



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

COMMONWEALTH OF INDEPENDENT STATES

MODEL LAW

ON THE PARLIAMENTARY OVERSIGHT OF THE

STATE MILITARY ORGANIZATION

Philipp Fluri and Alexander Nikitin (eds.)

Geneva, March 2002

**GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)**

COMMONWEALTH OF INDEPENDENT STATES

MODEL LAW

**ON THE PARLIAMENTARY OVERSIGHT OF THE
STATE MILITARY ORGANIZATION**

Geneva, March 2002

COMMONWEALTH OF INDEPENDENT STATES (CIS)

MODEL LAW

ON THE PARLIAMENTARY OVERSIGHT OF THE STATE MILITARY ORGANIZATION¹

Adopted by the 18th Plenary Session of the Inter-Parliamentary Assembly of the Participant States of the CIS (Resolution No. 18-13 of 24th November 2001)

The present Law² specifies forms of implementation of powers and functions of the Parliament in the field of democratic civilian oversight of the military organization of a CIS participant state. The present Law is a recommendation and serves as a basis for the legislative activities of CIS participant states regarding the establishment and the implementation of this oversight.

The parliamentary oversight is regarded by the present Law as the central component of a broader democratic civilian oversight of the state military organization.

The present Law regulates the nature, objectives, forms, and methods of the parliamentary oversight of the state military organization.

Article 1. Terms and Definitions

1. The *state military organization* is the aggregate of bodies and organizations of the executive power established and operating in compliance with the Constitution and laws (of the CIS participant state); aimed at providing the security of individual, society, and state; authorized to use force and military action and/or to conduct special operations within the framework and in cases established by law. The

¹ The Model Law "On the Parliamentary Oversight of the State Military Organization" was drafted and submitted to the Inter-Parliamentary Assembly of the Participant States of the Commonwealth of Independent States jointly by the Geneva Centre for Democratic Control of Armed Forces (DCAF), Switzerland, and the Centre for Political and International Studies, Moscow, Russia.

² Here and hereinafter, the expression "*the present Law*" means the Model Law "On the Parliamentary Oversight of the State Military Organization", adopted by the 18th Plenary Session of the Inter-Parliamentary Assembly of the Participant States of the Commonwealth of Independent States (Resolution No.18-13 of 24th November 2001).

composition and the structure of the state military organization shall be specified by law and shall be brought into accordance with the state's international obligations.

Depending on the nature and the details of the constitutional system of specific CIS participant states, the state military organization may include:

- a) armed forces, troops, para-military units and bodies aimed at repelling external aggression and other threats associated with the use of external military force against the given state or with the implementation of the state's international obligations;
- b) internal troops, other para-military units and bodies aimed at protecting constitutional order, putting an end to disorder, providing and ensuring public order and internal security, fighting terrorism, and protecting state secrets;
- c) border troops;
- d) bodies and para-military units aimed at fighting crime;
- e) bodies of state intelligence and counter-intelligence;
- f) bodies and para-military units aimed at providing government communications;
- g) bodies and troops of civil defense, military transport, as well as bodies and troops aimed at dealing with emergency situations of an environmental / ecological, and social / humanitarian nature;
- h) special units established for wartime.

Para-military organizations and units that are not part of the state military organization, as specified legislatively (by the CIS participant state), shall be declared as illegal by law.

2. The *parliamentary oversight of the state military organization* – a key component of democratic civilian oversight - is regarded in the context of the present Law as activities aimed at the establishment and the insurance of the adequate application of the system of legal provisions and administrative measures put in place by the Parliament in cooperation with other bodies of state power and institutions of the civil society pursuing the following goals:

- a) to ensure effective oversight of armed forces, troops, para-military units and bodies that are part of the state military organization, by the supreme institutions

of civilian political power in order to ensure security and protection of national interests;

- b) to ensure political neutrality (de-politicization) of armed forces, troops, para-military units and bodies that are part of the state military organization;
- c) to ensure de-ideologization of armed forces, troops, para-military units and bodies that are part of the state military organization;
- d) to shape the state military organization as an integral part of a law-abiding state, of the protection of civil rights and social interests of individuals active within the state military organization and their family members, of the adaptation to civilian life of servicemen released from active duty and of the protection of their rights and interests;
- e) to ensure maximum permissible transparency of the state military organization; to ensure a constructive exchange of information between the state military organization and the mass media and public organizations aiming to assist in the protection of civil, social, and personal rights and the interests of individuals active within the state military organization and their family members, as well as of servicemen released from active duty;

3. The *political neutrality* (de-politicization) of armed forces, troops, para-military units and bodies that are part of the state military organization, in the context of the parliamentary oversight, implies the insurance of the respect of the following norms by legislative means:

- a) political parties, public movements and organizations shall be prohibited from involving servicemen and personnel of armed forces, troops, para-military units and bodies in their activity, nor shall they establish para-military and armed units and organizations under their own control;
- b) servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, shall unconditionally obey the instructions and orders of the legitimate state leadership which has been elected, approved, or formed in compliance with the procedures specified by the Constitution and laws (of the CIS participant state), irrespective of the political and ideological orientation of this state leadership;
- c) servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, shall not have the right to engage in any political activity that exceeds the limits specified by the terms of their

service; nor shall they have the right to be directed, in their service activities, by incentives, instructions, and decisions of political parties, and public movements; nor shall they be members of political parties and political movements, nor shall they cooperate with them, assist them in their activities, or participate in political propaganda and agitation;

- d) the establishment of political organizations and activities of political parties and movements shall be forbidden within armed forces, troops, para-military units and bodies that are part of the state military organization;
- e) servicemen and civilian personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, shall not be restricted from being posted to positions, nor shall they be dismissed therefrom due to political motives, provided that the requirements of political neutrality specified by the present Article have been met.

4. The *de-ideologization* of armed forces, troops, para-military units and bodies that are part of the state military organization, means the prevention, by legal and administrative measures, of servicemen and personnel of these forces, troops, units and bodies from being directed in their service and professional activities by ideological, political, personal, and religious views and beliefs, when these views and beliefs contradict the Constitution and laws, service instructions, orders or directives specifying the terms of their service.

5. The *political activity* in the context of the present Law is regarded as:

- a) individual or collective actions aimed at influencing institutions and bodies of state power for implementing individual, group, and institutional interests that are beyond the limits specified by the terms of the military service;
- b) individual or collective actions aimed at forming and changing the political will of citizens;
- c) participation in the work of bodies of state power or local self-government in elected positions;
- d) assistance to individuals, political parties, public movements, organisations and associations participating in the elections to bodies of state power or local self-government and in conducting political propaganda and agitation;
- e) membership in an organization conducting political activities, in accordance with the definition given in the afore-mentioned paragraphs of the present Article, cooperation with such an organization, or providing assistance to it.

Article 2. Forms of Execution of the Parliamentary Oversight of the State Military Organization (of the CIS Participant State)

1. The Parliament (of the CIS participant state) shall execute oversight of the military organization (of the CIS participant state) by means of:

- a) adoption of laws specifying mechanisms and procedures of administration of the state military organization, its functioning, and cooperation with civilian institutions of state power, public organizations, and mass media; guaranteeing the protection of civil, social, and personal rights of servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, and ensuring their social interests;
- b) approval of the budget of armed forces, troops, para-military units and bodies that are part of the state military organization, as well as oversight of its execution and of the use of non-budgetary sources for financing activities of the state military organisation;
- c) approval of the composition, structure, and manpower of servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization;
- d) ratification and denunciation of international agreements and treaties which contain obligations on the restriction and reduction of arms and of armed forces, as well as on the use and restriction of the use of armed forces, troops, para-military units and bodies that are part of the state military organization;
- e) assessment of key issues in ensuring the security of individual, society, and state, as well as the functioning of the state military organization and its constituent parts in the form of parliamentary hearings, deputies' inquiries, and investigations;
- f) legislative regulation of the respect of civil, social, and personal rights and the interests of servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, as well as assessment and implementation of proposals given by citizens, public organizations, mass-media, relating to activities of the state military organisation, respect of civil, social, and personal rights of servicemen and personnel of forces, troops, units and bodies that are part of this organization;

- g) assessment and evaluation of military and political situations, approval of imposition and lifting of the state of emergency and martial law, declaration of the state of war and the conclusion of peace;
- h) legislative regulation of the use of armed forces, troops, para-military units and bodies beyond national borders (of the CIS participant state) and of the presence of armed forces of other states within national borders (of the CIS participant state).

Article 3. Implementation of Legislative Functions of the Parliament on Exercising Oversight of the Military Organization (of the CIS Participant State)

1. The Parliament (of the CIS participant state) shall adopt, in compliance with the procedure established by the Constitution (of the CIS participant state), laws regulating and specifying the system of administration of the state military organization; powers and functions of institutions and bodies of state power on the administration of this organization; the procedure for the use of armed forces, troops, para-military units and bodies that are part of this organization, as well as objectives, tasks, and powers of armed forces, troops, para-military units and bodies that are part of the state military organization. The Parliament shall ensure legislative guarantees of the respect of civil, social, and personal rights of servicemen and personnel of these forces, troops, units, and bodies, and shall regulate other issues of the functioning of the state military organization and its administration.

2. When elaborating and adopting legislative norms related to the issues listed in Paragraph 1 of the present Article, and administering oversight of their execution, the Parliament shall, in particular:

- a) prohibit the establishment, functioning and the existence of armed forces, troops, para-military units and bodies that are not part of the state military organization, are not subordinate to the constitutionally established bodies of state power, and are not controlled by them;
- b) create legal conditions under which armed forces, para-military units and bodies that are part of the state military organization, cannot act in contradiction to the laws according to which these forces, troops, units and bodies were established;

- c) create legal foundations for invoking personal service and criminal responsibility of individuals in positions of command for giving orders and instructions that contradict the Constitution, national legislation (of the CIS participant state), and /or international law;
- d) legislatively ensure political neutrality of the state military organization and its de-ideologization;
- e) legislatively establish that trying of civil and criminal court cases other than service offences, but involving servicemen and other personnel of the state military organisation, shall fall into the jurisdiction of civilian courts acting on the basis of the corresponding legislation.

Article 4. Implementation of the Functions and Powers of the Parliament in the Field of Oversight of the Financing of the State Military Organization

1. After proposal by the Government (or by the Head of State), the Parliament shall make a decision on procedure, structure, and amount of funding from the state budget for armed forces, troops, para-military units and bodies that are part of the state military organization, as well as on permissibility, forms, and amount of non-budgetary sources of financing.

2. The Parliament shall request, and the Government (or the Head of State) shall provide the Parliament with information, including classified information, necessary for making a learned and competent decision on the financing of armed forces, troops, para-military units and bodies that are part of the state military organization.

3. Information on the general structure and specific amount of budgetary allocations for the activities and development of the state military organization, including the distribution of budgetary allocations between sections and groups of articles of the budget that relate to national defense and security, shall be un-classified information.

Sections and articles of the state budget relating to the financing of the state military organization may be identified as classified, not subject for public discussion and disclosure only on the basis of a law on classified information, if their contents directly corresponds to the lists of types of information not subject to disclosure, as

established in the law on classified information. Such sections and articles shall be discussed and approved in closed sessions of the Parliament.

4. The use of state budget funds allocated for the financing of the state military organization for other purposes beyond the framework of ensuring state security, maintenance, and development of the state military organization, shall be prohibited.

5. For the purposes of oversight of the correlation of the real spending with the approved budgetary allocations, the Parliament shall request and the Government (or the Head of State) shall provide an annual report on the execution of the state budget regarding the financing of the state military organization.

The Government (or the Head of State) shall also provide the Parliament with all the information on the current material and financial status of the state military organization, necessary for a learned and competent evaluation of the state of affairs of the state military organization.

Article 5. Implementation of Functions and Powers of the Parliament in the Field of Defining the Composition, Structure and Manpower of Armed Forces, Troops, Para-Military Units and Bodies That are Part of the State Military Organization

1. After proposal by the Government (or by the Head of State), the Parliament shall make a decision on the composition, structure, and manpower of armed forces, troops, para-military units and bodies that are part of the state military organization.

2. The Parliament shall request, and the Government (or the Head of State) shall provide the Parliament with information, including classified information, necessary for making a learned and competent decision on the composition, structure, and manpower of armed forces, troops, para-military units and bodies that are part of the state military organization, including information relating to their actual composition and actual (en-listed) manpower.

Article 6. Implementation of Functions and Powers of the Parliament on Ensuring Transparency of the State Military Organization and its Activities

1. After proposal by the Government (or by the Head of State), the Parliament shall adopt a law on classified information, containing a comprehensive list of information related to the state military organization that is prohibited for publication in the mass media or for disclosure by any other means.

2. The Parliament shall legislatively establish a list of information relating to the state military organization that is subject to compulsory disclosure, including publication in the mass media, allowing for the citizens and tax-payers to form a competent and learned opinion on the state of affairs and on the status of the state military organization.

3. The list of information mentioned in Paragraph 2 of Article 6, shall include, in particular, all information relating to the state military organization and its functioning that is subject to be submitted to international organizations and foreign states within the framework of current international treaty obligations and international agreements (of the CIS participant state).

4. The Parliament shall ensure personal responsibility of parliamentarians for non-disclosure of classified information provided to the members of Parliament in the course of discussion of the issues of composition, structure, manpower, and financing of the state military organization.

Article 7. Implementation of Functions and Powers of the Parliament on Ensuring Political Neutrality (De-politicization) of the State Military Organization

1. Laws specifying the status and rights of servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, as well as laws regulating the activities of public movements and political parties, shall be supplemented by provisions ensuring political neutrality (de-politicization) of the state military organization, servicemen, and personnel of forces, troops, units and bodies that are part of this organization.

2. Should a case arise where political parties and public movements violate requirements of political neutrality (de-politicization) of the state military organization, as specified in Paragraph 3 of Article 1, the Parliament shall invoke judicial authorities to impose sanctions on violations of political parties and public movements, and affect their prohibition.

3. Should there be a case where servicemen and civilian personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, violate requirements of political neutrality of the state military organization, as specified in Paragraph 3 of Article 1, or where they directly participate in political activity, as specified in Paragraph 5 of Article 1, the Parliament shall demand immediate action from the leadership of the state military organisation to cease the violations and to ensure the unconditional respect of political neutrality of the state military organization.

4. The Parliament shall ensure legislative guarantees to servicemen who practice a religious faith, regarding the opportunity to participate in religious ceremonies and rituals during non-duty hours.

Article 8. Implementation of the Functions and Powers of the Parliament in the Field of Deployment of Military Personnel for Participation in International Peace-Keeping Operations and for Participation in Military Operations Outside of State Borders in Peace-Time

1. Deployment abroad of military personnel who are part of the state military organization, for conducting operations outside of state borders in peace-time shall only be allowed when the Parliament has been informed and agrees thereto in accordance with the procedures established (in the CIS participant state), in the following cases:

- for participating in international peace-keeping operations under the mandate of the United Nations Organization (in accordance with the provisions stated in Chapter VI of the UN Charter);
- for participating in regional international peace-keeping operations decided upon by a regional inter-state organization (in accordance with the provisions stated in Chapters VI and VIII of the UN Charter);

- for participating in the execution of enforcement measures decided upon by the UN Security Council in the case of threats to the peace, breach of the peace, or acts of aggression (in accordance with the provisions stated in Chapter VII of the UN Charter);
- for providing humanitarian assistance, as well as assistance in emergency situations;
- for implementing international treaties and agreements, including those on providing military and military-technical assistance, concluded by the given state and ratified by the Parliament.

2. Deployment abroad of military personnel who are part of the state military organization, for conducting operations outside of state borders during peace-time in cases other than those specified in Paragraph 1 of the present Article, or without the corresponding decision of the Parliament (of the CIS participant state), shall be prohibited.

SUPPLEMENT

The institution of the Parliamentary (State) Commissioner on the Affairs of the State Military Organization may be legislatively established and used as one of the specific mechanisms of implementation of the parliamentary oversight.

Parliamentary (State) Commissioner on the Affairs of the Military Organization (of the CIS participant state)

1. (CIS participant state) may legislatively establish the institution of the Parliamentary (State) Commissioner on the Affairs of the State Military Organization.
2. The Parliamentary (State) Commissioner on the Affairs of the State Military Organization shall be appointed by the Parliament.
3. The Parliamentary (State) Commissioner on the Affairs of the State Military Organization shall be exclusively directed in his activities by the Constitution and laws (of the CIS participant state), as well as by international law.

4. The Parliamentary (State) Commissioner on the Affairs of the State Military Organization shall report periodically, or as required, to the Head of State and to the Parliament on the state of affairs of the state military organization, as well as on his own activities.

5. Tasks of the Parliamentary (State) Commissioner on the Affairs of the State Military Organization shall include:

- a) providing practical assistance in ensuring guarantees of civil, social, and personal rights of servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization;
- b) ensuring constructive cooperation between, on the one hand, armed forces, troops, para-military units and bodies that are part of the state military organization, and on the other hand, citizens, public organizations, and mass media;
- c) overseeing the respect of requirements for political neutrality and of the prevention of political activity within the state military organization.

6. For the purposes provided for by Paragraph 5 of the present Article, the Parliamentary (State) Commissioner on the Affairs of the State Military Organization shall have the right:

- a) to request and receive information, documents and records, necessary for performing tasks specified in the present Article, from commanders and officials of armed forces, troops, para-military units and bodies that are part of the state military organization, as well as from the institutions of state power;
- b) to examine complaints by servicemen and personnel of armed forces, troops, para-military units and bodies that are part of the state military organization, regarding the violation of their civil, social, and personal rights by commanders and officials of the corresponding forces, troops, units, and bodies; to make the corresponding inquiries and proposals;
- c) to examine requests and proposals by citizens, public organizations, and mass media regarding activities of armed forces, troops, para-military units and bodies that are part of the state military organization, and, within this context, to submit questions and proposals to officials of armed forces, troops, para-

military units and bodies that are part of the state military organization, as well as to other institutions of state power;

- d) to demand answers to the core of questions mentioned in afore-mentioned paragraphs of the present Article, from commanders and officials of armed forces, troops, para-military units and bodies that are part of the state military organization, as well as from other institutions of state power.

7. Commanders and officials of armed forces, troops, para-military units and bodies that are part of the state military organization, and other institutions of state power shall provide the Parliamentary (State) Commissioner on the Affairs of the State Military Organization with information, documents and records, necessary for performing tasks specified in the present Article, and shall further, within the time provided for by procedures and rules of the state administrative system, give answers to the core of questions that have been posed.



Established in 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes international cooperation within this field, initially targeting the Euro-Atlantic regions.

The Centre collects information, undertakes research and engages in networking activity in order to identify problems, to establish lessons learned and to propose the best practices in the field of democratic control of armed forces and civil-military relations. The Centre provides its expertise and support to all interested parties, in particular governments, Parliaments, military authorities, international organisations, non-governmental organisations, academic circles.

Geneva Centre for the Democratic Control of Armed Forces (DCAF):
rue de Chantepoulet 11, P.O.Box 1360, CH-1211 Geneva 1, Switzerland
Tel: ++41 22 741 77 00; Fax: ++41 22 741 77 05
E-mail: info@dcaf.ch
Website: <http://www.dcaf.ch>