during the fight on terrorism. These measures should be paralleled by similar steps in the direction of adequate transparency, accountability and reporting on the preservation of the level of effectiveness of the counter-terrorism activity by the institutions of the security sector. Similar requirements should be placed to the international parliamentary forums, in which counter-terrorism is monitored. The net effect must be national and international mutual trust between the people and the respective institutions, carrying out the fight on terrorism.

Part VII

DEMOCRATIC CONTROL OF THE SECURITY SECTOR IN PEACE

Chapter 19

Democratic Control of the Security Sector During Crises and Emergencies

In exceptional circumstances, such as natural calamities or other types of crises, the state is expected to act quickly and decisively. Often, it may apply special powers and procedures in solving a crisis without, however, affecting the principles of democratic governance. To this end, it is important to establish clear definitions of crisis and emergency, procedures to declare a state of emergency, and legislative definitions of roles and responsibilities for emergency preparedness and crisis management, as well as constitutional oversight mechanisms during states of emergency.

Definitions

A *crisis* may be defined as an incident or situation involving a threat to a country, its territories, citizens, forces, or vital interests that develops rapidly and creates conditions of such diplomatic, economic, political, or military importance in which the commitment of military and other security sector forces is contemplated in order to achieve national objectives.[1] It may occur at local, provincial, national, or regional (international) level. Examples of crises include terrorist activity; aggressive military acts of another country, massive refugee flows, civil unrest with acts of violence, etc.

An *emergency* is a type of crisis that is caused by natural phenomena or act of man (usually with no malicious intent). Examples include natural disasters such as fires, floods, landslides, earthquakes, avalanches; industrial accidents, e.g., hazardous material spill, nuclear reactor incident, etc.; breakdown of critical infrastructures, e.g. extended blackouts; pandemics, and others.

Principles, international law and human rights

A state of emergency or crisis can be declared only in exceptional circumstances, following several key democratic principles [2]:

- ❑ The principle of *legality* – emergency measures should correspond to the declaration of the state of emergency that, on the other hand, should be in accord with the legislation of the country. This principle further seeks to ensure that internal law conforms to international law;

- ❑ The principle of *proclamation* – the state of emergency should be announced publicly;

- ❑ The principle of *communication*, which refers to the obligation duly to inform other states parties to relevant treaties, as well as the Special Rapporteur of the United Nations on the human rights situation during states of emergency;

- ❑ The principle of *temporality* – the declaration of a state of emergency should be of exceptional nature and corresponding limited duration;

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

- ❑ The principle of *proportionality* – the measures taken to counter the crisis should be proportional to its gravity;

- ❑ The principle of *intangibility* – certain fundamental rights under no circumstances can be derogated.

International law requires that each state should provide careful justification not only for its decision to proclaim a state of emergency (when there is a threat to "the life of the nation"), but also for any specific measure based on such a proclamation. And while the derogation of certain

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[1] Adapted version of the definition provided by Nikolay Petrov, "National Military Command Center – From Idea to Implementation," *Information & Security: An International Journal* 6 (2001): 69-81, <http://infosec.procon.bg>.

[2] Hans Born, ed., *Parliamentarian Oversight of the Security Sector*, pp. 100-101.

rights may be justified in emergencies, for instance, the freedom of movement or the freedom of assembly, no derogation can be made in regard to: right to life; prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent; prohibition of slavery, slave-trade and servitude; prohibition of imprisonment because of inability to fulfill a contractual obligation; the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place [3]; the recognition of everyone as a person before the law; and the freedom of thought, conscience and religion.[4]

Legally, the acts which constitute the state of emergency (proclamation, ratification, etc.) and the measures which are adopted when it is in force (suspension or restriction of certain rights, etc.) should remain within the framework of the principles governing the rule of law and are thus subject to controls.[5] Critically important is that the Parliament continues to act on behalf of the people without major reduction in its legislative powers and its powers to oversee the executive, in particular in regard to the security sector and its respect for human rights. It is also essential that the parliament exercised its role in regard to the declaration of the state of emergency, as well as its termination. Parliaments should strive to include in law automatic termination of a state of emergency, e.g., after three or six months, unless it is expressly renewed as a result of parliamentary debate and a vote.[6]

Emergency preparedness in liberal economy

With the reassessment of current security challenges and the increasing emphasis on societal, or homeland, security, emergency preparedness becomes an important issue from both security and good governance perspectives. In the last two decades infrastructure and services, traditionally associated with national governments, have been largely privatized. For example, in most European countries previously protected markets have been deregulated, and the provision of critical services such as telecommunications, energy, transport, health care, and financial services have been privatized or are in the process of privatization.

This privatization of public monopolies and infrastructure has essential consequences for national and international emergency preparedness and crisis management. In a non-liberalized economy, the state assumes the responsibility and the costs to guarantee functioning systems and availability of services.[7] However, it is more problematic to assign such responsibilities in a

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[3] Except in cases where a later law imposes a lighter penalty.

[4] General Comment No. 29, States of Emergency (Article 4), *International covenant on civil and political rights*, CCPR/C/21/Rev.1/Add.11 (Geneva, Switzerland: Office of the United Nations High Commissioner for Human Rights, 31 August 2001), <http://www.unhchr.ch>.

[5] Hans Born, ed., *Parliamentarian Oversight of the Security Sector*, p. 101.

[6] Ibid., p. 102.

[7] Jan J. Andersson and Andreas Malm, "Minding the Gap: Reconciling Responsibilities and Costs in the Provision of Societal Security," in *Societal Security and Crisis Management in the 21st Century* (Zurich, ETH Zurich and Swedish Emergency Management Agency, 2004), pp. 33-52. Proceedings are available at http://e-collection.ethbib.ethz.ch/ecol-pool/inkonf/inkonf_249.pdf.

liberalized global economy. Pressures to maximize profits, market failures, imperfect information, limited liability and the inclination of governments to assist companies in case of a major emergency or crisis,[8] make private motivation insufficient for the provision of optimal emergency preparedness for the society as a whole.[9] And yet, there is a clear trend to delegate governmental responsibility for the security of the critical infrastructure and services to para-state or private actors.[10]

As a result, in emergencies the security sector organizations rely on and act jointly with variety of private actors. Therefore, an effective system of democratic control of security should be based on adequate regulation for the preparedness and the readiness of these actors to function in emergencies. Such regulation should carefully balance direct legislative regulation, implementation of economic policy instruments, and establishment of public-private partnerships,[11] thus reconciling responsibilities and costs of governments and private actors in providing societal security.

Chapter 20

Cyberspace and the Challenges to Democratic Control of the Security Sector

For a number of reasons, the interest of all security organizations in cyberspace is rapidly growing. Information operations and the attainment of information superiority turn into a major factor in military operations; crime groups and terrorists increasingly use cyberspace; the dependence of advanced market economies and variety of public services on cyberspace steadily grows.

Thus, during the 1990s the information operations turned into a critical component of any military operation against another military, against opponents using asymmetric means and tactics, or in peace operations. Security sector organizations try to utilize the potential of most advanced information and communications technologies in order to collect and verify data, to enhance the situational awareness, to speed the decision-making process and to facilitate command and control, while denying similar advantages to an opponent or potential opponent.

At least partially, the respective activities are conducted in cyberspace. The term was introduced by the science fiction author William Gibson in his novel *Neuromancer*, published in

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[8] For example, the financial aid provided by the US Government to the airline industry after September 11, 2001.

[9] Andersson and Malm, "Minding the Gap," pp. 35-37.

[10] Stein Henriksen, "Norway: The Shift of Responsibilities within Government and Society," in *Societal Security and Crisis Management in the 21st Century* (Zurich, ETH Zurich and Swedish Emergency Management Agency, 2004), pp. 60-63.

[11] For details the reader may refer to Andersson and Malm, "Minding the Gap," pp. 39-41.

1984.[12] For our purposes we shall use a more pragmatic—and current—definition of cyberspace as a computer network consisting of a worldwide network of computer networks that use the TCP/IP network protocols to facilitate data transmission and exchange.[13] In this meaning the term is synonymous with *Internet*. In cyberspace people can communicate with one another and search for information. Like physical space, cyberspace contains objects—files, mail messages, graphics, etc.—and different modes of transportation and delivery. Unlike real space, though, exploring cyberspace does not require any physical movement other than pressing keys on a keyboard or moving a mouse.

If smartly used, this "network of networks" provides considerable advantages in information operations and military operations in general. Further, the rapid advances and the spread of information and communications technologies (ICTs) and Internet as global, strongly decentralized communications media [14] add to the complexities of asymmetric threats and warfare. Organized crime groups and terrorist organizations use Internet and other advanced ICTs to organize, to plan operations and to coordinate their execution. Terrorists use World Wide Web to promote their ideology and to find potential recruiters. And very importantly, Internet is the primary media used by terrorists to disseminate scenes of hostage pleas, decapitations and other gruesome images resulting of their actions, thus serving as a means to an end – a desired impact on perceptions, attitudes and behavior of societies and particular decisions of their leaders.

In addition, advances in ICT increase business efficiency and create new economic opportunities. Increasingly, cyberspace becomes the ground on which private companies compete in providing financial services, electricity and other utilities, telecommunications services, entertainment, etc. Also, cyberspace is being used extensively to provide public services, such as first aid and other emergency services and emergency management activities. On the other hand, while contributing to the increased efficiency and effectiveness, the reliance on cyberspace brings new vulnerabilities. The availability of a number of services of critical nature (or perceived to be critical), depends on the robust functioning of cyberspace and is subject of unintentional impact or malicious attacks, e.g., by hackers.

Since no one "owns" cyberspace, there are no clear responsibilities for its status. And although many of these services are provided by private companies, very often societies expect that governments—central executive administration or local authorities—will provide for uninterrupted availability of critical services. Thus the expectation is that security organizations as components in the structure of governments will "safeguard cyberspace," or at least guarantee a certain level of functionality and availability of critical services.

This expectation is paralleled by the natural interest of practically all security sector organizations to exploit the opportunities, created by cyberspace that often brings anxieties, in particular among human rights groups. This anxiety is tenser in the lack of comprehensive regula-

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[12] Cyberspace was defined by Gibson as a notional "information-space" loaded with visual cues and navigable with brain-computer interfaces; a metaphor for describing the non-physical terrain created by computer systems; virtual reality. See *Jargon File* (4.3.1, 29 Jun 2001).

[13] See http://dict.die.net/cyberspace/

[14] Commonly expressed by the statement that "no one controls Internet."

tive framework on the use of cyberspace that would provide for the protection of civil liberties and individual rights. In addition, it is often difficult, if not impossible, to define and impose boundaries in cyberspace. Therefore, the national legislation ought to follow internationally agreed principles. From the point of view of the democratic control of the security sector, it is important to establish rules and procedures in order:

- ❑ To criminalize hazardous activities in cyberspace;
- ❑ To protect critical information infrastructure;
- ❑ To regulate the collection of and the access to personal data.

Cybercrime

There is no commonly accepted definition of what constitutes a crime in cyberspace. The term is used to refer to a wide range of abuses and crimes related to malicious use of information technologies. The most widely discussed incidents involve hackers and computer viruses. This is not an entirely new phenomenon. Incidents have been reported since the early days of computing and connecting mainframe computers in networks. However, due to the spread of information technologies, and Internet in particular, today's attackers or potential attackers are able to inflict considerably higher damage. Practically, every day variety of cyberincidents are reported,[15] which leads to increasing interest in the area of cybercrime.[16]

The Council of Europe provides one example of the efforts to develop definition of cybercrime that is internationally recognized. On 23 November 2001, it adopted a *Convention on Cybercrime*.[17] This convention is open for signature and ratification. The condition for entry into force was ratification by five states, including at least three states of the Council of Europe. This condition was met on July 1st, 2004. Recognizing the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights, the Convention attempts to establish a common cybercrime policy aimed at the protection of society, *inter alia*, by adopting appropriate legislation and fostering international cooperation. From the perspective of democratic control of the agencies that are entitled to foster and protect cybersecurity, the Convention in its Article 15 "Conditions and safeguards" stipulates that "Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention

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[15] The interested reader may refer to the INFOCON mailing list and the Information Warfare Site <http://www.iwar.org.uk> that report dozens of incidents each day.

[16] Notably, accounting for the fact that computers are used in wide variety of crimes, the FBI has made computer crimes a top priority, just behind terrorism. See "FBI opens new computer crime lab," *Associated Press*, 29 June 2004.

[17] *Convention on Cybercrime* (Budapest, Council of Europe, 23 November 2001), <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm> (12 October 2004). See also *Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems* (Strasbourg, Council of Europe, 28 January 2003), <http://conventions.coe.int/Treaty/en/Treaties/Html/189.htm>.

for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments."[18]

In December 2000, the General Assembly of the United Nations issued a Resolution on "Combating the Criminal Misuse of Information Technologies."[19] One particular emphasis of this Resolution is on the role of the *Commission on Crime Prevention and Criminal Justice* to make law enforcement more effective. In addition to the importance of the international cooperation in combating cybercrime, the Resolution also underlines the importance of the cooperation between the public and the private sectors.

Romania provides one example of national legislation on cybercrime that follows definitions adopted by the Council of Europe. In this particular case the legislation on preventing and fighting cybercrime is part of Romania's *Anti-corruption Law*.[20]

Security of information systems and infrastructure

While the proper application of advanced information technologies provides competitive advantages and accelerates economic growth, the increasing dependence of businesses and public services on complex information and communications systems brings concerns—in business communities, governments, and international organizations—in regard to related risks. For example, in November 1992 the Council of the Organization for Economic Cooperation and Development (OECD) issued detailed guidelines on security of information systems [21] that "Aim to:

❑ Promote a culture of security among all participants as a means of protecting information systems and networks.

❑ Raise awareness about the risk to information systems and networks; the policies, practices, measures and procedures available to address those risks; and the need for their adoption and implementation.

❑ Foster greater confidence among all participants in information systems and networks and the way in which they are provided and used.

❑ Create a general frame of reference that will help participants understand security issues and respect ethical values in the development and implementation of coherent policies, practices, measures and procedures for the security of information systems and networks.

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[18] CoE Convention on Cybercrime, Article 15, Conditions and safeguards.

[19] UN General Assembly Resolution 55/63 (22 January 2001), <http://ods-dds-ny.un.org/doc/> (12 October 2004).

[20] *Anti-corruption law, Title III on preventing and fighting cyber-crime*. Unofficial translation of this title is available at http://www.legi-internet.ro/en/cybercrime.htm (12 October 2004).

[21] *OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security*, Directorate for Science, Technology and Industry, Organisation for Economic Co-operation and Development, Adopted as Recommendation of the OECD Council, 25 July 2002 <http://www.oecd.org/dataoecd/16/22/15582260.pdf> (13 October 2004).

❑ Promote co-operation and information sharing, as appropriate, among all participants in the development and implementation of security policies, practices, measures and procedures.

❑ Promote the consideration of security as an important objective among all participants involved in the development or implementation of standards."

In adopting these Guidelines, the Council of OECD stated that "the security of information systems and networks should be compatible with essential values of a democratic society: Security should be implemented in a manner consistent with the values recognised by democratic societies including the freedom to exchange thoughts and ideas, the free flow of information, the confidentiality of information and communication, the appropriate protection of personal information, openness and transparency."

An important addition to the Council of Europe *Cybercrime Convention* was the proposal of the European Commission for a *Framework Decision on Attacks against Information Systems*.[22] Seeking harmonization of cybercrime activities throughout Europe, it explicitly includes the prosecution of attacks against critical civil infrastructures such as power plants, hospitals, airports and water supply systems, as well as interferences with information systems, e.g., viruses, denial of service attacks and website defacements.

Within the European Union, the work on computer security incident response teams (SCIRTs) and computer emergency response teams (CERTs), in particular in dealing with transborder cases, is supported by the *Handbook of Legislative Procedures of Computer and Network Misuse in EU Countries*.[23] The first section of the Handbook describes incidents, international legal and forensic principles, and results of incident surveys, while the second provides for each EU member state and its legislation in the area of computer crime.

Protection of personal data

In December 1990, the UN General Assembly adopted Guidelines concerning computerized personal data files.[24] A decade earlier, the OECD had adopted recommendations concerning guidelines governing the protection of privacy and trans-border flows of personal data.[25] Already in 1980 OECD recognized the need to foster privacy protection and "to prevent what are considered to be violations of fundamental human rights, such as the unlawful storage of personal data, the storage of inaccurate personal data, or the abuse or unauthorized disclosure of such data."[26]

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[22] Commission of the European Communities, *Proposal for a Council Framework Decision on Attacks against Information Systems*, COM (2002) 173 final.

[23] http://www.iaac.org.uk/csirt.htm.

[24] *Guidelines for the Regulation of Computerized Personal Data Files*, Adopted by General Assembly resolution 45/95 of 14 December 1990 (Geneva: UN Office of the High Commissioner for Human Rights, 1990), <http://www.unhchr.ch/html/menu3/b/71.htm> (14 October 2004).

[25] *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (Organisation for Economic Co-operation and Development, 23 September 1980), <http://www.oecd.org/document/18/0,2340,en_2649_201185_1815186_1_1_1_1,00.html> (14 October 2004).

[26] Ibid.

Also, in 1981 the Council of Europe adopted a Convention for the protection of individuals with regard to automatic processing of personal data.[27] This Convention is considered the first binding international instrument, which "protects the individual against abuses which may accompany the collection and processing of personal data and which seeks to regulate at the same time the trans-frontier flow of personal data. In addition to providing guarantees in relation to the collection and processing of personal data, it outlaws the processing of "sensitive" data on a person's race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. The Convention also enshrines the individual's right to know that information is stored on him or her and, if necessary, to have it corrected. Restriction on the rights, laid down in the Convention, are only possible when overriding interests (e.g. State security, defense, etc.) are at stake. The Convention also imposes some restrictions on trans-border flows of personal data to States where legal regulation does not provide equivalent protection."[28]

In conclusion, the legislative regulation of the activity of public organizations, security services included, businesses and citizens is just one aspect of the democratic control related to cyberspace. A general framework would include in addition:

❑ Clear supremacy of democratically elected officials over the formulation of policy for security in cyberspace;

❑ That policy shall be based on clear and objective understanding of risks, threats and vulnerabilities, as well as the interdependencies within and among critical infrastructures. The formulation of such policy usually depends on the availability and the use of independent—and unbiased—scientific advice [29];

❑ Establishment of oversight mechanisms and their rigorous implementation.

As in other areas of democratic control over the security sector, the role of parliaments is critical. Public officials, and members of parliament above all, shall make sure that [30]:

❑ Adequate legislation in regard to information technologies and cybercrime is in place; it is regularly reviewed and updated;

❑ Their state is a party to the relevant international and regional conventions and the domestic legislation and policies are adapted accordingly;

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[27] *Convention for the protection of individuals with regard to automatic processing of personal data*, European Treaty Series No. 108, Entry into force: 1 October 1985 (Strasbourg: Council of Europe, 28 January 1981), <http://conventions.coe.int/Treaty/EN/Treaties/Html/108.htm> (14 October 2004).

[28] Summary of the Treaty ETS No. 108, <http://conventions.coe.int/Treaty/en/Summaries/Html/108.htm> (14 October 2004).

[29] A comprehensive example of a well thought-out supporting research agenda is provided in Myriam Dunn and Isabelle Wigert, *International Critical Information Infrastructure Protection Handbook 2004*, eds. Andreas Wenger and Jan Metzger (Zurich: Center for Security Studies at the ETH Zurich, 2004).

[30] *Parliamentarian Oversight of the Security Sector: Principles, Mechanisms and Practices*, Handbook for Parliamentarians No. 5 (Geneva: Geneva Centre for the Democratic Control of Armed Forces and Inter-Parliamentary Union, 2003), p. 117.

❑ Domestic legislation and policies regarding the use of information technologies and cyber-crime are elaborated and applied paying specific attention to the importance of the preservation of human rights and fundamental freedoms;

❑ If appropriate, take action, including in the form of a parliamentary question to the government or inquiry to remedy any unsatisfactory situation.

The following parliamentary means and resources may be used to this end [31]:

❑ Task a parliamentary committee or sub-committee to follow, on a permanent basis, developments and issues with regard to information technologies and their application;

❑ If necessary, establish such a committee or sub-committee or include this issue in the mandate of an existing standing committee;

❑ Ascertain that the competent parliamentary body has the best possible level of resources and expertise to carry out its mission.

Chapter 21
Democratic Control over International Peace and Humanitarian Missions Abroad

Necessary Definitions

In recent and current international context, the occurrence of interstate military conflict is steadily diminishing. Instead, the international community increasingly deals with variety of ethnic warfare, ethnic violence, civil wars, wars of independence, etc.[32] The main efforts to resolve such conflicts are made within the provisions of Chapter VI of the United Nations Charter "Pacific Settlement of Disputes" or Chapter VII "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."[33] Certain actions aimed at resolving conflicts fall between these two categories, and may be described as "Chapter VI and-a-half."[34]

The United Nations regulates the implementation of the provisions in its Charter using the following concepts and definitions [35]:

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[31] Ibid.

[32] Statistical data and trend analyses are provided by Monty Marshall and Ted Gurr, *Peace and Conflict 2003* (College Park, MD: Center for International Development and Conflict management, University of Maryland, 2003).

[33] Charter of the United Nations, http://www.un.org/aboutun/charter/.

[34] This phrase is attributed to the former UN Secretary General Dag Hammarskjold. For details see David S. Alberts and Richard Hayes, *Command Arrangements for Peace Operations* (Washington, DC: Institute for National Security Studies, National Defense University, 1995).

[35] Abridged and adapted versions of official UN definitions, available at http://www.un.org/.

Conflict prevention refers to various means through which conflicts may be contained and resolved, and their root causes addressed. Conflict prevention is intended to prevent human suffering and act as an alternative to costly politico-military operations to resolve conflicts after they have broken out.

Peacemaking refers to the use of diplomatic means to persuade parties in conflict to cease hostilities and to negotiate a peaceful settlement of their dispute. As with preventive action, the United Nations can often play a role if the confronting parties agree so. Thus, peacemaking excludes the use of force against one of the parties to enforce an end to hostilities.

Peacekeeping is a way to help countries torn by conflict create conditions for sustainable peace. UN peacekeepers—military personnel, police officers and civilian personnel from many countries—monitor and observe peace processes that emerge in post-conflict situations and assist ex-combatants to implement the peace agreements they have signed. Such assistance may include confidence-building measures, power-sharing arrangements, electoral support, strengthening the rule of law, economic and social development measures.

Initially developed as a means to deal with interstate conflict, peacekeeping is increasingly applied to intra-state conflicts and civil wars. The tasks of United Nations peacekeepers—military, civilian police and a range of other civilians—range from keeping hostile parties peacefully apart to helping them work peacefully together.

The UN Charter gives the UN Security Council the power and responsibility to take collective action to maintain international peace and security. Therefore, the international community usually looks to the Security Council to authorize peacekeeping operations. Most of these operations are established and implemented by the United Nations itself with troops serving under UN operational command. In other cases, where direct UN involvement is not considered appropriate or feasible, the Council authorizes regional organizations such as NATO, the Economic Community of West African States (ECOWAS) or coalitions of willing countries to implement certain peacekeeping or peace enforcement functions.[36]

Peace-enforcement. In the case of enforcement action, the Security Council gives member states the authority to take all necessary measures to achieve a stated objective. Consent of the parties is not necessarily required. Enforcement action has been used in few cases. Examples include the Gulf War, Somalia, Rwanda, Haiti, Bosnia and Herzegovina, Albania and East Timor. These enforcement operations are not under UN control. Instead, they are directed by a single country or a group of countries, such as Australia in East Timor (1999), NATO in Bosnia and Herzegovina (from 1995), and in Kosovo (1999) where NATO leads the troops and the UN heads the Interim Administration Mission.

Peace-building refers to external efforts to assist nations and regions in their transition from war to peace. Such operations have an extremely large mandate due to their state-building and reconstruction tasks. The UN is often focused on facilitating the implementation of a peace agreement. Effective peace-building requires concurrent and integrated action of military, diplomatic, political, economic, social, and humanitarian organizations in order to create a coherent and stable social fabric.

Humanitarian missions provide humanitarian relief in cases of civil wars, famines and natural disasters. Many participants—governments, non-governmental organizations, and UN agencies—seek to respond simultaneously to this complex of emergencies. Occasionally, logistic assistance of military forces is required as the only way to ensure relief programs.

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[36] For a detailed treatment of historical cases the reader may refer to Katariina Simonen, *Operation Allied Force: A Case of Humanitarian Intervention?* (Garmish-Partenkirchen, Germany: PfP Consortium of the Defense Academies and Security Studies Institutes, September 2004), available also on-line at www.pfpconsortium.org.

Given current trends in international security, states shall expect to be called upon to participate in such missions. Respectively, the military and other security services shall be prepared for peace and humanitarian operations, and the decision processes related to participation, operational control, regulations on the use of force, and readiness is not exempt from democratic civilian control.

Decisions on participation in peace and humanitarian missions

The UN Security Council is the main international body entitled to authorize the deployment of a peace mission and to determine its mandate. Occasionally, governing bodies of regional organizations decide on the deployment of peace and humanitarian interventions.[37] Therefore, the national role, and in particular the role of national legislatures, may be rather limited.

The Parliament has a strong role if its *a priori* or *a posteriori* approval is required in order to send forces abroad. For example, the Swedish and the Bulgarian parliaments have a role of the first type, while the US Congress should agree, sometimes *a posteriori*, on engagements abroad that are longer than 92 days.[38] Secondly, the constitutional arrangements may restrict the role of Parliament to debating executive decisions to send troops abroad, while having no power to change such decisions. Finally, in a number of countries the Parliament cannot even debate cases of sending troops abroad, since such decisions are regarded as part of a foreign policy that is in the realm of the executive.

The rigorous involvement of Parliament in the process of sending troops for participation in peace or humanitarian mission is a sign of healthy civil-military relationships. It enhances the democratic legitimacy and raises public support for the participation in the mission. In addition, in any of these situations democratic civilian control can be strengthened if parliaments or their individual members fully exercise the available budgetary control mechanisms, hold hearings, conduct post-mission inquiries, or visit the troops deployed abroad. In particular, being an element of the national security policy, each decision to send troops for participation in international peace and humanitarian operations shall be backed by resources, so that it does not have a detrimental effect on the rest of the forces in terms of manning, equipment, training level and readiness.

National control of troops during international operations

Organizational and institutional arrangements for peace operations are qualitatively different from those for war-fighting. Further, the principles of organizing and using force in peace operations differ from the "principles of war" which inevitably creates tensions.[39] Peace operations involve political relationships as much or even more than military operations. As a rule, peace operations are conducted in international format. National units are part of a coalition force and work closely with the host country, local political leaders, tribal leaders or clan chiefs, diplomatic

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[37] One recent example is the NATO operation "Allied Force."

[38] This and the next two possible roles of parliament are described in detail in Hans Born, ed., *Parliamentary Oversight of the Security Sector*, pp. 120-121.

[39] For a detailed analysis of the tensions and their impact the reader may refer to Alberts and Hayes, *Command Arrangements for Peace Operations*, pp. 27-37.

services and representatives of various international organizations, with non-governmental organizations or private voluntary organizations, e.g., the organization of the Red Cross/the Red Crescent. Often the nature of the relationship between the participating military forces and these leaders and organizations has a critical impact on the success of the operation.

Therefore, command arrangements in peace operations are rather complex. National forces are nominally under the operational command of a force commander, often from another nation. Sometimes the command hierarchy may have more layers,[40] yet forces maintain direct contact with their national governments and operate under variety of employment restrictions. National political agendas impact mission assignments. Rather than being assigned to subordinate forces, missions are often negotiated with them. The links between the operational command and the respective organizations of the international authority, e.g., of the United Nations, make the picture even more complicated.

In any case, nations maintain a degree of control over own forces primarily through definition of their mission (that supports international agreements but also reflects particular national policies and may be subject to parliamentarian debate) and regulations on the use of force.

Rules of Engagement

When the national authority—legislature or executive power—decides on sending troops abroad, it should also define the level of force the troops are allowed to use and under what circumstances, or the so called *Rules of Engagement* (ROE). The ROE define the limits to indiscriminate use of deadly force for a particular operation.[41] They have to be decided on an individual basis in an attempt to limit as much as possible the use of force while at least simultaneously allowing soldiers sufficient latitude to defend themselves. The ROE must sustain the fundamental premise of self-defense. They are both soldier support factors and operational or tactical parameters. They must be carefully tailored to comply with operational and political concerns, as well as international regulations such as UN Security Council resolutions. The Rules of Engagement must incorporate criteria that clearly outline the application of a graduated use of force to provide the balance needed to defuse, escalate, or otherwise resolve confrontation. Defining ROE in terms of graduated levels of response enables tactical elements to apply the force necessary to meet varying levels of violence while minimizing collateral damage. In this sense, ROE can stipulate the following levels of use of force (from minimum to maximum):

- ❏ Only for self-defense of the troops (individual soldiers, camps, etc.);
- ❏ Self-defense of troops plus defense of life of civilians;
- ❏ Self-defense of troops, life of civilians and particular assets – a communications center, a bridge, a hospital, etc.;
- ❏ The use of all necessary measures to ensure that the operational objectives are met.

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[40] For example, currently in Iraq the Bulgarian battalion is subordinated to a Polish brigade commander, while the multinational brigade is part of the US-led coalition.

[41] This paragraph follows definitions used by Hans Born, ed., *Parliamentary Oversight of the Security Sector*, pp. 122-123.

Further, the rules of engagement should include reference to the kind of weapons allowed in a specific peace operation. The range might be from no weapons at all, e.g., for UN military observers, to heavy weapons including ships and aircraft.

The norms regulating the conduct of combatants in times of conflict also fully include the "Law of Armed Conflict" or the "International Humanitarian Law."[42] These expressions are used to cover a range of international treaties and principles applicable to situations of armed conflict. Their aim is to establish limits to methods and means of armed conflict and to protect non-combatants – civilians, wounded, sick, or captured military personnel.[43] Already in the beginning of the 20th Century, through an annex to the 1907 Hague Convention, the international community attempted to regulate the actual conduct of hostilities during armed conflict, such as target selection and permissible weapons. Additionally, four conventions adopted in 1949 and collectively known as the "Geneva Conventions" aimed to protect civilians, wounded, and prisoners of war. Most important aspects of the Hague and the Geneva Conventions were merged in the 1977 Protocols Additional to the Geneva Conventions: Protocol I on the victims of international armed conflict and Protocol II on the victims of non-international armed conflicts.[44]

The issue of the treatment of prisoners of war once again raises considerable interest in the framework of the "war on terrorism" and the status of detained Al-Qaeda and other "fighters" in Afghanistan and Iraq. The graphical evidence of mistreatment of detainees in the Abu-Ghraib prison challenged the analysis of the war on terrorism, the ethics of the treatment of prisoners, and even major postulations of national security and military strategies.[45] A main conclusion in regard to the democratic control of the military and the security services is that the troops to be sent abroad should be provided with comprehensive and clear rules of engagement, should be educated in the principles and trained in the implementation of the requirements of international humanitarian law.

Preparing the troops for peace and humanitarian missions

The participation in international peace missions, very often far away from the home country, is a very demanding task. Furthermore, the ongoing "war on terrorism" places additional demands on response times and readiness, doctrine and training, force structure and technology level. Effective contribution to peace operations with minimized probability of casualties may be provided only by ready, cohesive, superbly trained, equipped, and sustained units.[46]

Being a challenge in itself, the preparation of forces capable to conduct such operations in multinational format should be examined as an essential component of the overall security and defense policy of a country. The development of the respective capabilities has to be pro-

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[42] The latter term is preferred by the International Committee of the Red Cross.

[43] Ray Murphy, "Contemporary Challenges to the Implementation of International Humanitarian Law," *Connections: The Quarterly Journal* 3:3 (September 2004): 99-113.

[44] Ibid., p. 100.

[45] Details are available in G. Paul Holman, "Implications of the Events at Abu Ghraib Prison for the PfP Countries: Reflections of a Former Intelligence Officer," *Connections: The Quarterly Journal* 3:3 (September 2004): 85-98.

[46] And not by the so called military "contingents."

grammed within a single *defense program* aimed to implement a declared security and defense policy within expected financial constraints.[47] Prior to that, the legislature and the government should define and agree on the "*ambition level,*" i.e., to what extent and how the country intends to contribute to the efforts of the international community to provide international order, stability, and protection of human rights. Respecting national perceptions of security risks, the formulation of such ambition levels accounts for international obligations of the country to the United Nations, alliances and unions, as well as on bilateral basis.[48] Finally, elected officials rigorously oversee the implementation of the approved policy, ambition levels, and priorities by the military and other security sector organizations.

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[47] In itself subject of rigorous parliamentarian control. More details are available in Part VIII of this handbook.

[48] One example is the decision of the NATO heads of states in Istanbul, 2004, that each member country will aim at having 40 percent of its land forces deployable in out-of-area operations, and 8 percent participating in such operations at any time.

Budgetary Control of the Security Sector – The Powerful Arm of Democratic Control

In democratic societies, the executive—security sector organizations included—is accountable to the people, mainly through their representatives in parliament. In relation to security and defense as well as elsewhere, governments are obliged to reveal, explain, and justify what they do, what they intend to spend and, after legislative approval, how they spend and what has been achieved.[1] In turn, the legislature is responsible and obliged to require that the government did that. To this aim, the parliamentarians have "the right to know" what the government does and spends, which only as exception may be restricted on the basis of "need to know."

Transparency provides a possibility for parliament, media, NGOs, interest groups and the general public to understand what the government does and spends and to assess how conscientious the executive is in revealing, explaining, and justifying its actions and expenditures.[2] Constitutional arrangements in these respects differ, but everywhere parliaments have key role in adopting and overseeing budgetary provisions related to security and defense. The national budget is not just a technical instrument presenting income forecasts and proposing expenditures. Creating conditions for transparency, accountability, and good governance, the *budgeting process* is arguably the most important means for democratic control of the security sector.

Part VIII

DEMOCRATIC CONTROL DURING THE BUDGET DRAFTING AND ADOPTION PERIOD

The typical budget cycle has four distinct phases: budget preparation, budget approval, spending or budget execution, audit and review. The first chapter in this section examines the interactions among security sector institutions during budget preparation. The second chapter looks into the role of parliament in the process of preparing and approving the budget. Both chapters touch on possible roles of civil society and media in these phases. The third chapter is focused on the auditing phase and the role of a national audit office. The final chapter examines the specific field of arms transfers and the challenges to democratic control.

Chapter 22

The Security Sector Institutions, Civil Society and Media during Budget Preparation

The institutional arrangements in support of the national budgeting process are expected to

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[1] David Greenwood, *Transparency and Accountability in South East European Defence* (Sofia: George C. Marshall Association – Bulgaria, 2003), p. 23. Prof. Greenwood identifies two broad areas of *policy accountability* and *financial accountability*.

[2] Ibid.

provide outcomes on three levels [3]:

1. Aggregate fiscal discipline;
2. Resource allocation and use based on strategic priorities;
3. Efficient and effective operational performance.

The major difficulty in applying the principles of levels two and three to the budgeting of the security sector lies in our limited capacity to assess objectively the product of the security sector. One possible measure is to put the military, the police force or the intelligence to the test against a competent opponent.[4] In peacetime, another possibility is to measure financial efficiency or the esteem for the security sector organizations. In any case, given the uncertainty in defining future threats and scenarios, there will be a strong subjective element in our assessment.

One comprehensive approach to the assessment of budgeting processes and proposed budgets includes comparison of national and organizational regulations and experience against an idealized budgeting system, or benchmark, described bellow on the example of a national military budgeting process.[5] The same principles apply to the process of budgeting for security in general.

Budgeting as an integral component of the security and defense policy

Military budgeting is a process well incorporated in the defense-planning framework, guaranteeing the implementation of a clearly stated defense policy in mid- and long-term. The country has clearly stated the objectives of its security and defense policies in a small number of legislative acts with apparent interrelationship among them. There is a comprehensive strategy to achieve the objectives of the security and defense policy, i.e., to join an alliance. This strategy—elaborated in a legislative act—is broadly assessed as realistic. The country has a vision of its force structure ten or more years in the future. The vision is feasible and sufficiently elaborated to guide R&D, technology development and acquisition policies. Its implementation is supported by a roughly estimated long-term force development plan. The vision and the long-term plan are approved either by the Government or by the legislature.

The country has an established process for development of a mid-term plan, or defense program,[6] designed to accomplish the objectives of the stated defense policy. The defense program and its components—sub-programs and program elements—are clearly designed to

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[3] *Public Expenditure Management Handbook* (Washington, D.C.: The World Bank, 1998), pp. 17-29.

[4] These measures are described in detail by Chris Donnelly, "Learning from Security Sector Reform in Central and Eastern Europe," in *Reform and Reconstruction of the Security Sector*, eds., Alan Bryden and Heiner Hänggi (Münster, Germany: Lit Verlag, 2004), pp. 45-63.

[5] For detailed description refer to Todor Tagarev, "A Means of Comparing Military Budgeting Processes in South East Europe," *Information & Security: An International Journal* 11 (2003): 95-125, <http://cms.isn.ch/public/docs/doc_556_259_en.pdf> (26 November 2004).

[6] For example, the United States use the term *Future Years Defense Program (FYDP)*. Many other countries have accepted the term *program* to denote a *resource constraint mid-term plan for development of defence and the armed forces*.

meet policy objectives. It incorporates diverse requirements, e.g., of national defense and allied planning. The defense program further includes programs and projects considered of highest priority in terms of policy objectives. In a comprehensive manner it covers all defense activities and costs, including personnel, operations and maintenance, procurement, utilization, education and training, research and technology development, etc. The defense program is constrained by anticipated resources. It further constrains any other defense resource requirements posed, for example, by acquisition programs or operational plans. It contains alternative options to reflect thoroughly described contingencies. The defense program effectively incorporates performance indicators. The level of detail for the first planning year of the defense program is sufficient to allow for its accurate transformation into a budget plan.

There is a clear understanding of the risk level associated with the budgeted force structure and defense posture in short-, and mid-term. The country has a methodology to assess risks associated with defense and force planning that is adequate to its needs. It has established procedures to develop scenarios for force implementation, to assess probability of occurrence of each scenario under clearly stated assumptions, to simulate performance of planned forces, to analyze simulation results and deduct risk. Furthermore relevant tools support the assessment of risk while the experts involved have the necessary knowledge and experience. Risk assessment is fully and effectively incorporated within the defense and force planning cycle. Finally, the budgeting procedure is clearly oriented to reflect precisely policy objectives and program decisions. It allows for efficient and effective translation of policy and program decisions into budgets.

Budget planning

Roles and responsibilities within the executive branch and among the branches of power in regard to military budgeting are very clear. That applies to the distribution of roles and responsibilities among the executive branch, the legislature, and the Head of State (the Supreme Commander); among the senior military authorities, the civilian MoD officials and the Ministry of Finance; the roles and responsibilities of the public sector, commercial organizations and lobbying groups, in particular the relationships between the executives and commercial organizations owned by the MoD or other governmental agencies.

Roles and responsibilities for key aspects of military budgeting are defined through comprehensive legislation, regulations, and instructions, covered by a budget system law. A degree of flexibility is available to the executives in spending public funds. Programs and, respectively, budget can be changed out of the regular planning cycle. However, the discretionary powers of the executives are clearly described in legal acts. Contingency or reserve provisions of the budget law specify clear and stringent conditions for the use of funds. Executive reports on spending contingency funds are independently audited.

In a comprehensive manner, the military budget covers all financing (subsidies and 'revenues') and spending. Comprehensively, with clearly defined sources and elaborated purpose, the military budget accounts for the subsidy from the state budget to the MoD; subsidies from the state budget to other organizations performing defense and defense-related activities, i.e., maintenance of wartime reserves; funding from other national, international and bi-lateral programs; revenues from sales of excess equipment, infrastructure, etc.; revenues from the profits

of commercial organizations and organizations, providing goods and services to outside organizations (when the MoD owns or has a share in these organizations).

The country has the capacity—methodology, adequate knowledge and trained people—to estimate accurately all future defense expenditures, including the expenditures according to the *UN Instrument for Standardized Reporting of Military Expenditures*, taxes, social and medical insurance costs, retirement costs, utilization, costs to cover previous contracts and loan servicing costs, as well as any contingent liabilities.

All revenues and expenditures are classified in a way that is compatible to the international standards. Budget information is presented in a way that facilitates policy analysis and promotes accountability. The military budget is represented in the form of appropriations, giving considerable detail. It provides detailed distribution among defense organizations, as well as among defense programs. In the latter case, the budget clearly presents the resources allotted to training, maintenance, procurement, R&D, etc., for each program and its elements.

Transparency

All aspects of military budgeting (planning, execution and assessment of implementation) are transparent to decision makers and the public. All participants in the budgeting process—civilian and military planners, ministers of defense and finance, governmental councils, legislature and its committees, head of state, audit office, lobbying groups, non-governmental profit and non-for-profit organizations, media and society at large—exercise their influence according to clear rules and with full understanding of all aspects of the military budgeting process and adhere to the principles of democratic governance.

Publications of military budgets and related information—major security and defense policy documents, defense programs, implementation and audit reports—are readily available to the public. The rules for disclosing military budgets and related information are also public. They are clearly defined in law and leave very little room for discretion by the executive agencies. The government and the respective agencies are legally obliged to publish information on military budgets in details, allowing rigorous analysis by an informed observer. The information is provided in printed version and on-line. The executives, i.e. the Minister of Defense, are obliged by law to respond in writing to requests for information. If a portion of a related document is classified,[7] that portion is deleted and the rest of the document is provided to the inquiring organization or person.

Aggregate information on the budget and the actual or expected outturn of the two preceding fiscal years is readily available. Aggregate information on the budget forecasts for five or more years following the budget year is also available. The country complies with international treaties and agreements that require disclosure of military budgeting information, e.g., UN and OSCE agreements, regularly providing complete and accurate information on time.

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[7] Not as a general rule, but based on a specific decision for classification of a particular piece of information.

Assuring integrity

Military budgeting is based on a rigorous and reliable forecasting of the budget/fiscal constraints in a comprehensive and consistent quantitative macroeconomic framework. All underlying assumptions for budget planning, i.e., major fiscal risks, uncertain costs, specific expenditure commitments, etc., are clearly documented and properly accounted for. Furthermore, major underlying assumptions such as macroeconomic forecasts, fiscal forecasts, etc. are assessed by independent experts.

All defense programs are assessed using a comprehensive and consistent set of cost factors that are clearly related to the findings of an independent national statistics agency. Integrity checks, as well as programming and budgeting, are systematically supported by an information system with tools for automated analysis and decision support. The accounting basis is clearly indicated, with full statement indicating any changes in practices as well as current accounting policy. Alternative programs and budgets, corresponding to different assumptions, are clearly identified and documented. There is a clear written procedure to transition from one alternative to another, and transition points are also clearly documented. History of both plans and implementation results and assessments is readily available.

Chapter 23

Parliament and Civil Society during Budget Preparation and Approval

Parliamentarian and societal control over the budgeting cycle often meets a long-established culture of supremacy of the executive in the security sector.[1] Nonetheless, the "power of the purse" can and should be exercised to ensure accountability in the use of the public resources for security and defense.

The most important role of Parliament is in setting proper legislative framework that guarantees—to the extent feasible within the particular constitutional framework—implementation of all principles, listed in the previous chapter, adding as well legislation for a comprehensive audit and review process. Furthermore, parliamentarian and societal oversight of the security sector through the budget should be solidly rooted in the political culture of the country.

Among all requirements, critically important are (1) the possibility of the Parliament and interested non-governmental organizations to assess the product the security sector will provide given certain budget allocations and (2) the availability of sufficient information to make such assessments during budget preparation and approval, overseeing the execution of the budget and reviewing budget accounts.

Budgeting for results

Technically, more difficult is to assess what kind of 'product' security sector organizations plan to provide with the budget they request and how that product relates to declared security and

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[1] Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 129.

defense policies. In economic terms, this means ability of Parliament and society to assess what will be the "value for money" or, in other words, to discuss and approve an "output budget" presented by government.[2] It is generally accepted, that the product of the security sector organizations are the *capabilities* to perform their roles and missions in envisioned security scenarios. For this purpose, the Parliament should oblige the executive to present the budget request for any security sector organization together with the *plans* what capabilities it intends to develop and sustain and how.

For defense organizations that equates to presentation of a comprehensive *defense program* with clear structure and sufficient detail to explain to parliamentarians what capabilities will be maintained and developed if the budget is approved as requested.[3] In turn, the Parliament decides not just on approving a budget request, on increasing or decreasing the requested amount of money; instead, it decides which of the capabilities in the proposal to fund and to what level. Occasionally, the Parliament may decide to increase the proposed capability level and, respectively, to authorize a higher than the requested budget. In effective budgeting systems the Parliament does that choosing among program elements or program alternatives, prepared and presented by the executive as part of the budget request.

Certainly, that cannot happen without an informed and essential debate in Parliament. Ideally, while balancing security and defense needs with resource limitations, parliamentarians have a good grasp of the concept of planning risks, as well as access to expertise in order to assess objectively these risks. Universities and non-governmental think-tanks often provide a good source of unbiased expertise in such highly specialized matters. Finally, however, the parliamentarians ought to account for the perceptions and the security concerns of the people that are often shaped by the media's interpretation of political and/or expert debates.

Transparency vs. secrecy

Transparency in the budgeting process enables parliaments to perform efficiently their oversight role and facilitates societal confidence in the security sector. However, the implementation of the principles of transparency and accountability has to balance carefully justifiable concerns for protection of sensitive information. Key rule in that respect is that Parliament should not allow 'blanket' classification of information related to the security sector. Instead, the executive should be obliged to justify and explain, in writing, the reasons for classification of each particular document, or part of document.

Even in such cases parliamentarians have to exercise their oversight power. In regard to budgeting, one possible way is to brake down the budget proposals to different levels of security classification [4]: The general budgets of the security sector organizations are presented to Parlia-

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[2] In contrast to "input budget" or expenditures. See Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 133.

[3] With the same meaning other organizations may prefer the IMF term *policies*. See *Code of Good Practices on Fiscal Transparency*, International Monetary Fund, <http://www.imf.org/external/np/fad/trans/code.htm> (24 July 2004).

[4] Ravinder Pal Singh, *Arms Procurement Decision Making Processes*, Vol. I (Oxford: Oxford University Press, 1998).

ment; classified investments and operational expenditures are scrutinized by a sub-committee to the defense and security committee; expenditures related to higher level of classification are scrutinized by a representative group of members of a 'scrutiny committee.' Each member of this group should receive access to classified documents according to the procedure, established in the respective legislative act.

Several other aspects of the budgeting procedure may be essential for the democratic control of the security sector:

- ❑ Enforcing budget discipline, e.g., precision of costing, limits on overspending, standardized accounting, strictly imposed rules on transfer of funds and payments between budget years, etc.;
- ❑ Rigorous parliamentarian oversight of all executive decisions with long-term budgeting implications, e.g., major procurements, entitlement programs (pensions, health care for retired personnel, etc.), recruitment plans, promotion regulations, etc.;
- ❑ Informing Parliament and involving the respective committees well in advance;
- ❑ Allowing sufficient time for debates on the proposed budgets of the security sector organizations (45 days to three months [5]);
- ❑ Adequate representation of the political parties in Parliament in all respective committees, sub-committees, and 'special scrutiny groups';
- ❑ Providing opportunities for the opposition to use public debate to publicize and promote alternative proposals;
- ❑ Availability of expertise on budgeting and security sector among parliamentarians and staff;
- ❑ Productive interaction with society, think-tanks and media in all phases of the budgeting process.

Part IX

AUDITING THE EXPENSES OF THE SECURITY SECTOR

Once the budget of the security sector organizations is approved, the Parliament continues its oversight mission. It decides on participation in operations abroad, debates international agreements and participation in international cooperative security initiatives (e.g., multinational formations, joint armaments procurement, or defense industrial cooperation), sanctions major procurements in key points of the acquisition life-cycle, regulates open tendering and contracting, recruitment and promotion of personnel, etc. – all these with important resource management implications. However, the most important ex-post oversight is through auditing budget execution reports, performed by an independent audit agency, e.g., a National Audit Office.

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[5]   Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 134.

Chapter 24

The National Audit Office and Its Interaction with the Parliament

In some countries the executive branch has a strong internal capacity for auditing budget execution by the security sector. Nonetheless, for each country it is important that the government presents to Parliament full accounts and that these accounts are audited independently. Such independent institution, called Auditor General, National Audit Office,[6] Budget Office,[7] or Chamber of Accounts,[8] should be established by the Constitution as independent of the legislature, the executive, and the judiciary. The Parliament should guarantee that its members have clear term of office, means and resources to perform their mission effectively and without bias, and report regularly and directly to Parliament or its respective committees. In cases fraud or corruption has been identified, the Audit Office is bound to report also to the judiciary.

Compliance vs. performance audits [9]

The Audit Office checks the accuracy, reliability and thoroughness of the finances of all governmental and public organizations. It verifies whether all financial operations are carried out in accordance with the regulations on spending public funds. In addition, it must verify that all public expenditures and incomes are conducted in accordance with the law governing the budget.

However, even more important is its mission to ensure that public funds are properly used to achieve the objectives stated in legislatively approved security and defense policies. To that aim, the Audit Office should verify the extent to which spending meets the following three criteria:

- *Value for money* – to verify, applying both qualitative and quantitative analyses, whether the resources were used to achieve maximum results;
- *Effectiveness* – to assess to what extent policy objectives were met;
- *Efficiency* – to assess whether the resources were used optimally to obtain the achieved results.

The Audit Office may conduct audits on its own initiative or at the request of Parliament. Its value for the democratic control of the security sector may increase through:

- Auditing, in a timely manner, annual budget execution reports together with annual performance reports, e.g., the annual report on the status of defense and the armed forces. Only

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[6]   E.g., in the United Kingdom, See also www.nao.org.uk.

[7]   See the US *Congressional Budget Office* and the activities of its National Security Division at http://www.cbo.gov/divlist.cfm?Pass=NSD.

[8]   E.g., in Bulgaria, www.bulnao.government.bg.

[9]   This paragraph follows the description in Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 142.

this approach would allow to assess whether the expected, i.e., the budgeted, 'product' of the security sector has been achieved, how effectively and efficiently;

❑ Auditing each case of spending contingency funds and funds, allocated by executive discretion, e.g., allotting budget surplus for 'high-priority projects';

❑ Making audit-based recommendations how to increase 'value for money" and overall performance of the security sector.[10]

Societal contribution

The independent audit capacity may be augmented through involvement, on a regular basis, of media and think-tanks. Media may have a critical impact when fraud, mismanagement, and corruption have been identified. Independent think-tanks—universities, academic institutes and other non-governmental organizations—may complement 'value-for-money' audits in particular areas of interest, i.e., force modernization programs. Of particular value are non-governmental organizations with notable capacity to conduct dedicated 'value for money' studies and a track record of successful performance reports. The reports of such organizations may have significant impact on decision makers and societal attitudes, thus contributing to the effectiveness of the democratic control of the security sector.

Chapter 25

Auditing Arms Trade and Arms Transfers

Arms trade often fuels and sustains conflict, destroys human lives and undermines development. Arms trade, as well as other types of transfer of weapons, military and dual-use technologies, is of increasing concern among international organizations, parliaments, governments, and non-governmental organizations.

Arms transfer covers all activities in which state and non-state actors are engaged in order to acquire or sell arms. It includes sale or trade, purchase, procurement, or donation of arms.[11] Therefore, rules and procedures aimed to limit availability of armaments should encompass any of these activities.

Effective oversight of arms trade and arms transfers is based on comprehensive arms policy, efficient implementation mechanisms, and high level of transparency.

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[10] See for example the report of the UK National Audit Office *Helicopter Logistics* (London: Report by the Comptroller and Auditor General HC 840, 23 May 2002). Executive summary of this report is available at http://www.nao.org.uk/publications/nao_reports/01-02/0102840es.pdf. It is believed, that the implementation of the NAO recommendations in the field of defense, made from 1999 till 2001, has saved £1.4 billion. Hans Born, ed., *Parliamentarian Oversight of the Security Sector,* p. 143.

[11] Hans Born, ed., *Parliamentary Oversight of the Security Sector*, p. 176.

National policy on arms transfer

This policy, approved by the legislature, should define the guiding principles of arms trade and arms transfers. It should be in line with the national security and defense policy, procurement law, budget and finance laws, contract law, and dispute settlement law. In addition, arms trade regulations should be consistent with the principles of the UN Charter, international law or UN arms embargoes, obligations ensuing from a country's membership in other international organizations,[12] and should also take into account the economic, political, ethical and security concerns of the countries procuring arms.

For example, the *European Code of Conduct* on arms transfers sets eight criteria, which, although not legally binding, should guide the arms export policies of European Union member countries. These include: respect for the international commitments and sanctions decreed by the UN Security Council; respect of human rights in the country of final destination; the internal situation in the country of final destination as a function of the existence of tensions or armed conflicts; risks that the intended recipient would use the arms aggressively against another country or to assert by force a territorial claim; the behavior of the buyer country with regard to the international community and its attitude to terrorism, the nature of its alliances and respect for international law; risks that the equipment will be diverted within the buyer country or re-exported under undesirable conditions; the compatibility of exports with the technical and economic capacity of the recipient country. Table 1 provides a list of additional international arms control regimes.[13]

The national policy should establish guidance and procedures to provide for transparency and accountability of the executive and the defense industries, requiring in particular a timely parliamentarian sanction of a comprehensive annual report on arms transfers.

Implementation mechanisms

Each country should have in place oversight mechanisms that provide for comprehensive control over arms transfers and covers in particular [14]:

- ❑ The relation of exports to declared security and defense policy and international commitments;
- ❑ Procedures for control of exports of defense and dual-use items and technologies, surplus weapons and ammunitions, re-export and any other movement of arms and associated materials through own territory;

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[12] E.g., the regulations of the "European Code of Conduct," approved by Resolution of the Council of the European Union (8 June 1998).

[13] Adapted from the description provided by Bernardo Mariani and Chrissie Hirst, *Arms Production, Exports and Decision-making in Central and Eastern Europe* (London: Saferworld, June 2002), pp. 5-7. The report is available at http://www.saferworld.co.uk/publications/Beastrep.htm. Full list and regular updates are available through the *Inventory of International Nonproliferation Organizations & Regimes*, hosted by The Nuclear Threat Initiative, http://www.nti.org/e_research/official_docs/inventory/.

[14] For details refer to Mariani and Hirst, *Arms Production, Exports.*

Table 1. International arms control regimes

Control Regime	Organizational format	Established in
Nuclear Non-Proliferation Treaty (NPT)	Multilateral agreement with near universal membership	1970, permanent since 1995
Guidelines for implementation of export control provisions of the NPT	Zangger Committee	1971
Export of nuclear and nuclear-related materials	Nuclear Suppliers Group (the "London Club")	1975
Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction (*Biological Weapons Convention* - BWC)	The United Nations	1975
Prevention of the proliferation of chemical and biological weapons (complementary to BWC and CWC)	The Australia Group	1984
Conventional Forces in Europe (CFE) Treaty	OSCE [15]	1990; 1999
Convention on the Prohibition of Development, Production, Stockpiling and the Use of Chemical Weapons and Their Destruction (*Chemical Weapons Convention* - CWC)	The United Nations	1994
Criteria on Conventional Arms Transfers	OSCE	1993
OSCE Document on Small Arms and Light Weapons	OSCE	2000
Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies	Voluntary association of 33 participating countries	1995
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the Ottawa Treaty)	Ottawa Process, led by Canada	1997
EU Code of Conduct on Arms Exports	The European Union	1998
Protocol Against Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials (Firearms Protocol)	The United Nations	2001
Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	The United Nations	2001
Initiative to establish an *International Framework Convention on International Arms Transfers* (Arms Trade Treaty – ATT)	NGO Initiative [16]	2004

[15] OSCE – Organization for Security and Co-operation in Europe; previously – Conference for Security and Co-operation in Europe.

□ Arms brokering activities;

□ Efforts to close down 'grey' or black market arms trading networks;

□ Control on end-users and follow-up checks to ensure that exported goods are not misused, diverted or re-exported.

Transparency and audits

A number of points are usually raised when one defends the rule of non-disclosure of information related to arms trade: commercial confidentiality; national security; security concerns of recipient states; possible adverse effect on bilateral relations, etc. However, transparency of arms trade and arms transfers brings several key benefits [17]:

□ It provides grounds for accountability of the executive to parliament and society;

□ Serves as a tool to overcome cases of mismanagement and corruption;

□ Facilitates coordination between officials from different governmental agencies in decisions on arms exports;

□ Promotes confidence building and compliance with national and international regulatory regimes.

While the optimal level of information disclosure is subject to further analysis, there is a clear trend since the beginning of the 1990s in support of greater transparency in conventional arms transfers. States are obliged to share significant amounts of information through the *UN instrument for standardized international reporting on military expenditures*. Several other international documents create obligations for exchange of information among states (Table 2 provides a sample of such documents and initiatives).

Table 2. Sample of venues for information exchange on arms transfers

Information exchange initiatives	*Organizational format*	*Established in*
UN Register on Conventional Arms: Data on arms transfers, military holdings, procurement form national sources and relevant policies	United Nations	1991
Confidence- and Security-Building Measures (Vienna 1994 Document; Vienna 1999 Document)	OSCE	1994 1999
EU Code of Conduct for Arms Exports	European Union	1998
South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC)	Stability Pact for South Eastern Europe	2002

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[16] For details see http://www.saferworld.co.uk/iac/att.htm.

[17] Bernardo Mariani and Angus Urquhart, *Transparency and Accountability in European Arms Export Controls: Towards Common Standards and Best Practice* (London: Saferworld, December 2000), http://svenska-freds.se/transparency/SafTraRep.PDF (02 November 2004).

In addition, domestic transparency may be increased through publication of comprehensive, detailed and clearly structured annual reports on arms exports and the establishment of formalized procedures for parliamentary and public scrutiny of national export controls.[18] For example, the UK government has already published seven such reports. The effect of such publication in terms of public and international confidence may be augmented through publication of summary reports of defense companies and defense industrial associations, as well as through independent audits of these reports.

Governmental reports on arms trade and arms transfers, that provide sufficient detail to allow parliamentarians and the public to assess how export regulations are implemented, may be audited by specialized NGOs (think-tanks). To ensure highest levels of transparency and accountability both annual and audit reports with policy recommendations should be made available to the public. Finally, in countries that do not provide annual reports, transparency and accountability may be increased through specialized NGO audits of the formulation, regulation and implementation of the national export control and arms transfer policies.[19]

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[18] Mariani and Urquhart, *Transparency and Accountability*, p. 3.

[19] See for example Philip Gounev, Emil Tsenkov, Bernardo Mariani and Larry Attree, eds., *Weapons under scrutiny: Implementing arms export controls and combating small arms proliferation in Bulgaria* (Sofia: Center for the Study of Democracy and Saferworld, April 2004).

Section Six

The People in the Security Sector – Role of Democratic Control

Part X

GOOD GOVERNANCE OF THE SECURITY SECTOR

Any further dealing with the issues of the 'first', 'second' and 'third' generation of civil-military relations reforms is no longer a matter of philosophic acceptance of the principles of the democratic control over the military and the security institutions in general, but rather a question of management and effectiveness in that area.[1] Finding the most appropriate style and mechanism of effectively delegating authority and responsibility, needed for the implementation of policy goals and of efficient decision-making by civilians and security sector servicemen constitutes the essence of the concept of 'good governance' of civil-military relations and the security sector reform.

The concept of 'good governance'[2] of the security sector has turned into a crucial issue of the system of democratic management. It includes the following elements: first, the establishment of an effective national-security policy decision-making and implementation process and its respective bureaucratic structures and institutions, including defense, intelligence, counter-intelligence, interior troops, border guards, police and troops for fighting organized criminality; second, parliamentary oversight of the security sector, including the armed forces and the defense policy; third, the contribution to democratic governance of the security sector by civil society through its expert institutions and individuals.

The assumption of a really effective managerial attitude to the security and defense sector and the civil-military relations becomes possible only after starting to treat these issues from a broader perspective of democratic management.[3] Any other approach – ideological or political-partisan, has proved to be ineffective.

'Good governance' of the civil-military relations and the security sector requires education and knowledge. The education of the new professional military requires capability to adapt to a new force structure, defense posture and new missions, especially peacekeeping and peace-building. Knowledge and skills are required for serving in a democratic political system, but also at international headquarters and staff. Awareness of politics, international relations and man-

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[1] D. Betz, "Democratic Civil-Military Relations in Practice: Implications for Theory," a paper presented at '*Taking Stock on Civil-Military Relations*' Conference (The Hague, 9-12 May 2001), 3-10.

[2] See: A. Cottey, T. Edmunds, A. Forster, 'The Second Generation Problematic: Rethinking Democracy and Civil-Military Relations in Central and Eastern Europe', *Armed Forces and Society*, Fall 2002.

[3] Andrew Cottey, Timothy Edmunds and Anthony Forster are absolutely right to underline that the democratization of civil-military relations cannot be separated from wider processes of democratization and political and state development. Broader democratization and relative domestic stability are background factors of establishing democratic civilian control in many countries in Central and Eastern Europe, unlike others, in which there exist more general problems in the democratic development. See: A. Cottey, T. Edmunds, A. Forster (eds.), *Democratic Control of the Military in Postcommunist Europe: Guarding the Guards* (Palgrave, 2002), 262.

agement are indispensable elements of the new curricula. The new officer needs to be capable in administrative issues, to be able to prepare documents, to have the capacity to participate in the defense-budget development, and also to be efficient in interacting with members of parliament. A specific accent needs to be placed on knowing NATO and PfP procedures, norms, bureaucratic interrelationships with other institutions, etc.

A significant feature of the effective management of the security sector, hence – of civil-military relations, is the implementation of certain principles: of just and fair personnel control; of regular review and assessment of the effectiveness of stated objectives relative to the applied methods and the realized results; control and assessment of the professional morale in relation to the bureaucratic methods; of preserving an appropriate level of publicity, and, of intra-institutional cooperation (through understanding, keeping interest, fair criticism and control). 'Good governance' in this field means that the empowered personalities should be able to channel the policy-making through the policy-implementation process towards the desired objectives. This requires an ability to delegate responsibilities and underline to the subordinates the authority of the followed aims and not of the position of the person in command (civilian or military).

Reaching these high levels of administrative interaction is directly connected with the applied system of recruiting, selection and promotion. Strategic thinking in the broadest meaning of the word and eagerness to take responsibility for the initiated steps is historically a new culture and the first question about recruiting, selection and promotion on security and defense issues today should be about the *education* received to carry out the new job and tasks.

Knowledgeable considerations of security sector policy issues by the Parliament require both outside advice and an *in-house* expertise. The same need is true about the implementation of the respective decisions the Parliament takes. That is why hiring parliamentary staff officials on a permanent basis is considered a strategic approach in improving the information and analytic perspective of the legislators.

In conclusion, the potential of the 'good governance' concept in the area of civil-military relations is huge and any further reform in that area should borrow from it as much as possible.

Chapter 26

Conscription and Alternative Military Service

By legal status servicemen are career personnel and recruited conscripts. Career-personnel include officers, non-commissioned officers, cadets and soldiers. For career servicemen military service is a profession in the Armed Forces. Bulgarian citizens who have completed their conscript military service (not applicable to women) and who are not older than 40 for officers, 35 for non-commissioned officers and 30 for soldiers may apply for a career military service. Certain positions specified by the Minister of Defense can be taken by career servicewomen as well.

Conscript national service is obligatory for all male citizens of the Republic of Bulgaria who have turned 18 years of age. The age limit for conscripts is 30 years of age. The length of service is 9 months and for those who have a university degree - 6 months. Bulgarian citizens permanently residing abroad cannot be exempted from conscript service on residence grounds only. Traditionally the conscription expresses readiness of citizens to assume personal respon-

sibility for the protection of the country. Through the general conscription service the armed forces are in a close contact with all inhabitants and with the young generation in particular. The importance of the general conscription does not change the principle that for certain reasons one cannot be forced to undertake military service with an arm. The one who will take advantage of this legal right has to undertake the civil compensatory or alternative service.

The gradual move from a conscript to a professional service in the Bulgarian Armed Forces is determined by the global tendencies and by the undoubted professional advantages of a career serviceman to a conscript. The limited term of military service and the related impossibility to train the conscripts to use and maintain the combat equipment, as well as the country's commitments to maintaining peace and security in the region do not make the conscript service option a successful one any more.

It is true that the "professionalization" of the security sector organization is one of the most discussed issues related practically to all aspects of its transformation – functional effectiveness, adaptability to the new security realities, civil-military relations and democratic control, improving the discipline and morale of the forces, budget restrictions, etc. Professionalism is often presented as panacea for all problems in the spectrum between the victims and injuries during the conscript service and membership in combat and peace support operation in alliance and 'coalition of the willing' format. Formally the issue of professionalization of the conscript service in the Bulgarian Armed Forces has begun with the *Law on Defense and Armed Forces of the Republic of Bulgaria (1995)*, which for the first time allowed for hiring of professional soldiers. The Law and its numerous amendments, however, still preserved the draft as the main approach to filling the soldier's ranks. Meanwhile, Article 93 of the Defense Doctrine as of 1999 requires that the Armed Forces' professionalization be completed by 2010. The document does not, however, determine any characteristic of the process and leaves its operationalization in the hands of the government. Unfortunately, the entire government's political program does not even mention the word "professionalization" despite that one of the four chapters of the *Membership Action Plan* and the *National Annual Program* for its implementation from the very beginning of the "MAP process" is focused exactly on professionalization in the comprehensive understanding of this term. Probably the most frequently talking persons on the issue are the Chief of the General Staff and some of the generals in the General Staff and Services (that is to say the highest military leadership). Probably, because of their influence on the current plans for immediate preparation for NATO membership, it has been decided for full professionalization of the Navy and the Air Force by 2006 and for the entire Armed Forces by 2010. The reasons for such an initiative are not very clear. On the one hand, the senior militaries speak about shortening the schedule for professionalization of the conscript service. On the other, it is well known that those soldiers will cost much more than these on draft service, but they are absolutely firm that 45,000 is the "sanitary minimum." This means that to maintain simultaneously both the process of professionalization and of modernization they, probably, expect a higher budget, including special funds for further big procurements of arms and equipment. The political leadership share such an approach, at least publicly. The main reason for this (Lieutenant-General (ret) Anyu Angelov, 2003) is the lack of a comprehensive state strategy based on a thorough comparative analysis of the advantages and disadvantages of the two main approaches to filling the military ranks.

Clear and detailed understanding on the issue of professionalism is obviously necessary at least because it is well known that there is no sign of equity between the abolition of conscript

service and the existence of a professional army. Meanwhile, the professionalization of the Bulgarian Armed Forces gives priority to the units, designated for NATO-led Peace Support Operations and especially to deployable forces. In accordance with the Annual Report on National Defense and the Armed Forces – 2002, the Land Forces have hired approximately 3,700 soldiers, in the Air Force the level of professionalization is 26 %, and in the Navy 81% as the warships staff is fully on contract.

Professional soldiers do not yet mean professional army in terms of overall performance. Many other elements such as mentality, ethics, leadership, management, public confidence and support, and total democratic control are necessary. In this context the civilian experts and expertise are between those factors, whose meaning for effective and efficient functioning of the Army is growing significantly in the new security environment. The last years of intensive preparation for membership in NATO and EU also determined and explained the importance of an effective civilian state bureaucracy including, and even especially, in the security sector organizations. In the security sector organizations it is measured by the extent to which the military and civilian personnel work together on defense planning, resource allocation and management, public information, personnel policy, specialized education, intelligence and international security organizations' co-operation.

Until this moment the development of an effective civilian expertise, capable to perform professional obligations in the security system, has faced two basic problems in Bulgaria. The first one is historical and is related to the fact that a European type of public bureaucracy and the armed forces' build-up have been directed and managed by an external power – the Russian Empire after 1887 and the Soviet Union after 1944. The second is the ongoing chronic lack of well-prepared civilians that can do defense and security job in an adequate professional way so that to win the confidence of the military. One of the reasons for it, besides the heritage from totalitarianism, is the systematic diminishing the attractiveness of the defense service for the young people mostly because the permanent reductions and structural changes make the profession unstable. In order to overcome this problem during the last years, serious efforts were undertaken mainly in providing opportunities for adequate education of civilians on security and defense related issues both at home and abroad, gradual balancing of the payment between military and civilians following the principle „equal payment for the same job," improving the mixture of positions for both categories mainly on ministerial level, etc.

Chapter 27

Promoting Democratic Values and High Professional Ethos with the Security Sector Services

It is of principal importance to understand that the democratization of civil-military relations is a socio-cultural problem and not only a problem of the structural and legislative configuration. Usually, the 'diagnosis' of relations between the army and civil society in young democracies takes into consideration the incapacity to comply with the endless series of democratic standards, the need for structural reforms, doctrine corrections and acquisition of modern weaponry. In other words, the civil control problems are not linked to conduct or rules but to a legal, structural and configuration diagram. This error in analyzing politics leads to inefficient measures for

targeting the problem. Focusing on the institutions, laws and documents, the improvement of leadership, the reorganization of ministries and commands, the downsizing of armed forces, the adoption of new procedures – these all have to do with the prerequisites for the existence of democratic civil-military relations. Yet whether they will lead to a truly functioning model of democratic civil-military relations depends on the degree of civil society development and the presence of civil (activist) political culture amongst its members.

Promoting democratic values and high professional ethos with the security sector services implies creating mechanisms within the security organizations that contribute to raising awareness of and respect for democratic values and institutions as well as human rights principles. These internal mechanisms are necessary to complement parliamentary, government and civilian control over the security sector. For uniformed people, this is a vital question, particularly as the way they answer it will determine how they feel about their profession and their own actions as members of that profession. For the politician, it is critical because his decisions in a democracy are the ones that ultimately determine the use, or not, of the violent or military option. Moreover, politicians are finally responsible for both the expenditures of material wealth, and, more importantly, the expenditures of the irreplaceable wealth of human lives. And lastly, the general citizenry are responsible for selecting politicians who will make those decisions and for supporting, or refusing to support those decisions once they are made.

An effective military ethos is fundamental to the ability of an army to carry out its functions in peacetime and in war. This ethos is developed over time, and is sustained by the continual reinforcement of a shared set of values. Inherent in these values is the notion of the unlimited liability, the concept that a soldier ultimately must be prepared to risk his life for a higher purpose than his own self-interest. Promoting democratic values and ethos is used as a point of departure to develop and analyze a larger issue of vital importance to the military profession. A number of factors, both domestic and international, are corroding the professional military ethos. These include the rise of post-modernist and egoist ethics as well as changes in the structure of the international system and hence in the demands placed upon the people in security sector organizations. The new military officers, contrary to history and tradition, are increasingly unwilling to take casualties in the accomplishment of their military missions, which has become second priority to force protection. What does this portend for commanders socialized in this new ethos when the war tocsin sounds again for major conventional wars in which effectiveness has in the past been made possible, at least in considerable part, by the self-sacrificial character of military leaders and soldiers?

The military performs a morally necessary function, in that it is responsible to society to safeguard the rights of the members of that society from external threats. In return for this loyal and principled service in safeguarding a way of life, the nation assumes certain obligations to the soldier, over and above that of payment. Most importantly are the respect and loyalty that the nation bestows upon its soldiers in various forms. Huntington points out that the discharge of this responsibility requires cooperation, organization and discipline (*The Military Mind: Conservative Realism of the Professional Military Ethic*, 1986). These factors in turn demand that the military's individual will be subordinated to that of the group. To sustain the individual soldier's acceptance of the restrictions placed upon him, the notions of tradition, esprit, unity and community are reinforced as essential values. The acceptance and internalization of such values form the basis of the military ethos.

The most significant difference between the military ethic and that of other professional groups is that members of the military profession embrace the concept of "unlimited liability." Soldiers are legally and morally obliged to carry out their duties and tasks without fear or danger, and ultimately to be willing to risk their lives if the situation requires. The acceptance of this concept of unlimited liability within the military is sustained as previously stated by the shared set of beliefs and values; in other words the military ethos. The following elements can help in enhancing the democratic disposition of uniformed personnel:

❑ Commitment to the Constitution and the rule of law. This means before all de-politicization, no membership in political parties and loyalty not to concrete political leader, government, minister or director but to the national ideal, whose essence is the Constitution. The security services are to be politically neutral and therefore political parties are not allowed to campaign within the barracks. The engagement of security sector professional in the political process should be based on detailed regulations and performed strictly outside their duty and installations. Civilian oversight of the security sector should include awareness of the precise nature of the military oath and of what is done in order to secure its enforcement.

❑ The people in uniforms should be provided with stimulating and motivating set of internal rules. Clear national military and security chain of command will not tolerate any attempt to avoid the prescribed subordination especially on the highest levels of leadership where the border between "political" and "professional" is easily overstepped. The career regulations, their both stability and adaptability within the time will ensure the staff and their families. Strong practice of performance-based promotions should be applied to all ranks.

❑ The security sector professional should obtain modern and comprehensive education and job qualification. A transition from the principles of learning and reproduction, towards critical thinking and creative interpretation is needed. The entire security and military knowledge and lessons learned are so dynamic that without such approach there will be a danger to train officers "in the war from the previous day." It is a fact that the knowledge and lessons learned are predominantly internationally based and the access to worldwide information is an inseparable element of any level and type of education. Only military sensitive politicians and politically sensitive soldiers, prepared for national and international operations and jointly working can be effective in the modern complicated security environment.

❑ Security organization professionals should have appropriate and stimulating social status. In market economy and societies with variety of choices, including to live and work abroad, diminishing the role of the social status will erode the motivation of the professional and could open the door for corruption.

❑ Civilian expertise should be adequate to their responsibilities. The institution that corresponds most adequately to the multifaceted tasks of the Minister of Defense is that of the Ministry that combines the Minister's political apparatus, the civil servants' staff for performance of administrative functions and the top military leadership. The areas of competence for performing the political, administrative and command functions need to be divided but should remain within the same administration. An efficient united ministry facilitates the exchange of ideas and information between the leadership of both comprising parts of the defense structure and assists the reaching of coordinated decisions. In this case, operative control over the army means partici-

pating in drafting the defense budget, strategic planning and definition of the structures and priorities in armed forces development, control over their use, definition of intelligence tasks of interest to defense, preparation of military procurement and supplies of arms and military equipment and full control over the staff policy of the armed forces.

❑ Security services should be a mirror of society. In principle, all positions within the security services must be open to all citizens, regardless of gender, political affiliation, class, race or religion. The best man or woman in the best place is to be the main criterion for selection.

❑ Professional ethos and code of conduct should be adequate to the public expectations and modern professional standards. A. Hartle has defined the concept of an ethic as follows (*Moral Issues in Military Decision Making,* 1989*) "A professional ethic is a code which consists of a set of rules and standards governing the conduct of members of a professional group. The code may be a formally written published code, or it may be informal, consisting of standards of conduct perpetuated by training and example.*" The most significant difference between the military ethic and that of other professional groups is that members of the military profession embrace the concept of "unlimited liability." Soldiers are legally and morally obliged to carry out their duties and tasks without fear of danger, and ultimately to be willing to risk their lives if the situation requires. The acceptance of this concept of unlimited liability within the military is sustained as previously stated by the shared set of beliefs and values; in other words the military ethos.

Part XI

EDUCATION AND PERSONNEL MANAGEMENT IN THE SECURITY SECTOR

The effective oversight of personnel management is key for the democratic control of the security sector. It should cover comprehensively recruitment, education, selection, promotion, and career management in general, in order to promote democratic attitudes and proper integration of the security organizations in society, so that they do not pose a threat to democracy.[1]

Political neutrality

All security sector organizations should be politically neutral and political parties cannot be allowed to campaign within their premises directly or through security service personnel. In many countries active service men and women are not allowed to become members of a political party. In other countries, they may be party members, however, without active involvement and certainly without the right to campaign within the security organization or in uniform. As a rule, in democratic countries servicemen cannot be Members of Parliament. In few exceptions active servicemen can run for and become members of local or regional assemblies.

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[1] Hans Born, ed., *Parliamentarian Oversight of the Security Sector*, p. 149.

Recruitment

All personnel management policies, including recruitment policy, are subject to democratic control. Parliaments should seek guarantees that the recruitment system for the security services is open to all segments of society and selection is based on merit and quality. All positions within the security services must be open to all citizens, regardless of gender, political affiliation, class, race or religion.[2] Ideally, the personnel composition of the security services, police and armed forces in particular, mirror the society. A number of democratic countries implement specific policies to encourage under-represented societal groups to apply for positions in the security services.

In states, where the constitutional duty "to defend the country" is made compulsory through law for military service, parliaments should establish clear rules for liability, duration of service, postponement and exemption, penalties for evasion, age limits, and recruitment procedures. In conscript armies, to some extent in a fully professional as well, i.e., voluntary, military, the service may perform important social functions providing education, skills and qualification that may be of use after the end of the service and, most importantly, to function as a 'melting pot' of various groups of society.

Most democratic countries, that still keep the system of conscription, recognize by law the right of the individual to refuse to join the armed forces and bear arms based on their religion or personal conviction. Such 'conscientious objectors' must carry out a national service as alternative to the military service. The regulations on recognizing the status of 'conscientious objector' and carrying out alternative service, as well as their implementation, are subject to parliamentarian control and oversight.

An effective and competitive recruitment system allows discretion on employment and payment of security service personnel. Remuneration is an important factor in finding suitable candidates for the security sector organizations. And yet, a clear primacy of the occupational as opposed to institutional motivations in choosing a career in a security service potentially leads to structural defects in the profession and limits strongly the possibilities for objective civilian control.[3]

Education

The education of security service personnel should promote key democratic values and norms, while creating professionals who are dedicated and prepared for their tasks. To that effect it would include courses on democracy, constitutional, international and humanitarian law. The education needs to be politically neutral – it should not include in any way political ideology and elements of propaganda.[4]

In addition to the necessary technical expertise, security personnel—and the officer corps in particular—should be prepared to deal with the ambiguity and the unpredictability of the 21st

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[2] Ibid., p. 152.

[3] As defined by Samuel P. Huntington in *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, renewed edition (Cambridge, Massachusetts: Harvard University Press, 1985).

[4] Hans Born, ed., *Parliamentarian Oversight of the Security Sector*, p. 152.

century security environment, to be aware of different cultures, to understand and respect international humanitarian law and human rights, to use creatively advanced information and communications technologies, to appreciate the obscure boundaries among the use of military, diplomatic, psychological and other tools for influencing an opponent, as well as the specific requirements of interagency and international cooperation.

Therefore, the emphasis in the education of security personnel shifts increasingly towards leadership curricula. This type of curricula stipulates specific learning objectives as precisely as possible and, yet, they should also promote general learning objectives in order to ensure corporate unity of the profession irrespective of changes in society, in warfare, security and defense policies. These objectives are: "participation; creativity; flexibility; critical reasoning; the ability to obtain information and organize it; the ability to communicate and exchange information; social awareness; endurance in conflict; readiness to accept responsibility, and the ability to inspire corporate unity."[5]

In addition, the education of security personnel is a continuous process that should be embedded in their whole career. Fortunately, advanced information technologies, simulations, distance and distributed learning technologies in particular, provide ample opportunities to organize a continuous learning process for practically all categories of security personnel.[6]

Finally, the measures to establish a process for education, that adequately reflects all listed considerations, need to be examined as an essential ingredient of democratic oversight of the security sector.

Career management

Career management of the security personnel should strictly follow a number of principles:

- ❑ Application of standardized personnel management regulations that are well known and relatively stable;
- ❑ Regular evaluation of each member of the security organization within a transparent, objective and fair process;
- ❑ Selection and promotion based on merit and personal quality (rather than party or ideological allegiance);
- ❑ Application of professional and clear criteria for appointment of top security personnel; civilian and, in some cases parliamentarian sanction of all senior appointments;
- ❑ Sustaining sufficient pool of possible candidates for promotion and assignment on a particular position, especially on top positions in the security sector;
- ❑ Appointment of civilians on top management positions;

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5 Detlef E. Herold and Hans E. Radbruch, "Overview: Military Education in the Context of the Euro-Atlantic Security Area," in *The Role of Military Education in the Restructuring of Armed Forces*, eds. Ernst Gilman and Detlef E. Herold, NATO Defense College Monograph Series, No. 1 (Rome: NATO Defense College, 1993), pp. 1-8.

6 Kateryna Synytsya, ed., *Advanced Distributed Learning*, Special issue of *Information & Security,* vol. 14 (2004).

❑ Effective use of resources.

For example, the structure of the professional corps, e.g., the issue of the military rank-'pyramid', particularly notorious in societies in transition, has an essential impact on the professional ethos of a service, but it is also an issue of costs. Therefore, in democracies with effective civilian control, the Parliament decides on the personnel strength of each security sector organizations, as well as on the rank structure, and approves its budget respectively.

Section Seven

International Aspects of Democratic Control of the Security Sector

The present international system is characterized by the absence of a fully guaranteed order, by a zone, comprised by Euro-Atlantic states entertaining a high degree of stability, and by a huge area of the globe with the respective population and states that is marked by ineffective or failed power. The problems of security are valid in different contents and priority order for the developed and the underdeveloped part of the world. The reform of the democratic control of the security sector has become at the beginning of the Twenty first century a key challenge for the Euro-Atlantic region as well as for the developing world.[1] This section of the Handbook deals with the role of the different international institutional and bilateral instruments in the process of transition to democratic civilian control over the security sector, the contribution in that respect of defense diplomacy, the normative meaning of the OSCE Code of Conduct as well as the specific combination of the transition, development and post-conflict issues in the evolution of civil-military relations in South East Europe.

Chapter 28

The Role of NATO, EU, Pact of Stability for South East Europe, and Bilateral Cooperation Instruments in the Process of Transition to Democratic Civilian Control over the Security Sector. Defense Diplomacy

The paradigm of Bulgaria's integration in NATO and EU is based on several presumptions that determine the role of these institutions for the deep political, economic, judiciary and security sector reforms.

- ❑ Bulgaria is not joining NATO because it needs support in the face of an imminent threat;
- ❑ Bulgaria was a factor of stability in the region over the last fifteen years and has shared the trans-Atlantic perception of threats and of the efforts for their neutralization in all critical instances;
- ❑ Bulgaria is joining NATO and the EU for the sake of the collective interest in uniting the efforts dedicated to security, stability and social progress;
- ❑ Bulgaria provides NATO and EU with its potential of a sustainable developing democracy, of a society focused on rapidly achieving the European economic and social standards, and of its armed forces dedicating enormous efforts to adapt to the new conditions. These qualities must be supplemented by the stable policy towards NATO and the EU followed by several governments over the last six years, and – of course – the important strategic location of the state within the context of the new security geography.

In view of this definition of Bulgaria's interest in membership, the political performance of Bulgaria within NATO is to be based on predictable positions, on responsible and consolidated

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[1] Theodor H. Winkler, *Managing Change: The Reform and Democratic Control of the Security Sector and International Order*, Occasional Paper – No. 1, Geneva, October 2002.

actions, on assuming measured responsibilities and commitments to persist with the process of reforms.

NATO's underlying principle is based on the assumption that the adequate condition, organization and democratic control of national security institutions are an important component of modern democratic states that contributes to international security and stability. The alliance makes it a compulsory membership requirement that each state be capable of guaranteeing its national security as it contributes to the collective efforts towards international order and stability by developing transparent and accountable organizations and policies and by adopting measures to make the latter effective, efficient and adequate from the point of view of real needs and possible resources. These standards are applied without exception to all members – old and new – and to the Partnership for Peace participants.

Both within NATO and within its member states, there is an ongoing process of reviewing the existing standards, policies and structures in view of bringing them to the levels of the Alliances' new paradigm and the new strategic environment parameters related to it. In this way, the reforms in the security sector, and in military systems in particular, become an obligatory component of Bulgaria's membership policy.

The main criteria of reform of these organizations are based on the compilation of both official and unofficial standards that are a matter of a tacit consensus rather than an official document. However, they reflect the shared determination of member states to prevent the enlargement from turning into a weakening and isolating component because of a possible loss of political or operating efficiency. In their essence, these criteria rely on the understanding that security sector organizations:

❑ Should be efficient and effective in performing their legally defined functions;

❑ They should work on the basis of justified and relevant national strategies of security and defense where collective security and defense play the central part;

❑ They should also be placed under an effective democratic control, and should be provided with resources for strategic transformation and development.

When outlined in its details, the system of NATO's official and unofficial standards presents a clear picture of the requirement package to be covered by every partner or member-country during the preparation for membership and in the course of being a full member:

❑ Updated National Security Strategy and National Military Strategy that should be discussed publicly and adopted by an act of Parliament. These documents should reflect the perception of threat shared by the state leadership and the citizens; they should define the roles, missions and strategies of the security sector organizations and declare their commitments to resource provision on a strategic scale;

❑ A modern structure and staff for the organizations and for the system for decision-making in peace time, crisis and military conflict, including issues such as NATO consultations and, most of all, 'transfer of control' over the national contingents to the coalition bodies;

❑ Goals and priorities-related resource provision on a long-term basis to ensure development stability and planned management of processes; including processes in a coalition context;

- ❏ Programs for transformation, reorganization and development based on strategic analyses, forecasts and prioritization that take into account both national priorities and Alliance trends and are provided with resources detailed enough for the purposes of operative planning and budgeting and are performed systematically and under parliamentary monitoring;

- ❏ Troops, forces, organizations, staffs, commands and strategic bodies possessing the relevant staff and equipment to meet the challenges to national and collective security and defense;

- ❏ A regulatory framework that corresponds to the level of democracy and to the efficiency and effectiveness requirements to ensure task completion on national grounds or in an allied or coalition-driven format;

- ❏ An efficient system of human resources management in the security sector – both military and civilian – that also includes regular education and training in security and defense issues as well as recruitment and adaptation programs (when people come in or leave);

- ❏ Regular accountability to Parliament and society to cover the financial, organizational, functional and operative issues;

- ❏ An information collection, processing and supply system that corresponds to the security environment and to national and collective demands – a system to be used in the course of the national and allied process of decision-making;

- ❏ Regulated transparency of security and defense policies that ensure real civil control and the inclusion of more factors in policy formulation in order to shape 'a security community' on a national and allied scale.

Bulgaria has been working on all these criteria for a long time and has achieved good results in many domains. In a number of areas, however, there is an obvious delay while the emblematic cases of recent years indicate that there is still a lot to be done. A careful reading of the criteria shows that the practical monitoring of policies in the context of their implementation can be done impartially only by the National Assembly, its committees and the interested Members of Parliament. The interaction with the non-governmental sector and academic circles for the purposes of regular and detailed monitoring is a prerequisite for success.

Military diplomacy has long been one of the essential components of international diplomacy and an effective methodology for fostering bilateral and regional relationships. The role of military diplomacy manifests itself in its two basic functions: preventive diplomacy and coercive diplomacy. Within the framework of preventive diplomacy, the military component is aimed at achieving the climate of confidence, necessary for the improvement of relations between two nations. This could be called peacetime defense diplomacy. The painful Balkan experience shows that the best approach to prevention of confrontation between two countries is to identify the common interests and to widen co-operation between them in diverse fields, particularly 'military'. Developments in South East Europe during the last decade illustrate the dynamics of the inter-state relations and the modification of their interests, including in their defense context. Because of this, the peacetime defense diplomacy has to find the best rhythm for the development of military relations.

Despite the fact that Bulgaria still has no coherent and comprehensive unified concept on defense diplomacy, the country has a significant record of extensive activities, especially during

the bloody wars in Yugoslavia and as part of the efforts to join NATO. Within the national defense planning documents 'defense diplomacy' does not exist as a directly defined mission. The 2003/04 Strategic Defense Review provided reassessment of the military missions and tasks in order to adjust them to the realities and requirements of the entire security situation. The SDR concluded that the focus should be shifted towards building crisis response capabilities and conflict prevention activities. A significant component of them is defense diplomacy in its modern understanding. Following the internationally used definition of the term, some of its components could be found in Mission 2: *Contribution to international peace and security.* Its core content was defined as follows:

> The mission in support of international peace and security is in implementation of international and coalition commitments to fight terrorism, prevent and manage crises and conflicts abroad, participate in multinational peace forces, activities in support of the evolving European Security and Defense Policy, arms control, non-proliferation of weapons of mass destruction and their means of delivery, international military co-operation, humanitarian assistance, strengthening of confidence and co-operation.

Two specific Military Tasks underline and contribute most directly to defense diplomacy aims:

❑ *International military co-operation and participation in multinational and bi-lateral military formations.* The Agreement on the *Multinational Peace Force South-Eastern Europe* was signed by the Ministers of Defense of seven countries in 1998, in Skopje. Albania, Bulgaria, the Former Yugoslav Republic of Macedonia, Greece, Italy, Romania, and Turkey (individually referred to as Nations 1 through 7) came together to demonstrate their commitment to regional security and stability, forge closer ties between their military forces, and foster good neighborly relations among their countries. Slovenia and the United States opted for observer status but expressed full support to this initiative. Croatia became the third observer nation to the MPFSEE at the fifth annual *South-Eastern Europe Defense Ministerial* (SEDM) meeting in Thessaloniki on October 9, 2000 - when it also was accepted as the tenth full member of SEDM. *BLACKSEAFOR* was established as a naval task group to take part in joint search-and-rescue, humanitarian aid and sea-mine clearing operations, as well as in Black Sea environmental protection operations. *The South Eastern Europe Simulation Network (SEESIM) Project was designed t*hrough a series of simulation-based exercises to serve as a foundation for integrating several initiatives functioning within the SEDM framework. *Satellite Interconnection of Military Hospitals (SIMIHO) Project* was a Greek proposal to connect Military Hospitals in South-Eastern Europe Defense Ministerial (SEDM) countries by satellite in order to practice telemedicine and exchange medical information. *Defense-Military Support for WMD Counter-proliferation, Border Security, and Counter-terrorism Initiative* was launched as a possible role for Ministries of Defense in border security and countering the proliferation of weapons of mass destruction. *Regional Crisis Management Initiatives* were launched with the aim to develop cooperative crisis management capacity. They build substantially on the existing military cooperation and the cooperation in emergency management. *NATO's South East Europe Initiative (SEEI) is an Alliance's* long-term effort to partner with militaries in the region in order to help shape smaller, more professional and civilian controlled militaries throughout SEE.

❑ *Participation in arms control, non-proliferation, and confidence and security building measures.* Bulgaria is among the 66 member states of the Conference on Disarmament in Geneva, which to this day remains the sole negotiating forum for multilateral disarmament. In similar vein, Bulgaria is a signatory to all major multilateral instruments in the area of arms control and disarmament. The latter form the cornerstone of today's non-proliferation regime in the field of nuclear, chemical, biological and conventional weapons. At the same time, however, we are favoring the comprehensive and integrated approach to apply all non-proliferation measures at global, regional and sub-regional level. Bulgaria's practical approach towards WMD non-proliferation is also warranted by the country's stance in anti-terrorist campaign. Thus WMD non-proliferation has been recognized as a major underpinning of the global efforts to fight terrorism by reducing the risk of terrorist entities to gain access to WMD and their means of delivery.

❑ *International Military education and training.* During the last decade Bulgaria was one of the major beneficiaries from the international support to officers' education and training, provided by the Western countries. Today, opportunities for foreign officers to receive education in Bulgarian military colleges are provided on a bi-lateral basis as a form of exchange.

Defense diplomacy needs to be further developed as one of the main and continuous peacetime activities in support of foreign and security policy objectives aimed to maintain peace, establish mutual trust, develop co-operation and enhance stability and security in the region.

Chapter 29

The OSCE Code of Conduct and Civil-Military Relations. The Code and International Law

The international perspective of democratic control of the security sector has its international legal aspect,[1] too. While international law – the Charter of the United Nations and the existing international legal treaties, conventions and agreements – does not provide for or even mention the democratic control of the armed forces (DCAF), the imperative international legal principle of refraining from the threat or use of force against the territorial integrity or political independence of any state has some reference to DCAF as one of the indispensable elements of stability and security. DCAF has also a logical linkage with the international legal principle of settling international disputes by peaceful means in a way that peace and security are not endangered. The obligation to assist the UN and refrain from assisting any state against which the United Nations is taking preventive or enforcement actions has also a certain reference to the different elements of DCAF.

However, it would be an overstatement that DCAF stems legally from these imperative international legal principles. They may provide with a certain argument the need to elaborate on

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[1] Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe* (Baltimore & London, The Johns Hopkins University Press, 1996); Paul Latawski, *A Normative Framework for Democratic Control of Armed Forces, in: One Europe or Several?* Working Paper 09/00, A. Cottey, T. Edmunds, A. Forster (eds.), p. 3-4.

an interstate level and in a legal treaty form the international aspects of the implementation of DCAF, but hardly anything more than that.

Closer to a concise international normative regulation of DCAF is certainly the Code of Conduct on Politico-Military Aspects of Security, adopted by OSCE member states during the Budapest Summit of December 1994.[2] Section VII (§§20-33) of the Code is devoted to the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police (§20). The Code thus gives a normative definition of the contents of the term "armed forces" – quite a broad and encompassing one. Its regulative utility may be traced also in the following aspects:

1. The participating states will further the integration of their armed forces with civil society as an important expression of democracy.

2. The states will provide and maintain at all times effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. The roles and the missions of such forces and their obligations will be clearly defined within the constitutional framework (§21).

3. The defense expenditures will be provided a legislative approval by each participating state (§22). Restraint in military expenditures, transparency and access to information related to the armed forces will be guiding principles in that activity.

4. The participating states will ensure their armed forces will be politically neutral (§23).

5. Taking special measures to guard against accidental or unauthorized use of military means (§24).

6. The states will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities.

7. The participating states will ensure that their paramilitary forces refrain from the acquisition of combat mission capabilities in excess of those for which they were established.

The last three provisions hold a special meaning for the troubled countries of the Western Balkans. The timing of the adoption of the Code coincided with the escalation of the bloody wars in former Yugoslavia and the mounting conflict in Chechnya.

8. Recruitment or call-up of personnel for service in its forces will be consistent with the obligations and commitments of the state in respect of human rights and fundamental freedoms (§27).

9. The participating states take the obligation to reflect in their laws and other relevant documents the rights and duties of armed forces personnel (§28). The introduction of exemptions from and alternatives to military service is a significant element of this obligation.

10. The states will make widely available in their respective countries the international humanitarian law (§29). Military training programs, regulations and instructions have to reflect this requirement, including the achievement of an adequate awareness by the personnel that they are individually accountable under national and international law for their

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[2] Code of Conduct on Politico-Military Aspects of Security, Chapter IV of the Budapest Decisions, in: Budapest Summit Meeting of the CSCE, Budapest, 6 December 1994.

actions. Military commanders should also achieve an awareness of their individual accountability for the unlawful exercise of their authority and for eventual giving orders contrary to national and international law (§30). The responsibility of the superiors does not exempt the subordinates from any of their individual responsibilities (§31).

11. The possession and the exercising of the human rights and fundamental freedoms by the armed forces personnel will be an obligation of the states in conformity with the constitutions, the laws, the requirements of service and international law. The states will provide the appropriate legal and administrative procedures to protect the rights of all its force personnel.

In Section VIII (§§34-37) the armed forces' command, recruitment, training and procurement, military policies and doctrines are subordinated to the norms of international law, including international humanitarian law – in times of peace and war (§§34-35). Each participating state is obliged to ensure that the internal security missions will be decided and executed under the effective control of constitutionally established authorities and subject to the rule of law (§36).

The Code of Conduct on Politico-Military Aspects of Security is a *politically* binding document, which came into force on 1 January 1995. It is an agreement of the OSCE member-states, reached by consensus. The politically codified (not treaty-based) norms on the democratic control of the armed forces is a valuable contribution to the efforts of defining the parameters of the legal concept of DCAF and its international legal aspects. Being even more than a political obligation, considering the solemn pledges of the heads of states the Code of Conduct is a major step-stone on the way to defining a full-fledged concept and norm or principle of DCAF. Each state is responsible to provide clarification of the Code of Conduct, including its Section VII as to how it would be implemented.

The Code of Conduct is not eligible for registration under Article 102 of the UN Charter since the participating states do not consider it a legally binding agreement, i.e. treaty. This does not mean that the norms of the Code cannot be applied in an indeterminate number of cases. On the contrary, the Code of Conduct though a politically binding document is verifiable. There are logical reasons to consider the possibility of turning the norms of the Code with time, after repeated implementation into elements of a process of international-law-making.[3] The practice of peacekeeping and peace-building of the last years point to the significant regulative potential of the Code of Conduct in the area of the democratic control of the security institutions.

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[3] Peter Kooijmans, The Code and International Law, in: Geeert de Nooy (ed.), Cooperative Security, the OSCE and its Code of Conduct, Kluwer Law International, The Hague, 1996, p. 40.

Chapter 30

The Evolution of Civil-Military Relations in South East Europe

The maturity of civil-military relations and the democratic control of the security institutions in South East Europe is reflected significantly on the general security situation of the region. A democratically and legally established system of transparency and accountability of the security and defense institutions is a confidence-building measure with a broad positive effect on the stability of bilateral, multilateral and regional relations in the Balkans.

Civil-military relations (CMR), democratic control (DEMCON) and security sector reform (SSR) are at different stages of their evolution in the Balkan countries. The harmonization of the activity of the states on CMR, DEMCON and SSR, considering the variety of levels of evolution in these areas of the individual national cases is more than a theoretic challenge – it is a practical need in the efforts of homogenizing security and defense fields of the countries from the region in the process of shaping a common Euro-Atlantic strategic culture. The standard NATO/PfP requirements on CMR, DEMCON and SSR as well as the South East European experience are expected to contribute to the improvements in that field since all Balkan countries are getting closer and closer to NATO and EU: they are either NATO and EU members or aiming to be NATO, PfP and EU members. In a NATO and EU organizational setting the South East European countries need to speak the same language on security and defense issues, need to share a common vision, regulative and behavioral culture on CMR, DEMCON and SSR.

There are *six specific features* of the CMR, DEMCON and SSR in South East Europe:

First, the issues of CMR, DEMCON and SSR continue to be key problems of the *transition* of most of the societies and states in South East Europe from totalitarianism to democracy, from wars to post-war rehabilitation and from post-war reconstruction to normalcy. Without reforming the security sector the security institutions of the old regimes may continue to have a 'say' in the life of the new, democratic societies. Fight on organized criminality becomes more difficult or even impossible without the SSR as the example of Serbia and Montenegro showed most vividly, but examples of that kind could be noticed in all post-totalitarian societies and states with no exception. Lack of stability, dependence on criminal structures keeps foreign investors away from South East Europe and without substantial investments the economic and infrastructure retardation of the region cannot be overcome. It is important to underline that the issue of the evolution of civil-military relations is central for the transition countries of South East Europe, but of priority value to the two older NATO states, Greece and Turkey, too.

Second, CMR, DEMCON and SSR continue to experience the influence of the ethnic pressures of the post-Yugoslav wars of the 1990s and of the ethnic clashes of 2000-01 in Southern Serbia and FYRO Macedonia. Notwithstanding, CMR, DEMCON and SSR in South East Europe in general become more characteristic of the '*regional security community*' that is in the process of establishing in the Balkans. Thanks to the domestic stabilizing effects, the growing transparency in the security sector in the individual countries, perceived by the neighbors as a *de facto* confidence and security-building measure, the general security situation in the Balkans is improving and the efforts of preventing conflicts become more effective. The region becomes more predictable from a security point of view and the chances of diverting the social attention and

energy on economic and other constructive areas increase for the good of the people of South East Europe and the whole Euro-Atlantic zone. Though disparities in the levels of evolution of democratic civil-military relations still exist in the individual countries of South East Europe, the tendencies and directions of the developing issue indicate a value of homogeneity in that area that has never existed before. This is a solid guarantee the forming regional security community has passed a philosophic turning point that can be hardly reversed. This does not mean that the security threats and instabilities are overcome and stability in the Western Balkans is irreversible. Due to the post-Yugoslav wars this area was, and to a very unequal degree still is, one of immense insecurity. The legacy of totalitarian party control in the Balkan countries is also reflected negatively on the state institution building in the region.

Third, the 'conditionality' policy on CMR, DEMCON and SSR followed by NATO and EU produces the multiple effect of improving the domestic and the broader regional security situation of the Balkans while raising the chances of the non-NATO and non-EU members to be *integrated in the Alliance and the Union*. PfP, the Stability Pact for South East Europe and OSCE also play leading driving roles in the evolution of the security sector towards integration in both major European and Euro-Atlantic institutions. Without covering the requirements in the area of CMR, DEMCON and SSR, integration in NATO and EU becomes virtually impossible and this has been well understood by the leading elites of the Balkan countries. Maturity on the issues of civil-military relations in the individual countries is achieved very much by the inducement, stemming from the opportunity and promise of future NATO and EU membership.

Fourth, a basic need of implementing the third generation of SSR, though in many individual cases fundamental, first or second-generation reform deficiencies are still to be observed, stems from the *fight against terrorism*. This would be impossible if on a domestic, regional and broader international level the different components of the security sector do not work cooperatively in identifying and neutralizing terrorist groups. Of course, SSR should not be identified with anti-terrorism activities, but surely, it is a main motivation for reform of the security sector. The reform is also needed because of the obligation of the new democratic societies (and older ones) in South East Europe to preserve the balance between the security interests and the support for democracy and human rights while the fight on terrorism still goes on.

Fifth, the SSR focus of the countries of South East Europe is needed for plain *good governance purposes of the security sector*. People understand how important security is for their everyday life. What they understand in parallel is that the more economic the 'security commodity' is, the better their economy and standard of living is going to be. That is why state budgets and professionalism in the security sector are turning more and more into topics of public discussion and the interest on these topics will grow. Understanding the meaning of good governance of the security sector in the individual Balkan countries may become a major vehicle of the broader reform process of the societies in the region, especially of the transition countries.

Sixth, the *fight on terrorism* on a global scale and the national and regional contribution to that fight is well realized by the people of South East Europe, though the urgency of that issue is not yet reflected well in the opinion polls of some of the countries. There is a link between the stability of the states, the activities of organized crime and terrorism. Some of the West Balkan countries bear that dangerous potential. There is a need of taking adequate measures through democratic procedures to legally narrow the room for maneuver of the terrorist groups that

would choose the Balkans in their schemes. Protecting the democratic liberties and rights of the people is another major challenge.

Any draft of typology or classification of the countries of South East Europe on the basis of the criterion 'civil-military relations evolution and state of the democratic control and reform of the security sector' is only conditional: the aim is just to highlight peculiarities of a process, which is encompassing for the whole region and all states without exceptions – *all three generations of civil-military relations reforms are present in the region and develop, though at different velocities and levels of maturity, towards a common target: covering the requirements of being NATO, PfP and EU member*. This constitutes a grand change, compared to the state of affairs some three years ago. The region of South East Europe is becoming more stable thanks to a democratic progress of the individual societies in the area of civil-military relations, too. The countries of South East Europe have already reached a level of common culture on the issues of democratic control and security sector reform. It is a fact that the third generation of reform in this sector, stemming from the needs to fight terrorism and build-up national democracy more effectively is also part of the current thinking in the countries of South East Europe and an instrument of closing the gaps among the individual states of the regions, concerning the levels of realization of the first, the second and the third generations of reform of civil-military relations.

CONCLUSIONS

This Handbook treats the conceptual developments in the security sector and how democratic societies respond to them. There is a new global, regional and sub-regional situation in the world in the beginning of the 21st Century compared even to the first years after the end of the Cold War. The overwhelming tendency in the security realm is the shift to democracy, but also the new security threats and needs, calling for a cooperative response of the democratic societies and states. National security policies change respectively, too. The continued need for democratic control of the security sector requires an improved process of shaping the national security policy. Civil-military relations, democratic control over the security sector in a democratic society can exist and evolve only in a constitutionally relevant and legal framework. Accountability and transparency are fundamental requirements of the democratic civilian control that bear huge potential to increase or compromise the effectiveness of the national security policy. The balanced relationship of civilians and the security sector professionals entails the formation of adequate expertise within the institutions of the civil society that would provide directly and through the media the absolutely needed correctives in the decision-making process on security issues.

Democratic control of the security sector is needed in peacetime and in war, in the period when the fight on terrorism will proceed, in cases of state emergency and crisis management situations. The principle of democratic control over the security sector is valid also in peace support operations out of the country.

A powerful arm of the democratic oversight of the security sector is the budgetary control. The national parliaments of the democratic states are the staunchest guarantors of the efficient implementation of all aspects of the democratic civilian control, especially in using the budgetary control and auditing instruments. The most significant component of the security sector is the individual. People matter most due to the requirements for good governance, the implementation of the service in the security sector. The moral and ethical issues in that sector are with direct practical consequences. That is why education and personnel management in the security sector have a key meaning in the overall functioning of the civil-military relationship.

The international aspects of the issue of democratic control of the security sector are crucial in a highly interdependent and compressed spatially world. The Handbook presents key insights on this issue for the interested specialists in South East Europe.

To the extent the problems discussed in the Handbook are psychologically internalized and transformed into an operational national issue by those working in the security sector, their political masters and the representatives of civil society in the individual countries of South East Europe, the practical effects of guaranteeing national security, prosperity and democratic governance would turn into reality.

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