SOURCEBOOK ON SECURITY SECTOR REFORM

Collection of Papers

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Miroslav Hadžić

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PREFACE

One of the most fundamental functions of the state is to provide for the security of its citizens. The security sector comprises those state institutions and structures whose primary function is to protect society and the liberty of its citizens. The term "security sector" expands the scope of security from its traditional focus on the military to include "public security", or the safety of the individual from threats of crime, disorder and violence. Because security sector reform is focused on the use of public resources to provide security for citizens, there is a necessary focus on state (often executive) institutions and public policy. These institutions include military forces, police and law enforcement services, paramilitary forces, border guard, intelligence agencies, the judicial system and penal institutions, as well as the government departments and ministries that exist to formulate policy and manage these institutions. Most of the institutions that are part of the security sector are authorised to use or threaten the use of force, if necessary, in order to fulfil this function. Nevertheless the legitimate use of force against the state's citizens is strictly regulated in a democracy.

Of all the sectors of public policy, however, the security sector has historically proven one of the most resistant to public input. This is in part a function of the fundamental and over-riding importance of national security to the continued existence of the state, and the prerogative of the executive arm of government for protection of national security. The right of states to restrict certain fundamental human rights for legitimate reasons of national security or public order is recognised, after all, in international law. Moreover the requirements of secrecy pose certain constraints on the types and amount of information that is released by security sector institutions to the public. Nevertheless, states have also used national security as a justification for withholding information and avoiding accountability. Official secrecy, justified on grounds of national security, has been used to avoid political embarrassment, cover up corruption or gross mismanagement of public affairs. The concept of "securitisation" has been used to describe this process whereby policy-makers apply the label of national security to otherwise contentious issues of public policy in order to elevate them above the level of political debate. The traditional secrecy and exclusiveness of the security domain has tended to constrain transparency, accountability and oversight of this most important sector.

This source book by the Belgrade Centre for Civil-Military Relations and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) seeks to make articles of seminal nature available. It can by no means claim to be comprehensive in a rapidly growing field of conceptual and operational knowledge. It may, however, be of assistance to teachers and students of defence and security sector reform.

I would like to express my thanks to Melissa George and Amélie Baudot who edited and formatted the manuscripts.

Philipp H. Fluri, Ph.D.
DCAF Deputy Director

INTRODUCTION

Dr. Miroslav Hadzic

THE CONCEPT OF SECURITY SECTOR REFORM

As of a few years ago, the syntagma "security sector reform" was introduced into political and scientific communication.[1] Then, elaborated by Anglo-Saxon writers, it gradually developed to become a separate theoretical concept. From this concept, under the influence of the EU and NATO, a complete political strategy was derived. The concept is also increasingly used as an instrument in analysing the social and security processes in individual countries or group of countries. In that context, the achievements of security sector reform are often used as an important indicator of the direction, pace and coverage of the overall social reform.

Although a widely accepted definition does not exist, this phrase generally denotes the sum of changes in security thinking and practicing within the frameworks of a specific state. Thus, it is a composite syntagma that exceeds, as well as includes, a series of parallel, but relatively separate reforms of all security factors of a particular state. At the same time, it also provides an indirect – and in the course of elaboration also direct - link between the changes in the security sector and the reform of the society concerned. This additionally emphasizes that the numerous changes within the security sector are inter-dependent and determined by the contents, scope and direction of reforms in a specific society.[2]

This concept, when it first appeared, primarily referred to Central and East-European transition societies. It was also believed that without it a lasting, political and security normalisation of post-conflict societies of the Western Balkans was not possible. In the countries of Central and East Europe this concept drew its political power from the public readiness, manifested by most local citizens and elites after the collapse of socialism, to promptly adopt the values of model West-European societies. That is why security sector

[1] Anthony Forster, 'West Looking East: Civil-Military Relations Policy Transfer in Central and Eastern Europe', *DCAF Working Papers*, No. 52, July 2002, http://www.dcaf.ch/publications/Working_Papers/52.pdf

[2] Dylan Hendrickson, 'A Review of Security Sector Reform', *King's College Working Papers*, No. 1, September 1999.

reform was, in these countries, mostly understood as a process of adjusting their respective societies to modern norms and, within that context also of simultaneously adapting the inherited armed forces to the needs of the emerging democratic order. It is surprising, therefore, that the reform of this sector is often understood simply as a process of transferring and applying the Euro-Atlantic solutions in the security sphere. The model of the offered security integration into this community, which, among other things, rests on the territorial expansion of NATO, i.e., the preparatory membership in the Partnership for Peace, went along these lines. All the more so in view of the primarily political conditions for the accession or association to NATO. Therefore, the achievement of these countries' military inter-operability with NATO figures as only a secondary condition and by-product of their ongoing security integration into the Euro-Atlantic community.

Under the influence of Western meddlers, the concept of security sector reform was soon carried over to the transition and (post)conflict societies of Asia, Africa and Latin America. The whole thing was facilitated by the fact that the armed forces in these regions, often for prolonged periods of time and in different forms, kept those societies under control. That induced their (ab)use in internal and inter-state conflicts and wars. That is why the security sector reform in these parts, just as in the Western Balkans, in the first place called for a simultaneous pacification and demilitarisation of state and society. This required systematic and systemic depoliticization and de-ideologization of the army, the police and secret services. In parallel, it was also necessary to disband and disarm various paramilitary formations. This was followed by a search for efficient, economically supportable and controlled system of local security, as a prelude to attaining sustainable individual-country and regional security.

The concept of security sector reform soon expanded to societies in the Euro-Atlantic circle. But the syntagma is, in that context, primarily used to signify the adjustment of these countries' - individual and/or joint - security systems and armed forces to the new, global and regional security circumstances. Until then, these same countries were predominantly concerned with internal issues and dilemmas related to the further professionalization of the army and its post-modern image.[3] Their agenda simultaneously included the problems of human rights protection in the army and the issue of the army's reintegration into society, all for the purpose of effective democratic civil control over the army and other components of the armed forces.

All these processes were essentially conditioned by the need of Euro-Atlantic states to redefine their security role in a radically changing world. That is why the last decade of the past century may be marked as a period of an all-out search of the U.S.A., the EU and NATO for a new – individual and joint – security identity, all the more so since the disappearance of the rival bloc redirected their attention from preparations for a potential world war towards rearranging the global community in line with their security, thus political and economic needs.

The creation and development of the concept of security sector reform are, therefore, originally dictated by radical and far-reaching changes in the local, regional and global security environment. The dismantling of the bipolar structure set off the change in the security configuration of the world community, as well as in the list of security challenges, risks and threats. The focus was gradually shifted from military risks and threats to those of a non-military nature. This was, consequently, reflected in the changed contents and scope of the security concept, and then also in the structure and purpose of the armed forces. That, on its part, required their different constitutional and systemic status. All that was, at least declaratively, aimed at establishing firmer democratic civil control and effective public supervision of the security sector and its armed forces. The above-mentioned changes were, naturally, multiply mediated, and therefore also determined, by the specific historical characteristics of individual states and regions. That accounts for the different contents, forms, purposes and achievements of security sector reforms in different countries.[4]

This overall variety therefore compels us to focus our attention on transition and post-conflict societies of the Western Balkans. Namely, the similarity of socio-economic and political conditions, and also of the challenges and tasks these societies are facing, permit us to outline a model of the size, contents and dimensions of the – intended and/or expected – security sector reform. While doing that we shall bear in mind that the apparent similarities of Western Balkan states conceal a multitude of basic and situational differences requiring additional elaboration of the model subject to the specific conditions of individual countries.

For the purpose of the following analysis, I shall first outline the original meaning of two central concepts: those of the "security sector reform" and the "armed forces". The first concept is – as already indicated – of recent date, created under the influence of changes in modern societies forming the Euro-Atlantic communi-

[3] Moskos, Charles C. Williams, John Allen. & Segal, David R. 'Armed Forces after the Cold War', in Moskos, Charles C. Williams, John Allen. & Segal, David R. (eds), *The Postmodern Military: Armed Forces after the Cold War*, (New York & Oxford: Oxford University Press, 2000).

[4] Alan Brydon and Philipp Fluri, 'Security Sector Reform: Institutions, Society and Good Governance, (Baden-Baden: Nomos, 2003).

ty, as well as in transition countries. All that is, naturally, placed within the context of the radically transformed political configuration of the Euro-Atlantic region and the global community, which set off the changes in the contents and catalogue of security challenges, risk and threats to individual countries and/or their associations.[5]

To put it simply, the concept of "security sector reform" was indirectly derived from the anthropocentric evolution of views on security, which placed an individual (citizen) at its centre and then, at least nominally, made him the purpose and standard of the society and state. Within that structure, the demilitarisation of thinking and practicing security has begun and it – the security of citizen, state and society – is now increasingly viewed as resulting from a combined effect of economic, social, political, cultural, demographic and ecological forces, while the military-political component is losing it primacy and monopoly.[6] That is why the concept of a "security sector" and of a "security system," deriving from it, are broader in scope when compared to the traditional "defence sector" and "defence system".

Accordingly, the concept of the "security sector" encompasses the entirety of a specific society and its institutions, and its reform therefore implies and demands: (1) changes in the way of security thinking and practicing; (2) changes in the constitutional and institutional arrangements; (3) establishment and development of democratic civil control over the armed forces; (4) reform of the armed forces, i.e. redefining the purpose and tasks of each of their components and the corresponding change of their structure, training, equipment and numerical size; and, finally, (5) various forms of international security cooperation and a higher degree of security integration.[7]

To that extent the armed forces today, in addition to their traditional constituents – the army and the police – also include all state bodies authorized to carry and use arms, i.e. force: border units, secret services, financial police, special – antiterrorists – units, customs, court and prison guards. To all these we should add the formations that emerged from the current privatisation of parts of the security sector and armed forces.[8] In the case of central states of Western Balkans (Bosnia and Herzegovina, Croatia, Serbia and Montenegro), this list should also include paramilitary formations

[5] Heinz Gartner, Adrian Hyde-Price, and Erich Reiter, 'Europe's New Security Challenges', (Boulder, CO: Lynne Rienner Publishers, Inc., 2001).

[6] Barry Buzan, Ole Weaver, Jaap de Wilde, 'Security, A New Framework for Analysis', (Boulder, CO: Lynne Rienner Publishers, Inc., 1999).

[7] Jürgen Kuhlmann, Jean Callaghan, 'Military and Society in 21st Century Europe. A Comparative Analysis', (Hamburg: Lit Verlag, 2000).

[8] Lilly Damian and Michael Von Tangen Page, 'The Privatisation of Security and Security Sector Reform', (London: International Alert, 2002).

– party and private armies – created during the Yu-wars. The same applies to Albania where, after the pyramidal collapse of the state, various paramilitary units continue to lay waste on the country. Another state in this group is Macedonia, where separatist – paramilitary and/or illegal – armed formations have not been disbanded.[9] Paramilitary formations are not, nor should they be, the subject of the above-mentioned reforms in any of these countries. However, it is obvious that until they are publicly disarmed and dissolved, and the role of their members in the war politically and judicially sanctioned, security normalization in any of these countries, and thereby also the Western Balkan sub-region, will remain impossible.

A better understanding of the concept of security sector reform requires that the key reasons for its creation be at least outlined. Bearing in mind that these are the product of radical changes in the security environment, they shall be sketched out in the first part of the paper. In doing this we shall be mindful of the fact that they have been the ultimate, multiply mediated product of various, mutually linked changes in individual societies, regions and the world community. Generalized insights should allow us to explain the dimensions of the offered model of security sector reforms in the second part of this text. The contents of each one of these shall be first generally discussed and then applied to transition and post-conflict societies of the Western Balkans.[10] Throughout out this exercise we shall, wherever opportune, refer to the courses of security sector reforms in the State Union of Serbia and Montenegro (SaM).

Changes in the security environment

The last decade of the 20th century was marked by radical and polysemous alterations in the global security environment. The profound changes initiated in that period are now evidently defining the economic, social, political and security configuration of the world community. The initial consequences of these changes are already catching up with us.[11] Among other things, the catalogue of security challenges, risks and threats has been altered and expanded with the appearance of new actors threatening the individual, regional and global security. Also emerging are new – individual, joint and/or collective – actors concerned with attaining and preserving security.

[9] Biljana Vankovska and Hakan Wiberg, 'Between Past and Future: Civil-Military Relations in the Post-Communist Balkans', (London: I.B. Tauris, 2003).

[10] For a comparative review on the courses of reforms in Croatia and SaM, see: Timothy Edmunds, Defence Reform in Croatia and Serbia-Montenegro, Adelphi Paper 360, IISS, London, 2003.

[11] Joseph Stiglitz, *The Roaring Nineties*, (New York: W.W. Norton, 2003).

That is why the security of the world community is today the ultimate, but dynamic product of a mediated and inter-penetrating action of the numerous factors and actors of various origins and unequal power. Therefore, it is no longer a simple sum or score of the security of individual, but isolated states, and therefore cannot be judged only by comparing the sizes of their respective armies or available weapons. The experiences of the anti-terrorist war in Afghanistan and of the preventive war in Iraq, on their part, warn that sustainable global security cannot be achieved or forced by unilateral, military-political action of the world superpower – the USA and its (*ad hoc*) coalition partners.[12] Thus it is still an undisputable fact that the world community cannot be really safe without the concurrent security of all its members. This means that global security is attainable only to the extent that each of the states is capable and willing to individually, but also jointly with others, attain its own and guard the security of others. The first obstacle in this respect derives from the fact that the cold-war order of international relations, complete with (in)security inherent in the block division, has disappeared, while the new one is only emerging.[13] And while its contours may be discerned, its final form is difficult to envisage.[14]

The disappearance of the block division gave critical momentum to the strengthening of the globalisation process.[15] We are witnessing a thorough economic, social, political and security integration of the world community. There is a growing awareness of increasingly stronger interconnectedness and interdependence of peoples, states, regions and continents. Gradual universalization of the achievements and values originated in the West-European civilization is, at least declaratively, accompanied by the recognition

[12] A brief, summary analysis is given in: Imanuel Volerstin, "2003 Is Bush's Year" (Godina 2003. je godina Buša, Komentar br. 128, Republika br. 324-325, Beograd, januar 2004), p. 4

[13] We believe that once the concept of the "new world order" is stripped of thick ideological layers, it is more of a case of taking the old order to its limits, than the establishment of a new or essentially different world order.

[14] Inspiring findings on one of the central security topics of the future are found in a collection of papers: Europe or America? On the Future of the West (Evropa ili Amerika?, O budućnosti Zapada, zbornik tekstova, izbor i prevod Aleksa Buha, Službeni list SCG, Beograd, 2003).

[15] Jean Baudrillard said: "The analogy between the terms global and universal is false. Universality belongs to human rights, freedoms, culture, democracy. By contrast, globalisation relates to techniques, markets, tourism, information. Globalisation leaves the impression that it is an irreversible process, while it seems that the universal is disappearing, at least as a system of values built on the level of the Western modern, without an analogue in any other culture. Every culture once universalized loses its singularity and dies". (Žan Bodrijar, Globalizacija još nije pobedila, u: Svet posle 11. septembra, Nova srpska politička misao, posebno izdanje 4(2002), p. 19.

of a need to preserve the wealth of national, religious, cultural and spiritual specifics of the world. There is no doubt that all this may only be achieved under conditions of a world-wide peace. But, this peace is not possible without a voluntary and joint effort to remove the inherited and new challenges, risks and threats to individual, joint and collective security.

However, the integration of the world community is also accompanied by its fragmentation.[16] Quite a few societies and states are facing the threat of internal and/or external dissolution of the – economic, social, political and constitutional – foundations of their existence. Globalisation, at the same time, highlights the old and introduces new divisions into the global community. The tendency of increasing controversies and differences between the world centre and its periphery, the rich and the poor, the powerful and the powerless, the strong and the weak, is still there. An asymmetric bipolar world is being entrenched, with the accumulation of knowledge, power, wealth, safety and power on its smaller pole, and ignorance, powerlessness, insecurity, poverty and deprivation, on the larger. That is, among other things, due to the fact that the main proponents of globalisation reap its benefits but would be glad to avoid its negative consequences, even if it takes the use of force. This is why the free flow of people, goods, capital and ideas retains its one-way course – from the centre towards the periphery, with insurmountable obstacles in the reverse direction.[17]

The world community is, today, torn between the growing unipolar and potentially multipolar organization. It lacks sufficient guarantees that either will necessarily increase security throughout the world. Namely, it is entirely possible that the effect of a monocentric or polycentric model of global security will be no more than a one-time increase in the security of the strongest at the expense of the weaker. That, on the rebound, may multiply and reinforce the security challenges, risks and threats for the world centre, and eventually their disastrous spill over to its periphery. This is all the

[16] "Globalisation of exchange marks an end of universalization of values. In the transition from universal to global there is an endless and simultaneous homogenisation and fragmentation of systems. Global networking is doubled by the separation of fragments. After the central we do not have that which is local but rather separate; the concentric is not followed by de-centric, but by the ex-centric, as the disintegration of the universal. Globalisation, all in all, represents homogenisation and increasing discrimination. The refusal and exclusion are not chance consequences; they belong to the logic of globalisation, which, by contrast from the universal, loosens the existing structures in order to be able to better integrate them.", Jean Baudrillard, op. cit.

[17] That is, for instance, illustrated by some restrictive measures undertaken by present EU members in order to prevent the inflow of labour from ten Central and Eastern European countries soon to become Union members; cf. Danas, 24. 02. 2004, p.17

more likely because the security reshaping of the world unfolds outside the current collective security system – the United Nations.

Moreover, there isn't sufficient evidence that the inherited systems of collective and joint security can provide valid responses to the new challenges, risks and threats. It is clear that the United Nations and its Security Council lack concord, will, power and means to prevent or stop local and/or internal conflicts and wars. They are still less capable of removing the security challenges, risks and threats on a lasting basis. It is therefore clear that the UN, unless it is thoroughly reformed, and soon, will remain an empty symbol of the order of times past. It is also doubtless that the UN cannot change itself and neither can it become/remain an important guarantor of security of the global community without a willing participation of the strongest states, especially the USA. That is one of the reasons why the present-day world is still far from becoming a global community of free and equal citizens, nations and states.

It appears that the breakdown of the bipolar structure of the international community has irrevocably made a world war almost impossible. However, we see a growing number and changed typology of local and internal conflicts in less developed regions of the world.[18] The range of their destructive consequences is no longer limited to local actors, but extends to entire regions and, not infrequently, to the whole global community. This ever more often causes and incites external – military as well as other – interventions in these wars. Of late, however, the meddlers, quite commonly – for humanitarian, preventive or other reasons – find it easier to act without the authority of the United Nations.[19] However difficult it may be to reliably check the motives and size up the achievements of such interventions, it is certain that they, along with other things, increase the number of security unknowns in the global community. In addition, unilateral actions violate the principles of the still valid international law and enthrone arbitrariness as the leading principle in relations between states. All this additionally proves that there is a need to jointly build a new security architecture of the modern world. In parallel, it would naturally be necessary to adjust the provisions of the international law to new security challenges, risks and threats.

This would be all the more important, since the speedy, and not infrequently forced, process of globalization produces numerous negative security consequences. It seems that what is happening deep inside international relations is a reconfiguration of anar-

[18] Christian P. Scherrer, 'Peace Research for the 21st Century: A Call for New Reorientation and New Research Priorities', (Copenhagen: Peace Research Institute, 1999).

[19] Miroslav Hadzic, 'Protection of Human Rights in the Army and Police', (Belgrade: CCMR, 2003) (in English and Serbian).

chy.[20] In other words, the all out violation of international law and the disregard of the UN system of collective security destroys the last vestiges of at least some orderliness and security (within) the global community. Thus, the practice of arbitrary military and political intervention is renewed throughout the globe. For that purpose new ideologemas such as humanitarian intervention and preventive war are coined and used, with the ultimate aim of disseminating democracy by force. Furthermore, this one-sided dissemination of democracy, i.e. its defence with arms, became only a screen for the wish to impose on the world community wholly measurable, economic and military-political interests of transnational and ruling elites of the United States. Only within this matrix is it possible to understand why the USA, and its loyal partner the UK, first came up with a claim that the whole world (with the available natural resources) was within the range of their state and security interests, continuing that the maintenance of their security gave them an inalienable right to defend these interests, including the use of military force, anywhere on the planet. After that, they did not find it difficult to rename their national interests as global in scope, and present their intervention, a protection of their selfish interests, as a way for the attainment and preservation of global security.[21]

The ultimate and most dangerous consequence of this course is reflected in a perverted return of the concept of the "security dilemma" in inter-state and international relations.[22] Let us recall

[20] This concept in realistic theories of international relations and security emphasizes the absence of international authority that could use its power to impose the respect for the rules and norms in inter-states relations, i.e. to prevent a general war of "all against all".

[21] "The national interest of the U.S.A. is to promote American values. Promotion of these values means their protection by establishing and implementing an effective national security policy (…) US national interests express the American values projected in the international and the domestic arenas (…) There are three reference points. First the application of American values to the external world forms the core of national interests. Second, the attainment of national interests means that the US strategy is not limited to that state. This may require deployment of forces into different parts of the world, especially to fight terrorism. Third, the president is the focal point in defining and articulating the national interests of the U.S.A.", Sam C. Sarkesian, John Allen Williams, Stephen J. Cimbala, U.S. National Security, third edition, Lynne Reinner Publishers, Boulder, London, 2002, pp. 4-5.

[22] "The understanding that war is a constant historical characteristic of international politics and will highly unlikely disappear, is based on the belief that states are faced with what is called security dilemma, which they cannot escape. The idea of the security dilemma was first clearly articulated by John Hertz in 1950. It was, as he noted: "A fundamental belief that efforts of states to preserve their own security, regardless of their intentions lead to an increased insecurity of others, since all measures undertaken are explained as defensive, while the measures of others are experienced as a potential threat" for one's own security (M.H), John Baylis, International and Global Security, in: The Globalization of World Politics, second edition, John Baylis & Steve Smith (eds), Oxford University Press, UK, 2001, p. 257.

that in the era of the block division this concept, or rather international relations defined on its basis, among other things, spurred the arms race ending in a global balance of fear. It is therefore not surprising that, at that time, there were at least two different catalogues of security challenges, risks and threats. In the inter-block competition this sort of a catalogue, however elaborate, remained mostly predictable, dosed and controlled. This allowed the block hegemons to carry their own disagreements over to others and transpose them into local and regional conflicts and wars. Thereby the autonomous catalogue of – internal and external – challenges, risks and threats facing the states on the periphery was endlessly expanded. It is therefore hardly a surprise that they could not achieve sufficient security for themselves nor for their citizens.

It seems that, after the terrorist attack on the USA, there is a tendency towards the reappearance of anarchy in international relations, where only the states with large economic, political and military capacities may ensure themselves sustainable security. That is why in a monocentric world, a single super power – however it may be, or wanted to be, the creator and/or guarantor of global security – becomes an additional generator of security challenges, risks and threats; moreover, in a way that substantially constricts the manoeuvring space of others, who are therefore compelled to either join the world enforcer of peace through war, or else be relegated to the "axis of evil". This is made easier by that the fact that the US security policy still largely rests on a reactive strategy. Thus, instead of a planned, long-term, social-economic and political action against the causes and sources of the new challenges, risks and threats, it ever more frequently engages in an unlimited use of armed force to deal with their consequences.

This, along with other things, constrained the new security paradigm, launched in the late 1980s, which as already mentioned, hinged on the anthropocentric evolution of thinking and practicing security. It, among others things, promoted the regional and global security cooperation and integration for the purpose of finding a valid, joint response to the newly created challenges, risks and threats. But instead, the states on the world periphery are today gradually deprived of the chance to attain sufficient and sustainable security by themselves or jointly with their neighbours. Therefore, the ongoing revitalization of satellite alliances, this time with only one power – the USA, comes as no surprise.[23]

The monocentric globalisation of the world community, among other things, favours easier and speedier totalization of the new security challenges, risks and threats. This means that all

[23] Initial arguments of this (our) position can be found in Michael Mandelbaum, "Diplomacy in Wartime, New Priorities and Alignments", u: How Did This Happen? Terrorism and the New War, James F. Hoge, JR., and Gideon Rose (eds), PublicAffairs New York, 200, pp. 255-268, particularly pp. 263-267.

(non)state actors of international relations have found themselves within its reach, quite independently of their will and/or distance from the world centre. The totalization spiral is in many ways the replica of the spiral of (forced) globalisation. To that extent the economic and political unification of the world launched from the centre is largely accompanied by exports and mass reproduction of non-military challenges, risks and threats created and strengthened in it. Therefore, forced globalisation, among other things, facilitates and accelerates mass production and illicit trade of arms, especially those for mass destruction. In the same way, it was only in a monosemically globalized world that the production and distribution of drugs, as well as trafficking in human beings and organs, grew into powerful challenges, risks and threats to individual, regional and global security. Within this vortex, new terrorism is the ultimate product of the combined action of power-greedy elites of the periphery, partly reared in the international crime zone, and anti-modernizing elites (self)legitimised by pseudo-religious resistance to globalisation (Euro-Atlantic values and interests). All that, on its parts, necessarily makes the central proponent of globalisation the main target as well as the protagonist in the totalization of new security challenges, risks and threats. Moreover, this actor's interference in these challenges, risks and threats allows it to even produce them or redirect them towards others, as required.

We are therefore witnessing the change of the role of the army and functions of war. Let us recall that in the Westphalian order, as well as in the block-bound world, the army and war were the main means not only of colonial conquest but also of the internal development of large powers in leaps and bounds. The *interregnum* reveals that the army and war are now out for conquests hidden under the auspices of peace. Namely, the impression is that today, only where and when the economic-political and ideological instruments of globalisation fail, come the army and a war tailor-made to fit the transnational corporations and the ruling elites in the USA. Therefore, the world today becomes/remains the key marketing tool for the American military-industrial complex, used to enforce an increased – internal as well as external – demand for its goods.[24] Consequently, the nature of (asymmetric) war is also changed. Leaving aside internal wars, our analyses shall deal with examples of disproportionate use of huge armed power against much weaker adversaries, which could hardly be called wars judging by classical standards.[25] Although this does not deny their

[24] For more see: Dr Predrag Bjelić, Uticaj tehnologije i vojnoindustrijskog kompleksa Sjedinjenih Američkih Država posle 1990. godine, Vojno delo br. 2/2003, VIZ Beograd, pp. 204-221.

[25] Some theoretical and political treatises on the first virtual war ("Desert Storm") and the meanings of the "humanitarian intervention" in Kosovo are given in: Čisti rat, Beogradski krug, No 1-2/1995, Beograd; Srbija i NATO, I i II, posebna izdanja, Nova srpska politička misao, Beograd, 1999.

strategic purposes and effectiveness, in cases of this kind it is rather difficult to distinguish actual combat from an exercise on arbitrarily chosen testing grounds and vice versa. Therefore, it shall remain unknown whether and to what extent these wars are intended to empty the arsenals and/or test new arms and weapons *in vivo*.

All that provides a perfect fit for the ongoing renewal of the myth of the professional army as the only proper means for the elimination of new security challenges, risks and threats. The main argument in favour of a professional army is already indicative enough. Justification by requirements deriving from the information revolution clearly demonstrates that this model is today accessible only to its creators and monopolists. This monopoly, naturally, enables them to preserve and reinforce their global military supremacy. This necessarily results in the prevalence of a reduced understanding of military professionalism with a highly trained mercenary at its basis. Therefore, at work here is also the reshaping of the traditional combat morale of the army, aimed at abolishing the need to present a soldier (military collective) with valid, measurable and acceptable reasons for combat motivation. That is but a small step away from abolishing what remains of the ethics of war.

Dimensions of security sector reform

The concept of security sector reform reached the Western Balkans only after the Yu wars, stopped and prohibited by the will of foreign meddlers. The new (old) elites of power have ever since been treating it, with more or less pronounced departures, only as part of a package of (un)willingly accepted demands and standards of the Euro-Atlantic community. This concept therefore belonged and still belongs to a set of propaganda political promises of local contenders for power, and is subject to (ab)use for ideological and daily political purposes. All that is, naturally, accompanied by abundant vulgarisation of the entire concept or its specific aspects. This especially applies to the democratic civil control of the armed forces. Thus, for instance in Serbia and Montenegro, one would be at a loss to decide whether it would be more difficult to draw a list of publicly stated stupidities or that of politicians and quasi experts who bombard the public with their ignorance on daily bases.

It is therefore hardly surprising that both the concept and attempts at reform are mostly interpreted as a (forced) concession to the West, i.e. an inevitable part of the procedure for the desired and fast accession to the EU and NATO. That, in effect, tends to conceal at least two facts. First, that the local political elites are creating for themselves and their electorate an illusion that the lack of will and knowledge for a radical reform of society and the security sector, may be covered up and/or compensated by reform

loquacity. And, second, that the generally chaotic reorganization of the security sector and the inherited armed forces may be passed for reform to one's own and to a foreign public. Namely, that it is possible to reform the inherited army, police and secret services without dealing with their war heritage, and that consequently the job can be properly done by party storm troopers in army uniforms.[26] Therefore, what we see in SaM is a postponed and/or feigned reform of the security sector. This has not only failed to reduce the list of internal security sector risks for the initiated transition, but has rather increased it. To make things worse, this amounts to an additional waste of the society's non-renewable social, economic and political resources as well as its time and will. The (un)deserving price for that is, naturally, paid by the citizens forced or sucked into party centrifuge.

Much more important is the fact that this approach denies the citizens and members of the armed forces the knowledge of numerous advantages that security sector reform may bring them. It would, among other things, permanently allay the citizens' fears of a (repeated) internal abuse of armed forces. The members of these formations should also, among other things, be at least nominally protected from the current and future ideological and political abuses. Therefore, we shall here advocate and explain the view that security sector reform is in the best interest of the domicile population, and therefore also those who serve in the armed forces. This is based on a conviction, regrettably confirmed by Serbia's experience after the October events, that in post-conflict societies even the initial assumptions for a democratic order cannot be created without planned and radical reform of the security sector.

Changes in security thinking and practicing

Under the influence of global structural changes the Euro-Atlantic circle gradually abandons the traditional concept wherein individual states and their respective armies are the main objects of protection as well as the key agents in preserving security. New security thinking and practicing is slowly gaining ground and should ultimately facilitate the establishment of a safer, more just and better arranged global society. For these reasons the scope and contents of the concept of security have also changed.[27]

Security is today increasingly viewed and expressed as the final product resulting from a combined effect of economic, social, demographic, political, cultural, ecological and military characteris-

[26] Miroslav Hadzic, 'Democratic Control of the Army and the Police in the Federal Republic of Yugoslavia: Legal Prerequisites', (Belgrade, CCMR, 2001) (in Serbian).

[27] This is evidenced by its ramification, so that today we have phrases like "hard security", "soft security", "human security", "societal security", "common security", "cooperative security".

tics of a state, region or global community. The contents and the potential of these characteristics determine their security capacities. To that extent, a numerically large and strong army is no longer sufficient to attain individual, i.e. joint or collective security. Post-cold war experience tells us that only stable and prosperous democratic societies could, jointly with their neighbours and partners, achieve and sustain sufficient security. This rapidly blurs the line between the internal and external security of a society and state. Namely, the internal situation and overall power of a given state ultimately define the degree of its external security. Just as external security, in return, influences a country's internal stability and security.

This reciprocity has two main consequences. First, it turns out that the security of individual citizens is the purpose, pledge and measure of security of their native societies and states. This means that a society and a state wherein human rights and the security of citizens are endangered, regardless of the strength of their armed forces.[28] Second, it is also doubtless that in a globalizing world, the security of an individual society and state is impossible to attain alone. Security is today, both geographically and in terms of its contents, becoming decreasingly divisible, and requires and imposes joint efforts to remove the security challenges, risks and threats. Therefore the current Euro-Atlantic integration, despite the numerous disagreements and difficulties, rests on communion and congruence of basic, not only economic-political, but also security interests and objectives. This explains why NATO is positioned on the gates of the EU and why the formerly socialist countries embark upon their integration from the security starting point.

The way of security thinking and then also practicing in individual societies naturally depends on the contents and direction of effects arising from the interactive coupling of numerous factors and determinants – economic power, political order, social being, historical (and civil-military) heritage, geopolitical[29] and geostrategic position, type of security challenges, risks and threats it is exposed to, (sub)regional position, etc. That is why the adoption of modern security thinking, and thereby also security practicing in the countries of Western Balkans is not and cannot be only a matter of enlightenment and/or a residue illusion of the communist arsenal that one-off and targeted change of the conscience of subjects (pre-citizens) is possible.

Namely, new security thinking can only start to take roots within the context of a gradual change in the inherited, non-democratic political culture. The first condition for that is that the local elites, in line with the (post)modern times, politically articulate an all-comprising and optimal strategy of social (state) development,[30] defining a new list of the basic and protected values and interests. That will enable them to have a more reliable identification of sources and proponents of their endangerment. After that, they will have to win over a large majority of their citizens for the materialization and protection of the above-mentioned values and interest. That, at the same time, requires them to define an appropriate strategy of national (state) security in line with the changes in their own society and its environment as well as the new catalogue of challenges, risks and threats.[31] However, all that is possible only under the assumption that the initiated, prodemocratic change of society shall, in due course, bring, or at least indicate, to its citizens the visible and measurable – economic, social and political – benefits.

Leaving aside their specific differences, it is easily noticeable that the Western Balkan states still predominantly think along the lines of the security dilemma. That accounts for the sustained belief that the state is the main object of protection, and that the strong army and the police are the main guarantors of security. This belief, on its part, rests on the primacy of collective (state, national, religious) values, interests and objectives over the individual. Out of that it is easy to derive the sovereign right of the state, i.e. the cur-

[28] A warning to that effect is the current constriction of human rights in the cradles of modern democracy, effected in the name of struggle against terrorism (Patriotic Act in the U.S.A. and the announced law on struggle against terrorism in the UK; from: London pooštrava antiteroristički zakon, www.danas.co.yu, 3.02.2004). Judging by that one could even say that the terrorists have already attained some of their strategic objectives: incitement of mass fear and reactive aggressiveness which threatens to ultimately divest democracy of its power and/or cancel it altogether.

[29] We have in mind the modern definition of geopolitics, stating that it is 'in the widest sense (…) a study of geographic dimensions (physical, cultural, political and economic) of the world politics. The dynamic influences and frequent competitive tensions between peoples, ideas and their riches (reserves) could gain substantial power in certain regions. Modern geopolitics could therefore, without risking a major error, be described as the abolishment (overcoming) of physical borders by means of flows of technology, riches and ideologies," Peter H. Liotta, The Geopolitics of the Balkans: Outcomes and Possibilities, New Balkan Politics, Journal of politics, vol. 8, 2003, Skopje, p. 107.

[30] "The strategy should tell us what is to be done, and in what order, in terms of institutional building, definition and implementation of economic policy and management of public resources so that (in cooperation with the growing private sector) in a given social environment desired economic and social results can be achieved. But, in order to define such a strategy we must at least tentatively envisage where we wish to go (what are the desired economic and social results for us). Therefore the strategy determines the *activity of the state* (the legislative, executive and judicial power) in determining the long-term course or *vision of development* and its implementation" (italicised in the original texts), Dušan Vujović, Strategija reforme i razvoja: izazovi, iskustva, rešenja, Prizma, februar 2004, CLDS, Beograd, p. 28.

[31] The fact that, for various reasons, this is neither a simple nor an easy job is confirmed by Croatia's adoption of the Strategy of national defence as late as 2002 (Narodne novine, no. 32, Zagreb), while Serbia and Montenegro still do not have a document of that kind (FRY).

rent holders of power acting in the name of real or false state/national reasons, to engage in unrestricted and limitless violation of their citizens' rights, thus endangering their personal and family security.

It is not difficult to comprehend the basic sources of the domination of traditional security thinking. It is, along with other things, the final product of the fact that the nations and states of the Western Balkans are still engaged in solving the initial problems of their national and state survival and/or self-completion carried over from the 19th century. They have therefore, in security terms, become/remained permanently dependent on foreign meddlers – previously large powers and today the USA, EU and NATO.[32] All this has been additionally sharpened by the disastrous consequences of the unfinished Yu-wars. Above all, bearing in mind that not one of the basic sources and causes of the violent disintegration of the second Yugoslav state has been terminated and/or removed, there is the possibility for further decomposition of the states, and thereby also for the recomposition of the region.[33] The prospect is all the more real since it is obvious that most of them – Bosnia and Herzegovina, SaM, Macedonia and eventually also Albania – survive mostly owing to the will or power of foreign meddlers. Just as the "Kosovo knot" shall, due to the lack of their will, remain the focal, and critical security point of the Western Balkans for a long time yet.[34] This kind of development is facilitated by the fact that the states concerned are weak, incomplete, undesired and undemocratic creations, which still cannot turn out autonomous, but sufficient – economic, political, social, national and security – reasons for their survival, and then also prosperity. Under such circumstances one could hardly expect the emerging of a security thinking which goes beyond the state-military coordinates.

In that respect, the violent creation (completion) of national states, incited and/or verified by the Yu-wars, represents the main obstacle for a different security thinking to take root in Western Balkan countries. To make things more difficult, the prolonged

[32] Miroslav Hadzic, 'Democratic Control of the Army and the Police in the Federal Republic of Yugoslavia: Legal Prerequisites', (Belgrade, CCMR, 2001) (in Serbian).

[33] As we are warned by the ongoing ethnic cleansing of the remaining Serbs from Kosovo, whereby the Albanian elites wish to rapidly change the actual situation in the province and force out state independence as soon as possible.

[34] This is evidenced by the data of a survey revealing that 41.4% of respondents in Serbia and 32,3% in Montenegro believe that the U.S.A. represents the largest security threat for SaM, compared with 37.6% and 31% respondents respectively who assign that role to Albania (J. Glišić, M. Hadžić, M. Timotić, J. Matić, Javnost Srbije i Crne Gore o reformi Vojske, Rezultati istraživanja, I krug, CCVO, Beograd, 2003, p. 69). This perception may be initially explained by the crucial role of the U.S.A. in NATO aggression against the FRY, as well as the regional networking of Albanian political and (para)military elites.

existence of a provisory state serves the local elites as the main argument for the postponement and/or feigning of security sector reforms. Using that as a basis it is easy to sustain and renew in the country's public the kind of thinking that fits into the security dilemma matrix. Therefore, the entrenchment of a novel way of thinking in these countries requires a new and different constitutional and legal regulation of the security sphere and the status of armed forces in the local society.

For that purpose it is necessary that the elected representatives of citizens (legal agents of power) in the parliament previously politically define the state's (national) view of security. The first task in that process is to realistically assess the situation of national security. This requires an inventory of external and internal challenges, risks and threats, and then the assessment of the security and defence capacities of the society concerned. A component part of this effort should, naturally be the evaluation of combat readiness of the available armed forces and their reform and modernizing capacities. Elaboration of such a document (a "Defence White Paper"[35]) would provide sufficient conditions to draw a strategy of national security and/or defence. And it is, let us recall, an eminently political document whereby the parliament of a state defines who should protect what in a given society, from whom and ultimately what forces and means should be used for the purpose. With this document, the state simultaneously defines its place and security role in the (im)posed regional and global context and expresses its attitude towards security cooperation and integration. Only after the adoption of the strategy of security and/or defence the initial conditions will be created for a planned and rational security sector reform, i.e. for the new and different security thinking in individual societies to take root.

Change of constitutional and institutional arrangements

The need for a normative re-arrangement of the security sector and armed forces in most Western Balkan states arises directly from the courses and results of the violent break-up of the second Yugoslavia. The main destructive forces, let us recall, were generated by the apparatuses in charge of the country's security and defence. The description of their duties, along with the defence from external threats, included the protection of the socialist constitutional order. For that purpose these apparatuses were established as armed branches of the communist oligarchy. When the latter divided and its members turned into fighters for the creation of (uni)national states, they were immediately joined by the mem-

[35] For more see: Tomo Radičević, Transparentnost odbrane: Bijela knjiga o odbrani, DEFIMI, Zagreb, 2000;

bers of the old armed forces attached to them by their origins and existential ties. It is therefore hardly surprising that the Yugoslav People's Army ended up as a para-army, while its adversaries, originally paramilitary formations became legal armed forces of the newly created states.[36]

The coupling of (para)military and political elites in the new states of Yugoslav origin, based on their interests and reinforced by war, was crowned by the petrification of the party state model and matching armed forces. That was, naturally preceded and decisively influenced by the cloning of the authoritarian order of the second Yugoslavia in the new states. Under such circumstances, military-police and secret service elites necessarily became/remained the central pillars of unlimited power wielded by local autarchs and the main obstacle to the pro-democratic reform of their states.[37] The subsequent electoral change of masters, especially in Serbia and Croatia, compelled them to legitimise their new loyalty by (quasi)democratic rhetoric and ornaments. At that point, their wish to preserve their corporative interests overlapped with the desire of the new holders of power to retain the clientelist status of the armed forces.

That is why the key obstacles for security sector reform in the former Yugoslav states arise from their authoritarian and war origin, i.e. heritage. They therefore cannot be compared with other transition societies, nor can the reform recipes of Central and Eastern Europe be applied there. This would be even more difficult because in these countries - also partly in view of the NATO and EU protectorate, and thereby also the impossibility to export the crisis – transition security risks are primarily generated from within. Thus, in these countries the preconditions for the security sector reform cannot be created by simply installing the Euro-Atlantic constitutional and legal solution.

The key, let us call it transition, aporia in the SaM, boils down to a dilemma of what precedes what, i.e. what is a precondition to what. We may express it by means of two, at first sight scholastic, questions: should the constitutional reconstruction of the joint state and/or its members be followed by a security sector and armed forces reform, or the security sector and armed forces should be reformed first, in order to provide the necessary preconditions for constitutional and effective inauguration of a democratic order? And all that without a final split with the authoritarian regime in Serbia, and with the prolonged existence of its quasi-democratic

[36] Miroslav Hadzic, '(In)Ability of the Local NGOs to Influence Law Making Process: Between Lack of Will and Lack of Knowledge, *DCAF Working Papers*, No. 62, August 2002.

[37] Ozren Žunec, *Rat i društvo. Ogledi iz sociologije vojske i rata*, (Zagreb: Naklada Jesenski i Turk - Hrvatsko sociološko društvo, (1998).

mutant in Montenegro. To this we should add their temporal limitation and forced coexistence in a semblance of state communion.

Since this is not the case of a simulation model, both undertakings have to be carried out in the existing circumstances, and under the powerful pressure of the war heritage and the growing – economic, social and political – price of the announced social reform. That is why the main challenge is epitomized in the difficulty to carry out a democratic (re)constitution of society and state concurrently with the reform of the armed forces, such as would place them under democratic civil control.[38]

For that purpose it is first necessary for the state members to ground their new constitutions on a strict observance of the division of power and the rule of law. This should be followed by the more difficult part of the job requiring that the ruling elite give the parliament back its rightful political power, and ensure full and real independence of the judiciary. All that requires that the executive power be stripped of any seized surplus authority and placed under parliamentary, judiciary and public control. Only then will it be possible to create the initial constitutional and legal conditions for a successful security sector reform in Serbia and Montenegro.

The issues which ought to be regulated may, for methodological purposes, be divided into two separate areas. The first shall encompass the relations between the society and its armed forces, and the second, the makeup and relations within each of the armed forces' components. The complexity of the situation is further increased by the fact that part of the issues related to the army and the defence is regulated at the level of the state union, while the status and competences of other armed formations are addressed by the member states. However, it is still possible to state the basic requirements to be fulfilled by constitutional and legal acts, no matter where they are enacted. The first is to precisely establish security objectives and tasks of each of the armed forces' components, and then also the procedure and manner of their (combat) employment...[39] Within that context, it would also be necessary to identi-

[38] The crucial confirmation is revealed in the numerous lacunae and vaguely articulated provisions of the Constitutional Charter regulating the defence and the army (Hadžić, 2003). This is also evidenced by the fact that the Parliament of the FRY and then also of the SaM, has never checked whether the new law on federal security services (adopted in 2002) is being enforced.

[39] Indication of the damage that may emerge due to incomplete constitutional and legal provisions is seen in the political controversies created due to unauthorized offer of the former Serbian prime minister concerning the participation of the SaM army in peace keeping operations in Afghanistan, i.e. Iraq; for more details see Jovanka Matić, Medijsko izveštavanje o odbrani i vojsci, drugi krug, u: J. Glišić, M. Hadžić, M. Timotić, J. Matić, Javnost Srbije i Crne Gore o reformi Vojske, rezultati istraživanja, II krug, CCVO, Beograd, 2004, pp..134-145.

fy the civil chain of command, administration and management, as well as procedures and instruments for the protection of constitutionality and legality in the armed forces. For that purpose the parliament and the judiciary should be furnished with clear and effective authorities for the exercise of their respective – control and protective – competences in the security sector. No less important is that the public transparency of the security sector and armed forces affairs be normatively guaranteed. This request cannot be properly fulfilled unless the citizens and the public are given legal guarantees for free access to information. That necessitates a new and different definition of the meaning, contents and scope of the state and military secret. Above all, the new norms should ensure an effective protection of the human rights of the members of armed forces, as well as citizens while within their competence.

Only subject to the realization of the above mentioned requirements will it be possible to legally rearrange the setup of each of the armed forces' components. The law-makers shall then have to adopt precise regulations for their internal functioning. Within that context, they will also have to regulate the official and inter-personal relations in all formations of the armed forces in a new way. In order to make that possible the bulk of the issues, thus far regulated by by-laws and/or lower level legal documents, should again be made subject to regulation by laws.[40] That will also require from the legislators to reduce the discretion of commanders wherever possible, i.e. to prevent their arbitrariness. This should also be done with the material and other illegal privileges of armed forces members, and especially their commanding elites.

Establishment of democratic civil control of armed forces

Normative reorganization of the security sector in the Western Balkan states should be underscored by placing the armed forces under a democratic civil control. Judging by the publicly proclaimed readiness of power agents, and leading men of the armed forces subordinate to them, one would say that this is merely a technicality.[41] Numerous simplifications and misunderstandings of the models of democratic control necessitate an outline of its essential characteristics. The easiest way to do that would be by comparing it with the model of civil control of the armed forces. All the

[40] Jovan Buturović, 'Mehanizmima za zaštitu ustavnosti i zakonitosti u JNA i VJ', in Miroslav Hadžić (priredio), *Demokratska kontrola vojske i policije - normativne pretpostavke*, (Beograd, Centar za civilno-vojne odnose, 2001).

[41] As evidenced by the invitation of the ranking commanders of the Yugoslav Army General staff to the highest officials of the FRY to start practicing civil control of the army; cf: proceedings of a professional conference held in October 2001 in: "Civilna kontrola oružanih snaga", Institut ratne veštine, VIZ, Beograd, 2001.

more so since people tend to overlook the fact that the army, police, secret services and par police units in the Western Balkan states have always been under civil, but not democratic, control.

The key difference between the two models derives from differences in regulated competences concerning civil command over the armed forces. This means that in both cases, subordination of the armed forces to the civil authorities is implied. However, democratic control relates only to democratically elected civil authorities. This means that the authorities are replaceable at the elections. Therefore, this kind of control is only possible in an open, democratic, market and plural society based on the rule of law and a law-abiding state.

Furthermore, the model of civil control in a republic gives supreme command over the armed forces and/or army to the president of the state and/or the prime minister. Therefore, the armed forces are ultimately subordinate to them and they are the ones who take final decisions on the use of these forces. By contrast, a democratic model introduces a complex decision-making procedure where the use of the state apparatuses of power are concerned. To put it simply, this means that the (individual or collective) sovereign must obtain the prior consent of the parliament and/or government before issuing an order for the use of the army. In addition, the supreme court of the country concerned is entitled to examine the constitutionality and legality of decisions taken by a civil commander. Moreover, if it finds that anyone in the chain of command has overstepped his authorities or violated the procedure, the court shall instruct that the previous state of affairs be restored. This means that, subject to the existence of constitutional and legal conditions, the court may cancel the command of a civil commander and stop the use of armed forces. It is thus clear that democratic control rests on the principle of the division of power. Therefore, this model necessitates that each of the branches of power has precise authorities over the armed forces. They are, at the same time, authorized and bound to control and restrict each other in a procedure duly established by the constitution and law.

The parliament as the highest legislative power is authorized to precisely define the position and the role of the armed forces in society by the constitution and law.[42] In other words, to prescribe the objectives, tasks and purpose of the armed forces. Consequently, no one is permitted to use the forces for any other ends. Therefore, the parliament alone is authorized to declare war, i.e. to decide whether the country should go to war. The constitu-

[42] For a general inventory of the parliamentary rights and obligations see: Parlamentarni nadzor bezbednosnog sektora, Načela, mehanizmi i praksa, Ženevski centar za demokratsku kontrolu oružanih snaga, Interparlamentarna unija, izvršni izdavač Centar za civilno-vojne odnose, Ženeva/Beograd, 2003.

tion and the law, at the same time, precisely define the chain of civil command over the armed forces. These acts explicitly prescribe the competences of the heads of the state and government, relevant ministers and commanders of the armed forces subordinate to them. Their mutual relations are also regulated so as to make it clear who is accountable to whom and in what respect. In other words, who controls whom, in what procedure and in which spheres.

The parliament is also the only body authorized to adopt a national security strategy, a strategy of defence and a doctrine for the use of armed forces. In doing so, the parliament naturally relies on professional proposals of competent ministries. The supremacy of the parliament is necessary since democratically elected representatives of citizens, rather than generals, should identify the national interests of the country and its population. They shall thereby define which of the joint values of the society will be defended, including the use of force, if so required. In the same way the parliament, not the generals, should assess whether the security of the country is endangered, by whom, to what extent and in what way. On that basis, the parliament in its strategy announces whether and under what conditions, and with whom the country concerned shall form a defence alliance and/or establish security cooperation. And, finally, the parliament defines the principles for the use of the army and other armed forces in war through the use of the strategy and the doctrine. With all these documents, the parliament essentially determines the kind and size of the armed force the society actually needs.

For that purpose the parliament has another, essential instrument at its disposal. It has an explicit right to adopt the budget for the army and other parts of the armed forces and to control the relevant spending. Namely, the parliament, through the budget, sets the size and the nature of the armed forces. That is because the size and structure of the budget determine their composition, numerical size and equipment. This job is addressed by the parliament's budgetary, defence, and security committees. The budget enters into force only following its adoption in the parliament by the required majority vote. However, the budgetary competences of the parliament and its committees do not end here. They are, above all, obliged to continuously control the spending of the appropriated funds by the competent ministries and the armed forces. Furthermore, they are authorized to carry out the inspection of the armed forces and check the respect of constitution and law therein. That is why in democratic countries, members of the armed forces have, for instance, the right to directly appeal to the parliament or one of its committees for protection if any of their rights have been endangered or denied.

The agents of executive power are, on their part, the only ones authorized to command, administer and manage the armed forces, but only in accordance with the constitution, law and strategic documents. They therefore must not independently change the purpose nor the intention of the armed forces. They are also obliged to take all decisions on the use of the armed forces in a constitutionally and legally defined procedure.

The chain of civil command, administration and management of armed forces usually, in hierarchical order, includes the president of the state, prime minister, ministers in charge and commanders of each of the armed formations. Civil commanders are responsible to their superiors and to the parliament, thus, also to the electorate. The prime minister is in charge of the foreign and defence policy of the country and has the relevant ministers subordinated to him. They directly administer and manage parts of the armed forces. The ministers are thus superior to the heads of the army, police, secret services and other par police forces. The ministers are accountable to the prime minister and also to the parliament. The parliament, if dissatisfied with the situation in the armed forces, may depose the entire government or only the relevant ministers.

The ministers and ministries in charge are the key civil controllers of parts of the armed forces. They are the ones who should ensure the submission of the armed forces to legal civil authorities. They are also obliged to ensure and protect the professional autonomy of parts of the armed forces submitted to them. The ministers, in addition, propose the budget and laws to the parliament and, upon the adoption of the budget, transfer the relevant funds to their end users and monitor their spending. The ministers are at the same time, authorized to define the organization and formation of the armed forces subordinated to them and approve annual plans for their training. Moreover, they also enact the relevant by-laws and control their enforcement. The ministers most often decide on promotions, appointments, relieving and pensioning of armed forces' members.

The model of democratic control contains additional instruments whereby it prevents the acquisition of absolute power by anyone in the chain of command, administration and management of the armed forces. That is why the constitution and the relevant laws have assigned each of the links in it a limited number of authorities over the formation of the armed forces. In the case of the army, the supreme commander is usually authorised to promote officers to the rank of general or admiral. However, in numerous countries he may do so only upon the proposal of government ministers or Prime Minister.[43] Something similar happens with respect

[43] Hans Born, Marina Caparini, and Philipp Fluri, 'Security Sector Reform and Democracy in Transitional Societies', (Baden-Baden: Nomos, 2002).

to the appointment of generals to key positions in the army. Moreover, the procedure not infrequently involves the parliament. In that case, if the supreme commander wants to appoint a person, e.g. to the position of the Chief of General Staff, he must previously solicit the opinion, and often also consent, of the competent parliamentary committee.

And finally, the operative command of each of the armed forces components is a professional body of the ministry. The task of these bodies is, in briefest terms, to qualify their formations for the performance of duties assigned to them by the supreme commander. That is why their competences include training, operational, and tactical command and management of units and institutions of the armed forces. At this point, the competence of other actors of democratic civil control ceases. Namely, they are obliged to respect the professional autonomy of members of the armed forces. This means that just as the officers must not interfere in political decision-making so the politicians must not interfere in the professional affairs of officers.[44]

The explanation and interpretation of the model of democratic control is, certainly, the easiest part of the job. In reality, the practicing of democratic civil control over the armed forces is by far more complex. It is challenged, in the first place, by the intrinsic aspiration of proponents of each of the branches of power to increase their authorities at the expense of others, seeking a dominant position for themselves. Furthermore, it is not an easy job to convince the members of the armed forces, especially the elite, to only engage in their professional duties. And, it is especially difficult to expect them to accept the appropriated budget without reservations, and to give up any requests and pressures to increase it. Resistance may also be encountered in reducing the discretionary rights and privileges of command elites. Above all, there is always the outstanding possibility that part of the political elite and the highest ranks of the armed forces may form – public or secret – alliances for the attainment of their partial objectives. It is therefore necessary that the constitution and the law guarantee the right of the public – the media, citizens and other civil society actors – to participate in the democratic civil control and supervision of the armed forces.

There is no doubt that the states of Western Balkans have yet to face the task of installing and/or applying the norms, procedures and instruments for the effective democratic control of their armed forces.[45] For that purpose, as already explained, it is necessary,

[44] Samuel P. Huntington, *The Soldier and the State: The Theory and Practice of Civil-Military Relations*, (Cambridge, MA: HUP, 1959).

[45] A. Cottey, A. Forster, and Timothey Edmunds, 'Security Sector Reform: Concepts and Implementation, (Geneva: Geneva Centre for Democratic Control of Armed Forces, 2002).

although not sufficient, that new constitutional and institutional solutions for the security sector are found. Namely, the states must carry out, in parallel, radical and aimed reform of the inherited armed forces.

Armed forces reform

First, it might be appropriate to delimit the concepts of the reform and reorganization of armed forces, especially knowing that reorganization is not infrequently offered as proof of reform.[46] In brief terms, reorganization aims at a systemic optimization of elements of the armed forces with a view to attaining their maximum combat readiness. It accounts for planned changes of the numerical size, structure, organization, formation, training, equipment and operational-tactical features of each or any components of the armed forces. That is why reorganization is a permanent internal task for the leading men of the armed forces, and one they can perform in accordance with their competences and/or instructions of their civil commanders. However, its scope does not extend to the normative and social status of the armed forces, their socio-political and professional profile, and the security strategy and doctrine. Only after changes are made will the need arise for the reform of each of the armed forces components. Therefore, reorganization is necessary but not sufficient for reform. In other words, reorganization is, in that context, one of the (main) methods to prepare the necessary assumptions for a successful reform.

Reform of the armed forces is initially motivated by a more or less radical change in the internal and/or external political and security environment; or rather the need to define a new and/or different security strategy appropriate to the created change, and – within that context – to define the new objectives and tasks for the armed forces and change the manner of their use and action. For that purpose, reorganization is certainly required. However, reform cuts into the social-political and professional tissue of the armed forces by essentially changing the contents and meanings of relations in the "society/citizens – state/political elites – armed forces/their members" triangle. This accounts for the consequent and mediated change of their relations with other, neighbouring – partner and/or rival – states. The reform, above all, requires and imposes changes in the political and cultural patterns of the society and armed forces and aims at the voluntary adherence of their

[46] Thus, e.g., Mr. Koštunica during his presidency of the FRY claimed (1) that the deposing of Pavković would endanger the stability of the complex and sensitive military system; (2) that Pavković was indispensable since he was the creator, main proponent and guarantor of the current Army reform, and (3) that his replacement would affect the army morale; cf. Tanjug, 27 December 2001.

members to the professional ethics based on a new and/or different registry of basic social values and interests.[47]

In the Western Balkan countries, at the beginning of the 21st century, both principal and compound reasons for the radical reform of their respective armed forces are in place. Most of these states are undergoing pro-democratic reconstitutions of their respective political orders, also extending to the security sector and appropriate armed forces. At the same time, the risk map of the Euro-Atlantic and the world community has been radically changed, especially after the terrorist attacks on the USA (2001) and Spain (2004). Therefore, the Western Balkan countries feel the parallel effects of the general and specific-individual reasons for armed forces reforms.

General reasons for reform resulted from the combined action of (a) changed security paradigm and the new and expanded list of challenges, risks and threats; (b) changed purpose, tasks and manner of use of the armed forces; (c) use of informatics in the armed forces and the development of new arms and equipment; (d) standardization, diversification and specialization of armed forces as appropriate for the new tasks, technologies and security integration; (e) intertwining of the national (internal) and regional-global (external) function of the armed forces; and (f) accelerated privatisation of the security sector and armed forces

The main cumulative change is revealed in the world trend towards the accelerated professionalization of the armed forces, especially the army. All that has naturally imposed the reorganization of each of the armed forces components for the purpose of qualifying them for the performance of new functions and tasks. That, along with other things, started a thorough change in the socio-professional being of the army and other segments of the armed forces. Contrary to the expected reintegration of the army in the native society, it appears that the Euro-Atlantic states are experiencing its functional separation and isolation. Departure from the conscription model changes the sources for the replenishment of the army making it decreasingly representative of the native society. This departure may seem initially advantageous due to the essentially external (interventionist) purpose of the army, since it reduces the need for special motivation of the paid soldiery. However, this does not remove the doubts and the unknowns, which may emerge in the possible internal use of these armed forces. Namely, there are e.g., sufficient reasons to doubt, in principle, the resistance of paid soldiers to internal political and ideological manipulations, i.e. the readiness of the officer corps to

[47] For useful findings see: Mihajlo Basara, Moral vojske u ideološkom pluralizmu – slučaj postkomunističke Jugoslavije, priređeno za štampanje, pp. 230, 2003.

unconditionally observe the supremacy of civil authorities in a situation of crisis. Moreover, this may additionally favour an interest-based alliance of political, economic and military elites and their joint derogation of democratic foundations of their own society.

The countries of the Western Balkans are still grappling with the initial tasks in the reform of their armed forces.[48] They face three groups of obligations: first, to submit the armed forces to legal civil authorities on a lasting basis; second, to adjust them to the economic and social capacities, as well as, to the actual security needs of their society; and third, to prepare them for the efficient elimination of new security challenges, risks and threats. This requires their profiling – organization, equipment and training – in line with modern standards that, once attained, would, along with other things, make them inter-operable with NATO.

The list of primary tasks clearly warns that this is a case of a complex, time-consuming and costly undertaking. Furthermore, in order to succeed it necessitates a long-term strategy of reform, and planned implementation in stages. That is, in the first place, a job for the state, which in principle should not depend on the momentary party and/or personal map. In other words, the start up and the successful completion of a – generally never ending – reform of the armed forces necessitates a majority social and political consensus in a given state. Once obtained, this consensus should be translated into a strategy of national security and a state plan for reform by the country's parliament. All that, on the other hand, requires parallel creation of constitutional and institutional assumptions for their unobstructed implementation. But, even that is not enough.

The initial and true trials emerge due to the difficulty in reforming the armed forces in economically and socially exhausted societies of the Western Balkans. Therefore, it is not easy to establish the actual reform capacities of these countries. This makes things all the more difficult since the transformation of the armed forces should unfold in parallel with a fundamental reform of society, which is already making the citizens pay a high economic and social price. That makes the rational management and reform allocation of otherwise limited funds much more difficult. Knowing that all this should be preceded by an irrevocable abandonment of the authoritarian and (post)war setup of the state and society, it is easy to conclude that the reform of the armed forces will be neither fast nor easy. In view of all that one may claim that all countries of the Western Balkans suffer from the chronically shortage of preconditions for a successful and let alone fast, reform of their armed forces.

[48] A. Cottey, A. Forster, and Timothey Edmunds, 'Security Sector Reform: Concepts and Implementation, (Geneva: Geneva Centre for Democratic Control of Armed Forces, 2002).

Focusing our attention, for a moment, on the reform of the army we shall easily note that, for instance, the joint state of SaM lacks sufficient conditions for the successful performance of this task. The essential deficiencies are currently revealed in the following points:

- The state community of Serbia and Montenegro has a deadline of three years, which is too short a deadline for a thorough reform of the Army. The first stage of the reform must therefore unfold on two levels: plan "A" in case the joint state survives, and plan "B" if the member states become independent.
- The authorities in Montenegro have no economic motives for army reform. According to unofficial estimates Montenegro pays about 50 million euro into the joint fund, while the costs of sustaining the army in that republic amount to about 60 million euro.
- The authorities in Serbia have, for a long time already, been preoccupied with the preservation of Serbia's statehood, as well as the need to deal with the economic-social consequences of the reform carried out so far in order to be able to continue it. They will still have to tackle the reform of the institutions of the system, as well as parts of the armed forces – the police, secret services and par police forces. Therefore, army reform is not a priority of local elites and parliamentary parties.
- The part of the Constitutional Charter which addresses the army and defence is full of constitutional lacunae and imprecise definitions of a kind that may or may not be removed by relevant laws. Moreover, the legal order in the joint state has yet to be completed, since the member states still have to adopt their new constrictions, and only then, in accordance with them, pass the new laws.
- Bearing in mind that the parliament of the joint state mostly does not sit, the Army still operates without a defence strategy and a military doctrine. Therefore the MPs have not yet even started to work on the new legislation governing the army and defence; and, finally,
- The Parliaments of Serbia and Montenegro have not been presented a state plan for army reform. That is why no one in this country knows with any degree of reliability just how long the reform is going to take or how much it will cost, or still less, who will control its implementation.

It would be hardly surprising if some of these deficiencies were removed by others. Bearing in mind that the survival of the joint state depends more on the needs of the EU and the USA, it appears that foreign meddlers will decide on its destiny, rather than its own citizens and rulers. It is also possible that the reform of the

army is objectively transferred to the competence of NATO as soon as Serbia and Montenegro join the Partnership for Peace. In that case it will be tailored according to the NATO model alone and suited to its strategic needs, rather than to the actual needs and possibilities of Serbia and Montenegro.

There is, of course, a worse scenario. It is entirely possible that the powers that be in Serbia and Montenegro arbitrarily break up the joint state prematurely and thereby once again keep out their citizens from the Euro-Atlantic community. In that case, the whole story of the reform will end in the struggle for the establishment of personal and/or party control over the divided army, police and secret services in their own state.

A somewhat less bad scenario, which I believe is unfolding now, may be reduced to a simulation of reform. Not only the reform of the army and defence, but also of the Serbian and Montenegrin societies. It is not difficult to see through the objectives and motives for this intention. In this variant, the changes will be forthcoming only in the cases of external or internal emergency. The holders of power are therefore hoping to obtain double benefits for themselves. In the first place, they believe that they will have an easier job passing the time until they have obtained their own state. Secondly, they also hope that by feigning change they will preserve their rule and power. That, however, will not prevent them from continuing with their vociferous pro-European declarations.

That is, among other things, evidenced by the fact that Serbia and Montenegro are not in a common security space. They do not have a joint national security strategy, and neither are the police forces and secret services of its members in any way bound to cooperate with one another. The absurd becomes quite obvious when the authorities of Serbia and Montenegro claim their wish for prompt entry into Europe. Either they themselves do not know, or they think that the citizens do not know that the European Union, along with everything else, has a joint foreign and security policy. The question is how they think that Serbia and Montenegro can join the EU if they are incapable or unwilling to pursue a common foreign and security policy in their joint state?

Security cooperation and integration

The current and indisputable request for global and regional security cooperation and integration conceals a multitude of unknowns. The developments after the collapse of the bipolar structure successively abolished the chances for thorough rearrangement of the international community, one by one. The disappearance of the Warsaw Pact in the first place did not cause the disbanding of the NATO. Moreover, during the 1990s, US-led

NATO imposed itself as the main guarantor and/or enforcer of global security. It assumed the task of adjusting the strategic environment of the Euro-Atlantic community to the needs of the single global superpower. It soon turned out that it has thereby paved the way for a monocentric profiling of the global community to suit the needs and interests of the USA[49] Its real self promotion into the single enforcer of the world peace, spurred by the terrorist attack on New York and Washington, started to materialize with the anti-terrorist war in Afghanistan, and recently also the preventive war against Iraq.

Thus the temporary balance of the current – political and security – turbulences in the modern world could be summarized in two key points. First, unilateral interventionism has, ultimately, not only reduced the security of the global community, but has on the rebound, also endangered the security of the USA. And, second, at work here is the overall – individual, joint and collective – search for a new and different security identity in order to attain sustainable security. This is substantiated by the failure of the rocket-bombarding struggle against terrorism. Moreover, the coalition partners of the USA have now found themselves within the reach of terrorism. All that has revived the key differences within the Euro-Atlantic community concerning its security strategy and setup. The first line of division, the one between the USA and the EU has been created at the time when the latter formally proclaimed its joint foreign and security policy. In that context, the still unsolved dilemma concerning the future of NATO has been revived. The uncertainty is made even greater by the EU decision to create its own armed – multilateral and intervention – forces. Although they will apparently rely on NATO (USA) for a long time yet, the possibility that they will be rounded-off and become independent in the medium term should not be disregarded altogether.

During the anti-terrorist and preventive war led by the USA all these dilemmas were brought to their heights. The first victim, after the United Nations – pushed aside long time ago – was NATO, which is now trying to incorporate itself into the recuperation of the disastrous U.S. victories, in order to survive. This has simultaneously endangered the security community of the EU. The first divisions appeared between the old union members (United Kingdom, Spain, Italy vs. France, Germany and Belgium), to be followed soon after by a split between the "old" and "new" Europe. After all that, the circle of the dilemmas is closed by a paradox: the USA is once again faced with the imperative of redefining its own security position and role. This necessitates a re-examination of the

[49] Joseph s. Nye, *Understanding International Conflicts: An Introduction to Theory and History*, (London: Longman, 2002).

current concept of – global and/or Euro-Atlantic – security cooperation and integration.

It seems that this should be the point of departure and/or continuation of security shaping of the Western Balkan countries. That could be substantiated by a few common reasons. The change of the US, EU and NATO strategic focus to the Euro-Asian centre decreased the interest in the Western Balkans. Therefore, its security integration has once again been postponed. Consequently, the accession of these countries to the EU has been put off for an indefinite period of time. At the same time, this has brought into question the belief of these countries that their entry into NATO inevitably leads to entrance into the EU. All the more so, since no one can reliably predict what will become of NATO in the future. Furthermore, there is no evidence proving that a direct link between the USA has brought certain countries of the Western Balkans greater security benefits or increased their chances for integration into the Euro-Atlantic community. Moreover, the impression is that the unlimited wish for integration has limited, as well as dissipated, the capacities for Western Balkan states to guarantee the security of their own region.

The perplexing crystallization of courses of the monocentric extraction of security for the global community requires that the Western Balkan states take into account a few inevitable facts in the shaping of their security identity. They, in the first place, cannot stop or avoid globalisation and its characteristic totalization of security challenges, risks and threats. That imposes the need for their participation in security cooperation and integration. However, these states will individually and all together be, and almost certainly remain, mere objects of globalisation. In other words, they will, independently of their will, directly feel the negative and much less positive consequences of globalisation. They are therefore facing a task of deciding how to reduce the damage, i.e. obtain possible benefits from globalisation. These states cannot even seriously influence the pace and scope of their (security) integration into the Euro-Atlantic community. No matter how they have tried to fulfil all the requirements, the decision whether any one of them will be integrated, and if so, where and how, will be taken by Brussels, in line with the US, EU and NATO interests and on the basis of flexible and arbitrary criteria.

This certainly does not mean that the alternative is isolation or giving up the wishes to join the Euro-Atlantic community. We are, however, convinced that there are reasons to revise the list of priorities drawn under the decisive influence of this same community we wish to join. Therefore, the key motives of the local states and their elites for a prompt entry into NATO are questionable. Namely, the impression is that the lack of readiness of the local states to jointly remove the threats to their security is in a reverse

proportion to the public will of their elites to enter NATO as soon as possible. But, security cooperation, and integration, is not a purpose unto itself. There is no doubt that by entering NATO through the Partnership for Peace the countries of Western Balkans will increase their security capacities. But, there is nothing to prove that this membership will, by itself automatically remove a single one of the – internal or external – threats to their own security.

Even if we conditionally accept that the foundations of the future security of the world are today laid in Afghanistan and Iraq, it is clear that the states and citizens of Western Balkans will not acquire substantial security benefits. They will continue to be exposed to unreduced effects of local challenges, risks and threats. Their security is, therefore, primarily and directly endangered in local frameworks. Therefore, the first task is to formulate and begin mutual security cooperation and integration. All the more so because this is a region neglected in security terms, and one that has never managed to develop autonomous mechanisms, procedures and instruments required to reach sustainable security.

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SECURITY SECTOR REFORM: CONCEPTS AND IMPLEMENTATION[1]

I. What is Security Sector Reform?

Security Sector Reform (SSR) has emerged as a key concept in policy and academic circles in recent years. Its origins stem from two main areas. First, from the development community, who have increasingly acknowledged the important role that the 'security sector' plays in issues of economic development and democratisation. Second, from the field of civil-military relations (CMR), particularly in relation to developments in central and eastern Europe, where post communist circumstances have led many analysts to think more holistically about key aspects of the CMR debate. SSR takes a holistic approach to the security sector that manifests itself in two ways. First, by recognising the importance of militarised formations other than the regular armed forces in (civil-military) reform efforts. Second, by recognising that the role of security and security sector actors in political and economic reform is important and complex, and not simply limited to questions of military *praetorianism* and civilian control over the armed forces.

There is no clear and agreed set of definitions for SSR. Present usage tends to be dictated by the concerns of particular academic or policy communities. Two approaches define the scope of the definitional debate. The first is concerned with those militarised formations authorised by the state to utilise force to protect the state itself and its citizens. This definition limits SSR to organisations such as the regular military, para-

[1]Report for the Geneva Centre for Democratic Control of Armed Forces. Security Sector Reform: Conceptual Framework and Practical Implications (Workshop 20-22 November 2001); Security Sector Reform in Central and Eastern Europe: Criteria for Success and Failure (Workshop 22-23 November 2001) Paper presented at the Workshop "Criteria for Success and Failure in Security Sector Reform," held on 5-7 September 2002, in Geneva, Switzerland. The Workshop is organized by the Geneva Centre for Democratic Control of Armed Forces (DCAF).

military police forces and the intelligence services. The second approach takes a wider view of SSR, defining it as those organisations and activities concerned with the provision of security (broadly defined), and including organisations and institutions ranging from, for example, private security guards to the judiciary. However, arguments over the definitional issue in SSR can be unhelpful and prevent analysts making progress on real issues of reform. A way out of the mire of the definitional debate is to take a problem driven rather than a definition or institutional driven approach to SSR. In this context, both poles of the definitional spectrum can be incorporated within the SSR concept, with specific contexts and circumstances dictating which elements of SSR are most applicable for addressing particular problem areas.

A problem driven approach defines the broad scope of SSR and then uses the elements of this that have relevance for the particular problem or context concerned. Broadly, the security sector can be defined as being concerned with 'the provision of security within the state'. However, SSR also suggests an explicitly normative direction for the concept in the sense that reform prioritises the provision of security within the state in a preferred way. Therefore, a normative working definition of SSR is that it concerns 'the provision of security within the state in an effective and efficient manner and in the framework of democratic civilian control'. Specific elements of SSR – such as police professionalisation or democratic control of armed forces – all fit into this broad definition and help to add to a more complete understanding of the SSR process as a whole. These specific elements do not occur in a vacuum and need to relate to the wider SSR process, but the extent to which they do so will depend largely on the particular problem being addressed. Thus, for example, in the Ukraine, democratic control of armed forces necessarily needs to consider the role of intelligence services or Interior Ministry troops as well as the regular military because they are particularly politicised actors in this area. In contrast, in Hungary, issues of democratic control of armed forces remain concerned much more specifically with the regular military. This definition therefore accepts that there are distinct targeted components of SSR, while recognising that there are also generic crosscutting issues inherent in SSR that have relevance to the security sector as a whole.

This definition of SSR contains two key normative elements. The first of these is the importance of democratisation and civilian control in any process of SSR. The second is the importance of developing effectiveness and efficiency in SSR. While related, these two pillars of SSR can have their own particular demands, rewards and problems.

II. Why Security Sector Reform?

SSR is a central element in any process of post-authoritarian or post-conflict transition. In particular, it plays an important role in the following six related areas:

Democratisation

The security sector can be an important obstacle to democratisation. Security sector actors are potentially influential in domestic politics, with their monopoly (or, at least, dominance) of the state's tools of coercion. If, as was the case in much of central and Eastern Europe, security sector actors are politicised, then they may be tempted to act in a partisan or praetorian manner in relation to domestic politics. Even if security sector actors do not have praetorian tendencies themselves, they may be the subjects of attempts by partisan factions within the civilian sector to draw them into politics and disrupt democratic processes. Thus, effective and democratic civilian control of the security sector is a key component of any process of democratisation.

Good Governance

Good governance refers to the mechanisms and arrangements through which appropriate public goods are provided for the citizens of a state in an effective and efficient manner. A key public good is security. It enables people to live their lives and carry out normal economic activity without fear of conflict, violence or banditry. Because of this, the security sector can be both an enabling force for good governance, and a significant obstacle in its way. Thus, an effective security sector is a crucial element in tackling corruption or organised crime. Effective and efficient border guards, for example, are a key mechanism for preventing drugs smuggling or other cross-border criminality. If security sector actors are engaged in activities which intensify these problems –for example if border guards are unable to effectively address smuggling or are actively engaged in it themselves – then good governance can be undermined. More widely, efficiency in the security sector is a central component of good governance. This concerns the affordable provision of effective security arrangements, in a manner which does not place inappropriate demands on society or the economy.

Economic Development

Economic development and activity is damaged by instability and unpredictability – both factors which stem from the ineffective provision of security. Corruption, for example, can undermine legit-

imate economic activity. Companies may be reluctant to invest or operate in states where security for their employees or legal protection for their interests – such as through enforceable contract law – is absent. As with good governance, the security sector can play a key role in addressing these problems through the effective provision of a secure environment conducive to development. If it is dysfunctional, it can be a central impediment to reform. In addition, post-conflict (including post-Cold War) societies often have bloated and inefficient armed forces that are a substantial drain on state resources. While effective SSR is generally expensive in the short to medium term – through demobilisation costs, professionalisation or the purchase of new equipment – in the long term an effective and efficient security sector brings major economic benefits.

Professionalisation

Professionalisation, as used in this context, refers to security sector actors that are able to fulfil the demands of the civilian government of the state in an effective and efficient manner. Professional armed forces, for example, are those who have a clearly (state-) defined role, and who are structured to fulfil this role in the most appropriate manner.[2] Thus, in much of central and Eastern Europe, the change in the geopolitical and geostrategic landscape brought about by the end of the Cold War fundamentally altered the role and purpose of the armed forces. Professionalisation was an important part of the process by which states in this region adapted their armed forces to this new environment. They have considered the requirements of the new security environment, and attempted to build or refashion their security sectors to meet this in the most appropriate way. Professionalised armed forces are therefore tailored explicitly to defined tasks and roles, and are better able to meet future military challenges and requirements.

Conflict Prevention

SSR is an important element of the wider conflict prevention agenda, particularly in regions emerging from conflict. Successful SSR, in the sense of the provision of security in an effective and efficient manner in a framework of democratic civilian control, can add to stability both internally and regionally. Internally, SSR can facilitate the effective management of tensions and problems which can lead to instability and conflict. Externally, a predictable, professionalised security sector under democratic civilian control and with a clearly defined role can act as an important regional confidence building measure. Moreover, the democratic peace concept suggests

[2] 'Professional' should not automatically be taken to mean 'all-volunteer'. While a professional *soldier* is a volunteer rather than a conscript, a professional *military* can include conscripts as long as it fulfils the criteria outlined above.

that democracies – with democratic civil-military relations – are less likely to go to war with each other. The development of an increasingly stable security community in central and Eastern Europe appears to support this thesis.

Integration with Western Institutions

SSR has been an important accession criterion for countries wanting to join western institutions such as NATO and the EU. NATO, particularly, has been active in promoting SSR issues in central and Eastern Europe through its Partnership for Peace (PfP) initiative and its Membership Action Plans (MAPs). While future decisions on accession are likely to be informed as much by political reasons as by specific SSR successes, SSR remains an important factor in post-communist countries' processes of engagement with NATO. Indeed, the experience of the new NATO members – whose SSR programmes did not focus sufficiently on the development of effective, efficient and interoperable armed forces – has led to the introduction of more stringent technical SSR criteria (in the form of the MAPs) for other prospective NATO members, and progress in SSR likely to be a necessary precondition of any further expansion of the PfP.

III. Implementation of Security Sector Reform

SSR is a process rather than an end point. International and domestic security requirements are inherently dynamic, and all states have to be able to adapt their security sectors to meet these demands effectively. Democracy too is a continuous process, and all established democracies adapt and reform their democratic procedures in accordance with changing circumstances. Thus, for example, the terrorist attacks of 11 September 2001 have initiated a major review of security sector controls and priorities in the United States. However, SSR does make particular demands in post-authoritarian and post-conflict societies. In these environments, there is often no established procedure for democratic control of security sector actors, despite the fact that there may have been very strong civilian – though not democratic – control during the authoritarian period. Structures for the bureaucratic management of the security sector fit authoritarian rather than democratic patterns and are often deeply politicised. Security sector actors themselves are often also politicised, and used to playing (or being used to play) a key (partisan) role in domestic politics. The security sector – or at least elements of it – is likely to have been a key instrument of authoritarian control and, as a result, tends to be tied to the old regime in relation to both ideology and its own interests. If a society is emerging from conflict, then the security sector will have to undergo a fundamental role change from one structured around the demands of conflict – in which it is likely to

have played a central role – to one more suited to a peacetime environment. In general this will involve a diminution in the size and importance of the security sector, and so is likely to directly threaten security sector actors' own sectional interests. The SSR agenda also incorporates a range of often institutionally separated domestic institutions, with their own chains of command, responsibilities and bureaucratic norms and procedures.

All these factors both necessitate and, potentially, impede SSR. However, several lessons emerge from the experiences of central and Eastern Europe in this area over the past ten years. In particular, it is clear that SSR processes in the post-authoritarian environment fall into two overlapping and interrelated phases, 'first generation' reforms, and 'second generation' reforms.[3] First generation SSR concerns the establishment of new institutions, structures and chains of responsibility for the security sector. Second generation SSR concerns the consolidation of previous reforms, and the effective and efficient operation of institutions and procedures at a sustainable cost for the state and society. In addition, SSR in central and eastern Europe has occurred at a time when other areas of transition – such as the introduction of market economies and wider political reform – have been more pressing priorities for governments and societies. This has meant that the political commitment and resources available for SSR have been limited, and has forced governments to prioritise their activities in this area. In general, therefore, central and eastern European states have concentrated on issues of democratic control of the security sector rather than the effective and efficient operation of the security sector itself.

First Generation Security Sector Reform

First generation SSR has a clear basis in the traditional civil-military relations literature. To this end, it is primarily concerned with the establishment of appropriate structures for (democratic) civilian control, and measures to depoliticise security sector actors and remove them from partisan intervention in domestic politics. Key elements of first generation SSR include the establishment of civilian control over the security sector, with a clear delineation of responsibilities between relevant actors, including the executive, legislature, bureaucracy, security sector formations and different levels of government (federal, republican, local etc). In the case of regular armed forces, for example, this means the establishment of clear roles and appropriate structures for civilian control through defined chain of command responsibilities for the Commander in Chief

[3] The distinction between first and second generation problems has been advanced by the ESRC Transformation of Civil-Military Relations research team. See Timothy Edmunds, Anthony Forster and Andrew Cottey, 'The Second Generation Problematic: Rethinking Democracy and Civil-Military Relations in Central and Eastern Europe', Armed Forces and Society, forthcoming.

(often the president), the General Staff, the Ministry of Defence, Defence Minister and parliament, and a clear delineation of responsibilities between different levels of government. In central and eastern Europe this has occurred through the drafting and implementation of constitutional and legislative provisions which clearly identify roles and responsibilities. Clear, civilian-dominated chains of command ensure that control of the security sector remains firmly in the hands of civilians and that the security sector's role is limited to that defined by legislation or the constitution.

First generation SSR also establishes the principles and structures for oversight and transparency of security sector issues. In central and eastern Europe, this has generally entailed empowering parliament to oversee and approve security sector budgets, and the establishment of systems of parliamentary committees to scrutinise security sector policies (such as a defence committee, a policing committee and so on). Processes of civilianisation of security sector bureaucracies, and the depoliticisation of the security sector itself are also key elements of first generation reform. While the latter remains a long term process, many of the post-communist countries in central and eastern Europe have addressed this by removing overtly political elements within their security sectors, including political officers and personnel with strong partisan connections to the old regime. When the West German *Bundeswehr* absorbed the East German National People's Army, for example, all soldiers over 55 years old, all political officers, all Generals and Admirals, and all personnel who had worked with the *Stasi* were retired. This removed the ideological core of the NPA, and allowed fundamental reform to occur. While other states in central and Eastern Europe generally did not (and because of different national circumstances were not able) to purge their security sectors to the same degree, all implemented policies of depoliticisation of one sort or another.

Finally, a key element of first generation SSR is to provide the groundwork for reforming and professionalising security sector formations. This entails defining missions, tasks and structures for security sector actors in line with the priorities outlined in relevant legal documents such as national security concepts. Where this has been most successful in post-communist Europe, it has involved a 'first principles' assessment of what a country's security needs actually are, and what the specific role of security sector actors is in addressing them. In turn, this provides a map for the future reform of the security sector that allows for coherent future resource and development planning.

Second Generation Security Sector Reform

First generation reform is a necessary but not sufficient element of SSR. Indeed, while many states in central and Eastern Europe have made significant progress in first generation issues, in practice SSR reform challenges remain in key areas. The majority of these lie

in areas of second generation SSR, and are concerned with the further consolidation of democratic procedures of oversight and transparency, the way structures and institutions implement policy, improvements in effectiveness and efficiency, and the wider engagement of civil-society. For example, while mechanisms for civilian control of the armed forces have been widely established across post-communist Europe, in practice second-generation reform issues mean that difficulties remain in key areas. Thus, while central and eastern European armed forces have been removed from domestic politics, and praetorian tendencies have largely been eliminated, in most countries the military still has a disproportionate (and sometimes exclusive) influence over defence policy. This is often not because structures and procedures for civilian control of defence policy have not been established, but because of a distinct absence of civilian expertise in – and often interest in – defence issues. The development of an informed civilian cadre that has the skills and experience required to, for example, provide effective parliamentary oversight of the more technical aspects of defence policy is therefore a key second generation SSR issue. Expertise in new areas does not develop overnight, and this is clearly a long-term element of SSR. However, it is crucial if democratic oversight of the security sector is to function properly.

A related second generation SSR issue concerns the capacity of security sector bureaucracies both to implement policy, and to adequately support the oversight and transparency functions of other areas of the security sector infrastructure. If the Ministry of the Interior, for example, does not have the resources, mechanisms and qualified staff to provide a detailed breakdown of where and how the budget for interior ministry forces is spent, then detailed and effective oversight of that budget is difficult. Capacity problems have manifested themselves in a number of ways across central and Eastern Europe. These include an absence of detailed information on security sector spending, poor analysis of available policy options, unrealistic assessments of the relationship between goals and resources, and bureaucratic structures unable or unwilling to implement security policy. Capacity problems may also be intensified by a lack of expertise amongst new civil servants in security sector bureaucracies. In turn, this may reinforce the reluctance of security sector actors to facilitate further reform because of a perception of civilian incompetence in security sector issues. Again, building capacity is a long-term component of the SSR process, but without it the consolidation of democratic procedures is problematic.

In common with bureaucratic reform problems, second generation SSR issues are visible within security sector formations themselves. Thus, a commitment to reform at the highest level of the armed forces will be difficult to implement if the mid-level officer corps remains unconvinced of, or does not understand, the rationale behind the reform process. In these circumstances, reform programmes may not be adhered to in practice because of creative non-compliance or simply because of ignorance. These problems are likely to be reinforced if – as is likely – SSR involves a transformation of the role and structure of particular elements of the security sector that will threaten jobs or damage individual interests. The development of security sector education and training programmes may go some way towards tackling these problems but, in many cases, it is likely that only generation change within the security sector will address them fully. Similarly, post-conflict downsizing of the security sector can create further problems, and add to the cost of implementing SSR. Indeed, while downsizing may reduce security sector-specific budgets, often this transfers expense to other sectors of government finances such as welfare. Effective retraining programmes for demobilised personnel will add further costs to downsizing programmes, but if they help to effectively prepare former security sector personnel for life in the civilian economy, will bring benefits to the overall economy in the long-term.

Finally, the effective engagement of civil-society in security sector issues is of crucial importance to SSR. Society more widely is central to the legitimisation of security sector actors, particularly (though not exclusively) in a democratic context. Without societal legitimisation, the security sector's role in the effective provision of security for a state's citizens will be fundamentally undermined. Moreover, civil-society is also central to many of the 'new' roles that security sectors are increasingly expected to play – such as humanitarian intervention – which require more complex and potentially fragile mechanisms for legitimacy than traditional defence of national territory missions. Without public support the security sector's participation in these 'new tasks' becomes problematic. In addition, civil-society plays three roles in the consolidation of democratic control of the security sector. First, through the media, non-governmental organisations, academics and so on, it provides an alternative, non-governmental source of information on security issues for both policy makers and the public at large. Second, civil-society provides the opportunity for popular debate, discussion and criticism of security issues. Finally civil-society can act as an important mechanism for holding other actors in the security sector accountable through exposing malpractice, forming critical judgements and so on. In much of post-communist Europe, civil-society engagement – and indeed civilian engagement more widely – with security sector issues is limited, and during the communist period was non-existent. This is beginning to change – and the NATO's involvement in the Kosovo campaign, for example, brought security issues to the fore in many societies – but remains a key factor in second generation SSR across much of the region.

Measuring Performance in Security Sector Reform

Because SSR is a process rather than an end point, measuring 'success' or 'failure' can be problematic. The holistic nature of SSR means that 'success' – or at least 'performance' – is only likely to be visible after time, when the 'big picture' can be considered.

Particular reforms may be assessed as 'successful', but can be undermined if other elements of the security sector system are unchanged. Thus, a professionalised police force may be considered an SSR success, but the implications of this for SSR as a whole may be undermined if, for example, the judiciary remains corrupt and partisan. 'Successful' SSR therefore is closely linked to 'successful' processes of wider democratisation and development. However, these difficulties do not mean that performance cannot and should not be evaluated, or that success on a case-by-case basis is irrelevant without wider success in the 'big picture'. Success in particular areas of SSR helps to advance the SSR process as a whole by providing momentum for reform and offering examples of success and good practice. In addition of course, it offers important advantages in the specific area of SSR concerned.

There are three methods of evaluating performance which attempt to provide criteria for marrying together both programme specific and 'big picture' evaluations of SSR. The first of these is a generic framework approach. This provides a normative, 'ideal type' against which performance can be measured. Thus, for example, an ideal type for democratic control of armed forces may include factors such as transparency in defence budgeting, effective parliamentary oversight of defence policy and civil-society engagement in defence issues. At its crudest, this approach measures performance by 'ticking' a series of boxes, each of which corresponds to particular normative criteria. This approach can work well for considering the overall progress of SSR, but struggles to provide assessments of specific elements of the reform process. In most cases, the normative criteria involved in a generic framework assessment are not absolutes, and are open to subjective interpretation and variation. Moreover, within a broad ideal type – such as democratic civil-military relations – there can be many different models of how to achieve this. Thus, democratic civil-military relations are provided by very different systems in the United Kingdom and the United States. Imposing particular models on countries with different historical, political, structural and social traditions and circumstances can be problematic and counterproductive.

A second method of evaluation is the collective/regional approach. This measures performance against specific international institutional agendas. Thus, in central and eastern Europe, NATO's MAPs provide specific goals and indicators which must be achieved in SSR. This approach has the advantage of providing specific criteria for the SSR process to work towards. Its disadvantage is that it can encourage an SSR process which is focused on 'jumping through hoops' rather than pursuing holistic reform. In central and eastern Europe for example, NATO interoperability criteria have led some countries to concentrate on the development and reform of small cadres of their armed forces to meet NATO criteria at the expense of the development of the military as a whole. A third

method of evaluation is the process/facilitation approach. This focuses on specific empirical rather than normative criteria, which act as 'facilitating elements' for reform. Thus, for example, it concentrates on measuring factors such as transparency or oversight rather than 'democracy'. This method provides a useful mechanism for measuring progress in certain areas, but can miss out on the bigger picture of SSR.

IV. Criteria for Success and Failure in Security Sector Reform

Despite the difficulties of implementing and evaluating SSR, central and eastern European experiences point to a variety of strategies for addressing these problems.

First Generation SSR

While first generation SSR is only an initial step in the reform process and is not sufficient in and of itself, it does provide the essential context for future reform efforts. Moreover, it is an area where visible successes are achievable in the short term and these in turn can create and maintain momentum for more in-depth second generation SSR. A key reform in this area is the establishment of structures for civilian control over armed forces. In federal systems, this entails clearly delineating appropriate responsibilities between different levels of government. In addition, visibly bringing civilians into the security sector decision-making processes through, for example, the establishment of parliamentary defence committees or a National Security Council with a high proportion of civilian members, can be important. A concerted effort to increase the number of civilians in security sector ministries also feeds into this process. Even if there is an absence of civilians with relevant expertise, these first steps towards civilianisation are important because they lay the groundwork for long-term second generation SSR. Crucially, these first generation reforms are easily measurable, and if sufficiently publicised, can help to illustrate progress in core areas of SSR in a short period of time. First generation reform is a necessary but not sufficient condition for SSR. As such, it also needs to be accompanied by measures which target second-generation SSR issues.

Second Generation SSR

Second generation SSR tends to deal with the most intractable and difficult areas of the reform process and so is often inherently long-term and difficult to measure. However, progress in second-generation issues is visible throughout central and eastern Europe. Certain SSR strategies have been particularly useful. These include, first, the provision of appropriate and coherent training for military

personnel, and for civilians working in security sector bureaucracies. Over the long-term, this can help to address inertia and opposition to reform by creating indigenous communities of reformers within the security sector itself. Second, appropriate programmes for retraining security sector personnel dismissed as a result of reform or downsizing programmes can better prepare them for civilian life and increase their chances of finding civilian employment. This will allow former-security sector personnel to better contribute to the economy as a whole and will lesson welfare demands on the state budget as a result of post-security sector unemployment. Increased employment opportunities will also lesson the number of former security sector personnel who become involved in organised crime or other destabilising activity as a result of dismissal. Third, the establishment of human resource management structures and procedures within the security sector, including appropriate career paths, promotion based on achievement, and competitive salaries, is central to its professionalisation. These measures are likely to improve retention rates and lesson the temptation for security sector personnel – such as border guards – to become involved in or complicit in illegal activity. Finally, official security sector actors should not see the engagement of civil-society actors with security sector issues as a threat. In practice, constructive and proactive engagement can make a positive contribution to SSR, by strengthening the legitimacy of the security sector and providing an opportunity to widen and deepen mechanisms for democratic oversight and transparency.

Engagement with the West

Active engagement with western countries and institutions also brings advantages to the SSR process. Thus, for example, in central and eastern Europe, NATO's specific programmes to encourage SSR – such as PfP – have advanced the pace of reform processes. This has been particularly visible in the Baltic States where western engagement has been both in-depth and long-term, and where SSR has made significant progress. While western engagement in SSR is not without its problems – central and eastern European states have sometimes complained of conflicting, inappropriate or partisan advice – it does bring advantages. These include training for security sector personnel (including civilians) both in-country and at western institutions, the provision of local advisors and financial support for the reform process. As with many first generation reforms, participation in western sponsored activities – such as sending officers to western staff colleges – can provide a visible demonstration of a country's engagement in SSR, which can be easily publicised. In addition, many states in central and Eastern Europe have been active participants in peacekeeping or multinational security sector activities. These help to expose security sector personnel to the norms and operating procedures of other countries and are high profile opportunities to communicate good practice and professionalism to domestic and international audiences. For example, the participation of Czech armed forces in peacekeeping missions has served to significantly increase their prestige amongst a previously sceptical general public. However, if training and multinational experience are to have a real impact on SSR, it is important that the participating personnel or units are returned to positions within the security sector where they can have a genuine impact. The 'knock on' effects of officer training to the security sector as a whole may be limited if, for example, all western-trained officers are subsequently posted to headquarters jobs rather than returned to their units.

Local Strategies

SSR cannot be imposed from above. While models of security sector organisation from other countries may be useful as reference points for particular SSR programmes, it is unlikely they will be successful if they are used as rigid blueprints for reform. Different historical, political, structural and social legacies create environments, which require local, context-specific strategies for reform. Thus, for example, the British constabulary model of policing differs greatly from the gendarmerie tradition in France, the *carabinieri* model in Italy or the role of interior ministry forces in much of post-communist Europe. Moreover, long-term SSR entails key second-generation issues such as the development of expertise, and effective mechanisms for security sector planning. In this respect, the local process of developing appropriate democratic security sector arrangements can be at least as important as the policy end-point itself. Imposing an externally generated blueprint for reform avoids (sometimes difficult) domestic security sector planning processes, which in themselves are a fundamental part of SSR more widely. Finally, reform needs reformers. If the SSR process is not driven from within the local context then it is likely that it will remain superficial, and will not tackle the underlying problems of the security sector. Often, of course, reformers will be hard to find in the security sector itself – particularly, if it perceives that its interests will be threatened or damaged by SSR. Under these circumstances, it can be useful to consider where reform is happening in other policy sectors (such as in finance ministries for example) and about how to harness and utilise this momentum and experience to help encourage reform in the security sector itself.

Problem Areas

SSR entails changing often powerful and influential institutions with established traditions, interests and agendas of their own. Because of this it is always likely to be challenging. However, central and eastern European experiences point to particular difficulties

in two areas. First, fundamental SSR is often expensive, particularly in the short to medium-terms. In the long-term, SSR will bring economic advantages for the reasons outlined above, but during the transitional phase professionalising and downsizing the security sector will often lead to an increase rather than a decrease in state budgets. If SSR is to be successful therefore it requires a realistic financial commitment from the government concerned. A second SSR problem concerns a tendency to concentrate on reform of the regular armed forces, to the exclusion of security sector actors such as interior ministry forces or the intelligence services. This has occurred for two main reasons. First, because the prospect of NATO accession (which, as an organisation is orientated towards regular armed forces) has been one of the key drivers of SSR in the region, reform has been biased heavily towards the military. Second, because secretive institutions such as the intelligence services are inherently more difficult to penetrate and engage with than other elements of the security sector. However, the experience of countries such as Ukraine illustrates that, often, it is these other security sector actors who pose the most difficulty in relation to their engagement in domestic politics or their exclusion from democratic mechanisms for oversight and transparency. It should be stressed again that SSR is a multifaceted issue, which entails reform efforts across a number of different governmental and policy spheres, often with different chains of command, responsibilities and bureaucratic norms and procedures. If it is to occur in a coherent, effective and successful manner therefore, it is critical that future reform efforts also include the more 'difficult' areas of the SSR agenda.

V. Conclusions

SSR has emerged a key concept in policy and academic circles in recent years. It recognises that the role of security and security sector actors in processes of political and economic reform is important and complex, and not simply limited to questions of military *praetorianism* and civilian control over the armed forces. The scope of SSR will vary according to particular problems and circumstances but can broadly be defined as concerning 'the provision of security within the state in an effective and efficient manner, and in the framework of democratic civilian control'.

SSR has important implications in six related areas: democratisation; good governance; economic development; professionalisation; conflict prevention; and integration with western institutions.

A reformed security sector can facilitate progress in all of these areas. A dysfunctional security sector can inhibit progress. While SSR is a process rather than an end point, and has relevance for all states, countries in post-authoritarian or post-conflict transitions face particular SSR problems. These include the politicisation of security sector actors, the absence a clear delineation of security sector

responsibilities and democratic, civilian controlled chains of command, problems of effectiveness and efficiency. SSR may also threaten the sectional interests of security sector actors themselves. Post-conflict security sectors are often outsized and a substantial drain on state resources.

SSR in transitional states can be conceived as consisting of overlapping first generation and second-generation reform issues. First generation reform is concerned with the establishment of appropriate institutional structures and legislation for democratic civilian control and depoliticisation. It is a necessary but not sufficient element of SSR. Second generation reform concerns the further consolidation of democratic procedures of oversight and transparency, the way structures and institutions implement policy, improvements in effectiveness and efficiency and the wider engagement of civil-society.

SSR is complex and involves a variety of different interests and institutions. However, Central and Eastern European experiences point to several key criteria for successful implementation. These include the early adoption of key first generation reforms; the adoption of clear strategies to address long-term second-generation reform issues; constructive engagement with the West; and the importance of developing local solutions for SSR problems.

Recommendations

Early adoption of key 'first generation' reforms. Central and eastern European experience has shown that visible successes are achievable in the short term in this area, which can create and maintain momentum for further reform efforts.

- Important 'first generation' reforms include:
  - A 'first principals' assessment of what a states security demands are, and a clear articulation what the role of various security sector actors are in addressing these;
  - The establishment of *structures* and clear chains of command and responsibility for civilian control over the sector;
  - The *depoliticisation* of key elements of the security sector;
  - The *civilianisation* of security sector bureaucracies and decision-making structures; and
  - *Rationalisation* of outsized security sector formations and bureaucracies.
- 'Second generation' reforms address the most intractable and difficult areas of post-authoritarian, post-conflict SSR. However, central and eastern European experience shows that the adoption of clear strategies to address these problems over the long-term can aid the reform process.

- Important strategies to address 'second generation SSR' include:
  - The provision of appropriate *training and education* for *both* military *and* civilian security sector personnel;
  - The provision of appropriate *retraining* programmes for dismissed or retired security sector personnel;
  - The establishment of appropriate *human resource management* structures and procedures within the security sector; and
  - The active engagement of *civil-society* actors in the reform process.
- Constructive engagement with western countries and institutions – while not without its difficulties – can bring advantages in relation to training and education, access to SSR advice and access to resources for reform.
  - *Military cooperation* can expose domestic security sector actors to other counties' norms operating procedures.
  - *Participation in multinational operations* can create new bases for security sector legitimacy in society.

SSR cannot be imposed from above, and the development of locally owned strategies for reform is important. In many respects, the reform *process* itself is more important than the imposition of a particular end-point.

SSR must be *problem driven* rather than *institution driven*, and as such must address all security sector actors of relevance. In particular, the difficulties of conducting SSR in 'difficult' areas such as interior ministry forces or the intelligence services must be grappled with.

Part One:

DEMOCRATIC CIVILIAN CONTROL OF ARMED FORCES

Simon Lunn

THE DEMOCRATIC CONTROL OF ARMED FORCES IN PRINCIPLE AND PRACTICE

1. Introduction: The Rise to Prominence of the Democratic Control of Armed Forces

The expression 'democratic control of armed forces'[1] is generally understood as the subordination of the armed forces to those democratically elected to take charge of the country's affairs. In its fullest sense it means that all decisions regarding the defence of the country - the organisation, deployment and use of armed forces, the setting of military priorities and requirements and the allocation of the necessary resources - are taken by democratic leadership and scrutinised by the legislature in order to ensure popular support and legitimacy. The ultimate aim being to ensure that armed forces serve the societies they protect and that military policies and capabilities are consistent with political objectives and economic resources. While a subject in its own right, the democratic control of armed forces must be seen as an essential part of and, indeed, a reflection of, the broader relationship between armed forces and the societies they protect.

During the Cold War the term the democratic control of armed forces evoked little discussion or debate beyond academic circles[2]. In most NATO countries it was largely taken for granted as attention focused on the potential use of armed forces in coun-

[1] The definition of "armed forces" can cause problems. This article will refer to forces under Ministries of Defence. However, in many countries, there are a variety of forces who bear arms and do not fall under the authority of the MOD, for example, internal security forces or paramilitaries. It goes without saying that all forces should be democratically accountable irrespective of subordination.

[2] The most noteworthy academic works on civil-military relations during this period were: Samuel E. Finer, *The Man on Horseback: the Role of the Military in Politics*, (Boulder, CO: Westview, 1986); Samuel P. Huntingdon, *The Soldier and the State,* (Harvard, H.U.P., 1957); Morris Janowitz, *The Professional Soldier,* (Glencoe, Ill: Free Press, 1960) and Amos Perlmutter, *The Military and Politics in Modern Times,* (New Haven, CT: Yale University Press, 1977).

tering the threat of Soviet aggression. Since the end of the Cold War, the question of the democratic control of armed forces has gained considerable prominence. A veritable cottage industry has sprung to life around it; workshops, seminars and conferences abound; theses, studies, articles by academics and practitioners alike clutter the market. A new centre has been created in Geneva dedicated specifically to the issue[3].

There are a number of reasons for the issue's sudden rise to fame. First and foremost was the transition that took place throughout Central and Eastern Europe as former Communist countries began to develop the democratic institutions and practices that are the hallmark of Western societies. It was soon apparent during this transitional period that the armed forces were one of the residual elements of the old regime that had to undergo fundamental change. Accustomed to civilian single party control and a privileged position in terms of resources and status they had to be brought under and made responsible to the democratic processes that were being put in place[4]. The issue became more pressing when NATO made clear that the democratic control of armed forces was one of the conditions the Alliance would be looking at in assessing the readiness of aspirants to join the Alliance. Prominent among the objectives of NATO's Partnership for Peace (PfP) initiative were the facilitation of transparency in defence planning and budgeting and ensuring democratic control of defence forces.

As a result, many would-be members and other partners have looked to the Alliance for advice and assistance as to what steps they should take. Here they encountered a central paradox. While NATO placed considerable emphasis on the democratic control of armed forces, no single model existed within the Alliance by way of example. For historical, cultural and constitutional reasons each Alliance member has adopted a different approach to the issue which defies the elaboration of a "fit all" formula. A series of NATO brainstorming sessions in the PfP framework shed considerable light on the various components of democratic control; but equally on the many variations that exist and therefore the difficulty of reaching a single definition. Agreement that "we know it when we see it, or rather we recognise when it does not exist" was about as close as was achieved. As one Alliance participant noted at one such session: "As soon as we get close to agreeing on criteria, one of us has to leave the room"[5].

This reflected the dilemma facing the Alliance and would-be members alike, and indeed affected other NATO "criteria" - the problem of assessing when countries had reached the desired level as judged necessary to become Alliance members[6]. For the aspirants the absence of a specific model had both advantages and disadvantages. On the one hand they were exposed to a variety of advice, not always consistent, as to the appropriate steps they needed to take. On the other hand, they were able to select from this advice and adapt to their own needs and circumstances.

This focus on democratic control coincided with a period of wholesale change for the forces of Alliance members, changes which themselves have consequences for the relationships of armed forces with their societies. The armed forces of all NATO countries are in transition as they restructure, reorganise and generally reduce away from Cold War military structures. Many have moved, or are moving, from conscript to all-volunteer armies. The roles and missions of these forces are also changing as they are increasingly engaged in Crisis Response Operations (CRO-s); missions which place new demands on the military. Furthermore, the development of technology and the Information Revolution has an impact on the way armed forces operate; and by way of an omnipresent and all pervasive media how they are perceived to operate by the public at large.

Collectively these factors represent a new environment and a new set of challenges to which the armed forces must respond; these adjustments in turn influence their role in society and the relationship between the military and political sides. The broader context of civil-military relations, of which the democratic control of armed forces is a part, is not a fixed process but is continuously evolving. All countries, members and partners alike, are having to rethink the consequences of the new security environment for the way their militaries operate.

These two developments - democratisation in Central and Eastern Europe (CEE) and the impact of the new security environ-

[3] The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was created through the initiative of the Swiss Ministries of Defence and Foreign Affairs jointly, with the goal of providing a specific focus on an issue of widespread and growing interest and relevance. In addition to its own research programme, it was hoped to bring a degree of much needed coordination to the many disparate activities under way in this field.

[4] The national standing of the armed forces varied greatly from country to country depending on historical experience. In Poland and Romania the military was held in high standing, in Hungary and the Czech Republic not so. However, irrespective of their national standing as a corporate group they were a repository of old thinking and represented an obstacle to successful democratisation.

[5] These formal sessions were reinforced by a plethora of workshops and seminars on the issue, many organised in aspirant countries at the initiative of Christopher Donnelly, the Special Advisor on CEE to NATO's Secretary General; another prominent player in providing assistance in the early years was the Centre for European Security Studies at Groningen, Netherlands.

[6] The Alliance was always careful to stress that there was no fixed or rigid list of criteria for inviting new members; readiness for membership would be a political judgement based on all relevant considerations.

ment - have given the democratic control of armed forces issue the prominence it enjoys today. Most Alliance countries have the appropriate mechanisms in place to absorb and adjust to the changes in the new environment. For countries of the CEE, life has been more problematic. They have had to cope with these changes while developing the mechanisms, procedures, expertise and attitudes of cooperation necessary to ensure effective democratic control, and at the same time (and most difficult of all) overcome the burden of the past. This has proved a formidable challenge.

2. The Essential Elements for Democratic Control of Armed Forces

While no single model was on offer, the intense activity surrounding the democratic control of armed forces issue saw the emergence of broad guidelines concerning the basic elements that should be present in one form or another to ensure democratic control. These are:

a. 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; establish the roles of the relevant institutions and also the status and rights of armed forces;
b. an appropriate mix of military and civilian personnel within the MOD (including a civilian Minister of Defence) to ensure that military expertise is placed into the appropriate political and economic context;
c. effective parliamentary oversight to ensure democratic legitimacy and popular support;
d. maximum transparency and openness including independent research institutes and an active and inquisitive media;
e. armed forces at ease with their role in society.

These elements are easy to define on paper. However, making them work in practice is another matter. Successful implementation rests on the respective roles of the executive and the legislature, and the relationship between them. It rests equally on the relationship of both bodies with the armed forces and on the division of responsibility and competence between the political and military sides. Developing the trust, confidence and mutual respect on which these relationships depend lies at the heart of effective democratic control.

3. Why Defence is Different

In all areas of government a degree of tension between the executive and the legislators is inevitable, in view of their respective functions. There must be a division of power and responsibility that on the one hand ensures effective action by the executive without a potentially dangerous accumulation of power; and on the other, ensures popular support through legislative involvement but without risking paralysis of action. Establishing this balance between "efficiency" and "democracy" is crucial to ensuring effective government and is particularly salient to the field of defence.

The need to establish such a balance is both more important and more difficult in the field of defence than other fields of activity. Defence is not just another spending department. It brings with it certain characteristics and qualities that complicate the relationship between the executive and the parliament and increase the inherent potential for friction between the two branches. There are several reasons why defence makes things more difficult.

First, because defence concerns the security of the nation and involves decisions to commit lives and expenditure for the nation's defence. Decisions of this magnitude impose an additional burden of responsibility on the political leadership to get things right and to ensure that decisions and policies enjoy popular support.

Second, because defence involves the maintenance of armed forces. In any society the military assume a special and distinctive position, chiefly as the principal possessor of weapons and armaments. Furthermore, the military also represent a highly-organised and disciplined group, knit together by traditions, customs and working habits; but above all, by the need to work together and to depend on each other in times of crisis and conflict - a dependence which can literally mean the difference between life and death. Such dependence builds strong bonds and loyalties and requires a degree of cohesion and coherence that few other professionals can claim. It is these qualities - discipline, dedication and loyalty - that make the military profession different, and in some ways, distinct from society.

There are those that argue that the changing nature of war and societal trends are diminishing these unique characteristics. This is not the place to discuss this issue in detail except to suggest that these values continue to provide the core of "soldiering" and what makes the military function in the armies of most Alliance countries.

In addition the highly organised and structured character of military life tends to give military men a rather straightforward and uncomplicated view of the world, a view that contrasts and is often at odds with the more complex, and by comparison, apparently "murky" world of politics. The terms concession and compromise, essential to the balancing and reconciliation of competing interests in domestic and international politics, do not sit easily with the clarity and directness of assessment and decision which are essential characteristics of an effectively functioning military. This can lead to very different perceptions of the same problem and can represent

a source of friction between the military and political sides[7]. At a minimum, such friction is constrained to grumblings in the officers' mess over the doings of 'our political masters'. At the most extreme it can lead to military interference with, or defiance of, the government of the day. When such episodes have occurred it has been frequently because the military men have suggested an allegiance to a higher calling - the nation, the constitution - than the transient government of the day[8].

[7] For a flavour of this difference in perceptions between the man in the field (or in this case at sea) and the politicians, see the comments of Admiral Sandy Woodward, Commander of the Falklands Battle Group as he took his force towards the Falklands: 'None of our plans seems to hold up for much more than twenty-four hours, as Mr. Nott (Defence Minister) footles about, wringing his hands and worrying about his blasted career. And the Ministry men play their intricate and interminable games with an eye to the aftermath ('get in quick if there's credit, be elsewhere if there's not').' Admiral Sandy Woodward with Patrick Robinson, *One Hundred Days: The Memoirs of the Falklands Battle Group Commander,* (London, HarperCollins, 1992). A thoroughly readable and informative account of the problems of modern warfare including the difficult interaction between political and military considerations.

Similar frustration was expressed by General Sir Peter de la Billiere, Commander of British forces in the Gulf War, during the build-up of forces: 'The level of ministerial indecision and looking backwards is appalling and desperately time wasting. There is every likelihood that we shall stay behind while the Americans go to war and our ministers dither over their decisions.' In, *Storm Command, a Person Account of the Gulf War,* by General Sir Peter de la Billiere, (London: Harper Collins, 1992).

[8] See, for example, the well known statement by General Douglas Mac Arthur: 'I find in existence a new and heretofore unknown and dangerous concept that the members of our armed forces owe primary allegiance or loyalty to those who temporarily exercise the authority of the Executive branch of government rather than to the country and its constitution which they are sworn to defend', quoted in Telford Taylor, *Sword and Swastica: the Wehrmacht in the Third Reich*, (London: Gollancz, 1953) p 354.

And in a similar vein: 'I have never served Tsars or Commissars or Presidents. They are mortal men and they come and go. I serve only the Russian state and the Russian people, which are eternal'. General Lebed, quoted in Chrystia Freeland, 'General awaits call of destiny: Gen Alexander Lebed is a man who makes the Kremlin nervous', *Financial Times*, September 6, 1994.

During the first of the summer schools for CEE parliamentarians organised in the mid-1990's, by the NATO PA in conjunction with the George C. Marshall Centre in Garmisch-Partenkirchen, Germany, there was considerable discussion of the question of whether there were ever circumstances under which the armed forces have the right to intervene internally: for example, to "save" democracy as when the army in Algeria prevented the fundamentalists taking power, or when there are competing democratic institutions as was the case when President Yeltsin used the Russian army against the Parliament. While it was agreed that there was never any justification for intervention against democratically elected authorities, it was evident that grey areas arose when the democratic legitimacy of the government itself was in question. This issue also raised questions as to whom armed forces took their oath of allegiance.

Most of our governments have at some time in their history experienced in differing degrees a "turbulent" military. Several members of the Alliance - Turkey, Greece, Spain and Portugal - have experienced such problems in their relatively recent past[9].

Today, none of the established democracies have serious worries on this issue. The respective roles of the military and civilians are well established and understood - albeit, as will be seen later, there are some areas where the dividing line is increasingly easily blurred. The significance of democratic control lies elsewhere - in the fact that in any society the military represent a strong corporate body, capable of exerting considerable influence over policy and the allocation of resources. The significance of democratic control of armed forces is to ensure that the armed forces and their requirements occupy an appropriate place in the nation's priorities, that they do not absorb an undue proportion of the national resources, nor exert an undue influence on the development of policy.

For these reasons, it is important to ensure that defence is organised and managed in a way that maximises military professionalism and efficiency, but also guarantees political control and popular support. There is an additional dimension which makes this a difficult goal to achieve. There is a tendency for the military to believe that military things are best left to the military men. This is understandable as the business of armed forces is to prepare for conflict and the potential loss of life. This makes the intrusions of outsiders or non-professionals a sensitive issue. This aspect is discussed in greater detail later. It is sufficient here to make three points. Firstly, there are certainly many areas that are rightfully the preserve of the military professionals who spend their time studying and perfecting the business of war and the management of the armed forces. Secondly, at some stage these military activities must come under the scrutiny of the political leadership to ensure that they are consistent with, and reflect, political aims and priorities. And thirdly, implicit in this situation in which the military accept the primacy of politics is the responsibility of the political side to ensure that it exercises informed judgement.

4. The Role of the Executive

The executive of any nation comprises the democratically-elected or appointed leadership, whether President or Prime Minister, or both, plus the permanent cadre of civil servants and

[9] The experiences of Spain and Portugal in making the transition to democracy and returning the armed forces to their appropriate place in society has been particularly helpful to the new democracies. See for example, the Rose-Roth Seminar on "Defence in Democratic Societies. The Portuguese experience", Lisbon, 20-22 April 1995. The particular role of the Turkish armed forces is also frequently noted in discussions of civil-military relations and the influence of history and political culture on the place of the military in society.

military officers. It is responsible for allocating defence its appropriate place in the nation's priorities, for adjudicating between competing claims, and for ensuring defence requirements are consistent with political goals and economic resources. In other words, the executive is responsible for seeing the "big picture" and for defining the national strategy within which defence must be set. The executive is normally responsible for the decision to go to war - with legislative approval - and for the strategic command and control of any conflict. Clarity of responsibility and the line of authority is obviously crucial.

Within the executive, the Ministry of Defence together with the General Staff is responsible for the "hands on" organisation and management of the defence establishment and for the running of the armed forces. This includes responsibility for the deployment and employment of armed forces, for the development of strategy and doctrine, for defence plans and budget, for personnel policy, and for their education, training and equipping.

The Ministry of Defence has to reconcile military requirements with real world political and economic constraints and also to arbitrate between the various services. The Ministry must also establish the degree of autonomy of the armed forces and the degree of intrusiveness of political supervision.

4.1 The Political-Military Interface

In looking at the role and responsibilities of the executive there are three broad areas where political and military interaction is of particular interest: the question of command; the use of civilians; and the dividing line between military and political competence and responsibility.

4.2 Command

First, the question of clarity in the arrangements for command of the armed forces in peace and in war. It goes without saying that responsibility for the decision to go to war must be clearly and unambiguously defined and that, where possible, this should be vested in a single individual, albeit subject to the agreement of parliament. In Presidential-parliamentary systems it is critical that the role of the President vis-à-vis the Prime Minister should be clarified. Likewise, there should be no doubt as to whom the Chief of Staff reports nor the line of authority. This again is easier said than done. No matter how tightly drafted, constitutions and legal frameworks frequently leave room for interpretation, particularly by forceful personalities.

Even the American Constitution, much admired for the simplicity of its language and the clear separation of powers, has not escaped unscathed. Under the Constitution, the President is Commander in Chief but the Congress has the power to declare war.

These definitions have left open the possibility for disputes over authority for those conflicts which fall short of a formal declaration of war, yet require the deployment of American forces and sometimes the loss of American lives. US forces have been deployed frequently by the President without the express authorisation by Congress[10]. Despite the War Powers Resolution the debate continues today and has echoes in Congressional strictures on the deployment of US forces in Bosnia and Kosovo, and now again on the potential use of military force against Iraq. This is not to comment on the merits or otherwise of the arguments, but merely to indicate that even in well-established democratic systems, differences arise over who has responsibility for the use of armed forces.

Likewise, the French Constitution which gives the President special powers for the security of the nation and the Government responsibility for the running of defence also leaves room for uncertainty, particularly in a period of so-called cohabitation when the President and Government represent different parties. This was evident at times during the recent period of co-habitation between President Chirac and Prime Minister Jospin.

There have been several cases in East and Central Europe where Presidents have attempted to interpret their roles as Commander in Chief and to develop special relations with the armed forces, circumventing the government and the Minister of Defence. The most notable of these was the situation in Poland when then President Walesa attempted to assert his prerogative over those of the Government. During a meeting in 1995 with then President of the NATO PA, Karsten Voigt, President Walesa stated that his own role as Commander-in-Chief of the Polish armed forces was a sufficient condition to satisfy the requirements of democratic civilian control. This proposition was diplomatically but firmly refuted. This problem was resolved, by the adoption of a new Defence Law and Constitution, although the President still retains considerable powers.

4.3 Role of Civilians

The second area of potential disagreement concerns the role of civilians in the Ministry of Defence. A standard feature of most Western democracies is that the Minister of Defence comes from a civilian background. There are a number of reasons for this, notably the fact that a civilian is considered better equipped to take account of broader policy issues and influences; and better able to fight the MoD's corner in the competition for resources.

This is not to say that military men cannot bring the same qualities to bear to the position of Minister. However, Western experi-

[10] See Louis Fisher, 'Congressional Checks on Military Initiatives', *Political Science Quarterly*, Vol. 109, No. 5, 1994-1995 and also Joseph R. Biden Jr and John B Ritch III, 'The War Powers at a Constitutional Impasse: a Joint Decision Solution', *The Georgetown Law Journal*, Vol. 77, No 2, December 1988.

ence suggests that a civilian background is more appropriate to cover the full range of tasks required of the position[11].

Similar questions of competence concerning the inter-changeability of civilians and military men occurs in the question of the role of the former in ministries of defence. Most, but not all, Western ministries of defence employ a large number of civilians to work alongside military officers in the organisation and running of the ministry. The use of civilians has clear advantages as they bring skills in terms of administration, management and finance that military professionals frequently do not possess. However, many civilians also work in policy areas which take them into military territory where, without a careful delineation of boundaries, friction can occur.

The use of civilians surfaced frequently as an issue in CEE countries during the early days of transition. Most partner CEE reacting to Western urgings rather rapidly produced 'civilians' in their Defence Ministries. However, most of these personnel were former military officers[12]. This was partly due to the dearth of civilian expertise available in post Communist countries, but also to the residual belief in the primacy of the military in defence matters. The respective roles of civilians and uniformed personnel raises the broader issue of whether service life produces an exclusively military approach which permanently influences the working methods of a military officer and therefore narrows his future employment applicability. Discussion of this issue lies beyond the scope of this paper. Clearly, much depends on the individual. Many military men make the transition to civilian policy positions, for example at NATO, without apparent difficulty. However, the broader answer is that it is important to maximise the particular skills of both the civilian and the military, professional or retired, and ensure that they complement and reinforce each other.

4.4 The Political-Military Dividing Line

This raises the third and central issue - the question of identifying the division of competence and responsibility between the political and military sides. This is an issue which permeates all aspects of democratic control. Are there areas which are strictly military only, where the military should be allowed to get on with their business unimpeded by political interference? Common sense suggests yes: that there are areas such as the development of doctrine and tactics and the education and training of armed forces which should be left

[11] Again, during the first summer school for CEE parliamentarians held at Garmisch, the Western assumption that a civilian was best suited for the post of Minister of Defence was hotly contested by some of the CEE parliamentarians, indicating how deeply embedded were the norms of the previous Communist regimes in fencing off the field of defence for the military only.

[12] During an official NATO PA visit in 1994 to a partner country, the Minister of Defence pointed to the civilians accompanying him as proof of civilian control. It was later pointed out that these 'civilians' had been in uniform until the previous day.

to the military professionals. Likewise, in conflict situations, it would appear obvious that the handling of operations should be governed by professional military judgement. However, practice and experience tells a different story and suggests that few military areas are free from some form of political interference or oversight.

The final verdict has to be that all military actions are accountable at some stage to the political side. But this begs the question at what stage should politicians exercise direct influence? Or to put it more directly, when should political judgement and authority take precedence over that of the military? This is not an easy line to define and there are a number of areas where it easily becomes blurred. The following are illustrative examples of areas where political and military interests are often in collision.

4.5 Rules of Engagement (ROE)

ROE-s are guidelines for the military in carrying out their mission and which define their scope of action taking full account of the political context. These cover a wide range of activities from strategic to operational and frequently give rise to frustration between the military and political sides. At the level of grand strategy, the competing tensions between military and political requirements is best illustrated by the Cuban Missile crisis. The American military sought to establish the line at which Soviet ships had to stop beyond the range of MiG fighters from Cuba, but that would have reduced the decision time for Soviet leadership. The political requirement to provide more time but which increased the risk to US forces won the day.

Admiral Sandy Woodward, leading his Task Force towards the Falklands and uncertain about the interpretation of the ROE's he has been given, provides a graphic description of a Commander's frustration:

> …the picture is gloomy. The politicians are probably going to tie my hands behind my back and then be angry when I fail to pull their beastly irons out of the fire for them[13].

Woodward also considered the question of ROE's head-on:

> I realised that considerable local amplification of the ROE was going to be central. I was sure they made excellent sense of the political interface in Whitehall, but they were sometimes less than crystal clear in the front line, where there was no time for debate as to the subtleties implied but not stated[14].

In the same vein, the Commander of British Forces in the Gulf War, General Sir Peter De La Billiere facing the dilemma that his own ROE's to deal with potentially threatening Iraqi aircraft were

[13] Again see Woodward, *One Hundred Days.*

[14] Ibid.

much more restrictive than those of the American forces with whom he was deployed:

The politicians are ducking and weaving, and trying to avoid the real decisions they are there for. They love section-commander type decisions, like organising uniforms or deciding on the British Forces' radio. ROE matters, where the future conduct of the war and their own and the Government's position could be in question, they avoid if at all possible.[15]

The experience in Bosnia during the UNPROFOR period was replete with examples of the frustration of military commanders on the ground with the ROEs given to them by New York. NATO's own peacekeeping operations in the Balkans, while a quantum improvement on UN operations, have not been problem-free in this respect with national ROE's frequently more restrictive than those of the overall force hindering overall operational effectiveness.

4.6 Multi-National Operations

ROE's are part of a larger problem posed by multinational operations, whether peace support or peace enforcement, which require a delicate balancing of military and political considerations and a further blurring of their respective roles. In peace support operations such as Bosnia and Kosovo, many of these problems on the ground stem from the reluctance of nations to cede more than tactical control to the Force Commander and to retain a final veto on decisions they do not like.[16] However, these operations also present entirely new challenges to armed forces particularly in requiring the military to adopt a more political role. From the Force Commander to the soldier on a checkpoint, the requirement for acute political sensitivity to local conditions and the consequences of specific courses of action are overwhelming. The need for personal initiative and judgement is ever-present[17].

[15] See De la Billiere, *Storm Command*.

[16] KFOR and SFOR Commanders have frequently complained on the unwillingness of some nations to implement their decisions, particularly on the redeployment of forces.

[17] This new form of military involvement has led to the creation of specialist Civil Military Cooperation (CIMIC) officers in most European armed forces. The US was already ahead of the game in this respect. Contrary to the thinking in some quarters, this activity and other community or nation-building activities are supported by the military. Field visits to NATO forces in BiH and Kosovo have demonstrated considerable pride felt by the soldiers of all nations in helping local communities recover from the trauma and damage of war. Many of the tasks undertaken by the peacekeepers require and therefore practice basic military skills. Moreover, most military commanders believe that sensible rotation cycles should ensure that specialist military competences are not degraded. In other words, the roles currently being performed in the Balkans should not be disparagingly dismissed as "doing the dishes" after the real military work has been completed but should be seen as a fundamental and indispensable part of the spectrum of military contributions to conflict management.

The complications involved in multinational operations become even greater when fighting is involved. The NATO campaign against Yugoslavia provided a classic example of the interplay between political and military considerations in the conduct of such operations. Again, NATO commanders talked of fighting with their hands tied behind their backs; referring to the initial targeting in the air operations and the refusal by the political leadership to countenance a ground option because of concerns over public support[18].

Hence, the result of these operations will be to blur even further the dividing line between military and political areas of responsibility and competence. Likewise, the trend to a more educated military encourages greater political awareness and diminishes the traditional distinction between the military and the political side. The classical military response to questions of a political nature frequently heard during the Cold War, "I'm just a simple soldier - that's for my political masters," - and it was always a misleading statement - will now be heard far less.

The new missions require the military to act in a more political sense. However, their very nature also means greater political sensitivity to military actions while "high-tech" means that all military activity is within political reach. These developments will have direct consequences for all aspects of democratic control of armed forces and civil-military relations.

4.7 Procurement

The procurement of military equipment offers a second example of potential friction. Frequently military considerations on the most appropriate choice of systems are made subordinate to economic, industrial and political considerations. Examination of the purchase of almost any major weapon system will tell the same story, the final choice is rarely decided on purely military requirements. The result is that the military frequently feel aggrieved that they have not received the optimum system.

4.8 The Military and Society

Finally, there is the quite separate issue of whether military life should reflect the standards of society, for example, in the employment of women or the acceptability of gays. Recent debates in the United States and the United Kingdom indicate considerable

[18] For an excellent description of the operation in Kosovo, and the problems of reconciling political and military requirements in such operations see General Wesley K. Clark (former SACEUR) US Army (Retired), *Waging Modern War,* (Oxford: Public Affairs, 2001).

resistance on the part of the military to political pressure of this nature. This, again raises the question of the separateness of the military and the degree to which the political side should insist on policies that the military believe are inimical to their effectiveness.[19]

Each of the areas mentioned above merits detailed study; of necessity this paper has only been able to scratch the surface. The object of the discussion here has been to indicate the potential areas of friction inherent in the roles of the military and political sides in the management of defence; and also to show that the different interests and perceptions of the respective actors will continue to give rise to tensions that will require persistent adjudication and balancing.

5. The Role of Parliament

Before examining the role of parliaments in influencing the development and implementation of defence, two general remarks are appropriate. First, in an ideal world the role of a parliament is not just to support the executive, but to impose its own pers of policy[20]. However, in practice many parliaments have ceded their powers of initiative to the executive. This is particularly true of

[19] For an insightful discussion of these issues, see Christopher Dandeker, 'On the Need to be Different: Military Uniqueness and Civil-Military Relations in Modern Society', *RUSI Journal*, June 2001, p. 4. A related issue concerns the direct involvement of military personnel and civil servants in politics. In most Alliance countries, military personnel are not encouraged to be involved in politics – in the UK they are positively discouraged. For example, 'In the United Kingdom, it is regarded as a breach of professional ethics to express opinions in public about matters which are politically controversial or show preference for one political party'. Presentation by A. Cragg, NATO Assistant Secretary General (on secondment from the MOD) to the seminar on 'Democratic Accountability of Armed Forces', Prague, April 1995.

This is not the case in all countries - the German army with its concept of 'Innere Führung' - a soldier has the same rights as a citizen - takes a very different approach – one that derives from its immediate past and the determination that never again will the German army be apart from society.

There is also the question of the rights of soldiers to belong to the unions or associations which guarantee or protect their well-being or whether this is incompatible with the very nature of the military profession with its emphasis on discipline, reliability, and unquestioning obedience. Again, different countries take different positions. For an overview of these different positions, see the report on the 'Right to Association for Members of the Professional Staff of the Armed Forces'. Document 9518, The Committee on Legal Affairs and Human Rights; the Assembly of the Council of Europe, 15 July 2002.

[20] The role of parliaments in defence and security cannot be divorced from the role of parliaments in general. For a discussion of the decline in parliamentary influence over the budget process, see 'Holding the Executive Accountable: The Changing Role of Parliament in the Budget Process', Palais du Luxembourg, Paris, 24-25 January 2001. An International Symposium for Chairpersons of Parliamentary Budget Committees organised by the Finance Committee of the French Senate and the Organisation for Economic Cooperation and Development.

security and defence policy where there is a widespread acceptance that defence and security lie rightly within the prerogative of the executive. Frequently, parliamentary influence lies in the constraints that it is able to impose on the executive; in its ability to change or reject proposals or rather in its ability to say no. Second, many of the characteristics of defence described earlier as inhibiting or complicating the work of the executive apply equally to the work of parliaments, even more so.

The importance of parliaments to defence should be self-evident. No defence policy can endure without the support of the public it is deemed to protect. As the elected representatives of the people, parliamentarians are at the heart of the democratic system. They represent the electorate from whom armed forces are drawn and whose taxes pay for their upkeep. Parliaments perform a dual function in the sense that they must both influence and reflect public opinion. It is their task to explain and justify military expenditure; why military personnel are deployed "overseas"; and why such deployments may result in the occasional loss of life.

In this respect, it is worth noting that the context in which public support for the use of military force must be sustained is changing. In the absence of the direct threat present during the Cold War, armed forces are increasingly pre-occupied with crises and conflicts which demand forces for power projection and rapid deployment. This has two immediate consequences. First, these missions are very demanding in terms of men and the means needed to transport and sustain them: many Alliance countries are suffering from overstretch as a result of the deployments in Bosnia and Kosovo. Second, the nature of some operations makes timely consultation with parliaments extremely difficult. These trends also have implications for public support. Many of these conflicts are "remote" in the sense that they do not appear to present an immediate threat to national security, yet the media ensures that the suffering involved is brought directly into the homes of the public. This leads to the much debated "do something" factor. While for the most part the public appear to support the use of their armed forces in such situations, it is never clear to what degree this support will be sustained in the event of casualties. This is a difficult calculation for both policy makers and politicians. Hence the need to engage parliamentary support as early as possible.

The importance of parliaments to defence is indisputable. However, there is less agreement on what role they should play. The key issue is how much influence and control a parliament should endeavour to exert over the development of the defence budget and the organisation and running of the armed forces; with what degree of detail and intrusiveness should parliamentarians scrutinise defence?

There is, of course, no single model - Alliance parliaments exert varying degrees of influence and in different ways[21]. The basic distinction to be drawn is between those who exert direct influence through formal powers of consultation and decision and those whose influence is indirect through their ability to hold the executive accountable albeit "after the event".

At one end of the spectrum there is the US Congress which, because of the US Constitution and the separation of powers, plays an influential role in the development of the US defence budget. Congress holds the Department of Defence firmly accountable, often in excruciating detail and in a manner described by some, particularly those on the receiving end, as excessive micro-management.

In the initial years of transition, Congress was often seen as the model for those who sought real legislative influence[22]. However, two factors were quickly apparent. Congressional powers are not easily replicated as they are obviously a product of, and specific to, the US Constitution; and they require substantial supporting infrastructure in the way of Committee staff, experts and supporting organisations and therefore substantial resources.

At the other end of the spectrum, is the British Parliament, whose direct oversight consists of voting on the defence budget as a global figure once a year, plus various debates. The Government does not have to obtain parliamentary approval for specific expenditure decisions. Parliament exerts little influence over the development of the British defence budget, this rests firmly in the hands of the executive. Again, this relationship is a function of British history and the development of a strong executive depending on a highly-professional and relatively insular civil service.

The function of the British Parliament and its Select Committee on Defence has to be seen in a different context. It plays a major role in informing public opinion and making defence more transparent, through focused hearings and reports[23]. Likewise, the National Audit Office which reports to parliament, keeps the government on its toes by in-depth assessments of various programmes looking specifically to see that expenditure has been used effectively.

[21] In 2002, in a joint cooperative project DCAF and the NATO PA carried out a comprehensive evaluation of the powers of parliament in defence and security in the nineteen NATO countries. See Annex 1.

[22] This was also because Congress was very quick into the field in providing advice and assistance to the new parliaments, notably through the Congressional Research Service.

[23] For a frank assessment of the role of the British parliament, see the presentation of Bruce George MP (currently Chairman of the Select Committee on Defence) to the Rose-Roth Seminar on 'Armed Forces in Democratic Societies', Herstmonceaux Castle, 23-26 July 1996.

Most other parliaments exert considerably more direct influence than the British but fall short of the Congressional model. The German Bundestag, the Netherlands and Danish parliaments offer more appropriate models as they enjoy formal consultative powers on issues such as equipment purchases and force deployments.

Within this overall distinction of direct and indirect influence, parliamentary activity can therefore be grouped into three broad areas: accountability, oversight and transparency.

5.1 Accountability

All parliaments hold their government accountable through the annual voting of the necessary funds, whether this is the end of a long process of examination as in the US model or the merely formal endorsement as in the British case. Whatever the model, the "power of the purse" requires every government to explain and justify its expenditure demands. Accountability is also achieved through hearings or the establishment of special committees to look into specific issues. Examples of the latter were the investigation by the Canadian parliament into the conduct of Canadian soldiers in Somalia, and the enquiry by the Belgian parliament into the events that led to the deaths of Belgian peacekeepers in Rwanda[24].

5.2 Oversight

However, the crucial issue is the degree to which oversight translates into real influence over the decisions of the executive. Parliamentary authorisation is an important instrument of influence. In many countries parliamentary authorisation is required for the purchase of major weapon systems, which in effect equates with participation in the decision.

Several Alliance parliaments have the constitutional requirement to be informed on the deployment of forces abroad, a few have the right to participate through formal authorisation. The new missions will increase the demand for parliaments to be kept informed on a more time urgent basis and to be consulted on the

[24] Professor Dr. D.J. Winslow, 'The Parliamentary Inquiry Into the Canadian Peace Mission in Somalia', paper presented at 'The Fourth PCAF Workshop Strengthening Parliamentary Oversight of International Military Cooperation / Institutions in Euro-Atlantic Area', Brussels, 12-14 July, 2002 available via the publications section of the DCAF website (conference proceedings section) or at: http://www.dcaf.ch/pcaf/virtuallibrary/publications/cf17_.pdf See also the report of the Belgian Parliament on the murder of Belgian UN peacekeepers in Rwanda, 'Parliamentary commission of inquiry regarding the events in Rwanda', Belgian Senate, December 6, 1997.

terms of deployment[25]. This will further test the balance between democracy and military efficiency. Similarly, the use of force in conditions short of war, for example, during the air campaign against Yugoslavia, or the recent operation in Afghanistan[26] reflect this need. However, in all Alliance countries, irrespective of the formal powers of consultation, parliamentary support is a precondition for involvement in such contingencies.

Most parliaments also have the responsibility to ratify treaties including obviously NATO enlargement. The real question is how far parliaments should intrude into the making of defence policy and the running of the armed forces, for example: should they be informed or consulted on operational matters; or on development of strategy and doctrine; or on procurement decisions?[27]

Again, the question arises of the dividing line between things military and political. As noted earlier, common sense suggests that there are many areas where parliament should not be directly involved in telling the military how to do their business. On the other hand, parliament should be kept fully informed through regular and timely consultation; and all areas should be open to parliamentary oversight and scrutiny. The executive should have the flexibility to exercise power responsibly but must always be mindful that parliament is watching.

5.3 Transparency

Parliamentary debates and reports help make defence more transparent and increase public awareness of defence. They play an important role in building the public consensus essential for defence. Parliamentary work in defence should form an important part of a general security environment and the creation of a defence community in which security is freely and openly discussed and ceases to be the property and prerogative of a few.

Discussion of the role of parliaments would not be complete without a mention of their role in the broader context of civil-military relations. Parliamentarians form a natural link between the armed forces and the society. Many parliamentarians have particular connections through having military facilities or defence industries in their constituencies or because they themselves have a military background. Defence committees are frequently active in looking after the welfare and rights of soldiers.

What then are the obstacles to effective parliamentary involvement?

Whatever the model and degree of involvement, parliamentary effectiveness depends on parliamentarians being well informed and knowledgeable. However, again the unique characteristics of defence make the acquisition of the required competence problematic.

As a subject, defence has always lent itself to both secrecy (in the sense that the provision of adequate information has often been limited for reasons of national security) and exclusivity. With the passing of the Cold War, this factor has become less inhibiting but confidentiality still tends to limit the flow of essential information to a qualified few. Frequently, the executive is unwilling to make available the required information, on the grounds of its sensitive nature. Membership of international organisations such as NATO is often used as a reason to withhold information due to the rules of the organisation, which inevitably always work at the level of the most security conscious. Parliaments deal with the issue of confidentiality in different ways. Most work on a 'need to know' basis, albeit that it is the executive that decides 'the need'. Some hold closed hearings to satisfy the requirement.

Exclusivity in the sense of military sensitivity to civilian intrusion into "its territory" has already been discussed. This sensitivity is frequently more pronounced towards parliamentarians because of their perceived lack of expertise. In some instances, this is understandable because from the military professionals' point of view "uninformed" interference can have far-reaching consequences for the lives of service personnel. Likewise, the executive as a whole is frequently resistant to parliamentary involvement in defence and security. However, an unwillingness by the executive to cooperate with parliament is both wrong and ultimately counter productive. It is wrong because it is contrary to the spirit of democracy. It is counter-productive because no matter how irritating parliamentary scrutiny

[25] For a comparative review of the powers of parliaments in PSO's, see Hans Born and Marlene Urscheler, 'Democratic Accountability and Parliamentary Oversight of Multinational Peace Support Operations: Powers and Practices of Parliaments in 17 Countries' paper presented at 'The Fourth PCAF Workshop Strengthening Parliamentary Oversight of International Military Cooperation / Institutions in Euro-Atlantic Area', Brussels, 12-14 July, 2002 available via the publications section of the DCAF website (conference proceedings section) or at: http://www.dcaf.ch/pcaf/virtuallibrary/publications/CF22.HANS.BORNMARLENE.URSCHELER.pdf

[26] Special forces from several NATO countries including Denmark, Norway, Germany, Canada, the UK, to name but a few, took part in the US-led operation against Al Qaeda, in what were evidently sensitive operations. It would be interesting to know whether and how parliaments were consulted on the deployment of their forces. Such operations highlight the dilemma of reconciling the need for timely consultation with the need for military effectiveness of the operation.

[27] Some of the new parliaments initially attempted to micro manage their armed forces even attempting, for example, to write military doctrine. Frequently this degree of intrusion was due to the suspicion with which the military was viewed rather than a realistic assessment of what was feasible and appropriate.

can be, parliamentary support is indispensable. Cooperation with parliaments is as the Americans would say, a "no brainer"[28].

A successful working relationship between the three components of the democratic control of armed forces - the civilians, the military and the parliamentarians - depends on the various parties respecting the competence and professionalism of the others. However, developing this competence and understanding takes time and application. Both are available for the civilian and military professional. Not so for the parliamentarians who must first deal with a range of competing domestic pressures. Moreover, in few countries are there many election votes to be gained in being a defence or foreign policy expert. However, defence is not some form of black art comprehensible only to a privileged and dedicated elite. With the appropriate supportive infrastructure, parliamentarians can develop the competence and expertise necessary to exercise responsible judgement in holding the executive accountable.

5.4 The Supportive Infrastructure

Effective parliamentary involvement in defence is best achieved with the help of a supportive infrastructure which should include: qualified staff to offer reliable and informed advice on government submissions; research departments and independent research institutes to provide in-depth and objective analysis; and a critical and inquisitive media. Parliament should have access to multiple sources of information and to independent counsel so that they are not forced to rely on, or automatically accept, government submissions.

Inter-parliamentary organisations form an important part of this supportive infrastructure. As NATO's inter-parliamentary arm, the NATO Parliamentary Assembly has long been a been a transatlantic forum for parliamentary dialogue and a source of education, information and experience for its members. It has played a significant role in assisting legislators to become more effective in influencing national defence policy through their national parliaments; and in holding their executives to account.

[28] A revealing example of the benefits of a cooperative approach was provided during a recent NATO PA visit to Slovenia. One of the more impressive oversight roles is exercised by the Foreign Affairs Committee of the Slovene parliament in monitoring and approving all developments in negotiations with the EU - to the extent that the Committee plans to move to Copenhagen in the latter stages of the negotiation. Asked for his reaction to this degree of involvement, the Under-Secretary admitted that at first it was a real nuisance because of the very technical nature of the issues but that it was now seen as a real advantage because this involvement had ensured parliamentary support.

The NATO PA is a policy influencing rather than policy-making body[29]. The nature of NATO's inter-governmental decision making process based on consensus means that the contribution of its inter-parliamentary counterpart lies primarily in creating greater transparency of Alliance policies and contributing to the development of Alliance-wide consensus. Direct influence on NATO policies lies through national parliaments[30]. Obviously it is to be hoped that in developing Alliance policies, NATO's member governments heed and take account of the collective parliamentary voice as expressed in Assembly debates, reports and resolutions.

From 1989, the Assembly's role expanded through the integration into its work of the countries of East and Central Europe (ECE). This 'outreach' programme now includes special seminars on issues of particular topical or regional interest a training programme for parliamentary staff[31], special co-operative arrangements with Russia and Ukraine, a Mediterranean parliamentary dialogue and a new parliamentarians initiative.

[29] The NATO Parliamentary Assembly, founded in 1955 with a Brussels-based secretariat, brings together 214 national parliamentarians from the nineteen NATO countries. Associate delegations from seventeen nations, nine with the status of Parliamentary Observer and the European Parliament also participate in a wide range of Assembly activities and meetings. The OSCE Parliamentary Assembly and the Assembly of the Western European Union also send delegations to the Assembly. For a discussion of the role of the NATO PA, see the author's paper presented to the Fourth PCAF Workshop on Strengthening Parliamentary Oversight, July 12-14: 'The Role of the NATO Parliamentary Assembly', a paper prepared for the seminar on the parliamentary dimension of the European Security and Defence Policy, The Hague, 14 May 2001.

[30] The emergence of the European Security and Defence Policy (ESDP) has provoked discussion on the question of democratic accountability and a mini-institutional battle with the WEU Assembly and the European Parliament as chief protagonists. Like NATO, ESDP is inter-governmental and therefore direct accountability lies with national parliaments complemented by the work of the inter-parliamentary assemblies. However, the overlap of ESDP with the CFSP and with Commission-funded projects in post conflict areas such as the Balkans has given the European Parliament a toe in the water. The discussion continues. The recently created cooperative relationship between the European Parliament and the NATO PA also makes a contribution to this area and adds a much needed degree of transparency to the status of ESDP.

[31] The Rose-Roth initiative was named after the two members of Congress who initiated the program and secured the necessary funding through US AID. The Rose-Roth initiative was based on two factors: recognition of the complexity and magnitude of the problems facing the new democracies in developing effective democratic institutions and a determination that the NATO PA could help. The Rose-Roth outreach program has three component parts: the integration of East European parliaments into all aspects of the Assembly's work, the organisation of special seminars and of staff training for parliamentary staff. The seminars (53 to date) and staff training have focussed on providing advice and expertise on the development of democratic control. Overall the program has been successful not only in providing practical experience, but also in demonstrating political commitment and solidarity.

The object of this activity has been to demonstrate the Assembly's commitment to the democratic process under way in ECE and to the eventual integration of partner countries into the Western community. At the practical level, they have also served to strengthen the democratic process by sharing Alliance legislative experiences, both the strengths and the weaknesses.

The parliaments of the three Baltic states were among the first to associate themselves with NATO PA from the moment they regained their independence. The first Rose-Roth seminar was held in Vilnius in December 1991, in what were still dark and uncertain days with Russian forces showing little inclination to return home. This was followed by similar seminars in Riga and Tallinn. Subsequently Baltic parliamentarians and staff have been enthusiastic participants in all Assembly activities. This participation allowed NATO parliamentarians to see at first hand the problems facing the new democracies: it has also allowed them to witness the impressive progress in political, military and economic terms that has been made in all three countries.

5.5 The Transition Countries

Needless to say, most of the obstacles described earlier in establishing the norms of the democratic control of armed forces have confronted the new democracies[32]. However, the transition increased the magnitude of the challenges. In several areas the problems were worse. While all transition countries faced similar problems as a result of their Communist past, each had its own specific characteristics that made the pace of change different. The Baltic States, for example, had to start from scratch in developing their own armed forces. They did not have the enormous challenge facing others in the need to reduce and restructure bloated military establishments nor in the need to deal with a top-heavy and frequently recalcitrant officer corps. Yet, no one starts with a blank sheet of paper. They, like the others, had to deal with most burdensome Communist legacy of all - mentality and attitude - and the difficulty of inculcating a sense of initiative and responsibility. This was probably the greatest problem in putting in place the necessary mechanisms and then making them work.

Most of the aspirant countries appear well on their way to overcoming these obstacles. They have developed the appropriate mechanisms, practices and procedures for effective democratic control. The building of the trust and confidence that is the basis of effective the democratic control of armed forces will take time

[32] For a thoughtful analysis of the experiences, problems and progress made by four parliaments, see 'Comparing frameworks of Parliamentary Oversight: Poland, Hungary, Russia, Ukraine'. David Betz, presented to a seminar on 'Democratic Control of Armed Forces in Croatia', Zagreb, 26 October 2001.

because it means changing attitudes and habits. Of course, problems and shortcomings remain. But that is also true in member countries because the relationship between the armed forces and society is constantly evolving.

6. Conclusion

This article has emphasised the centrality of relations between the executive and the parliament, and between the military and political sides in providing effective democratic control. In Alliance countries, the tensions inherent in these relations have been absorbed through custom and practice and have become an essential element of the dynamic of democratic government. Likewise, the same process will have to work its way through in the countries that have made and are making the transition to democracy.

Each country has to manage this process in its own way. The final goal is the same - finding an appropriate place for defence and the military in our respective societies. In achieving this goal, ideas and experiences can be shared and lessons learned. But the precise route chosen will be determined by the forces and influences at home.

Ian Leigh

NATIONAL LEGAL DIMENSION OF THE DEMOCRATIC CONTROL OF THE SECURITY SECTOR: VALUES AND STANDARDS IN DEVELOPED DEMOCRACIES[1]

Ever since September 11 2001 we have faced an acute world-wide dilemma of how to reconcile our commitment to democratic values with that of national security. There is widespread recognition of the risks that terrorism poses to open democratic states. The paradox becomes increasingly evident that in defending themselves those states risk losing the very democratic characteristics that make them worth preserving. At times of national and international emergency there is always the risk of over-reaction resulting in the trampling of civil liberties are and in regarding free speech and debate as unpatriotic, subversive, or worse, treasonous.

My purpose in this paper is to present some of the principles which ought to be respected in the admitted tension between national security and freedom and to briefly sketch the implications for the control and accountability of security and armed forces.

I am aware that in my own country, the United Kingdom, there has been a swift (and excessive) reaction to September 11 with a voluminous new law. This law, the Anti-Terrorism Crime and Security Act 2001, adds to the many provisions already in place as a result of 30 years' conflict in Northern Ireland. As a result, a handful of foreign nationals are now detained in our prisons without trial for an indefinite period. Additionally, Article 5 of the European Convention on Human Rights has been suspended. The Home Secretary has publicly rebuked human rights lawyers for opposing these measures. Nevertheless, it is important to reflect on the principles that we

[1] Paper prepared for the Workshop "Legal Issues and Practices in the Field of Democratic Control of Armed Forces and Security Sector: National and International Perspectives" held on 5-6 April, 2002 in Geneva, Switzerland. The Workshop was organised by the Geneva Centre For Democratic Control of Armed Forces (Switzerland).

consider important. At such moments there is all the more need to engage in reasoned debate about the balance between national security and liberty.

Most countries associated with the Geneva centre for the Democratic Control of Armed Forces are signatories to the European Convention on Human Rights and Fundamental Freedoms of 1950, and much of what I will be addressed in this paper will refer to the Convention as a foundation for democratic values.[2] However, those values transcend any single treaty and are recognised universally. Countries which are not signatories to the ECHR nevertheless recognise the value for their citizens of constitutional rights of fair trial, privacy, freedom of expression and non-discrimination. These rights are acknowledged in domestic constitutions, regional human rights treaties and in the UN International Covenant on Civil and Political Rights. Although Western human rights standards may not always be universally applicable or relevant, it is hoped that the underlying principles that will be discussed are un-contentious wherever the rule of law applies, regardless of cultural and constitutional differences.

I shall argue that five organising principles should apply: legality; transparency; accountability; proportionality; and equality. In the first part I elucidate the application of these to security forces. In the second I tentatively set out the implications for the domestic legal framework governing such forces.

Principles

Legality

The *staatsrecht* or rule of law is fundamental. Only if the security sector and armed forces are established by law and derive their powers from the legal regime can they be said to enjoy legitimacy. Without such a framework there is no basis for distinguishing between actions taken on behalf of the state and those of law-breakers, including terrorists. 'National security' is not a pretext to abandon the commitment to the rule of law which characterises democratic states, even in extreme situations. On the contrary, the exceptional powers of security services must be grounded in the legal framework and in a calculated system of legal controls.

The structure of the ECHR demonstrates this point. Some rights, such as the right to life under Art. 2 or the right not to be tortured under Art. 3 are absolute; no state interest – no matter how

[2] See I. Cameron, *National Security and the European Convention on Human Rights*, (Uppsala, 2000).

serious – justifies limiting them. Other rights, notably, Arts. 8-11, may be limited, *within the law*.[3] Hence limitations to the rights of respect for private life, home and correspondence, freedom of expression and freedom of association on grounds of national security must be 'in accordance with law' or 'authorised by law'. A few illustrations from different countries explained under the Convention framework may help demonstrate the proceedure.

Where security forces act in violation of domestic law and their actions interfere with human rights there will be a breach of this principle of legality under the Convention. For example, when the Greek National Intelligence Service was found to have been conducting surveillance on Jehovah's Witnesses outside its mandate, it was held to have violated Article 8, which guarantees respect for one's private life.[4] This, however, is not a typical case. Much more common are situations in which disagreement exists as to whether a domestic law which has been followed is sufficient to comply with the Convention standard.

Such questions about legality have two aspects:

(i) The need for an explicit legal basis for the powers of security bodies affecting individuals; and

(ii) The 'quality' of domestic law.

On the first aspect: where a security or intelligence service lacks a domestic legal foundation any steps it takes that affect individuals is in violation of the Convention. For example, a successful Convention challenge arose from complaints of surveillance and file-keeping by the UK's Security Service (MI5), based on allegations made by a former employee.[5] The absence of a specific statutory basis for MI5 was held to be significant to the claim that its actions were 'in accordance with the law'. The government could only point to the Service's administrative charter- the Maxwell-Fyfe Directive of 1952- as authority for the surveillance and file-keeping. However, this did not have the force of law since its contents were not legally binding or enforceable, and it was couched in language which failed to indicate 'with the requisite

[3] e.g. ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[4] *Tsavachadis v Greece*, Appl. No. 28802/95, (1999) 27 EHRR CD 27.

[5] *Harman and Hewitt v UK* (1992) 14 EHRR 657.

degree of certainty the scope and the manner of the exercise of discretion by the authorities in the carrying out of secret surveillance activities'.[6] As a consequence of the ruling in the case, the UK passed a statutory charter for MI5 (the Security Service Act 1989), and later took a similar step for the Secret Intelligence Service and GCHQ also (see the Intelligence Services Act 1994).

Moreover, the particular powers that the security forces exercise must also be grounded in law. Specifically elaborated legal authority is necessary, therefore, for example, for telephone tapping or bugging. In the *Malone* case[7] it was held that a phone tapping in the UK authorised by a minister under imprecise guidelines lacked statutory authority and breached Art. 8.[8] Similarly, the fact that the legal regime introduced *ex post facto* legal justification to regulate the interception of an employee's calls by a public authority on its own internal network was a violation of Article 8.[9] The same conclusion was reached with regard to police 'bugging' in the absence of a regime authorising such interference with property[10] or personal privacy.[11]

The second aspect- the 'quality of law' test propounded by the European Court of Human Rights- focuses on the clarity, foreseeability and accessibility of the legal regime. Where a Royal Decree in the Netherlands set out the functions of military intelligence but omitted any reference to its powers of surveillance over civilians, this was deemed inadequate.[12] Similarly, the French Criminal Code governing telephone tapping was found to be deficient because it did not indicate with reasonable clarity the extent of discretion conferred on the authorities, especially concerning whose telephone could be tapped, for what alleged offences, for how long, nor did it deal with the destruction of recordings and transcripts.[13] The same conclusion was reached concerning Swiss law in the *Amann* case[14] and with regard to telephone tapping in Spain, where the only legal basis was the Constitution.[15] Similar standards apply

[6] Ibid., para.40.

[7] *Malone v UK* (1984) 7 EHRR 14 .

[8] In response the UK passed the Interception of Communications Act 1985 which the Commission regarded as adequate in *Christie v UK* 26/06/94 [1994] 78A DR 119.

[9] In *Halford v UK* 25/06/97 24 EHRR 523 the telephone tapping by a public authority of the calls of a senior police officer from police premises on its own system (which were outside the legal regime) were caught by Art 8.

[10] *Khan v UK,* May 12, 2000, European Ct HR (2000) 8 BHRC 310*; Govell v UK* [1997] EHRLR 438. The Home Office Guidelines to the police on use of 'technical equipment' were held by the Commission to be not legally binding and inaccessible.

[11] *P.G. and J.H. v UK*, European Court of Human Rights, 25 Sept. 2001, ECtHR Third Section (police bugging of cell violated Art. 8).

[12] *V and Others v Netherlands*, Commission report of 3 Dec. 1991.

[13] *Kruslin v France* (1990) 12 EHRR 547; *Huvig v France* (1990) 12 EHRR 528.

to the keeping of security files. In *Rotaru v Rumania*[16] the Strasbourg Court held that the law on security files was insufficiently clear with regard to grounds and procedures, since it did not lay down specific procedures with respect to the age of files, the uses to which they could be put, or establish any mechanism for monitoring them.

One less direct way that the domestic legal system itself can reinforce standards of legality on security and armed forces is by excluding illegally obtained evidence in criminal trials. This will only be effective in those cases (which may be a minority) where the goal of the security forces' work is law enforcement. Some legal systems, of which the United States is a prime example, operate on such an exclusionary principle. Others, like the UK, have a more contextual and flexible approach which may have the disadvantage of condoning official law-breaking. Unfortunately, the European Court of Human Rights has also held that the admission in evidence of an unlawfully obtained tape of a telephone conversation does not violate the right of a criminal defendant to a fair trial under Article 6 of the ECHR.[17] This unsatisfactory position evident in its low application to evidence under the Convention system but arguably, should have no part in a domestic regime.

Many states have now taken the step of codifying in law the constitutions of their security forces, often as a response to scandal or abuse. In that sense, the rule of law is widely observed. However, other problems remain. For example, so far as the absence of legal authority is concerned these include: the creation of new secret agencies without legislative approval; the lack of regulation of the private security sector; the position of foreign visiting forces and security (e.g. SIGINT) installations; the legal basis

[14] *Amann v Switzerland*, 16 Feb. 2000. The 'quality of law' test was applied in a second case from Switzerland in which the E Ct. HR found that the level of judicial supervision of interception was inadequate and so was 'not in accordance with law' in that although sanctioned by Swiss law it was left to a junior post office official to determine which conversations on a lawyer's telephone were legally privileged: *Kopp v Switzerland* 27 EHRR 91.

[15] *Valenzuela Contreras v Spain* (1999) 28 EHRR 483. See also *Domenichini v Italy*, 15 Nov. 1996; *Calegero v Italy*, 15 Nov. 1996 where the monitoring of the post of a defendant awaiting trial on terrorism charges under a law permitting a judge to censor the mail of a prisoner was found to violate Art. 8.

[16] No. 28341/95, 4 May 2000.

See also *Leander v Sweden* (1987) 9 E.H.R.R. 433, holding that in order to be 'in accordance with law' the interference with privacy must be foreseeable and authorised in terms accessible to the individual. In the context of security vetting this did not require that the applicant should be able to predict the process entirely (or it would be easy to circumvent), but rather that the authorising law should be sufficiently clear to give a general indication of the practice, which it was.

[17] *Schenk v Switzerland* (1988) 13 E.H.R.R. 242; *Khan v UK,* May 12, 2000, European Ct HR.

for international security and policing co-operation; the domestic status of external security agencies and operations. Few of these matters are comprehensively covered, if at all, by domestic law.

Transparency

There is at one level an obvious conflict between a commitment to openness and national security. An open society is one whose hospitality can be abused by hostile states or groups that intend to undermine it. But equally, a state where unnecessary secrecy reigns will be mistrusted by its citizens, will forfeit legitimacy, and become a breeding ground for paranoia and conspiracy theories.

There are several reasons why a *presumption* of openness should operate even though it may be revocable where national security is involved. The public has a right to know what is done by officials acting in its name, under powers given for the public good and, ultimately, at public expense. Conversely, security and intelligence agencies, unlike individuals, have no private rights of their own. Transparency also assists in the exposure of illegality, wrong-doing and corruption by public authorities; hence the importance of effective 'whistle-blowing' and grievance procedures. A number of states have learned (at no small cost), that where such procedures are not in place the result may be greater susceptibility to damaging allegations in the press by disaffected members of the security and armed forces and a loss of public confidence.

However, in some instances a case against disclosure of information can be made, again, in the public interest. Exceptions for national security are commonplace in Freedom of Information legislation and laws giving access to personal files. This is readily justifiable. It is important, however, that the protection of state interests takes the form of exceptions for state activities, rather than wholesale exemptions for particular security agencies. One key difference is that the former will allow for monitoring and scrutiny in the normal fashion (for example, by an Information Commissioner or ombudsman) under the law concerned of the claim for exception. The public may therefore be reassured that an outside check exists to ensure that necessary exceptions are not abused.

Transparency is also a desirable characteristic in the legal process itself. The conduct of a trial wholly or partially in secret raises controversial questions because of the priority in the legal system given to the principle of 'open justice'.[18] The philosopher Jeremy Bentham argued:

> In the darkness of secrecy, sinister interest, and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest guard against improbity. It keeps the judge himself while trying under trial.[19]

It is important to disentangle two issues which, at first sight, seem similar: the closing of proceedings to the public and the withholding of relevant material from a defendant or complainant. Even where the first is justified because of some overarching community interest, it does not follow that the second will be. Although it may be strong, the public interest in open justice is weaker than the public interest in fair proceedings based upon a notion of adversarialism. For example, in an Official Secrets trial the defendant may have direct knowledge of facts relevant to the proceedings, of which the public as a whole are, perhaps justifiably, ignorant. This is most likely to occur where the defendant is a government employee, former employee, or informer. In such circumstances, limits on the *public* access to the proceedings may be justified, although limitations on the information available to the *defendant* may not be.

Deviations from the ideal of open justice may be of three kinds. First, there are proceedings in which the public's interest is overridden but the complainant's or defendant's is not. Examples include: publication bans which prevent the reporting of evidence given in open court; providing protective screens behind which a witness testifies screened from the public, but in sight of the defendant, lawyers and jury who, therefore, may still observe the witness demeanour; and *in camera* hearings at which the defendant is present for the whole proceedings, for instance in an Official Secrets trial. Disclosure of a document for use in the proceedings on terms that prohibit its publication have the same effect. Second, in some proceedings the public interest may be adequately met but the defendant's interests are impeded; examples might include allowing anonymous witnesses or disallowing certain questions in evidence in the public interest. In these situations a denial of information to the other party to the proceedings is a denial to the public also, but the impact is likely to be greater on the other party, whereas the interference with public interests will be minimal. The third type of deviation arises in proceedings from which the public are excluded, and the other party's rights are also abridged. Examples include the denial of access to parts of the evidence which the tribunal hears and bases its decision upon, or limiting knowledge of the allegations, or access to legal representation, or cross examination. In extreme circumstances, restrictions in this third category may even deny an individual any forewarning or

[18] G. Nettheim, Open Justice and State Secrets (1985-86) 10 Adelaide L. Rev. 281.

[19] J. Bentham, Rationale of Judicial Evidence, vol. 1 (London: Hunt & Clarke, 1827) c. 10.

knowledge after the event that a procedure affecting his or her rights has been invoked, where for example, a judge is responsible for issuing a warrant for covert surveillance.

Article 6 of the ECHR reflects both the litigant's and the public's interests in 'open justice' through the presumption of a public trial and the 'equality of arms' principle .[20] The Strasbourg Court has generally been reluctant to interfere with the treatment of evidence in criminal trials by domestic courts. However, certain types of procedures towards which security agencies are accustomed-notably the use of agents provocateurs – have attracted intervention because of their effect on the fairness of the trial as a whole.[21] Equally exceptional, the Strasbourg Court has ruled that Art. 6 is breached where the cross-examination of an anonymous witnesses via a link does not allow the defence to observe his demeanour.[22] This is because there is no evidence that the domestic court correctly weighed the prejudice to the defence.

Other cases show the more robust use of Article 6. In criminal trials involving security questions the Court has insisted that judges must be regular civilian judges and not military officers[23], that the defendant must be allowed to be present, notwithstanding security concerns,[24] and that reasons for conviction cannot be censored on security grounds in an espionage case.[25]

One notable development under Art. 6 has been the suggested introduction of special, security-cleared counsel, in some civil law contexts, such as deportation and employment cases with security implications in order to give protection to state security interests without totally excluding any opportunity to challenge the evi-

[20] Article 6:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. …

3. Everyone charged with a criminal offence has the following minimum rights:

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

[21] *Teixeira de Costra v. Portugal*, (1999) 28 EHRR 101.

[22] *Van Mechelen v Netherlands* (1998) 25 EHRR 647.

[23] *Incal v Turkey*,9 June 1998.

[24] *Zana v Turkey* (1999) 27 EHRR 667 (violation of Arts. 61 and 3 where the defendant was prevented from attending his trial on terrorist charges).

[25] *Hadjianastassiou v Greece*, 16 December 1992.

dence on the applicant's behalf.[26] This is modelled on the procedure under the Canadian Security Intelligence Service Act 1984 of the Security Intelligence Review Committee.[27] The idea is that even where the complainant and his lawyer are excluded from parts of the legal process on security grounds a measure of adversarialism can be maintained by allowing a vetted lawyer to test the strength of the government's case on his behalf. The Court has shown a strong commitment to open justice by insisting that states devise alternative procedures which are less restrictive of a complainant's rights than total exclusion or the use of conclusive ministerial certificates.

Accountability

Governmental decisions are normally considered legitimate within liberal democracies if they are demonstrably within the law and are rational, principled, and proportionate. In the security realm, the difficulty is in devising appropriate political and legal mechanisms by which these criteria can be *shown* to be satisfied while also protecting secret material. The normal constitutional processes for government accountability may seem to be insufficiently protective of secrecy. On the other hand, to give the executive free rein in determining the boundaries of its actions without any independent review or control is to invite political abuse and ignores the rights of the individual.

The principle that the security forces should be accountable may be uncontroversial but disagreement is likely to arise as soon as we ask: to whom?(the government, the legislature or some independent body or person?); for what? (for expenditure, policy, and operations?); and when? (before carrying out operations or after?).

[26] See (in the UK) Special Immigration Appeals Commission Act 1997 introduced in deportation cases following the ruling in *Chahal v UK* (1997) 23 E.H.R.R. 413 that the processes for review in national security cases were inadequate.

Likewise, see Northern Ireland Act 1998, ss. 91 and 92 and sched. 11, introduced following *Tinnelly and McElduff* v *UK*, (1999) 27 EHRR 249. In *Tinnelly and McElduff* a provision in Northern Ireland anti-discrimination legislation enabling a minister to give a conclusive certificate that the reasons for a decision were national security was held to violate Article 6 on the grounds that it prevented the tribunal from effectively reviewing the facts; and see *Devlin v UK, The Times,* October 30, 2001.

Anticipating the effect of *Tinnelly* in other fields the UK government acted to remove similar certificate provisions other areas of law and to open the issue of whether a statutory national security exemption applies to be determined by a tribunal: Employment Rights Act 1999, sched. 8 and Employment Relations Act 1999, sched. 8.

[27] I. Leigh, 'Secret Proceedings in Canada' (1996) 34 Osgoode Hall Law Journal 113 -173.

Moreover, it is in the area of accountability that constitutional differences between states produce the greatest variety of mechanisms. One would not expect that accountability mechanisms would look the same in a 'Presidential executive' system like the USA, and in a 'dual executive' like France, or in a Westminster-style Parliamentary executive. Even within the one type of system wide variations may exist- quite different patterns of oversight for security and intelligence have emerged in the UK, Australia, Canada and New Zealand, for example.[28]

Despite all these variatons some generalisations can be made.

First, concerning the *purpose* of accountability mechanisms. Mechanisms must be designed to protect against the twin dangers of *political manipulation* and abuse of the security forces (where they become the private army or police of the government to be used against political opponents) and *political neglect*, where security forces are left free to develop their own political agenda and so become an independent source of power and a threat to democratic government through manipulating the political process themselves.

Protecting against political manipulation means that there must be appropriate safeguards for officials to refuse unreasonable governmental instructions (for example, to supply information on domestic political opponents). At some point a body reflecting a cross-section of political opinion must be able to call the agencies to account, for example, a parliamentary committee. Independent officials who have powers to review the exercise of ministerial powers after the event and to report *to the legislature* (for example, judicial commissioners or Inspectors or Auditors) can be a valuable safeguard, provided they have sufficiently broad jurisdiction and powers to obtain information.

Protection from political neglect implies that the government should, as a minimum, have a legal right to information about the actions of the security forces. Otherwise they cannot be answerable (as they should be) for those actions. Where it is appropriate for politicians to give binding instructions, however, care must be taken that there are counter-balancing measures to prevent manipulation.

Second, the type of accountability mechanism depends on the activity in question. Where a process is undertaken by or on the recommendation of the security forces and seriously affects an individual, such as the commencement of intrusive surveillance, a requirement to obtain authorisation from an independent outsider (e.g. a judge) may be appropriate. Moreover, individuals who suspect that they have been adversely affected by decisions of the security forces should have an effective channel for challenging the legality of those actions before a review body, court or tribunal which has powers to establish the facts, even if they cannot be conveyed in full to the complainant. However, precisely because individuals are unlikely to be aware of secret action affecting them there is case for systematic (as in the German G-10 arrangements) or random review (as with the Canadian SIRC and Inspector-General) of the use of such powers by an independent body with its own power to initiate complaints.

Accountability for policy matters, however, can be quite different. A committee drawn from the legislature or composed of civilians may be an effective check, provided it has adequate technical assistance. There is a tension in such arrangements between independence and access to the detail necessary to make review effective. A committee acting on behalf of the public may find itself either co-opted within the ring of secrecy and so prevented from referring to the information necessary to give convincing reassurance to the public, or operating outside it as a critical, but perhaps ill-informed and ineffective, bystander. This is why some investigatory capacity is crucial, so that the committee or review body can receive independent assurance that the security agencies are telling it the truth even if those involved do not necessarily have full access to all the operational details.

[28] On the first three see L.Lustgarten and I. Leigh, op. cit., chs. 15 and 16, which gives a much fuller treatment of the whole issue of accountability than I am able to here.

Proportionality

Proportionality is the name given in European law (it applies in the EC as well as the ECHR) to a principle which is recognised more widely- the reasonable relation of 'means' to 'end'. North Americans, for example, talk of the 'least restrictive alternative' in relation to laws interfering with individual rights[29] (occasional European judgments use the same terminology[30]). More bluntly, it is the 'nutcracker' principle: 'don't use a sledgehammer to crack a nut'. As with openness, proportionality is seen to be valuable because of the bias within democratic states towards maximising the freedom of individuals. Incursions on these rights can be justified by public interests such as national security- but only to the extent necessary. National security should not be a *carte blanche*.

Proportionality applies, for example, under the ECHR to special powers (e.g. surveillance); information gathering; and to legal privileges and exemptions for security and armed forces. The Court of

[29] e.g. *R* v. *Oakes* [1986] 1 S.R.C. 103, discussing the Canadian Charter of Rights, section 1.

[30] e.g. *Van Mechelen v Netherlands* (re the restrictions on defendant's rights under Art. 6 in order to protect the identity of undercover police officers and informants).

Human Rights has consequently applied this test to consider whether laws permitting telephone tapping for reasons of national security were necessary in the interests of democratic society under Art. 8 ECHR.[31] In so doing it has considered the range of institutional safeguards for authorisation and review of these powers in several countries. The same approach has been applied to legislation permitting the opening and retention of security files.[32]

Practical guidance on what proportionality means in relation to one area of importance – surveillance - was given by the MacDonald Commission (the Commission of inquiry into abuses by the Royal Canadian Mounted Police) which reported in 1982. To ensure the protection of privacy from intrusive surveillance the MacDonald Commission proposed the following general principles:

(1) that the rule of law should be strictly observed;

(2) investigative techniques should be proportionate to the security threat under investigation and weighed against the possible damage to civil liberties and democratic structures;

(3) less intrusive alternatives should be used wherever possible; and

(4) control of discretion should be layered so that the greater the invasion of privacy, the higher the level of necessary authorisation.[33]

Much the same points might be made of information gathering and disclosure generally.

Equality

Equality is a multifaceted concept. In the context of this discussion it is relevant both within the security forces (especially with regard to the treatment of employees) and between military and security personnel and civilians. The security forces of a democracy should be committed to equal treatment and protection of its citizens and to modelling equality in its treatment of staff.

Many international legal documents now require states to extend equal treatment to their citizens regardless of race, sex, religion or other factors such as sexual orientation or disability e.g. ICCPR, Art. 26; ECHR Art 14 and Protocol 12; EU Equality Framework Directive 2000.[34]

These requirements (as well as domestic and E.C. non-discrimination legislation) pose a challenge to established practices with

[31] *Klass v FRG*, (1979) 2 EHRR 214; *Mersch v Luxembourg*, (1985) 43 D and R 34; And see *Foxley v UK*, Chamber of the E. Ct of HR , 20 June 2000 where a court order for re-direction of mail was found to be disproportionate in that it disregarded legally privilege material.

[32] *Leander v Sweden* (1987) 9 E.H.R.R. 433 ; *Esbester v UK* App. No. 18601/91, 2 April 1993.

[33] Commission of Enquiry into Certain Actions of the RCMP, Freedom and Security under the Law, (Otttawa, 1980), Vol. 1, pp. 513 ff; see further L.Lustgarten and I.Leigh, op. cit, ch. 2.

regard to eligibility for employment in the security and armed services. It has been common in the past to discriminate for certain posts on grounds of nationality or ethnic origins, religion, sex or sexual orientation.

Nationality restrictions can be justified in the interests or ensuring loyalty to the state and some legal texts, mostly in the E.C., permit exceptions for sensitive posts in the public service to be reserved for a state's own citizens.

Ethnic and religious conflict may often take on the character of a threat to the stability or even survival of the state itself. In these instances exclusion of certain groups from employment in the security forces may be justified. For example, the European Court of Human Rights, has, perhaps somewhat uncritically, accepted the exclusion of a member of the armed forces for 'fundamentalist religious views'.[35] However, in other states in conflict (for example Northern Ireland) the inclusion of a religious minority within the Police and Security Forces has been seen as instrumental in healing inter-community conflict.

Discrimination by the armed or security forces based on sex or sexual orientation has come under fire in many countries, especially in the last decade, and many of these prohibitions have been lifted. For example, women in the Armed Forces in the UK are now entitled to maternity leave, whereas a decade ago they were discharged if they became pregnant. The UK has followed several other countries in lifting the prohibition on homosexuals and lesbians in its armed forces, following a controversial ruling from the European Court of Human Rights in 2000.[36] Similar restrictions from the Cold War era which equated homosexuality with a character defect amounting to a security threat for those in sensitive work have now been lifted where sexual orientation is openly acknowledged.

The important point about all these changes is that they demonstrate the need to test objectively established practices which discriminate against particular groups. The onus must be on the state to establish why an exception to the general principle of non-discrimination is necessary.

Applied Standards

[34] Council Directive 2000/78/EC of 27 November 2000.

[35] *Kalaç* v *Turkey (1999) 27 EHRR 552*. Similarly, during the Cold War the Court was relatively uncritical of political restrictions on state employment against Communists. See *Glasenapp v F.R.G.* (1987) 9 E.H.R.R. 25 and *Kosiek v F.R.G.* 9 E.H.R.R. 328 where the Court found no violation of Article 10 because it considered the real issue at the heart of the cases to be that of access to the civil service, which was not protected by the Convention (as it was then interpreted). Contrast *Vogt v Germany* (1995) 21 E.H.R.R. 205, however, where a teacher sacked for actively campaigning for the Communist Party successfully invoked Art. 10.

[36] *Smith and Grady v. UK*, (2000) 29 EHRR 493.

In this part I tentatively sketch the practical implications of the values of legality; transparency; accountability; proportionality and equality in the following areas:

- Legal Structure
- Accountability mechanisms
- Surveillance powers
- Controls on human sources
- Information gathering, retention and use
- Independent review

These are offered as a basis for discussing what an ideal domestic legal regime for the security sector might look like. They are utopian: perhaps no existing state (and certainly not the UK) conforms to these standards.

Legal Structure

All executive authorities charged with security, intelligence, policing or military roles connected within national security shall be founded on a clear and explicit legal basis.

The legal basis should be explicitly approved by the legislature, according to the national constitution.

As a minimum it shall include:

a) A clear mandate specifying the objectives of the institution with sufficient clarity that its jurisdiction can be differentiated from those of other security, military and police institutions and that significant new areas of work can only be undertaken following legislative approval.
b) The method of appointment and removal of the official in charge of each agency.
c) Clear arrangements for political direction and, in the case of internal agencies, political independence, to ensure that matters of policy are determined by politicians accountable to the public.
d) Where relevant, clear, structured investigative powers proportionate to the threats within the mandate under (a).

Accountability

At the legislative level mechanisms should exist whereby Parliamentarians can call officials in charge of security or armed forces to account. These mechanisms should include:

a) The participation of representatives from a cross-section of the political groups represented in the legislature or, alternatively, an independent (non-political) body which reports to the legislative as a whole and is responsible to it:
b) The power to question agency heads and the right to receive timely and accurate information concerning the actions of the agency, its policy and budget;

c) The power to make public reports on the actions of the security and armed forces containing such details as the accountability body itself determines;
d) Either within the Committee itself, or through independent officials reporting to the Committee, an ability to audit the actions of the agencies, including their use of surveillance, information collection and human sources to determine that they are lawful and proportionate to the threats which the agency is legally charged with countering.

Surveillance

All surveillance of individuals conducted by or on behalf of the security or armed forces shall be in accordance with law.

The relevant law shall govern:

a) The methods of surveillance, whether by technical means or human sources, to be permitted. The law shall be comprehensive, so that there is no incentive for an agency to resort to less regulated means;
b) The process for authorising surveillance, including authorisation external to the investigatory body;
c) The grounds on which surveillance may be authorised;
d) The period for which it may be authorised;
e) The use that may be made of material obtained by surveillance, the period for which may be retained, and when it should be destroyed;
f) Safeguards governing access to sensitive material about individuals held by medical professionals, religious advisers, lawyers and journalists;
g) The oversight of the authorisation of surveillance, its implementation, and the use of material obtained by surveillance by an independent official or body;
h) Effective and accessible remedies for individuals wishing to complain of unlawful or incorrectly authorized surveillance.
i) Evidence obtained in breach of the legal regime for surveillance shall be excluded from all legal proceedings.

Controls on Human Sources (Agents/Informants)

The use of agents and informants who are not members of the security or armed forces shall be governed by law, containing (at a minimum) the following safeguards:

a) Prohibition on the use of such sources of information or the giving of instructions to such people in situations where the agency concerned could not lawfully act itself;
b) A clear process establishing the level at which the use of an agent or informant should be authorized within the

agency and in circumstances relating to the legal mandate of the agency;

c) Controls on unethical or illegal pressure to recruit informants and on such behaviour by informants or agents themselves, including bribery; blackmail and sexual exploitation;
d) Mechanisms to ensure that any provision for the anonymity of informants as agents in the legal process are balanced by the judge with the individual's right to a fair and public trial and that all such protection or restrictions are no more than necessary;
e) An independent mechanism should exist for investigating allegations of abuse by or involving agents or informants.

Evidence obtained in breach of the legal regime for use of informants and agents shall be excluded from all legal proceedings.

Information

a) The legislative mandate of the security and armed forces shall limit the purposes and circumstances in which information may be gathered and files opened in respect of individuals to the lawful purposes of the agency.
b) The law shall also provide for effective controls on how long information may be retained and shall ensure compliance with international data protection principles in the handling of disposal information. Audit processes should exist including external independent personnel to ensure that such guidelines are followed.
c) Security and armed forces should not be exempted from domestic freedom of information and access to files legislation. Instead they should be permitted, where relevant, to take advantage of specific exemptions to disclosure principles referring to a limited concept of national security and related to the agency's mandate.
d) The courts or whatever other independent mechanism is provided under the legislation should be free to determine, with appropriate access to sufficient data from the agency's files, that such exceptions have been correctly applied in all cases brought by individual complainants.
e) Where information is received from an overseas or international agency, it shall be held subject both to the controls applicable in the country of origin and those standards which apply under domestic law.
f) Information shall only be disclosed to foreign security or armed forces or to an international agency if they undertake to hold, and use it subject to the same controls as apply in domestic law to the agency which is disclosing it

(in addition to the laws that apply to the agency receiving it).

Independent Review

Review of the functions of the security and armed forces affecting individuals shall be made by independent and impartial judges or officials (such as ombudsmen, or Inspector Generals) and comply with the following standards:

a) The judge or official shall be a person who fulfils the constitutional and legal requirements to hold an office at this level and shall enjoy legal security of tenure during their term of office;
b) The scope of review and grounds of review shall be clearly established in law and shall extend to the substance (rather than merely procedural aspects) of the actions of the security and armed forces;
c) The official or judge shall have sufficient legal powers to be able to review matters of fact and evidence relating to the use of powers of the security or armed forces;
d) As much of the process as possible shall be completed in public;
e) Even where the process is closed to the public as much of it as possible shall be open to the complainant and his or her legal representatives;
f) If it is necessary for reasons of national security to restrict the participation of a complainant in the review process then the decision to do shall be in the hands of the reviewing judge or official alone and compensating safeguards (such as the use of 'Devil's Advocate') shall be provided to ensure that proceedings are fair and impartial.
g) The judge or reviewing official shall have ultimate authority to determine the form and scope of any order or report or decision which results from the process;
h) The judge or official shall have power to make legally binding orders which provide an effective remedy to a complainant who has a justifiable case. These may include the award of compensation and the destruction of material held by the security or armed forces.

Owen Greene

INTERNATIONAL STANDARDS AND OBLIGATIONS: NORMS AND CRITERIA FOR DCAF IN EU, OSCE AND OECD AREAS[1]

Introduction

This paper aims to examine existing and emerging international norms and criteria relating to the security sector and security sector reform amongst EU, OSCE and OECD countries. Security sector reform agendas are expansive, and this paper focuses particularly on norms and criteria relating to democratic accountability and control of the security sector. It aims to clarify ways in which normative processes in these areas could contribute to international efforts to promote and assist appropriate security sector reform (SSR).

Each society has its own elaborate set of formal and informal norms and standards on appropriate democratic oversight of each branch and role of its security sector. For example, practices are widely regarded to be democratically acceptable in some EU states that would be thought scandalously inadequate in others (such as the legal role of parliament in decisions to go to war). Democracies are bound to differ in many ways. So it is futile to aim at full 'harmonisation' of norms and standards of democratic states in relation to ensuring democratic accountability and control of the various elements of the security sector.

Nevertheless, there are some shared understandings of basic 'minimum' norms and standards that all OSCE and OECD states at least recognise and share in principle, and common agendas and debates relating to the further development of democratic accountability and control. As policies and programmes for DCAF and SSR develop, it is important to identify and specify such existing or emerging shared norms, not least to facilitate international co-operation and the development of criteria for evaluation and lessons-learned processes.

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In examining these issues, this paper works within the wider framework developed within the DCAF CSF Working Group, as expressed in the paper 'Evaluation of Security Sector Reform and Criteria of Success: practical needs and methodological problems' by Wilhelm Germann.

In examining the normative dimension of these issues, it is possible either to elaborate basic principles inductively from the practices of well-established democracies, or to examine explicitly elaborated and declared international norms. Dietrich Genschel's paper 'Principles and Prerequisites: Commonalities of Best Practices in Established Democracies' adopts the former approach. It identifies some basic principles of civil - security sector relations and democratic accountability and control that at least implicitly exist in good contemporary practices of the well-established western developed democracies. The present paper complements this through adopting the latter approach, by examining existing and emerging norms that have to some extent been explicitly articulated and agreed to at an international level.

The importance of developing explicit international norms is widely acknowledged. They provide an agreed basis for sustained international agreement and co-operation, and are a condition for effective development of international programmes and regimes. As described below, a number of important relevant international norms have explicitly been agreed through formal intergovernmental negotiations, particularly amongst OECD, EU and OSCE countries.

However, it is important to look beyond formal international treaties and agreements when identifying international norms. In practice the development and use of international normative standards is a dynamic and contested process, in which 'soft' or 'informal' agreements on norms can also be very important. Section 2 of this paper develops this perspective, and briefly discusses understandings of formal and informal international norms and their practical significance. It further discusses relationships between international normative processes and the core issues for this working group: the development and use of criteria for success and failure of efforts to promote security sector reform and DCAF.

Section 3 then outlines and discusses some key international norms and standards relevant to SSR and DCAF that have been formally agreed by states through OSCE, EU and other Euro-Atlantic institutions, including the OSCE Code of Conduct on Politico-Military Aspects of Security and the European Council's 'Copenhagen Criteria on Democracy'. Section 4 identifies and discusses emerging sets of international norms relating to accountability and reform of the security sector associated with soft or informal agreements. Section 5 concludes with a discussion of issues

and priorities for promoting the further development of agreed international norms in this area.

The Significance of Normative Processes in International Efforts to Promote SSR

The Practical Importance of Normative Processes

Practitioners are often somewhat suspicious of extended discussions of norms. Why are normative processes important in practice for our purposes?

In relation to evaluation, the importance of normative criteria is quite clear. Assessments of success or failure of efforts to promote DCAF and SSR are inevitably complex and contested. They must involve assessments of the appropriateness of the objectives of specific efforts and programmes for reform as well as evaluations of the effectiveness with which these objectives have been pursued. Normative criteria are central to evaluations that involve comparisons with 'ideal types'. Further, they are also implicit in evaluations focussing on processes and procedures relating, for example, to mechanisms for oversight, transparency and consultation.

More widely, norms are also of central importance to the development and results of international SSR efforts. In practice, adequate agreement on norms and objectives is normally a precondition for effective development and engagement of international institutions, mechanisms and co-operation programmes to promote and assist democratic accountability and control over the security sector. Such international institutional and programmatic resources are critically important in SSR in most transitional and developing countries. Thus, although it is widely recognised that effective SSR depends greatly on domestic 'ownership' and support, it is also clear this will often be insufficient to secure appropriate change without reinforcement and assistance from outside. In Central and Eastern Europe, for example, the pace and achievement of SSR, including improved democratic accountability, has depended greatly on pressure and support from NATO and its member states (see, for example, country case studies in Part II of this project). The contribution of outsiders to SSR efforts is shaped, supported and sustained through the international and regional institutions and programmes of NATO, EU, OSCE, Council of Europe and other regional bodies.

Thus, positive reinforcement between domestic and international support for reform depends substantially on the existence of agreed norms. Moreover, the mobilisation and development of support programmes in these international institutions depends on

significant agreement on norms and objectives amongst their members.

On a more detailed level, the effectiveness of specific international programmes and projects to support countries in SSR can only be evaluated well if there is clear understanding of the sets of normative objectives and assumptions on which such programmes are based. Often there is scope for debate about which operative norms are actually motivating the programme. International institutions typically acquire their own framing concepts and arcane understandings of terminology, reflecting institutional mandates and compromises amongst member states, with the effect that declared normative agendas are highly negotiated and sometimes contain tensions within them. The same is true of negotiated assistance agreements with particular 'recipient' countries. In this context, good evaluations require sophisticated understandings of the interplay and complexity of normative agendas and trade-offs in any international or assistance programme.

Thus it becomes clear that normative processes play a complex and dynamic role in the development and effectiveness of efforts to promote democratic accountability and control over the security sector. Norms do not only express basic agreement on principles for action. Agreed norms also have a constitutive role in policy process. Agreed norms are an important determinant of the *capacity* of international institutions and programmes to contribute to SSR, and of the ways in which they do so.

Normative debates are an intrinsic part of on-going political and social processes on priorities, programmes and societal change. In principle as well as in practice, any individual and group participating in these debates can assert their own normative agendas and criteria. However, they are greatly strengthened when they can appeal to norms that have been negotiated and agreed within powerful institutions, and particularly when they have been agreed at international level.

Legal and Political Agreements

In this context, formally agreed norms expressed in legally binding treaties plainly have the greatest force. International law rarely automatically trumps national interests in the area of security. However, governments are normally keen to remain within international law as far as possible. This is particularly true for well-established or emerging democracies where respect for law has high domestic value and (since the end of the Cold War) is also a key criteria for full participation in the benefits of valued institutions such as NATO, EU, Council of Europe, and OSCE. Thus, norms and standards established in legally binding treaties have powerful weight in debates about policies and programmes relating

to democratic control of security sector as in any other issue area. Moreover, legally binding international treaties are often 'domesticated' through national laws and regulations, enabling domestic legal institutions to be used to enforce them.

As will become clear below, as yet there are few specific and substantial norms relating to democratic control of the security sector that are clearly established in international treaties, in Europe or elsewhere. This would be a major problem if international norms require legal force before they become influential. However, in my view this is not the case. Politically binding international agreements are also important, and often just as effective as legally binding treaties.

Political agreements are generally as effective in shaping behaviour as legal treaties if they have been carefully and precisely negotiated in a written agreement that has been explicitly signed and approved at a high political level. In that case, the determinants of effectiveness depend more on the extent to which the agreement becomes embedded in policies, institutions, regulations and programmes than on its international legal force. For example, although legal treaties can include sanctions for non-compliance, in practice these are rarely used in agreements relating to democratisation and security (in contrast, for example, to agreements on trade and investment): governments prefer to use the informal and programmatic 'carrots and sticks' to encourage implementation, which as available for political agreements as for legal treaties. In most societies, domestic political pressure can be applied to governments through appeals to international political agreements almost as effectively as to legal treaties. The experience during the Cold War with human rights groups using the CSCE agreements to exert pressure on the Soviet authorities illustrates this point.

In fact, it is often more possible to achieve specific commitments through political agreements than through legal treaties. For a variety of reasons, government negotiators are often much more cautious about what to include in a legally binding text. This is particularly true in relation to issues such as governance and control of armed forces, police and other parts of the security sector. On such issues, governments may be willing to go a long way in expressing agreements clarifying minimum and good practices, but not to admit any international legal authority over such matters.

Soft Agreements and the Politics of the Norm Lifecycle

Political agreements on international norms are therefore important in this area. However, they come in a wide variety of forms. These range from the intergovernmentally-negotiated texts approved at the highest political level, through international agreements established at lower levels of government, agreed pro-

grammes of international institutions, professional codes of practice recognised by governments, to widely shared norms specified by civil society groups. Some of these are quite formal and highly negotiated by all participating governments; others are quite 'soft' or informal.

To the extent to which disputes about governance and control of the security sector are treated as high politics, formal high-level international agreements are likely to be stronger and more influential than softer informal agreements.

Nevertheless relatively soft or informal agreements play an important role. Firstly, they play an important role in the emergence of new international norms. Soft and informal agreements can be important precursors to more formal international commitments. Studies show that agreed international norms emerge through complex social processes, involving campaigns and 'norm entrepreneurs' operating in (and taking advantage of) a variety of institutional settings. Advocates of new or stronger international norms may, for example, try to extend the application of commitments that have already been formally agreed in other contexts, or to formalise and strengthen transnational codes of good practice amongst relevant agencies or professional bodies. It is thus important to identify and examine emerging soft and informal agreements as possible bases on which to build stronger international programmes and agreements.

Secondly, soft and informal agreements can play an important role in widening adherence to and support for international norms. For example, countries may begin to align themselves with the strong international commitments adopted by a relatively small group of states (such as members of NATO or the EU) through participation in joint programmes or code of conduct which express commitment to those norms but in a less formal or specific way. This links with the second key phase in the normal 'lifecycle' of international norms: after they have emerged and been adopted by some countries and institutions, they need to spread (or 'cascade') to others.

Thirdly, informal and soft agreements can play a key role in the 'internalising' and institutionalisation of formally agreed international norms. They play an essential role in specifying the implications of formal agreement and developing shared understandings about good implementation. High level intergovernmental agreements often do not detail specifically how they are to be implemented. In successful agreements, this is generally elaborated through a set of supplementary sectoral agreements, co-operative programmes, codes of conduct, and such like. In this way, informal agreements can fill-out and reinforce high-level formal agreements, helping to connect general inter-governmental commitments to efforts to change practices of the directly relevant institutions and agencies.

So, in the following sections we shall discuss informal and 'soft' international norms amongst OECD and OSCE countries relating to democratic oversight and control of the security sector. One of the reasons why soft or lower level political agreements are often neglected is that their variety and scope is so wide, making it hard to be comprehensive. This paper also cannot be comprehensive, but will rather aim to illustrate and to provide an overview.

Norms and Standards Relating to Democratic Oversight and Control of Security Sector Amongst EU, OSCE and OECD Countries

Introduction

One of the distinguishing characteristics of OSCE countries, compared to other regions of the world, is that they have established not only a substantial set of international agreements on security issues but also a well-developed complex of institutions for co-operation including NATO, the EU, OSCE and many others. Moreover, they have relatively strong declared agreement on support for the principles of liberal democracy and the rule of law.

Thus, it is striking that there are as yet few legal or politically-binding agreements within the area of the OSCE that specify norms or standards relating to democratic oversight and control of the armed forces or other parts of the security sector. There are some relevant substantial agreements, which are described below. But it is clear that this is an issue area where international norms and standards are still very much at the stage of emergence.

Principles of Democratic Institutions and Governance

The member states of NATO, OECD, EU and Council of Europe have committed themselves to strong principles relating to democratic governance, human rights and the rule of law. In principle, these apply to governance of all sectors of society, including the security sector. Thus, although they do not include specific norms of democratic oversight and control over the military, police or other parts of the security sector, they do provide a basis for such norms.

It is worth noting that although these broad international principles of democracy, human rights and rule of law have a long history, until quite recently commitment to them (to say nothing of their implementation) was confined to only a relatively small group of states in North West Europe, USA, Canada, Japan, Australia, New Zealand and India. During the 1970s and 1980s, these international standards spread across much of Southern Europe. During the 1990s, adherence to these norms has spread much further,

across much of Central and Eastern Europe, the Americas and some countries in Africa and Asia. All states in the OSCE area are now committed in principle if not in practice to these broad normative principles.

Formal international agreements on some principles of democratic governance were developed within the Conference on Security and Co-operation in Europe (CSCE) in the late 1980s, alongside those an elaboration of standards relating to human rights and rule of law, taking advantage of the opportunities offered during the Gorbachev reform period to elaborate these within CSCE frameworks. Thus, the founding documents of the follow-on Organisation for Security and Co-operation in Europe (OSCE) - the Charter of Paris and the Helsinki Document (1992) - include explicit politically binding commitments to such principles.

Similarly, members of the Council of Europe (CoE) are committed to a range of key principles of democratic oversight and control, through a variety of agreements, codes of conduct and guidelines. These are found in formal and soft CoE agreements relating to: the rule of law, individual and minority rights, freedom of the media, access to justice, and penal systems. Again, these agreed standards generally include little or no specific reference to democratic accountability and control over the security sector, although they do have direct implication for police, judicial and penal practices. Most relevant CoE agreements are politically binding, but the CoE programmes are often particularly focussed on ensuring adoption of national laws and regulations that are compatible with standards agreed by CoE members.

Membership of the OECD club of advanced industrialised democracies includes numerous standards for democratic governance. Thus, extension of membership to Republic of Korea and Mexico in the early 1990s reflected progress in democratisation as well as good standing in liberal trade and investment regimes. However, although the OECD is centrally concerned with developing and sharing good governance practices, it is not focussed on issues of democratic oversight, and relies on international standards and criteria of democratic practices established in other forums.

The end of the Cold War, and debates about accession to the EU of countries in Central and Eastern Europe, stimulated the European Council to specify some broad political criteria for EU membership. At its meeting in Copenhagen on 21-22 June 1993, the European Council laid down a number of broad criteria to be fulfilled by associated countries in Central and Eastern Europe in order to be considered for EU membership. These included 'the achievement of institutional stability as a

guarantee of democratic order, the rule of law, respect for human rights and respect and protection of minorities' as well as other criteria such as establishing a functioning market economy.

These 1993 'Copenhagen Criteria on Democracy' have subsequently been referred to repeatedly by EU institutions. They were a declared basis for the framework of the EU initiative to establish the Stability Pact for South Eastern Europe, launched at the Cologne EU summit on 10 June 1999. This declared that 'countries wishing to be admitted [to EU membership] must, however, meet certain minimum standards, including the Copenhagen criteria on democracy and market economy laid down in 1993'…. 'the Stability Pact's stabilisation policy is not only about economic development. Without state institutions that work effectively and the democratic development of a state under rule of law, there can be no economic development and prosperity. Equally, democratisation and non-discrimination are also fundamental preconditions to guaranteeing internal and external security'. The promotion and acceptance of democratic norms are thus embedded in the Stability Pact as far as South East European transition countries are concerned.

However, it is notable that the Copenhagen criteria on democracy are not elaborate or very specific. They simply express some basic principles of democracy. Their importance lies in the fact that they provide the basis for the EU to negotiate specific bilateral agreements with each accession and stability pact country, which have generally included some rather specific milestones towards establishing stable democratic and accountable institutions. For example, Stabilisation and Association Agreements with stability pact countries (such as Macedonia and Albania) have included measures to improve access to justice and police practices, and official accountability before the law.

The OSCE Code of Conduct on Politico-Military Aspects of Security

The OSCE Code of Conduct on Politico-Military Aspects of Security is the most prominent international agreement within in the OSCE area that includes norms and standards that specifically address democratic oversight and control of key elements of the security sector – particularly the armed forces. This Code of Conduct was agreed at the OSCE summit in Budapest on 5-6 December 1994. As for all OSCE agreements, it is politically binding. However, it not only includes a number of specific norms and standards but also established a follow-on process: a biennial

review process in which participating governments are invited to report and discuss their progress in implementation.

The OSCE Code of Conduct on Politico-Military Aspects of Security was developed within the framework of wider OSCE principles relating to security. These include the concepts of:

- comprehensive security: security is not simply a military issue but is secured through progress in all of the three OSCE issue 'baskets' – politico-military, human rights and fundamental freedoms, and economic and environmental co-operation;
- indivisibility of security: security cannot be obtained at the expense of others, and states have a legitimate security concern in the domestic affairs of other OSCE countries because bad internal practices can have wider security implications.

The OSCE Code of Conduct on Politico-Military affairs is thus primarily legitimised through its contribution to confidence-building and co-operative security in the OSCE area, rather than through international commitment to democracy and rule of law *per se*. Further, it covers a range of issue areas, including: preventing and combating terrorism; refraining from threat of use of force; conflict prevention measures; and compliance with the international laws of war.

Nevertheless, the OSCE Code of Conduct establishes a number of important agreed norms and standards relating directly to democratic political control over the security sector and over the use of the armed forces. Section IV, paragraph 13 states 'Each participating State will determine its military capabilities on the basis of national democratic procedures, bearing in mind the legitimate security concerns of other States as well as the need to contribute to international security and stability. No participating State will attempt to impose military domination over any other participating State.' This paragraph is in a sense characteristic of the whole document, in that it establishes an important norms of democratic decision making, but primarily in the context of norms to promote co-operative security amongst OSCE countries.

Chapter VII of the OSCE document is particularly important for our purposes. It includes the following commitments that participating States:

- 'consider democratic political control of military, paramilitary and internal security forces as well as of intelligence services and police to be an indispensable element of stability and security.' (paragraph 20)
- 'will further the integration of their armed forces with civil society as an important expression of democracy.' (paragraph 20)

- 'will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating state will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.'(paragraph 21)
- 'will provide for its legislative approval of defence expenditures…and, with due regard to national security requirements, exercise restraint in its military expenditures and provide transparency and public access to information related to the armed forces.' (paragraph 22)
- 'will ensure that its armed forces as such are politically neutral, while providing for the individual service members' exercise of his or her civil rights.' (paragraph 23)
- 'will provide and maintain measures to guard against accidental or unauthorised use of military means.' (paragraph 24)

  'will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities. If a participating State is unable to exercise its authority over such forces, it may seek consultations within the OSCE to consider steps to be taken.' (paragraph 25)

Chapter VIII of the Code of Conduct further includes the commitment that 'each participating state will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under effective control of constitutionally established authorities and subject to the rule of law (paragraph 36).

These are important international norms and standards on democratic oversight and control of the security sector in OSCE member states. The normative framework that they establish has been adopted as an obligatory standard for all OSCE programmes as well as by all of the relevant and important regional institutions, including NATO and the EU. For example, NATO's Partnership for Peace programme makes respect for the principles of the OSCE Code of Conduct on Politico-Military affairs a condition of NATO's assistance and co-operation with other members of the European Atlantic Partnership Council (discussed further below). It is now a major reference point for virtually all assistance programmes within the OSCE area that are relevant to security sector reform, whether bilateral, EU, regional or by international institutions such as the World Bank.

Importantly, the OSCE Code of Conduct explicitly establishes agreed international norms of democratic control relating to virtually all elements of the security sector (see paragraph 20, and also paragraph 21). Nevertheless, its focus is primarily on the military. It is only in relation to the military that more detailed norms of democratic oversight and control are specified in the Code of Conduct. Similar norms could in principle have easily been formulated for other parts of the security sector, including paramilitary and internal security forces and the police, but this was not done.

Similarly, international norms and standards for democratic control of the military relate primarily to ensuring the control of the armed forces by a constitutional civil authority with democratic legitimacy – that is, of the executive branch of government under democratically elected leadership. The role of the legislature is less specified. The main commitment here is that there should be legislative approval of defence expenditures, and that there should be transparency and public access to information related to the armed forces (paragraph 22). Once again, these are very important principles, but they are quite general and do not address many aspects of democratic control of the security sector.

These limitations reflect a number of factors, including the agreed primary motivation and scope of the exercise (co-operative regional security) and the relatively basic level of shared norms of democratic control of the security sector amongst even the well-established democracies at the time of negotiation.

In spite of its limitations, however, the OSCE Code of Conduct on Politico-Military Aspects of Security stands out as the primary international agreement on norms and standards of democratic control of the security sector. It is politically binding, but agreed at high political level and embedded in relevant subsequent programmes of not only the OSCE but also NATO, the EU and other relevant institutions.

Other Relevant Agreed Norms and Standards

This author has not been able to identify any other formal multilateral inter-governmental agreements, whether legally or politically binding, of EU, OECD or OSCE countries (or subsets of them) that specifically establish norms and standards for democratic oversight and control of elements of the security sector.

This may be surprising in view of the substantial number of international agreements, mechanisms and institutions for co-operation amongst various elements of the security sector amongst these democratic countries, and the progress towards establishing clear international norms for democratic institutions and democratic governance at a more general level.

However, upon review it is perhaps not so very surprising. International agreements on institutions such as police, border guards and interior forces are primarily concerned with functional co-operation rather than issues of democratic governance. Thus INTERPOL and EUROPOL have been concerned with facilitating co-operation in police investigations. Co-operation amongst border guards tends to be similarly dominated by issues of functional co-operation. In these contexts, discussions on principles clearly arise where they relate to law, respect for civil rights, and accountability of the relevant part of the security sector to the law and to executive authority – for example, in relation to issues of 'hot pursuit', admissible evidence, extradition proceedings and exchange of intelligence on suspects. Issues of parliamentary oversight, for example, are secondary contextual issues under such circumstances .

Soft and Informal International Agreements on Norms of Democratic Oversight and Control

In view of the relative dearth of international agreements specifying norms and principles of democratic oversight and control over the security sector, attention should turn to the possible existence of soft or informal international agreements in these areas, for the reasons discussed in section 2 above.

Institutionalisation of Norms of Democratic Control and Oversight of Security Sector International Assistance Programmes

Well-established democracies and the institutions that they dominate (including NATO, EU, OECD, and the World Bank) have been focussed less on elaborating norms of democratic control for themselves than for transitional, post-conflict and developing countries that they assist and support.

Thus, NATO's Partnership for Peace programme with EAPC countries includes 'ensuring democratic control of defence forces' as one of its five objectives. In this context, NATO has identified a range of activities that should be considered as part of the specific PfP co-operation and assistance agreements established with individual partner countries. These include establishing appropriate: political and legal concepts and institutions; defence and security related education for civilians and parliamentarians; development of balanced civil-military relations; progress in implementing the OSCE Code of Conduct; and information on concepts of defence structures (such as ministries of defence) in a democratic society. Agreements under the Partnership for Peace programme have tended to be somewhat flexible on which elements to prioritise. In con-

trast Membership Action Plans for aspiring NATO members have included detailed requirements under the above headings.

Similarly, donor countries in the OECD have gradually developed shared understandings through the OECD Development Assistance Committee on the role of assistance with security sector reform in the context of development aid programmes. These remain at an early stage. Development assistance agencies of some OECD countries have taken a lead in developing policies and programme relating to SSR (particularly in relation to the military, police and border guards), including Canada, Denmark, Japan, Netherlands, Norway, Switzerland, United Kingdom, and the USA. However, most of these agencies still approach this issue area cautiously in practice, and norms and principles for providing such assistance remain under discussion. Nevertheless, the OECD DAC has issued guidelines for assistance with SSR (agreed in 2001), which include reference to principles of support democratic oversight and control.

Some of these countries have been pressing the IMF and World Bank to include support and capacity-building assistance to promote democratic oversight of public expenditure on the armed forces, police and other sections of the security sector in their programmes to support transparency and accountability in other areas of public expenditure. These latter programmes are now well established, and incorporate highly developed sets of norms relating for example to information management and accountability in relation to public expenditures in other sectors. However, both the IMF and World Bank remain reluctant to explicitly extend these to elements of the security sector such as the military and police.

Similarly, the EU has supported, with caution, programmes to promote transparency and democratic accountability of the security sector in countries of Central and Eastern Europe, mainly through their PHARE and TACIS Democracy Programmes. This included, for example, projects to promote oversight by legislatures, and for parliamentarians of countries of the former USSR to develop 'model legislation' on parliamentary oversight of the military sphere.

The OSCE, EU, Council of Europe, NATO and individual donor countries have co-operated in a more or less co-ordinated way to support police reform and access to justice programmes in a number of countries in Eastern Europe, including Stability Pact countries in South Eastern Europe. These have been reinforced through civil society programmes to the same ends (including those supported by DCAF). Thus, for example, OECD countries and OSCE field missions have supported police reform programmes in Macedonia, Serbia and elsewhere, complementing Council of Europe and EU programmes to promote access to justice. In practice these programmes have to engage with issues of

democratic oversight and control of the reformed services, and shared understandings on principles and norms and good practices have developed. However, these remain informal and inchoate at the international level.

Professional Codes of Conduct and Guidelines

One of the characteristics of the countries within the EU, OECD and OSCE area is that there are dense transnational networks amongst officials, professionals, political parties, parliamentarians, industry, and civil society groups. This is the case for those concerned with the security sector as it is for other sectors such as health or education. These transnational communities provide a basis for the development of informal shared norms and principles relating to democratic oversight and control.

At a thoroughly informal, though important, level there is little doubt that these networks are contributing to shared understandings of what it means to be a professional soldier, policeman or woman or border guard in a democratic society. Just as induction of national military into NATO networks assisted in the democratisation process in process in Spain, Portugal and Greece in the 1980s, there is evidence that it has done so in relation to Central and Eastern Europe in the 1990s.

As discussed above, NATO and OSCE frameworks have contributed to the establishment of relatively strong international norms relating to democratic oversight and control of the military. Progress in other aspects of the security sector appears to be more limited. However, it is not non-existent. For example, a process of establishing a code of police ethics is underway within the Framework of the Council of Europe. This CoE Draft Code of Police Ethics includes quite elaborate and specific principles of police accountability, including accountability to local communities, local authorities, national government and parliament in a number of areas, including police practices and spending. This Code is as yet not finalised, but it seems that it will provide a specific set of agreed norms on these matters amongst Council of Europe members.

Conclusion

Commitments to broad principles of democratic governance and to democratic institutions are well established in international agreements amongst EU, OECD and now OSCE countries. Beyond these, there are some international agreements that include substantial norms and standards relating to democratic oversight and control of the security sector. Prominent amongst these is the OSCE Code of Conduct on Politico-Military Aspects of Security.

These agreements are politically binding rather than legal treaties, but are nonetheless key reference points for OSCE countries.

These agreed norms and principles have been institutionalised in the OSCE, EU Council of Europe, NATO and other important institutions and organisations, and thus have significant influence. They provide a basis for supporting the elaboration of more specific norms into national laws, regulations and practices, supported in many cases in central and Eastern Europe through assistance programmes.

However, internationally agreed norms and standards for democratic oversight and control remain weak or inadequately developed in many areas, particularly in relation to legislative oversight over the executive and elements of the security sector other than the military. Although the core democratic countries of the EU, OECD and NATO would probably be able to recognise and endorse a relatively well-developed set of principles and good practices relating to democratic oversight and control (such as those elaborated in Dietrich Genschel's paper), they have not as yet aimed to do so. Instead they have focussed more on establishing principles and conditions for transitional or post-conflict societies that they are assisting.

The development of norms and standards of democratic oversight and control for co-operation and assistance programmes in Central and Eastern Europe is significant. Efforts to publicise and crystallise these emerging norms and standards could play an important role in the further development of agreed norms across the OSCE. Similarly, emerging codes of conduct on professional practice, such as the CoE Draft Code of Police Ethics, could provide an important basis for strengthening and widening commitments to security sector accountability.

The time appears ripe for renewed efforts to develop more formal and explicit sets of agreed norms relating to democratic control and oversight of the security sector across the countries of the OECD, EU and OSCE. There is widening concern about these issues, and it is clear that there are many inadequacies in well-established democracies as well as in transitional countries.

The emerging debates amongst EU and associated states about the 'democratic deficit' and 'accountability gap' in European defence and security policy could provide a good framework for pursuing the development of agreed norms and principles of democratic accountability and control.

Part Two:

PARLIAMENTARY DIMENSION

Hans Born & Philipp Fluri[1]

OVERSIGHT AND GUIDANCE: THE RELEVANCE OF PARLIAMENTARY OVERSIGHT FOR THE SECURITY SECTOR AND ITS REFORM

Myths

There is a widespread belief that security policy is a 'natural' task for the executive as they have the requisite knowledge and ability to act quickly. The decision to go to war, to contribute troops to multinational peace support operations, to conclude international treaties or to raise defence spending, to mention just some of the most important governmental security responsibilities, are regarded to be executive decisions. The stubborn perception exists that parliaments should be kept out of these decisions. Parliament tends to be regarded as a less suitable institution for dealing with security issues, especially given its often time-consuming procedures and lack of full access to the necessary expertise and information. Additionally, parliaments are regarded as ill-suited institutions for keeping classified information secret. However, this is a misperception. The past teaches us that parliaments do play a major role in matters of security in democratic states, both in times of war and peace. In the times of the Roman Republic, the Dutch Republic in the sixteenth century, Great Britain in the Second World War, or, more recently at the outbreak of the Second Gulf War, parliaments across the globe have debated, influenced and exercised oversight over security policy and security sector reform, even in the middle of war.

In this short essay, we put forward the main arguments for (a) why parliamentarians should put security sector reform and policy high on their political and legislative agenda and (b) why parliamentarians ought to insist on exercising oversight of the security sector and its reform. First we turn to the novel concept of security sector reform.

[1] The authors would like to thank Marlene Urscheler and Eden Cole for their invaluable research and suggestions.

What is Security Sector Reform?

'Security sector reform' is a relatively new but ill-defined concept. By replacing 'defence reform' as a staple phrase in security studies, it seems to be a more adequate policy concept with which to address the problems of the new security environment. Security threats today not only include military threats, which require defence responses, but also non-military threats such as terrorism, civil wars, organised crime, illegal trafficking or proliferation of or small arms or even weapons of mass-destruction. These new threats require that all state security services operate in a concerted manner.

The security sector includes all 'state institutions and agencies that have the legitimate authority to use force, to order force or to threaten the use of force'.[2] Normally these institutions are the Military (Army, Navy, Air Force), Intelligence, Border Guard and Paramilitary organisations. The reform of the security sector takes place 'in order to create systematic accountability and transparency on the premise of increased, substantive and systematic democratic control'[3]. The accent on accountability and transparency places security sector reform within the context of the good governance agenda, characterised by a substantive concern for human rights, democracy and the rule of law.

On the other hand, a non-reformed security sector is often characterised by:

- Lack of transparency and flourishing corruption, especially in the arms procurement and trade sector;
- Too large an organisation and budget, both of which overburden and endanger the national economy;
- Lack of the rule of law due to a non-existing or weak legal footing;
- Lack of professionalism: poorly trained units, amateurism, selection and promotion of servicemen on the basis of nepotism instead of merit;
- An inward looking bureaucracy, risk-avoiding, resistance to change, and organisational structures that are ill-suited to new security threats;
- The political abuse of security services by using intelligence services for domestic spying purposes such as manipulating political enemies, as well as the use of paramilitary units to intimidate or neutralise political enemies;

[2] Hans Born, Philipp Fluri, Anders Johnsson (eds.), *Handbook for Parliamentarians N°5, Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, IPU/DCAF*, (Geneva: Belgrade, 2003) p. 16.

[3] See definition of 'security sector reform' in the Glossary of this handbook p. 244.

- A de-motivated and frustrated officer-corps due to a lack of professionalism, career opportunities, low salaries, or their low esteem in society;
- Conscripts perceiving service as a waste of time, the misuse of conscripts for personal gain, and the 'hazing' of conscripts in the barracks.

A non-reformed security sector coincides with the concept of 'poor governance' (as opposed to good governance) which refers to 'arbitrary policy-making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life and widespread corruption'[4].

	Reformed Security Sector (good governance)	Non-Reformed Security Sector (poor governance)
Accountability	Accountable to democratically elected leaders	Unaccountable bureaucracies, arbitrary policy making due in-transparency, political misuse
Work ethos	Professionalism, adapting to the demands of the new security environment, predictable execution of tasks	Amateurism, hazing of conscripts, political leaders cannot trust on loyal execution of orders
Norms	Transparency, dedication	Nepotism, corruption, risk-avoiding

Table 1: Reformed as Opposed to Non-Reformed Security Sector

The Necessity of Security Sector Reform

Regarding the nature and scope of security sector reform (and its opposite, the non-reformed security sector), the reforms are necessary for at least four reasons.

Progression towards Conflict Prevention and Stability

An unreformed security sector often fails to prevent and sometimes causes violent conflicts which leads to increased suffering and poverty[5]. NGOs working in conflict zones report that an ill-

[4] See: The World Bank, *Governance: The World Bank's Experience*, (Washington, DC: World Bank 1994).

[5] Department for International Development, *Understanding and Supporting Security Sector Reform,* (London: Stairway Communications DFID, 2002) http://www.dfid.gov.uk/Pubs/files/supporting_security.pdf p.2.

functioning security sector is a key-impediment to peace-building and stability:

Agents of security that do not play a legitimate and democratically accountable role in providing security for citizens not only are unable to prevent conflicts occurring but can also be a *source* of violence.[6]

Effective security sector reform, on the other hand, in the sense of the provision of security in an effective and efficient manner under democratic control, can add to stability both internally and externally[7]. Internally, security sector reform can take away causes which lead to instability in, for example, civil-military relations. Externally, a transparent and democratically controlled security sector can be regarded as a regional confidence building measure[8]. Therefore, security sector reform can promote stability which is a basic condition for democratisation and economic development.

Contributing to Sustainable Economic Development

A non-reformed security sector, leading to instability and insecurity, does not create a favourable investment climate. Foreign and domestic investors are very reluctant to commit themselves to financial investments if the country is in an unstable and insecure situation. Otherwise, a security sector that is plagued by corruption and that constitutes a burden to the national economy does not contribute to sustainable economic development either. One should keep in mind that security sector reform does not come cheaply, due to, among other factors, investment in new equipment, training and offering service personnel salaries competitive in the national labour market. In the long run, however, security sector pays off as it contributes to sustainable economic development.

Professionalising: Creating a Reliable and Dedicated Corps of Servicemen

As the security sector services are managing, on behalf of the democratically elected political leaders, the state's monopoly of violence, it is important that the monopoly is carried out by a professional work force. Dealing with violence professionally is what distinguishes the security services from other governmental organisations. It is 'more than just another job'. Professionalism entails dedication, the ability to carry out the tasks and orders of their superiors and to provide security within the context of the dynamic and rapidly changing 'new security environment'. Professionalism also means that the officers corps operates in a predictable and disciplined manner. Without professionalism, democratic control would not make any sense as the military's political superiors would never be assured whether their orders will be implemented due to a lack of discipline and quality. Professionalism implies that the political leaders trust that the servicemen are up to their job.

Democratising Security

Last but not least, security sector reform enhances democratisation by the creation of a legal framework which subordinates the security services to the legitimate political authority as well as defining and limiting its purview. Installing a legal framework which affirms civilian supremacy may be regarded as the bottom-line and point of departure for successful democratisation efforts in countries in transition. In principle, the legal framework rests on two core values, which are accountability and transparency. The relations between the political leadership and the security services should be governed by these two important twin concepts of democratising security.

Making Oversight Democratic: the Necessity of Parliamentary Involvement

The security sector services can be characterised as a *Janus*-faced organisation. On the one hand, the security services have to meet their functional demands, that is to maintain law and order, protect the national interest and civil rights. The security services, be it the military, intelligence services or border guards, all have to be prepared and show readiness to fulfil their duties. On the other hand, the security services have to comply to normative societal, democratic and legal standards. All security services have to operate within the law and are accountable to the democratically legitimate political leaders. In other words, democratic governance applies to security services as well.

When it comes to civilian supremacy and democratic governance, parliaments fulfil a crucial role. Due to parliamentary involvement and debates, civilian oversight becomes democratic oversight. It is a way to give voice to the people's needs and

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[6] See Damian Lilly, Robin Luckham, Michael Von Tangen Page, *A Goal Oriented Approach to Governance and Security Sector Reform,* (International Alert: London, September 2002) available at http://www.international-alert.org/pdf/pubsec/Goa.pdf

[7] Timothy Edmunds, 'Defining Security Sector Reform', in *Proceedings of the 2001 DCAF/IISS Conference*, Geneva, 23-25 April, 2001, (Oxford: OUP for IISS) pp. 3-6.

[8] See Heiner Hänggi, 'Good Governance of the Security Sector: its Relevance for Confidence Building', paper presented at the conference on "Practical Confidence-Building Measures: Does Good Governance of the Security Sector Matter?", New York, October 16, 2002.
http://www.dcaf.ch/news/NewYork_161002/Hänggi.pdf

concerns in the debates about security. In fact, parliamentary involvement makes the difference between civilian oversight and democratic oversight, or, between good governance and democratic governance. It is important to make this distinction. Civilian oversight is a pre-requisite, but insufficient condition for democratic oversight. This is what the authoritarian regimes of 20th century teach us. For example, Hitler and Stalin had perfect civilian control over their military, but their type of oversight is not really desirable in a democratic society. In this respect, parliament plays an important role in safeguarding the democratic element of overseeing the security sector.

There are at least five reasons why parliamentary involvement in security policy and security sector reform is essential[9].

A Cornerstone of Democracy to Prevent Autocratic Rule

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

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

No Taxation without Representation

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

[9] Born, Fluri, Johnsson, *Handbook*, pp. 18-19; see also Hans Born, 'Between Efficiency and Legitimacy: Democratic Accountability of the Military in the US, France, Sweden and Switzerland', Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Working Papers*, No. 102 pp. 2-3 available at http://www.dcaf.ch/publications/Working_Papers/102.pdf ; and Hans Born, 'Democratic Oversight of the Security Sector: What Does it Mean?', Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Working Papers*, No. 9 pp. 2-3 available at http://www.dcaf.ch/publications/Working_Papers/09(E).pdf.

Creating Legal Parameters for Security Issues

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

A Bridge to the Public

The executive may not necessarily be fully aware of the security issues which are priorities for citizens. Parliamentarians are in regular contact with the population and are well-placed to ascertain their views. They can subsequently raise citizens' concerns in parliament and see to it that they are reflected in security laws and policies. Due to their representational function, parliamentarians have the unique possibility to give or to withhold democratic legitimacy to government's decision about security policy and security reform. Parliamentary debates may fulfil a catalytic role in creating or diminishing public support for, among other decisions, the government's decision to contribute troops to multinational peace support operations.

Balancing Security and Liberty

In the post-Cold War era, the security services are confronted with a new security environment. Among others, security threats today include failed states, terrorism, uncontrolled proliferation of weapons of mass-destruction, political threats and organised crime. Particularly after 9/11, a whole series of new-anti terrorism legislation and measures are put into place. It is important the security services make the right choices under democratic guidance. That is, firstly, that the 'generals are not preparing for the previous war'. Parliaments have to ensure that the security services are up to the demands of the new security environment. Secondly, parliaments have to over-

see that the new directions and actions of the security services are at all times consistent with the constitution, international humanitarian and human rights law.

Challenges for Parliamentary Oversight of the Security Sector

In sharp contrast between the desirability of parliamentary oversight of the security sector, as described above, is the actual state of affairs of parliamentary oversight in many countries. In many countries, both in consolidating and consolidated democracies, parliaments are confronted with serious challenges:

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

Perhaps the most serious challenge is to convince all the concerned actors throughout the military, civil society, the executive and democratic institutions that parliamentary oversight is in the interest of both democracy and security.

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Hans Born

LEARNING FROM BEST PRACTICES OF PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR[1]

Introduction

Winston Churchill once labelled the parliament as the workshop of democracy. While it goes without saying that parliament plays a central role in any democracy, this role may vary greatly across political systems. While parliaments may range from superficial to significant governing partners, they all share some common characteristics. These include the three basic functions that they perform: representing the people, making (or shaping) laws, and exercising oversight. Parliaments articulate the wishes of the people by drafting new laws and overseeing the proper execution of those policies by the government. In short: the parliament is the mediator between government[2] and the people.

Parliaments are regarded as the cornerstone of a democracy. No area or institution of the government can be exempted from parliamentary oversight and this includes all organisations of the security sector. Instead of "defence sector" the term "security sector" is deliberately used in this paper, as the military is only one of the important guardians of the state. The other 'guardians' are the police, border guards, paramilitary units, intelligence services and private security organisations. Parliaments have to develop a comprehensive security policy as well as keep track of all security sector organisations. Parliamentary oversight is only complete when it oversees the five major aspects of these agencies, that is, the poli-

[1] This paper was presented at the Parliamentary Workshop on "Parliaments and Security Sector Reform in Bosnia and Herzegovina" held from 7th to 10th March 2002, in Sarajevo, Bosnia and Herzegovina, organised by the Centre for Security Studies (Sarajevo, Bosnia and Herzegovina) and the Centre for European Security Studies (Groningen, The Netherlands). We would like to thank the Centre for Security Studies in Sarajevo for undertaking the Bosnian translation of this text.

[2] 'Government' has a different meaning in different countries. In this article, government refers to the top political level, being the president, prime minister and ministers as well as the departments headed by those ministers.

cies, personnel, finances, operations and procurement of equipment and weapons systems.

The parliamentary oversight of the security sector is not a goal in itself. In essence, the main principle of parliamentary oversight is to keep the government accountable and to secure a balance between the security policy and society by aligning the goals, policies and procedures of the military and political leaders. In many countries, it is not the fear of military coups, but the alignment of military and political goals, that remains the biggest concern for parliaments.

In this paper some best practices used by parliaments around the world are discussed. Before presenting some of these practices, we turn first to the relevance of democratic control and second to some methodological issues which are relevant for understanding these practices.

Relevance for Old and New Democracies

Many parliaments, especially those in democracies in transit or being consolidated, often face difficulties in understanding the vast and complex security sector, getting relevant information and assessing military data. Yet parliaments in consolidated democracies also face new challenges when it comes to parliamentary oversight over new military missions or security and defence policy on a supranational level. All these problems are aggravated by the lack of parliamentary staff and education in the field of defence and security matters.

In Europe, the issue of democratic and parliamentary control of the armed forces is undergoing a renaissance. The topic is on the political and scientific agenda of several European countries for numerous reasons. Firstly, the abolition of military conscription in several European countries (the Netherlands, Belgium, France, Italy, Spain, Portugal) raised a critical debate on the democratic control of the armed forces. Many commentators are afraid that an all-volunteer force is more difficult to control democratically than a conscript army. Secondly, during the last decade, on the one hand all European countries have been involved in the downsizing of the armed forces; yet on the other, these same countries have seen an amplification of the tasks assigned to the military with the surge in peace missions. The processes of restructuring and downsizing the military result in less budget and more tasks for the military and consequently put political-military relations under high pressure. Thirdly, as military activity increasingly takes place at the international level, the democratic and parliamentary control of international military cooperation and institutions is also becoming increasingly relevant. This is especially true for smaller member states of, for example, the EU and NATO. Fourthly, at the demand

of international organisations such as NATO and the OSCE, post-communist countries in Central and Eastern Europe have had to restyle political-military relations according to democratic principles. Without the democratisation of the political-military relations, these countries were not permitted to become members of western international organisations. Moreover, in most transition societies, political democratic reform preceded security sector reform. Before reforming the security sector, transition societies adopted new constitutions, gave powers to legislatures and installed civilian ministerial control over the military. This was important, as security sector reform should be reformed in a democratic manner, not only meeting functional military demands but also attaining the demands of societies.

These four developments resulted in a renaissance of the democratic control in both old and new democracies in Europe.

Learning from Best Practices

Three issues are relevant for understanding and learning from best practices: the contextuality; political willingness of parliamentarians; and the meaning of the 'oversight'.

Contextuality

Contextuality refers to the topic of universal or relative democratic standards. The best practice of parliamentary oversight or the best way to carry out parliamentary oversight of the security sector does not exist and is an ideal toward which each specific government strives. Moreover, accepted practices, legal procedures and parliamentary structures in one established democracy may be unthinkable in another one. This variety of democratic practices and systems is the essence of democracy: every country has the right to choose its own way of dealing with civil-military relations. Although there is no single set of norms for civil-military relations, there is a general agreement that democracies adhere to principles of democratic civil-military relations. Parliamentary oversight of the security sector is a 'sine qua non' condition for democracy.

Political Willingness of Parliamentarians

Parliamentary oversight is in many countries hampered by lack of appropriate (effective? Successful) (parliamentary) organisation, parliamentary staff and expertise. Best practices as listed in section 3 show how parliaments are dealing with these barriers to effective oversight. We will now turn to the issue of political willingness as another important factor hindering effective oversight.

Unless elected representatives have either a commitment or the political will to hold the government accountable, no amount of constitutional authority, resources or best practices will make them effective. If parliamentarians do not want to use their power to scrutinise the government, then constitutional or other legal powers will be of little use. Parliamentarians may be less interested in examining the security sector for various reasons. The most important reason is party politics. More often than not, parliamentary political parties which are represented in government are not very eager to oversee their governmental counterparts in a critical manner. As a result, the (best) practices and tools of parliamentary oversight will not be used to oversee the government, except during scandals or in emergency situations. Another reason is that some parliamentarians think that the security sector is not interesting or crucial for the voters. As parliamentarians strive for (re-) election, it might be the case that they turn their attention to other governmental sectors, such as employment issues, welfare, labour issues or pension system or simply the price of bread and gasoline.

The Meaning of 'Oversight'

Many different words refer to parliamentary involvement in the security sector. A first concept is 'oversight', referring to over viewing the government and to setting broad guidelines for the government and its agencies. A second concept is 'good governance', referring to a whole system of democratic management of the security sector, in which the parliament should play a significant role. Thirdly, 'control' is a commonly used concept. In the English language, 'control' has a broader meaning than in many other languages. In English, control means to rule, to instruct or even to manage, as opposed to the stricter concept of 'to check'. Each concept has its own advantages: good governance refers to a systematic approach, oversight stands for a broad approach and control signifies a powerful approach by the parliament with respect to the management of the security sector. We have used the concept of oversight in this case because governance has too broad a meaning (since it refers to the entire political system). The concept of control is not used as it has a narrow connotation of simply checking.

It should be emphasized that each concept represents a specific and particular political system and culture. With regard to parliamentary oversight, the essence is to grasp the 'dividing line' between the parliament and government: to what extent should the parliament be involved in the activities of government? It is, of course, clear that parliamentarians do not command the army, but it must be equally clear that parliament and government have a shared responsibility with respect to the security sector. The idea of

shared responsibility is equally applicable to the relation between political and military leaders. These two parties should not be regarded as adversaries with antagonistic goals. On the contrary, political and military leaders need each other in order to achieve an effective security policy that meets both the military and societal requirements. Therefore, democratic oversight not only means commands and orders, but also incorporates dialogue and communication between political leaders and generals. This communication should be characterised by trust, open lines of communication, mutual inclusion and mutual invitation to express one's opinion.

A final remark on oversight deals with the distinction between democratic and civilian oversight. Civilian oversight is a pre-requisite, but an insufficient condition for democratic oversight. This is what the authoritarian regimes of twentieth century have taught us. For example, Hitler and Stalin had perfect civilian control over their military, but their type of oversight is not really desirable in a democratic society. In this respect, parliament plays an important role in safeguarding the democratic element of overseeing the security sector.

Some Best Practices

All best practices address the main task of parliaments, which is to keep the government accountable on behalf of the people. The best practices come from various countries of the Euro-Atlantic area, from both 'old' and 'new' democracies. It is most certainly not the case that the 'old' democracies have stronger parliaments than 'new' democracies. Indeed, the new democracies in particular are afraid of previous forms of authoritarian rule and consequently are especially careful to put substantive powers into their parliaments. The practices mentioned below constitute a catalogue of possible practices, legal arrangements and organisational set ups which can facilitate effective oversight.

The Parliamentary Committee on Defence and Security

Parliamentary committees are the most powerful organisations that carry out parliamentary work. Through committees, parliamentarians have the opportunity to organise their work and focus expertise. Given the complexity of the security sector, a well-developed committee structure is necessary if the parliament is to exert real influence on the government. Effective parliaments have committees for each policy field of the government; the defence or the security sector is no exception. Committees are vital because they are able to scrutinise in detail the government and because they allow for direct communication between parliamentarians

belonging to different political parties. An effective committee has the following features:

- Their functioning and powers are based on rules of procedure;
- They have control over their own schedules (agenda, issues, dates, frequencies of committee meetings), and have broad latitude in the initiation and amendment of legislation;
- They make use of minority reports;
- There is consistent inter-committee coordination between the committees relevant for the security sector: defence committee, home affairs committee, budget committee, industry/economy affairs committee and the foreign affairs committee;
- The chairman is a senior member of the parliament in the field of defence and security policy;
- The committee is entitled to require the presence of the Minister of Defence at committee meetings;
- The committee has the power to organise hearings on any topic it deems necessary;
- The committee has the power to demand that ministers, civilian and military experts testify at hearings;
- The committee effectively uses academic and NGO experts from outside the government;
- The committee has its own meeting rooms, staff, budget and documentation centre.

Making Full Use of Other Oversight Organisations Inside Government and Civil Society

Parliament alone cannot guarantee effective oversight and hold the government accountable for all activities and policies within the security sector. Politicians do not have the time, resources or expertise to keep a close watch over the complex and expansive security sector. Effective parliaments:

- Make full use of the reports and the work of other state institutions responsible for over evaluating the security sector, such as the judiciary, accountants/auditor-general (e.g. checking the accounts, procurement, and criminal behaviour);
- Invite civil society experts to participate in parliamentary hearings;
- Order independent think tanks, research institutes and universities to carry out research/audits in specific fields of the security sector (e.g. crime, procurement issues, and personnel policies);

- Ensure that NGOs have access to all relevant policy documents;
- Stimulate the existence and functioning of NGOs, such as lowering the bureaucratic barriers for legal recognition of NGOs or giving financial support.

Parliaments and Budget Control

Budget control is at the heart of parliamentary control. Most countries have developed or are developing a systematic approach for evaluation and approval of budget proposals. The key of proper budgeting is transparency and accountability. Effective parliaments:

- Enact laws and procedures for installing transparency and accountability, giving the parliament the power to enforce transparency and accountability;
- Ensure that all budget documents are available to the parliament and to the general public;
- Possess detailed and complete information on all budget items (not only on grand totals);
- Ensure that secret budget items are available to a select group of parliamentarians;
- Demand external auditors to report to parliament on the financial state of affairs of each security sector organisation;
- Maintain the authority to approve, disapprove or amend the budget (allocating funds);
- Have the power to approve or disapprove any supplementary budget proposals presented by the Minister.

Parliamentary Staff and Other Resources

Effective parliamentary oversight of the security sector requires expertise and resources within the parliament or at its disposal. However, the expertise found within parliament does not normally equal the expertise of the government and the security forces. In most cases, parliaments only have a very small research staff (if any), whereas the government can rely on the staff of the Ministry of Defence and other ministries dealing with the security sector. In addition, parliamentarians are only elected for a limited term to sit in parliament, whereas the great majority of civil servants and military personnel spend their entire career in the Ministry of Defence. The basic problem is, however, that parliaments mainly rely on information emerging from the government and military; yet these are precisely the institutions they are supposed to oversee. This creates asymmetrical dependency relations between parliament, government and military. The situation is aggravated by the closed nature of the security sector due to its typically military work, culture, education, and secre-

cy laws. Effective parliaments have developed strategies to cope with this precarious situation. Some possibilities to meet this challenge include the following:

- They could make use of the expertise of NGOs in their work (see above, e.g., ordering research from think tanks, inviting civil experts to participate in hearings and so forth);
- International parliamentary assemblies and international think tanks are becoming increasingly active in supporting parliaments. Parliamentarians participate in international assemblies where they have the opportunity to exchange experiences and viewpoints with parliamentarians from other countries;
- Have parliamentary staff members that support both individual parliamentarians and parliamentary committees;
- A civil service system for parliamentary staff is in place (e.g. recruitment, selection, promotion); parliamentary staff members are acknowledged (senior or junior) experts;
- Both parliamentarians and parliamentary staff members should follow national and international seminars and study tours;
- They should also possess or strengthen parliamentary research services and libraries.

Conclusion

Democracy (and therefore democratic oversight) cannot be a gift. To achieve democracy, as we know it, one has to struggle. History teaches us that most countries have had to fight to become a democracy and to dethrone their authoritarian rulers, be it a dictator at home or abroad. The same is the case with parliamentary oversight. In both new and old democracies, neither governments nor security sector organisations are very willing to surrender (even a part of) their powers and privileges. To establish best practices or to tear down inappropriate practices is not only a matter of knowledge and expertise, but also of resolve and conviction.

In this respect, the political willingness of individual parliamentarians is crucial. Do parliamentarians keep a careful watch on their oversight powers? Do parliamentarians duly exercise those oversight powers, in particular when their 'political friends' are in government? Are they prepared to make the effort to become acquainted with the complex issues at stake? Are they willing to invest time and energy and political (good)will in establishing a system of good governance of the security sector? In answering these questions, one can learn a great deal about parliaments in old and new democracies. The political willingness to do so, however, cannot be taught.

In summary, there are many aspects that both old and new democracies can learn from one another. Perhaps the most important axioms for ensuring democratic best practices include the following:

- Political willingness of parliamentarians is paramount for implementing reform of both the political/parliamentary system and the security sector. If parliamentarians do not want to use their powers to hold the government accountable, their constitutional or legal powers are of little use;
- In many instances, however, parliamentarians are willing but not entirely able to review the government and its agencies due to a lack of human and budgetary resources. Those resources, such as a parliamentary staff, provide parliaments the necessary capability to perform oversight

1. Political and parliamentary reform precedes security sector reform. If not. reforming the security sector becomes similar to driving a car without a steering wheel.
2. Political and military leaders have shared responsibilities in reforming the security sector, given that the reform must fulfil both functional and societal demands.

Appendix

LIST OF POWERS AND PROBLEMS OF PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: SOME EXAMPLES (WORK IN PROGRESS)[3]

Country	Examples of parliamentary powers	Examples of parliamentary problems
Bulgaria	• According to the constitution, parliament is responsible for passing the defence budget. • Approving military deployment overseas or the deployment of foreign troops on its territory. • Approving any declaration of war or state of emergency by the President or the Council of Ministers. • The parliamentary National Security, Budget and Foreign and Integration Policy Committees have the power to call the Minister of Defence, the Chief of the General Staff and any of their subordinates to provide evidence for their enquiries.	• Often differing parliamentary priorities means that defence issues are not allocated the time necessary for their full consideration. • Lack of defence expertise among parliamentarians. • Need for clearer institutional arrangements.

[3] See also Andrew Cottey, Tim Edmunds and Anthony Forster (eds.), *Democratic Control of the Post-Communist Military: Guarding the Guards*, (Palgrave: London, 2001).

Czech Republic	• All defence-related decisions are taken by the President and must be endorsed by the parliament. • In exceptional situations, when parliament cannot be convened, the President can order a military operation without parliamentary approval. • Approves all defence and security legislation. • Plays a central role in drafting the military budget and overseeing military expenditures. • Responsible for deploying the army in times of crisis and declaring or extending a state of emergency at the request of the government. • Approves any governmental decision on the participation of Czech troops on peacekeeping missions. • Can establish commissions of enquiry into serious problems within the armed forces.	• It is difficult for parliamentarians to obtain information of a confidential nature (e.g. related to military intelligence services) • Party politics. • Lack of expertise.
Hungary	• Declares a state of war and the conclusion of peace. • Decides on the deployment of armed forces both abroad and within the country. • Establishes the National Defence Council in the case of war or imminent danger of armed attack by a foreign power. • If the parliament is obstructed in reaching the necessary decisions the President has the power to declare a state of war, a state of national crisis or a state of emergency and can establish the National Defence Council.	• The parliament's role in relation to defence matters has been relatively limited reflecting the predominance of other tasks requiring its attention. • Lack of experience and basic expertise in this area. • No programme budgeting means that parliamentary control of the defence budget is limited.

Latvia	• Passes legislation relating to the military. • Determines the overall size of the armed forces. • Approves the defence budget. • Appoints the commander of the National Defence Forces. • Has the power to declare a state of war and state of emergency. • Endorses international agreements on defence issues. • Approves decisions on the participation of the armed forces in peacekeeping operations. • The parliament has the role of overseeing national security and defence policy. • The parliament has 16 standing committees.	• Problems in translating these enumerated powers into effective oversight. • Lack of experience and knowledge of committee members.
Lithuania	• The main issues of national defence shall be considered and coordinated by the State Defence Council, consisting of the President, the Prime Minister, the Parliamentary Chairperson, the Defence Minister and the Commander in Chief of the armed forces. • The government is accountable to the parliament, which is sovereign in these matters. • The parliament assumes a growing role in terms of passing laws relating to security and defence, providing oversight of the government in this area and approving the defence budget. • The parliament and the National Defence Committee have also developed expertise on defence and security issues. • The National Security Committee has a responsibility to exercise parliamentary control of national defence, state security, civil defence, state border protection and the Special Investigations Service. A team of advisers, administrative staff and the information branch of the parliament support the Committee.	

Romania	Parliamentary oversight is exercised through the defence committees of both parliamentary chambers: • Preparation of reports for legislation. • Hearing civilian defence and uniformed military leaders. • Recommend approval of the budget to the plenum. • Grant permission for participation in military exercises and operations and for transit of foreign troops.	• The parliamentary budget control is limited due to a chronic lack of financial resources. • The Parliamentary Defence Committees instruments must be re-empowered and strengthened, especially regarding their powers of independent investigation and their expertise in defence matters.
Russian Federation	• Adopt the Defence Budget. • Declare war. • Legislate on military matters.	• Laws adopted by the Parliament are subject to mandatory consideration in the Federation Council but come into force only after presidential approval. • The power to approve the budget is undermined by a lack of detailed information on the defence budget, resistance from the Ministry of Defence and the military, a lack of civilian expertise, and the supremacy of the Presidency in Russian politics. In July 2000, a new joint committee on federal budget spending for defence, security and law enforcement activity was established.
Slovenia	• Scrutiny of defence budget. • Defence Minister's actions are exposed to scrutiny and pressure from the Defence Committee of the National Assembly, which is normally chaired by an opposition MP.	• The effectiveness of parliamentarian oversight of the military and defence policy has been limited by the relatively low level of expertise in the Defence Committee.

Ukraine	• Adopt laws. • Approving the State Budget and controlling its implementation. • Determining the principles of foreign policy. • Declare war following a request from the President. • Approving presidential decisions on the use of the armed forces. • Giving consent to the appointment of the Prime Minister. • Approving the Programme of the Cabinet of Ministers. • Confirming the general structure and numerical strength of the armed forces, security services and other military formations. • Confirming the introduction of martial law, the state of emergency and the mobilisation of the armed forces by the President.	• The powers are relatively limited compared to those of the President. • The lack of access to detailed information, limited expertise on defence and security issues, and resistance from the President, government and the military means that parliamentary oversight of the armed forces and defence policy is rather limited.

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Part Three:

DEMOCRATIC ACCOUNTABILITY OF THE SECURITY APPARATUS

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CIVILIAN CONTROL AND MULTINATIONAL MILITARY MISSIONS. RESPONSIBILITY SHARED OR DIFFUSED?

Introduction

The study of what has come to be termed civil-military relations has received renewed interest within the last decade. The reason for this renaissance seems to be that, in recent years, civil-military relations all across the globe have entered into an era of turbulence challenging – albeit with considerable variation – the established patterns of civil-military relations of the past. In particular, '[t]his renaissance in what some academics once considered a settled issue may be attributed to the emergence of post-cold war democracies in Eastern and Central Europe; to a (mostly) American quest to spread democratic norms throughout the world; to continued problems of imposing civil control over the military in many states, especially those where internal conflict seems endemic; and to a recent, but brief, interlude of American self-doubt about the effectiveness of civil control in the United States.'[2] Don Snider and Miranda Carlton-Carew add to these elements some others, such as the changes in the international system by the end of the East-West conflict, the rapid drawdown of the armed forces that followed, and the increasing use of the military for military operations other than war.[3]

The civilian control of the armed forces is a major part of the reflections on civil-military relations and this will be the focus of what follows. After an outline attempting to define the various

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[2] Douglas L. Bland, "A Unified Theory of Civil-Military Relations," *Armed Forces & Society*, 26, 1 (1999): 7-26, 7.

[3] As cited in Sam C. Sarkesian and Robert E. Connor, eds., *The US Military Profession into the Twenty-First Century. War, Peace and Politics* (London – Portland: Frank Cass, 1999), 81.

dimensions of civil-military relations and to clear the boundaries between civil-military relations and civilian control, the concept of civilian control as a regime of shared responsibility will be presented. The second part of this chapter discusses the issue of the transfer of the concept of civilian control from a national to an international environment and explains why the issue of the civilian or rather democratic control of multinational military missions has been moving up on the agenda. The approach, again, is to conceive of multinational democratic control as a regime of shared responsibility that includes a higher number of parties and actors compared to the national regime.

Reflections on a Model of Civil-Military Relations and a Theory of Civilian Control of the Military[4]

The Dimensions of Civil-Military Relations

As can be inferred from the above use of the expression 'renaissance', the study of civil-military relations is by no means confined to the more recent past. Indeed, civil-military relations and issues of civil-military relations have aroused the research interest of a whole number of scientists coming from various academic disciplines following, naturally, quite different approaches. Arguably, political scientist Samuel P. Huntington and sociologist Morris Janowitz were and still are most prominent voices in this debate. The former wrote his seminal *The Soldier and the State* in 1957.[5] By focusing on the officer corps, he revealed the potentially conflictual relationship between the civilian desire for controlling the armed forces and the needs of military security. In his view, this tension could be managed by what he called objective civilian control the key to which was military professionalism and its notions of military autonomy, political neutrality and voluntary subordination. Huntington's study served to shift the focus of research on civil-military relations to issues concerning the relationship between the military and the state, i.e. the government, and to highlight the predominant relevance of military professionalism as an instrument of civilian, governmental control of the military.

[4] This section largely draws on Gerhard Kümmel, "The Military and Its Civilian Environment. Reflections on a Theory of Civil-Military Relations," *Connections – The Quarterly Journal* (forthcoming).

[5] Samuel P. Huntington, *The Soldier and the State. The Theory and Politics of Civil-Military Relations* (Cambridge, Mass. – London: The Belknap Press of Harvard University Press, 1957). It has been argued that Huntington's book 'has had the greatest and most lasting influence. It enjoys such longevity in part because it is a richly textured and insightful examination and in part because the American military, who endorse many (...) of its general conclusions, have made it the centerpiece of their training on civil-military relations.' Peter D. Feaver, "The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control," *Armed Forces & Society*, 23, 2 (1996): 149-178, 158.

Yet, as others have noted,[6] the equation of military professionalism and voluntary subordination inherent in Huntingtonian thinking does not necessarily hold because too many armed forces that were deemed professional not only by their own standards, but also by external evaluation have engaged in various endeavours of subverting civilian authority, including coup d'etats. That is one major reason why the second chief protagonist in the debate on civil-military relations, Morris Janowitz in his classic *Professional Soldier*,[7] 'understood civilian control in terms of societal control rather than state or institutional control. State institutions play a secondary role as an extension of society, but societal control, measured in part as integration with society, was Janowitz's normative and empirical focus.'[8] Nevertheless, Janowitz made much reference to the idea of professionalism also, but was ready to accept some degree of unavoidable politicisation of the military because, in his perspective, given the international context of the nuclear age, the military increasingly had to operate on the concept of the constabulary force.[9] Even more important to note is that his notion of 'professional ethics', as he calls it, is dynamic and thus subject to change over time and does include more than Huntington's professionalism: According to Janowitz, the officer is subject to civilian control not only because of 'self-imposed professional standards,' but also because of a 'meaningful integration with civilian values'.[10]

Yet, although common-sense has it that the study of civil-military relations refers and is confined to the dimensions of society and, especially, politics, the field of civil-military relations is richer than is often assumed. Having said this, for analytical reasons I propose to distinguish six – to be sure: interdependent and interpenetrated dimensions to cover the richness of civil-military relations,[11] and

[6] Among them, e.g., Samuel Finer, *The Man on Horseback: The Role of the Military in Politics* (London: Pall Mall Press, 1962) and Bengt Abrahamsson, *Military Professionalization and Political Power* (Beverly Hills: Sage, 1972).

[7] Morris Janowitz,. *The Professional Soldier. A Social and Political Portrait* (New York – London: The Free Press, 1971 [1960]).

[8] Feaver, "Civil-Military Problematique," 166.

[9] Janowitz, "Professional Soldier," Ch. 20.

[10] Janowitz, "Professional Soldier," 420. This points to substantial differences between Janowitz and Huntington in the treatment of military autonomy. Furthermore, it is to be emphasized that both Huntington and Janowitz apply the concepts of military professionalism and professional ethics to officers only. Cf. Gwyn Harries-Jenkins, "The Concept of Military Professionalism," *Defense Analysis*, 6, 2 (1990): 117-130, 122.

[11] The following is inspired by Martin Edmonds, *Armed Services and Society* (Boulder – San Francisco: Westview Press, 1990), 113; and Bernard Boëne, Wilfried von Bredow, Wilfried von and Christopher Dandeker, "The Military in Common-Risk Societies. Elements of Comparison Among Nine Countries of West, Central, and East Europe," in *Military and Society in 21st Century Europe. A Comparative Analysis*, ed. Jürgen Kuhlmann and Jean Callaghan (Hamburg: Lit, 2000), 305-331, 319-325. They differentiate the economic, political, societal and cultural dimensions.

these are: economy, finances, technology, culture, society, and politics. Next, it is advisable to keep in mind that these various dimensions of civil-military relations may most likely look quite different depending on the point in time they are looked upon. In other words, the time factor has to be included into the analysis. Here, I suggest to differentiate between civil-military relations in (1) peacetime, (2) crisis situations, (3) traditional military operations (defence, deterrence, attack), and (4) non-traditional military operations (peacekeeping, humanitarian intervention, etc.). Furthermore, since the civilian side has both a national and an international facet, these very six dimensions have to be seen in a national/domestic as well as in an international context.[12] Nevertheless, it is to be noted that the bulk of research on civil-military relations, indeed, is dedicated to these two dimensions of society and politics, and of course, there are good reasons for this.

The Civil-Military Problematique: A Regime of Shared Responsibility

The reasons for this special attention of civil-military relations research to the societal and the political dimensions are basically rooted in what Peter Feaver has termed the 'civil-military problematique'. That there exists such a problematique, rests on the assumption that the armed forces are sufficiently different from its environment to conceive of them as a distinguishable entity.

[12] According to the scheme resulting from this tableau, research issues can be grouped. The following table gives some examples for research topics that fall into the various categories and illustrate that the study of civil-military relations is an interdisciplinary undertaking:

Table: The Dimensions of Civil-Military Relations and Examples for Research Topics

Dimension	National Context	International Context
Economy	The armed forces and the armaments' industry	The military's economic relevance as a consumer of goods in peacekeeping missions contributing to economic reconstruction
Finances	Military expenditures and the overall state budget	The armed services as a recipient of international military aid and of international credits
Technology	The military as a promoter of technological progress within a country	The export of military technology and armaments
Culture	The military's importance within the political culture of a country (the 'weight of history')	The impact of the presence of foreign armed forces on a country's political culture
Society	The military's distinctiveness from and integration into a country's society	The perception of peacekeeping forces within the society of the country in which the peacekeeping mission is conducted
Politics	The political control of the armed services	The political control of multinational military missions

Indeed, there is a 'need for armed forces to remain apart from society with distinctive organisational structure and culture or ethos in order to do its job.'[13] Bernard Boëne has referred to this as the issue of military uniqueness, i.e. the essential 'question of how unique the military really is – and ought to be.'[14] The answer he gives is, though a differentiated and nuanced one, in the end basically affirmative, for he writes: 'There are (...) a few permanent, universal traits, related to the sacred character of war for any society, once it has embarked on such a course – obedience, loyalty, unlimited liability for service, a stronger degree of coercive institutional authority – as well as to its violent nature (transgression of civilian taboos).'[15] Christopher Dandeker agrees: 'The military is unique in the nature and extent of the demands it places upon its personnel. They are obliged to train to kill and to sacrifice self, to participate in a military community where one works, lives and socialises with other service personnel and, when, necessary, to respond to a 24-hour commitment with the risk of separation from family at short-notice.'[16] And an adequate theoretical framework to capture this is offered by systems theory.[17] In this vein, the armed services can be conceived as a system that is distinct from its environment and is, in its interacting and interdependent component parts, operating on a specific systems logic. Thus, the system (or rather the sub-system) of the armed forces can be analyzed in terms of its relationship with its environment and with other (sub-)systems that are working and operating in this environment.

The civil-military problematique, then, is by no means a more recent one or one of modern times, but has already found the intellectual and political attention of a good number of political thinkers and philosophers among them, for example, Plato who dwelled upon this problem in the Third Book of his famous *Republic*. And this problem or problematique rests with two central and potentially conflicting principles: 'First, the military must be strong enough to prevail in the society's wars.' And, second, 'just as the military must protect the polity from enemies, so must it conduct its own affairs so as not to destroy the society it is intended to protect.' Accordingly, the military is deemed to be subordinate to the political authority of the

[13] Christopher Dandeker, "The Military in Democratic Societies: New Times and New Patterns of Civil-Military Relations," in Kuhlmann and Callaghan, "Military and Society," 27-43, 29.

[14] Bernard Boëne, "How 'Unique' Should the Military Be? A Review of Representative Literature and Outline of a Synthetic Formulation," *European Journal of Sociology*, 31 (1990), 3-59, 3.

[15] Bernard Boëne, "How 'Unique' Should the Military Be? A Review of Representative Literature and Outline of a Synthetic Formulation," *European Journal of Sociology*, 31 (1990), 3-59, 58.

[16] Christopher Dandeker, *Flexible Forces for the Twenty-First Century* (Karlstad: Department of Leadership - Swedish National Defence College, 1999), 85.

[17] Edmonds, "Armed Services," especially 113f.

state, 'while it should be large enough to protect against threats, its size and draw on society's resources must be bounded.'[18]

This civil-military problematique originates from processes of functional differentiation and specialisation within society that occurred in the course of time. The trend towards a division of labour in the development of societies implies that a society, or rather the government that a given society has chosen or has to live with, delegates the task of providing security for the respective society to some of its members. This segment came to be called the military. The military as a sub-group of the larger society and as an instrument of a given government, however, commands substantial power resources, power resources that generally surpass those of the government thus putting the question on the agenda why the armed services should follow what they are being told by civilians. Herein lies what Feaver calls the civil-military challenge which is about reconciling 'a military strong enough to do anything the civilians ask them to with a military subordinate enough to do only what civilians authorize them to do. This is a special problem of political agency: how do you ensure that your agent is doing your will, especially when your agent has guns and so may enjoy more coercive power than you do?'[19] This, then, is the issue of the civilian control of the military being part of the larger landscape of civil-military relations research.[20]

Civilian control of the armed services is a fundamental and essential, perhaps even perennial question to those societies that have put up armed forces, irrespective of whether the political system or the government is a democratic, monarchic, theocratic, authoritarian or totalitarian one.[21] The reason for this is that the military is inherently ambivalent in its character. Judging from the

[18] Feaver, "Civil-Military Problematique," 151, 152, 153. As a consequence, the problematique is about striking the appropriate balance between the functional and the sociopolitical imperatives. (Boëne, "How 'Unique' Should the Military Be?").

[19] Ibid., 149.

[20] It is important to note that the term civilian control is a general one in the sense that it does not provide distinctions between societies according to their degree of democratisation. Hence, for democratic/democratising societies, the more normatively filled notion of *democratic control* has been proposed. (Wilfried von Bredow and Gerhard Kümmel, "New Roles for the Armed Forces and the Concept of Democratic Control," in *Civil-Military Relations in an Age of Turbulence: Armed Forces and the Problem of Democratic Control*, ed. Gerhard Kümmel and Wilfried von Bredow (Strausberg: SOWI, 2000), 109-131, 126.

[21] Following the recent independence of East Timor, at present (July 2002) there are 193 states in the world. More than 10 percent of them, namely 22, have not established armed services. The countries free of armed forces are: Andorra, Costa Rica, Dominica, Grenada, Haiti, Island, Kiribati, Liechtenstein, Maledives, Mauritius, Monaco, Nauru, Panama, Saint Lucia, Saint Vincent & the Grenadines, San Marino, Salomon Islands, Samoa, St. Kitts & Nevis, Tuvalu, Vanuatu and, last but not least, Vatican City. (See http://www.globaldefence.net)

long history of the military there have been numerous cases in which the armed services did not follow the orders given to them by civilians in government. Also, at times the military acted in non- or even anti-democratic ways; for example, it served as an instrument to overthrow democratic political regimes. This can be seen when looking at some Latin American, African, Asian and even Western countries and, in particular, at the number of attempted or successful coup d'etats in these regions. But this is only one side of the armed services. The other is that there have been cases in which the military served as a *conditio sine qua non* in endeavours to defend a democracy against its attackers; in such a vein, it is also to be mentioned that, e.g., in the German case, the armed forces served as a supporter of a transition to democracy. Since the armed services obviously are a 'double-edged sword' so to speak, it is no wonder that the relationship between the armed forces and society and the issue of civilian control of the military have since been of substantial social-scientific and also societal and political concern. This is particularly true for democratic societies, the number of which has risen since the end of the East-West conflict as can easily be inferred from Freedom House's annual publication *Freedom in the World*.[22] In recent years, the problematique of civilian control has been debated especially with regard to Eastern European countries and successor states to the Soviet Union.[23]

In democracies, then, there is a basic feeling that the existence of the armed forces requires institutions, mechanisms and instruments for the political and democratic-societal control of the armed forces in order to prevent an insularisation of the military from society and to prevent the armed forces from turning into a state within the state thereby constituting a potential threat to the political rule of a given legitimate government. This involves both a 'hardware' and a 'software' side as Douglas Bland convincingly argues.[24] In his approach, the 'hardware' of civil-military relations or rather civilian control of the military includes aspects like the creation of appropriate laws, the establishment of civilian-dominated ministries of defence, the institutionalisation of parliamen-

[22] Freedom House, *Freedom in the World 2001-2002: The Annual Survey of Political Rights and Civil Liberties* (New York: Transaction Publishers, 2002).

[23] Cf., *inter alia*, James Gow, *Legitimacy and the Military: The Yugoslav Crisis* (London: Pinter Publishers, 1992); Anton A. Bebler, ed., *Civil-Military Relations in Post-Communist States* (Westport – London: Praeger, 1997); Constantine Danopoulos and Daniel Zirker, eds., *Military and Society in the Former Soviet Bloc* (Boulder: Westview Press, 1998); Kuhlmann and Callaghan, "Military and Society"; Andrew Cottey, Timothy Edmunds and Anthony Forster, eds., *Democratic Control of the Military in Postcommunist Europe: Guarding the Guards* (Hampshire – New York: Palgrave, 2002).

[24] Douglas Bland, "Patterns in Liberal Democratic Civil-Military Relations," *Armed Forces & Society*, 27, 4 (2001), 525-540, 525.

tary committees of oversight, and the appointment of civilian ministers of defence. According to his view, this hardware dimension is usually quite adequately realised in emerging democracies, whereas the software side is more difficult to put into practice since it touches the thinking of the people involved and demands its change. More precisely: The software of civilian control of the armed services refers to the incorporation of the framework of democratic ideas, values, principles, and norms into the military culture, the political culture and the defence establishments of new democracies.[25] And this incorporation can be successfully implemented only if the change of human thinking and reflection towards a democratic direction is not only rhetorically proclaimed, but also proceeding in reality – a process which most likely involves the passage of some time.

The mentioning of the need to instil democratic norms into the military culture, then, points to the need to broaden the view. So far, the civilian control of the armed services has largely been viewed from the civilian perspective. However, since there is a military side in the issue of civilian control, it has to be analysed by shifting the viewpoint to the military also. Here, it is quite obvious that the armed forces have a robust interest in not being disposed to undue interference from the civilian side, an interest that, in particular, entails the existence or the establishment of provisions aiming at preventing the political misuse of the military for party political objectives or for reasons of a given government's political survival. In Michael Howard's words, this is the problem 'of the control of a government in possession of such force [the armed forces, G.K.].'[26] In such a vein, the Soviet government's political control of the armed forces represents what could be termed the 'too much'-side of political control and is proof of the fact that the military, as an institution of the state, might not in any case be capable of rejecting or, at least, restricting, undue political interference.[27] Yet, what can be said of legitimate civilian control is that it obviously requires the agreement and the consent of the armed services to be operable and effective. According to this, the military's 'voluntary and purposeful adherence to the principle of civilian control' is essential, even a prerequisite to ensure civilian control.[28]

[25] For a discussion of the Westminster/American tradition see Bland 2001: esp. 529-536.

[26] Michael Howard, "Introduction. The Armed Forces as a Political Problem," in *Soldiers and Governments: Nine Studies in Civil-Military Relations*, ed. Michael Howard (London: Eyre & Spottiswoode, 1957), 9-24, 12.

[27] Cf., e.g., Timothy J. Colton and Thane Gustafson, *Soldiers and the Soviet State. Civil-Military Relations from Brezhnev to Gorbachev* (Princeton: Princeton University Press, 1989).

[28] Peter D. Feaver, *Guarding the Guardians: Civilian Control of Nuclear Weapons in the United States* (Ithaca: Cornell University Press, 1992), 253.

This very fact has aroused some uneasiness given that 'the civil authority has legitimacy, but the armed forces have the guns' as Douglas Bland puts it, adding: 'Even if the idea of civil control is embedded in the officer corps, one cannot avoid the conclusion that it resides there because officers accept it, not because the civil authority has imposed it,'[29] thus leaving the somewhat awkward impression that, in the end, the civilian side comes close to be at the mercy of the armed forces.

More recent approaches to develop a coherent and comprehensive theory of civil-military relations, or rather: of the civilian control of the armed forces,[30] are thought to meet certain criteria. Peter Feaver identified four 'benchmarks' such a theory should meet: First, it should start from the analytical distinction of civilian and military spheres; second, the theory is tasked to identify the factors that shape the exercise of control over the military by civilians; third, the theory needs to transcend the concept of professionalisation; and, fourth, he recommends to develop such a theory deductively.[31] Douglas Bland adds to these four benchmarks further criteria: first, the theory should cover all the relevant 'issues' within one model; second, it should not be applicable to democracies only, but be transferable to any state or political model; third, it is requested to explain change over time; fourth, it has to provide substantial predictability across state lines, time, and events; and, fifth, it should be falsifiable.[32] Bland has made strong efforts to meet these benchmark/criteria challenges. His resorting to regime theory as known from the field of International Relations and his sketch of a theory of shared responsibility arguably belong to the most innovative and recent endeavours in this field.

His theory of shared responsibility makes two key assumptions: first, civilian control 'means that the sole legitimate source for the direction and actions of the military is derived from civilians outside the military/defense establishment,'[33] and, second, 'is a dynamic process susceptible to changing ideas, values, circumstances, issues, and personalities and to the stresses of crises and war.'[34] Shared responsibility is based on the notion 'that civil con-

[29] Bland, "Patterns," 529.

[30] Hence, the present article distinguishes between an overall model of civil-military relations and a more specific theory of civilian control.

[31] Feaver, "Civil-Military Problematique," 167-170.

[32] Bland, "Unified Theory," 9.

[33] This assumption is somewhat problematic. Imagine a situation in a democracy in which the ruling civilian government's objective is to change from a democratic political system to an autocratic or authoritarian one. If we follow Bland's assumption, the armed services should remain neutral, but would it not to be greeted on normative terms if, among other actors, the armed forces as democratic armed forces tried to prevent this from happening?

[34] Bland, "Unified Theory," 10.

trol of the military is managed and maintained through the sharing of responsibility for control between civilian leaders and military officers. Specifically, civil authorities are responsible and accountable for some aspects of control and military leaders are responsible and accountable for others.'[35] They form what he terms a 'regime' which he defines, in the meanwhile classic quotation of Stephen Krasner, as the 'principles, norms, rules and decision making procedures around which actor expectations converge.'[36] This implies that 'leaders in both entities must understand how these principles, norms, and rules affect the routine functioning of their relationship, and their place in the process – in sum, how the regime might guide and direct their individual and collective behavior in civil-military relations.'[37]

Accordingly, Bland speaks of national regimes of civilian control that have developed and changed in the course of time due to a country's specific history, geopolitical/strategic situation and political culture. This implies that civilian control is 'conceptualized not just as a shield against the coup d'etat, but as an exercise in the management of a regime that legitimizes and restricts the actions of all the players in the interest of society.'[38] As a result, such an approach accounting for the study of regime change and regime dynamics allows for the fruitful analysis of civilian control over time, over various political systems and over various social and cultural contexts. 'Thinking of civil-military relations as anarchy controlled by a regime that links basic causal variables to behavior provides a way of relating actions to actors that transcends specific states, times, and situations. The examination of how such regimes are formed and maintained can bring history into the debate (...). It also helps to identify the foundations for civil-military relations where current rules (laws) and decision-making procedures are based on other fundamental national principles and norms.'[39]

The specific constellation within any such civil-military relations regime at a given point in time accounts for and explains the outcomes in 'four central decision matrices in defense management: strategic, sets of decisions about the ends and means of defense; organizational, decisions about the arrangement of defense resources and internal responsibilities; social, decisions about armed forces and society; and operational, decisions about the employment of forces.'[40] Since decision-making is a genuine-

[35] Bland, "Unified Theory," 9.

[36] As cited in ibid., 10. In a similar vein, James Gow used the notion of a 'social contract' between soldiers and the socio-political community. (Gow, "Legitimacy," 27-32)

[37] Bland, "Patterns," 536.

[38] Bland, "Unified Theory," 20.

[39] Bland, "Unified Theory," 16.

[40] Bland, "Unified Theory," 11.

ly political undertaking, this means to accept the notion of the military as a political actor or, as Morris Janowitz has put it, as 'an effective pressure group'[41] thereby questioning the widespread notion of the military's political neutrality in its hypertrophied version. In particular with regard to decisions on the use of force, the armed services expect to be consulted and listened to; if not, the alienation of the armed forces from their civilian authorities may ensue.[42] This points to Peter Feaver's notion of 'delegative control' that he juxtaposes to what he calls 'assertive control'[43] and it also takes up Rebecca Schiff's plea for building consensus.[44]

In the end, then, a civil-military relations regime, or, rather, a civilian control of the military regime, will be effective if there is a basic resource at hand for all the parties involved and if that resource is available in sufficient quantity. This resource is trust, and trust is strengthened the more internal control mechanisms are implemented on all the parties involved.[45] Yet, talking of trust implies that uncertainty cannot be completely washed away.[46] Thus, it may be appropriate to expand Douglas Bland's formula of the civilian control of the armed services because it, for most the most part, entails the armed forces and the civil authorities as ingredients only. The critique Bland's concept has to be exposed to, then, means to bring society back in. Indeed, Bland tends to neglect society in his formula by not treating society, or parts of it, as an actor in civil-military relations regimes in its own right; he merely treats society as some sort of a background variable without a weight of its own. Thus, his regime theory of civilian control stresses the political/governmental/administrative side of civilian control and tends to overlook the societal side of civilian control which is particularly relevant in the case of democracies. Following democratic theory, in democracies in particular society legitimises its government and authorities, and thus also its armed forces. Therefore, 'the legitimacy of the military in relation to society is dependent on societal acceptance of the military's role(s), and the military's ability to fulfil the demands of that roles(s) effectively.'[47] And this legitimacy of the armed services

[41] Janowitz, "Professional Soldier," LVI.

[42] Cf. also Richard Betts, "*Soldiers, Statesmen, and Cold War Crises* (New York: Columbia University Press, 1991).

[43] Feaver, "Guarding the Guardians, " 7-9.

[44] Rebecca L. Schiff, "Civil-Military Relations Reconsidered: A Theory of Concordance," *Armed Forces & Society*, 22, 1 (1995): 7-24.

[45] This may answer, at least partially, Samuel Finer's question on the armed forces refraining from major political interference (Finer, "Man on Horseback", 5).

[46] Cf. Niklas Luhmann, *Vertrauen. Ein Mechanismus der Reduktion sozialer Komplexität*. Third edition, (Stuttgart: Ferdinand Enke, 1989).

[47] Timothy Edmunds, Andrew Cottey and Anthony Forster, *The Military and Society in Central and Eastern Europe: A Background Paper* (http://civil-military.dsd.kcl.ac.uk/TCMR%20Papers/TCMR%201.13.htm; retrieved: 19 November 2001), 8.

within society is to be seen as a major, essential asset for any military mission to be effective and successful.[48]

The logical way forward, then, seems to be to include societal control in Bland's regime approach. Resonating with Rebecca Schiff's concordance theory, the issue of the civilian control of the military thus is a major task for any given government as well as for the society at large and for the military itself. These 'tripartite' civilian control of the armed services regimes face the challenging task of striking a balance between the interests of all parties involved. And this seems to be even more of a challenge when it comes to military missions that are conducted within a multinational context.

The Civilian-Democratic Control of Multinational Military Operations

The Emergence of the Issue

The concept of civilian control of multinational military missions refers only to the formal relations between a society, its political system and the armed forces. However, to be compatible with the norms of a democratic society, a more normative concept is needed. This concept may be termed the *democratic control* of multinational missions entailing both Douglas Bland's 'hardware' as well as 'software' components mentioned above. 'Democratic control comprises all formal norms and rules, laws and regulations which are designed to integrate the organization of the armed forces into the democratic political system and the soldiers, especially the officer corps, into the democratic political culture.'[49] That this issue of the civilian-democratic control of multinational military missions has been moving up on the agenda is in no last consequence due to developments that originate within societies and states that, slowly, but increasingly, turn democratic or, in Freedom House's terminology,[50] free and thus face mounting societal demands for transparency. Openness and transparency have become the dominant mode to generate trust and thus political legitimacy.[51] Since Western countries are 'political societies'[52] undergoing a communication revolution, armed forces have to be constantly aware that military operations and actions as well as developments within the armed forces become a matter of large-scale public opinion and of media scrutiny. In addition, 'we are witnessing an increased capacity of public opinion to exercise its political influence in ways that transcend the boundaries of states'[53], adding an international dimension to this issue.

As this already indicates, the ascendance of the issue of the civilian-democratic control of multinational military missions is also due to developments that originate within the international system. Here, we have to look at what may be termed the 'prime mover' in international relations, i.e. globalisation. Globalisation[54] has gained momentum after the end of the East-West conflict; it is an asymmetrical process with costs and benefits being unevenly distributed between states, between societies, but also within them. Because of this, there is opposition towards globalisation, as for example expressed in fragmentation of various (political, economic, cultural, religious, ethno-national) brands. Globalisation also is a multi-dimensional phenomenon that can be observed in the economy, the financial system, the ecosphere, in communication, in demographics, and in security and military affairs. Across these fields, the basic joint characteristic is debordering or transbordering, i.e. the transgression of territorial boundaries. Globalisation means an increase in trans- and interactions between states and between members of its societies leading to what Robert O. Keohane and Joseph S. Nye, Jr., termed complex interdependence.[55] Although globalisation and the density of interdependence varies across the world because of different interdependence costs and benefits and because of different degrees of interdependence susceptibility and interdependence vulnerability, the global arena increasingly becomes the focus and framework of social actions for all societies, but, of course, to varying degrees. This implies that the security of a given country can be influenced and threatened by events and developments in far away places. This means, in turn, that the security policies of each country in the world have to take the global aspects of security into consideration. With the implosion of the Soviet Union and the ensuing collapse of the Soviet empire the rather clear-cut and straightforward structure of international politics marked by the East-West conflict, however, the pres-

[48] That is why Bernard Boëne writes: 'Sociopolitical uniqueness [of the military, G.K.] is superimposed on functional uniqueness. The two dimensions are analytically distinct but not independent.' (Boëne, "How 'Unique' Should the Military Be?,' 57.

[49] Von Bredow and Kümmel, "New Roles," 126.

[50] Freedom House, *Freedom in the World 2001-2002: The Annual Survey of Political Rights and Civil Liberties* (New York: Transaction Publishers, 2002).

[51] Bernd Grzeszick, "Erfolg durch Offenheit. Geistiges Eigentum unter den Bedingungen der Kommunikationsgesellschaft. Ein Plädoyer für Vertrauen in und Erfolg durch zivile Öffentlichkeit," in. *Öffentlichkeit und Vertraulichkeit. Theorie und Praxis der politischen Kommunikation*, ed. Otto Depenheuer (Wiesbaden: Westdeutscher Verlag, 2001), 21-66, 47.

[52] Michael Th. Greven, *Die politische Gesellschaft. Kontingenz und Dezision als Probleme des Regierens und der Demokratie* (Opladen: Leske & Budrich, 1999).

[53] Dandeker, "The Military in Democratic Societies," 31.

[54] Cf. Malcolm Waters, *Globalization.* Second edition, (London - New York: Routledge, 1996).

[55] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence. World Politics in Transition* (Boston: Little, Brown & Co., 1977).

ent world order is much more messy than before and there are regions and zones of security of different degree and intensity.[56] Hence, the world may not have become a safer place. In contrast to hopes of a benign, pleasant, harmonious, peaceful and prosperous world, possibly governed by a much more powerful United Nations, and in contrast to the democratic and market economic triumphalism in the wake of Francis Fukuyama's well-known proposition of an end of history, the world witnessed the persistence of military conflicts, the unilateral decision over and the ongoing use of military means as well as the continued spending of substantial financial resources on armament's production, weapons procurement and arms' acquisition. Most of today's conflicts do not resemble the conflicts of the past where states were fighting each other, but they increasingly stem from internal rifts within states between different groups of society and from state structures falling apart.[57] Faced with so-called humanitarian catastrophes that actually ensued from such conflicts in the 1990s and that appealed to substantial cosmopolitan concerns for human rights in the world and to what can be termed the humanitarian impulse, i.e. the 'something must be done factor',[58] the military roles set was expanded to include peacekeeping, peace-enforcement, humanitarian intervention and military missions other than war. Arguably, the soldier is no longer a fighter, a technician or a bureaucrat only, but he (or she) increasingly becomes a diplomat, a policeman and a global street worker. Thus, it makes sense to distinguish between traditional and non-traditional roles of the armed services.[59]

The Military in the Process of Adaptation

The ensuing broadening of the range of missions abroad and the increase in the number of missions that have occurred have several implications. One implication is that the armed forces are far from losing political relevance. Rather, they gain new *political* importance by taking over new and non-traditional roles. Indeed,

[56] Joseph S. Nye, "What New World Order?", *Foreign Affairs*, 71, 2 (1992): 83-96.

[57] The seminal piece on this is William Zartman, ed., *Collapsed States. The Disintegration and Restoration of Legitimate Authority* (Boulder – London: Lynne Rienner, 1995); cf. also Robert I. Rotberg, "The New Nature of Nation-State Failure", *The Washington Quarterly*, 25, 3 (2002): 85-96.

[58] Christopher Dandeker, "New Times for the Military: Some Sociological Remarks on the Changing Role and Structure of the Armed Forces of the Advanced Societies", in *The Sociology of the Military Caforio*, ed. Giuseppe Caforio (Cheltenham – Northampton: Edward Elgar, 1998), 573-590, 579.

[59] Cf. von Bredow and Kümmel, "New Roles". *September Eleven*, the horrible synonym for the terrorist challenge to world order, is also to be mentioned in this regard as it implies a further diversification of military roles responding to the significant change of the image and the face of war and warfare.

the 'boundary between what is military and what is political has become blurred.'[60] Albeit, this may mean that there are 'more frequent opportunities for political-military conflict.'[61] Another is that these more and broadened military missions constitute a prominent challenge for the armed forces. To meet these various mission requirements and functional imperatives in times when it is politically and socially more accepted to further reduce the military budgets than to increase them the armed services have been following various paths.

One option pursued is that the actors have intensified their efforts to establish multinational military cooperation. As a matter of fact, we are witnessing the multinationalisation of the armed forces[62] - be it in the framework of the United Nations and its peacekeeping operations or in the context of specific alliances and ad-hoc-coalitions. Within this military multinationalisation/globalisation, issues of organisational interoperability, of cultural interoperability, of mutual understanding and of effective civil-military (CIMIC) and military cooperation are central. That is why Christopher Dandeker speaks of 'a complex set of arrangements among a mixture of military and civilian agencies, including NGOs, the media and regional political organizations.'[63]

Another option pursued is that the armed services, as a general trend, have become smaller, leaner, more modular, more flexible, more high-tech oriented and are increasingly operating on the 'matrix format'[64] and on an all-volunteer format.[65] Taken together, these developments underline the assumption of Charles C. Moskos and James Burk who perceive a transition from the modern mass army and the late-modern large professional army to a

[60] Dandeker, "The Military in Democratic Societies," 42f.

[61] Bernard Boëne, "Post-Cold War Trends in the Civil Control of Armed Forces in the West," in Kümmel and von Bredow, "Civil-Military Relations in an Age of Turbulence," 11-31, 24.

[62] Gerhard Kümmel and Paul Klein, "The Internationalization of Military Life. Necessity, Problems and Prospects of Multinational Armed Forces," in *Military Sociology. The Richness of a Discipline*, ed. Gerhard Kümmel and Andreas D. Prüfert (Baden-Baden: Nomos, 2000), 311-328.

[63] Dandeker, "Flexible Forces," 81. For CIMIC, cf. the account of Peter Braunstein et al., "Zivil-militärische Zusammenarbeit der Bundeswehr im Balkan-Einsatz," *Aus Politik und Zeitgeschichte*, B 20, 37-46.

[64] Boëne, von Bredow and Dandeker, "The Military in Common-Risk Societies," 319.

[65] Viewed from an international perspective, then, conscription seems to be phasing out (cf. Karl W. Haltiner and Paul Klein, "Europas Streitkräfte im Umbruch – Trends und Gemeinsamkeiten," in *Europas Armeen im Umbruch*, ed. Karl W. Haltiner and Paul Klein (Baden-Baden: Nomos, forthcoming). This will involve new and major challenges for recruitment policies as can be seen in the cases of those countries that have already shifted to the all-volunteer format.

postmodern smaller professional military.[66] Charles Moskos, John Allen Williams and David Segal also speak of postmodern military and characterise it like this: 'The Postmodern military (...) undergoes a loosening of the ties with the nation-state. The basic format shifts toward a volunteer force, more multipurpose in mission, increasingly androgynous in makeup and ethos, and with greater permeability with civilian society.'[67] Yet, despite this greater permeability, there is some concern that 'the tensions between the civilian values of democratic society and the unique structure and culture of the military' may increase in the future,[68] because, within a 'postmodern' military based on the all-volunteer format, we 'may see an increase in the proportion of those in the rank and file who are single-mindedly promilitary, and possibly alienated from society, entailing the emergence of far-right ideologies and politicization.'[69] Among others, this implies the 'distinct possibility that radical professionalism and a more uncooperative military culture will return.'[70] As a remedy, the strengthening of pragmatic professionalism has been advocated.[71] In a Janowitzian tradition of human resource policy/management 'the expected result would be to foster role models that strengthen dual identities as soldiers and citizens, to the detriment of hardened corporate identities.'[72] In a similar vein, there is the notion of a 'post-deferential military ethos'[73] that needs to be constructed and that 'meets the operational needs of the military, as well as meeting the demands of modern business and contemporary social values.'[74] Such an ethos would also have to meet the requirements the military and the family as 'greedy institutions' (Mady Wechsler Segal) demand from the individual soldier as well as to provide coping strategies and mechanisms for pending mission fatigue.

[66] Charles C. Moskos and James Burk, "The Postmodern Military," in Caforio, "Sociology of the Military," 591-612, 592.

[67] Charles C. Moskos, John Allen Williams and David R. Segal, "Armed Forces After the Cold War," in *The Postmodern Military. Armed Forces After the Cold War*, ed. Charles C. Moskos, John Allen Williams and David R. Segal (New York – Oxford: Oxford University Press, 2000), 1-13, 1.

[68] Dandeker, "Flexible Forces," 93.

[69] Boëne, "Post-Cold War Trends," 21.

[70] Boëne, "Post-Cold War Trends," 22.

[71] For Arthur D. Larson, "Military Professionalism and Civil Control: A Comparative Analysis of Two Interpretations," *Journal of Political and Military Sociology*, 2, 1 (1974): 57-72, *radical professionalism* means that the soldiers view themselves as being on duty 24 hours a day, whereas *pragmatic professionalism* tries to balance the functionally unique and non-unique elements of the military and to constantly work for a balanced relationship with society.

[72] Boëne, "Post-Cold War Trends," 25.

[73] Dandeker, "The Military in Democratic Societies," 35.

[74] Dandeker, "Flexible Forces," 93.

The changes the armed services have gone through in recent years and still have to go through in the years to come pose serious questions to the civilian-democratic control of national armed forces. As was indicated above, the shift to the all-volunteer format is accompanied by some apprehension that the recruited personnel may be less representative of society, much more single-mindedly promilitary and less democratically oriented or democratically mature as before. Intelligent national recruitment policies will surely have to take this risk potential into consideration; also, education in the sense of teaching democratic norms and the fostering of professional attitudes based on the notion of pragmatic professionalism play a major role in ensuring that the functional and sociopolitical uniqueness of the military remains compatible with democracy. Following the concept of the 'tripartite civilian control regime' outlined above, besides the armed forces themselves and their political leadership, the democratic control of the armed services is the task of those in parliament and of society in general, as well. Since in democratic societies there is a pressure of the public towards transparency and participation in any issue area and since democracy and liberalisation/democratisation have meanwhile become a major element in the international normative order that even non-democratic states have to refer to, there is a pressure towards democratisation of security politics[75] and of the armed forces themselves as can be seen, for example, from the debate on the unionisation of soldiers. The armed services are increasingly under pressure to instil democratic norms such as decentralisation of decision, participation, relatively thorough flow of information and transparency in the structure of the armed forces. This poses new challenges to leadership in the military as it entails a shift towards 'delayering' and project management[76] and it helps with democratic control.

If these national provisions for democratic control of the armed services work, considerable steps toward the functioning of democratic control in a multinational framework have been made. Nevertheless, such multinational democratic control seems quite difficult to establish because of the multitude of actors involved. Although the democratic control of the armed forces in multinational missions is of high relevance – the simple reason is that they often are the most powerful, the most consequential and the most visible part of such missions, the other – non-military – actors involved also have to be subject to democratic control. The various

[75] Günther Baechler, "10 Thesen zur Demokratisierung der Sicherheitspolitik," *Sicherheit und Frieden*, 7, 1 (1989): 27-31.

[76] Dandeker, "Flexible Forces," 87.

actors in multinational missions therefore comprise not only the armed services, but also national governments, international organisations, and transnational civil-society actors like non-governmental organisations or international relief agencies.

Thus, the democratic control of multinational military missions includes

- different armed services with different military cultures coming from countries with different modes of civilian or democratic control.[77] Hence it is conceivable, in some cases even quite likely, that one's own democratically controlled armed forces are requested and tasked to cooperate with armed forces from countries in which civilian, rather than democratic control is present;[78]
- different national governments of different political systems with different national interests. Again, it is by no means to be precluded that the armed forces of democratically legitimised governments have to cooperate with the military or other state institutions like the police forces of less or even non-democratic governments;
- different societies, different media and different public opinion patterns;
- different international organisations as, e.g., the United Nations, the OSCE, ASEAN, OAS, OAU, NATO, the European Union that are initiating, directing, conducting or mandating the mission; and
- different transnationally operating actors from civil society such as human rights organisations, agencies for medical help, disaster relief agencies which need not be, but may be rather democratically organised and/or legitimised by transnational public opinion.

The notion, then, that is advanced here is an extension of the 'tripartite democratic control regime' as outlined above into the multinational context. The different parties to a given multinational mission including the armed forces are conceived as forming a multinational regime in which each of the parties involved is

[77] Of course, in each case the difference may be more or less pronounced.

[78] In practice, given the existence of some transculturally shared notions of military professionalism, this may be easier to be achieved than one may initially think. In General Klaus Reinhardt's account of his mission as KFOR-Commander of, inter alia, United Arab Emirates, Jordan and Russian troops, he states: 'My task in Kosovo, Macedonia, Albania and Greece was to command the KFOR troops in which all religions and colours were present and in which the most diverse military doctrines were represented. This was relatively easiy given that the soldiers of all the nations were highly motivated and did their best for this peace mission.' (Klaus Reinhardt, *KFOR – Streitkräfte für den Frieden. Tagebuchaufzeichnungen als deutscher Kommandeur im Kosovo*. Second edition (Frankfurt am Main: Blazek & Bergmann, 2002), 551 (my translation).

responsible for ensuring the democratic control of the mission in general and in which mutual surveillance works. The democratic control of the military is one important facet in this regard, but not the only one, as has to be underlined, because in some cases it might be necessary to ensure the democratic control of some transnational, civil society party to the mission. This normative context lends much, if not all, national and international legitimacy to the mission as such and is something that democratic actors, especially if these are state or governmental actors, should consider as the *conditio sine qua non* of the participation in the mission. Parties with less democratic orientation and legitimation should be convinced to accept the normative context of democracy. This may be best achieved by clearly defining the rules of engagement and the competencies' profiles for all parties involved before the mission is put into practice. Actors or parties that enter the mission at a later stage would be requested to accept these rules as something like the constitution of the mission. Such an approach helps to ensure that responsibility is shared, and not diffused.

Part Four:

CIVIL SOCIETY

Ms. Marina Caparini

CIVIL SOCIETY AND DEMOCRATIC OVERSIGHT OF THE SECURITY SECTOR: A PRELIMINARY INVESTIGATION

I. Introduction

Civil society has become a popular term in academic, policy and foreign assistance circles. A significant body of literature and research has developed around the concept, and its key role in consolidating and sustaining democracy is now widely recognised by academics and policy-makers alike. Successive waves of democratisation in Latin America and Central and Eastern Europe have led experts to view civil society as a crucial agent for limiting authoritarian government, strengthening the empowerment of the people, and enforcing political accountability. It is considered a crucial factor in improving the quality and inclusiveness of governance.

Yet the term is often used loosely and with imprecision as a more current replacement for the more general "society". This is especially so in defence and security affairs, where there has been little research to date that has focused explicitly on the relevance of civil society and the non-governmental domain in general to this particular sector of public policy. Civil society is often invoked in discussions about democratic control and accountability of armed forces, for example. It is usually considered an important, albeit informal, mechanism of public oversight and accountability of those institutions providing security for the society and state. However, civil society's relation to the armed forces and the security sector more broadly is in practice rarely addressed in any depth, either at a conceptual or empirical level.

This paper attempts to look more closely at the concept of civil society, begins to define its relevance to the security sector, and notes the implications for our understanding of democracy and democratic control of state security functions. It asks what civil society brings to our understanding of SSR, and inversely, how SSR furthers our understanding of civil society. It attempts to begin the process of delineating relevant categories and functions of civil society activity vis-à-vis the armed forces, police and intelligence

services. This paper provides the background to a program of research that is being undertaken by the Working Group on Civil Society at DCAF.[1]

II. Context

The concept of civil society has a long history in political thought dating from Roman times and the notion of *civilis societas*, although it underwent a significant shift in meaning between the late 17th and 18th centuries.[2] Many scholars trace its recent renaissance to thinking and developments in Central and Eastern Europe (CEE) that culminated in the momentous events of 1989 leading to the replacement of communist regimes and the transition to democracy across the region. For dissidents in the state socialist regimes of CEE and the authoritarian regimes of Latin America, the delineation between the state and civil society became an essential element in the critiques of their respective regimes. Dissidents such as Vaclav Havel and Adam Michnik, living in regimes where the party state penetrated all aspects of political, social and economic life, emphasised civil society as an autonomous sphere and focused on individual responsibility and the capacity of societal actors to self-organise.

Mature Western democracies are also captivated by the concept, but for somewhat different reasons, namely concern with the perceived deterioration in the quality of public life and debates over the course that their societies are taking. Many political scholars and commentators have noted the erosion of democracy and apathy of electorates in Western societies. In a sense, the contemporary Western literature on civil society is a response to the perceived deficiencies in the state of democracy in these countries, and civil society is viewed as a way of revitalising democracy. Civil society tends to be celebrated in Western contexts because it presents a potential antidote to a government that has lost touch with its citizenry, and well-informed and well-organised citizens may constitute motors for change. These two divergent starting points to the

[1] For the project outline, see Marina Caparini and Philipp Fluri, "Mapping Civil Society in Defence and Security Affairs: An Agenda for Research", *Connections Quarterly Journal*, upcoming. Also available on the Civil Society Working Group page of the DCAF website: http://www.dcaf.ch

[2] Briefly, to Cicero "civil society" denoted those who lived in a political community and who fulfilled their public and social roles to serve the interests of the political community. In this view, the state constitutes an instrument of civil society. Similarly, subsequent European philosophers such as Kant, Rousseau and Hobbes saw the most important distinction between society and the state of nature. It was only with the writings of Ferguson, Paine, Hegel and de Tocqueville that the notion of a necessary separation between the state and the society emerged.

discussion on civil society – the CEE view of civil society as an antidote to excessive state control and the Western view of it as a means of revitalising democracy - suggest that the concept is fuzzy and malleable enough to fit a wide variety of interests and agendas.

Civil society has become a valued concept in the literature on democratisation and democratic consolidation even though the specific nature of civil society's role in democratic governance is debated. Democratic consolidation is the point at which democratic rules are so institutionalised that no major political actor would consider challenging them. Democratic consolidation stands in contradistinction to procedural or limited or illiberal democracies, which may hold regular elections but are otherwise lacking in the substance of democracy. The absence of a lively and vibrant civil society constitutes a potential reason for why such illiberal democracies are not complete democracies. Civil society is the concept that cuts at the core substance of democracy, the inherent respect for human rights, civil liberties and political pluralism.

Foreign assistance programs

Concomitant with the intellectual interest in the concept, civil society has become a key funding priority among donors of foreign aid. A reason for the interest of many development aid organisations in civil society is that it has become linked with both socio-economic development and democratisation. Major bilateral donor agencies, such as USAID, CIDA, DFID and SIDA have all developed programs focused on strengthening and building civil society in recipient states. Multilateral organisations such as the United Nations Development Program and the World Bank have incorporated civil society into their programs and attempted to become more inclusive and transparent in their activities and decisions. The World Bank, for example, attempts to consult with civil society organisations in bank projects and policy work, recognising that such consultations "have improved the quality of policymaking, positively influenced the direction of country programs, strengthened national ownership of key reforms, and promoted public sector transparency and accountability."[3] Even the IMF, which deals primarily with its member governments, now maintains a "dialogue" with civil society organisations in recognition of the vital role they play in effective policy formulation, implementation and legitimisation.[4] Furthermore, major philanthropic and donor foun-

[3] *Consultations with Civil Society Organizations: General Guidelines for World Bank Staff* (Washington, D.C.: IBRD/World Bank, 2000), 3. Available at: http://www.worldbank.org/ngos

[4] Jan Aart Scholte, "IMF meets civil society", http://www.cepr.org/GEI/GEI9IMF.html

dations such as the Carnegie, Ford, and Soros foundations all have major programs that focus on building and strengthening civil society.

Donor assistance to promote civil society is undertaken to further either development or democratisation. A developmental focus will tend to emphasise institution-building and participatory development, and will draw on local membership organisations (for example, organisations of craftsmen, farmers, small business, industry) to provide services and implement programs. In comparison, a civil society aid program aiming to bolster democracy will tend to look for civic organisations that fulfil a more political role, such as professional bodies and trade unions. Such organisations are able to contribute to democratisation and to holding governments to account.[5]

Globalisation

Civil society has also become a major area of investigation over the past 10-12 years because of growing concerns over globalisation. Globalisation is, in fact, an essential framework for understanding civil society today, even in the seemingly local-national context of policy advocacy and oversight of the security sector, as I will explain below. Globalisation poses challenges to the contemporary state and state sovereignty, especially in the form of transnational financial markets and interdependent social and environmental issues. Decisions made by transnational actors such as international financial institutions (IFIs) exert considerable influence on the governance and policies of member governments, and have been criticised for harming local social and economic actors. Globalisation is also equated with the emergence of transnational threats such as terrorism, drug trafficking, arms proliferation, money laundering, cybercrime, illegal immigration and organised crime. These transnational threats, usually involving sub-state actors, are perceived as the main challenges to the security of most modern states, necessitating a coordinated approach involving local, regional and global actors which may represent a retrenchment of the state. In terms of security, "globalisation from above" is seen in the norms, standards and assistance provided by supranational institutions and multilateral bodies such as the UN, EU, NATO and OSCE which are influencing the ways in which states, especially newly democratic ones seeking membership in privileged multilateral bodies, constitute and reform their economic and security institutions. Ironically, the influence of such globalising bodies may also be leveraged by local civil society organisations to

[5] Allison Van Rooy, ed., *Civil Society and the Aid Industry: The Politics and Promise* (London: Earthscan Publications Ltd., 1998), 35.

contest controversial state decisions and to exert pressure on governments to respond to their views.

In terms of policy advocacy, numerous social movements now have a global reach due to the internet and activists can inform and politically mobilise like-minded individuals and groups around the world. This has been termed "globalisation from below", and speaks to the perceived emergence of global civic politics or transnational alliances of social protest movements and organisations, as has been visible at recent economic summits and meetings of IFIs, such as the IMF/World Bank meetings in Prague in 2000, the World Trade Organisation in Seattle in 1999, and other meetings in Gothenburg and Genoa.

Furthermore, there has been a tremendous expansion in what was termed "global civil society". Whereas in 1956 there were 973 international NGOs (INGOs) and 132 interstate international organisations (IOs), by 1999 there were 5825 INGOs while the number of IOs had increased only to 251.[6] This explosive growth in the global NGO sector and the transnational issue network has been facilitated by the increased density and ease of international communication and information exchange. Transnational networks are not restricted to any single country and contain overlapping diverse memberships, which may include international and regional organisations, governments, international and domestic NGOs and other civil society organisations.

Various domestic CSOs also have the benefit of being able to call on the assistance of transnational networks of actors in their field ("transnational advocacy networks"), including international NGOs and intergovernmental organisations, when they perceive they are being treated unfairly by their government, or when the state ignores their efforts to effect change. Actors in the international community are in turn able to exert pressure on the national government in a "boomerang pattern".[7] Human rights NGOs have been particularly adept at using international counterparts and institutions to draw attention to deviations from democratic norms and behaviour and governmental policies and behaviour that are not in accordance with international conventions ratified by governments themselves. Supranational and international institutions such as the European Court of Human Rights, UN Committee Against Torture, the International Court of Justice, international CSOs such as Amnesty International, and the International Federation of

[6] Roman Waschuk, "The New Multilateralism", *Human Security and the New Diplomacy*, ed. Rob McRae and Don Hubert (Montreal and Kingston: McGill-Queen's University Press and Foreign Affairs and International Trade Canada, 2001), 216.

[7] Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca, N.Y.: Cornell University Press, 1998), 12.

Journalists have successfully drawn the attention of donor governments and key actors in the international community to harmful state practices, after having been alerted to abuses and problems. International CSOs have therefore functioned, in effect, as a sort of remote accountability mechanism at the local level.

In short, the security of states, societies and individuals exists in a context of increasing globalisation, bringing different types of risk (sub-state, transnational, but also supra-national) and prompting different types of responses (state responses include greater inter-agency coordination, information-sharing and inter-state cooperation, but there is also transnational mobilisation at the sub-state level). Civil society organisations have traditionally been conceptualised as local phenomena, but it is obvious that their self-perceptions, actions, and involvement in security-related issues are influenced by the effects of globalisation, both positive and negative.

III. Civil society as a concept

Civil society as a concept has been around for a long time in political philosophy, although its specific meaning and significance have been subject to numerous interpretations in different historical and cultural contexts. Numerous contemporary definitions have been proposed for the concept, and there is no one standardised definition in use by academics or policy-makers today. However, there is agreement, more or less, on two main principles about what civil society is not. First, civil society is not part of the state, the government, or the state apparatus. Many civil society scholars exclude political parties from civil society, since parties are aimed at gaining control of a part of the state. Secondly, civil society is not the market – that is, it is non-commercial and therefore excludes profit-seeking firms, which are organisations geared towards private rather than public interest. Accordingly, civil society is sometimes referred to as the "third sector", reflecting its supposed place alongside the state and the market (or economy) as one of the primary institutional domains of life.

Civil society is "that sphere in which people come together to pursue the interests they hold in common – not for profit or the exercise of political power, but because they care enough about something to take collective action."[8] This includes a potentially vast array of groups – grassroots organisations, professional organisations, religious groups, labour unions and non-governmental organisations (NGOs). The collective term for such groups is civil society organisations (CSOs). Civil society also potentially

[8] *Consultations with Civil Society Organisations: General Guidelines for World Bank Staff*, 5.

includes forms of association that do not serve any sort of collective purpose beyond recreation, entertainment or leisure, such as a bridge club or stamp collectors or bowling leagues. It is therefore helpful to delineate the various types of functions that CSOs can fulfil. CSOs can fulfil more than one of these types of roles, and these may be overlapping:[9]

Types of CSOs:

Representation: CSOs that aggregate the views and preferences of citizens (women's associations, labour unions, NGO networks, churches, native groups, ethnic or minority group associations, such as the NAACP)

Technical expertise: CSOs can provide specialised information, advice, and engage in lobbying efforts (professional and business associations, advocacy NGOs, think tanks, research groups, media groups)

Capacity-building: CSOs that provide support to other CSOs, including advice, contacts, and funding (foundations, NGO support organisations)

Service-delivery: CSOs that implement development projects or provide services (implementing NGOs, grassroots and community-based associations)

Social functions: CSOs that concern recreational activities (sports clubs, cultural societies)

Note that while for some civil society scholars the media are technically considered firms, they are here nevertheless considered part of civil society because of the key role they play in conveying the interests and demands of civil society groups to policy-makers, to other parts of civil society, and to international audiences. Further, investigative journalists and those who specialise in an area of the security sector – defence, public security or intelligence – can act as an oversight mechanism and influence public debate simply by knowing which questions to ask, knowing whom to approach, and publishing the information gleaned. Accordingly, they are classified primarily as having a technical expertise function.

Civil society is often used in general terms as a synonym for public opinion, people, culture or society more generally. Confusion that results from conflating civil society as an empirical category (more specifically "non-governmental organisation") with a political project (the autonomous sphere of social activity that has the potential to improve governance, hold the state accountable, etc.) also arises. This implies that the term civil society tends to mean all things to all people, and the analytical benefit from a more rigorous use of the concept may be lost. The looseness with which "civil society" is

[9] Ibid, 6.

invoked explains its fuzziness as a concept, yet this inherent flexibility also explains its popularity in policy and academic circles.

The understanding of civil society adopted in this paper has two main elements – institutional and normative.[10] First, it centres on those groups that have been formed for collective purposes primarily outside of the state and marketplace. Rather than focus on all such groups, which might include hobby and recreational groups, such as Boy Scouts, bowling and bridge clubs, civil society groups will be defined according to their function. The function of groups that comprise civil society, in this understanding, is to influence democratic and developmental goals in their country. That is, CSOs seek to exercise power and to effect change by confronting those who hold power, usually those in the state and economy. These organisations may conflict with other CSOs in their goals, and they are not all necessarily "civil", nor do they all necessarily improve the quality of public life. However, in general, a vibrant civil society is considered a positive factor for democracy . This normative view of civil society as a desirable social value constitutes the second element of our definition. It focuses attention on those factors that facilitate the growth of civil society organisations and it tells us that civil society refers to the kind of society that democracies aspire towards.

Because civil society involves groups that seek to effect socio-political change, it is an inherently political concept. This does not necessarily invoke partisan politics, but is used in the sense that civil society actors confront power-holders in the state (and the market) whose social, economic or political interests may be at odds with those of citizens or communities of citizens.[11] At the most general end of the spectrum, this may involve simply mobilising people and their activities supporting a common interest. At the more extreme and deliberate end of the spectrum are those CSOs that are engaged in advocacy and lobbying activities. The concept of civil society raises important questions with regards to which actors have the capacity to effect social and political change, and concerning the relationships of power, or the distribution of power between the governors and the governed.[12]

Civil society and good governance

Civil society is valued in part because of its potential contribution to good governance. Good governance involves more just than the effective exercise of economic, political and administrative authority in managing a country's affairs. According to the UNDP, good governance is "a virtuous process made up of institutions, institutional arrangements, mechanisms, people's participation and dialogue. It is driven by synergy, strategy and political will to negotiate and compromise decisions and governmental actions."[13] While good governance obviously involves the state and governmental structures, it also transcends these by including the private sector and civil society organisations. Good governance is "participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law."[14]

Good governance concerns the relationship between the state and civil society and specifically the way in which power is exercised. It emphasises the existence of trust and dialogue between the government and the governed. Civil society, in the form of people's participation and dialogue in the process of arriving at decisions and governmental action is a fundamental element of good governance. The organisation of groups that seek to effect change or influence democratic development of a country is based on a view of political participation that involves more than political elites. It rests on the assumption that citizen participation, beyond the formalistic expressions of democracy (periodic elections, referenda), is legitimate and to be encouraged. "Broad participation contributes both to the exchange of information needed for effective decision-making and for the legitimacy of those decisions. Legitimacy, in turn, entails effective implementation and encourages further participation and improved accountability. Finally, legitimacy and accountability make government institutions more responsive, transparent and functioning according to the rule of law." [15]

Civil society organisations are viewed as often being more in tune with the local needs and interests of citizens than governments, which can easily lose touch with citizens and appear distant and impenetrable. They can play a valuable role in conveying the needs and interests of citizens to their governments. However, one should also note that most citizen mobilisations tend to occur in response to a specific problem and once the problem is solved, mobilisation disappears. For mobilisations to become CSOs or movements and to serve as an ongoing source of input to government decision-making and public debate, solid leadership is required, alongside an ability to inform and engage the public, and to engage with the state on policy issues.

[10] This definition adapted from Van Rooy, "Civil Society as an Idea: An Analytical Hat-Stand?", 30.

[11] Jonathan Fox, quoted in Van Rooy, "The Art of Strengthening Civil Society", 200.

[12] Van Rooy, "The Art of Strengthening Civil Society", 199.

[13] *UNDP Human Development Report: Romania 2002*, 53.

[14] "What is Good Governance?", UNESCAP, http://www.unescap.org huset/gg/governance.htm

[15] *UNDP Human Development Report: Romania 2000*, 70.

This requires capacity on the part of the CSO, and explains the effort directed towards CSO capacity-building in many donor programs.

Civil society as adversary or partner to the state

We are interested here in CSOs that seek to influence or shape the policy process or public debate on issues relating to security. That is, we are looking at the interface between government decision-makers in the security field and civil society actors. An issue of ongoing debate within the literature on civil society is whether civil society organisations are adversaries or partners to the state. On the one hand, CSOs may oppose the state on certain issues and mobilise public opposition or lobby policy-makers to change policy. These civil society actors may seek to act as a type of watchdog over the state and so function as a force for accountability, pressuring officials to inform the public about what they are doing and explain their decisions, thereby holding them responsible for their actions.

However, CSOs may also serve to function as partner to the state in certain capacities, especially in developmental contexts and, as we shall see, in the context of the security sector. In defence and security affairs, most CSOs have a dual role. They are frequently composed of members of the intellectual elite who stand between the government and the general public. On the one hand, such members CSOs may assist the government in finding the right answers to public policy issues and criticising governments responsibly. On the other hand, defence and security CSOs can help to spread knowledge and create a climate of opinion that encourages wise policy.

That is only one part of the equation of the relationship between the state and civil society. It is also important to understand the role of the state in encouraging civil society and facilitating the engagement of the public in security affairs. What is the nature of the relationship between CSOs and the state? Is it a cooperative partnership, or do the state actors and civil society actors perceive themselves as opponents or opposites? What degree of state support for CSOs is considered necessary and legitimate? The attitude of representatives of the state towards civil society will determine in practice the extent to which CSOs can influence policy and public debate.

IV. Relevance of civil society to SSR

One of the most fundamental functions of the state is to provide for the security of its citizens. The security sector comprises those state institutions and structures whose primary function is to

protect society and the liberty of its citizens. The term "security sector" expands the scope of security from its traditional focus on the armed forces and military security to include "public security", or the safety of the individual from threats of crime, disorder and violence. As security sector reform is focused on the use of public resources to provide security for citizens, there is a necessary focus on state (often executive) institutions and public policy. These institutions include military forces, police and law enforcement services, paramilitary forces, border guard, intelligence agencies, the judicial system and penal institutions, as well as the government departments and ministries that exist to formulate policy and manage these institutions. Most of the institutions that are part of the security sector are authorised to use or threaten the use of force, if necessary, in order to fulfil this function. Nevertheless, the legitimate use of force against the state's citizens is strictly regulated in a democracy.

Security sector reform (SSR) is about making the institutions that are responsible for protecting society more accountable to individual citizens and communities and more responsive to their security needs, while ensuring that they become or remain effective and efficient in providing security. Security institutions, being organised and run by the state, are essentially top-down institutions. Of all the sectors of public policy, however, the security sector has historically proven one of the most resistant to public input. Elected representatives must hold the ultimate authority on key security issues. Security sector reform, however, advocates and seeks to institutionalise a bottom-up dynamic whereby the concerns, needs and views of citizens are systematically incorporated into policy and practice of security institutions. SSR thus seeks to cultivate the trust and confidence of local communities.[16] In this sense, it deals with the legitimacy of authority and the accountability of decision-makers in security affairs to their publics. One of the main objectives of SSR, then, is to achieve and maintain good governance.

If we accept that SSR is a normatively based agenda, its success will rest on the cooperation of governmental and non-governmental actors, and ultimately on the sway of public opinion. A key ingredient in success will therefore be the ability to gain supporters and convince the public that the norms and policies implied by SSR are worthy and valid. This should be accomplished through an inclusive and participatory approach that through horizontal coordination brings NGOs and citizens directly into the consultation and decision-making process. It also relies on making information about the security sector institutions, policies and practices widely available to the public. Although certain information must neces-

[16] Michael Small, "Peace building in Postconflict Societies", *Human Security and the New Diplomacy*, 86.

sarily remain classified due to national security considerations, democratic governance of the security sector depends on fostering the greatest degree of transparency possible within those limits.

Our focus on armed forces and other elements of the security sector identifies our core interest in civil society in terms of its impact on political change, and in the case of SSR, towards more democratic institutions and governance. Security sector reform is about state institutions, specifically those authorised to use coercive force, namely the armed forces, police and intelligence services. The role of the state is central and primary. Reform may entail the renegotiation of the relationships of these central state institutions to other political and social actors, but the crux of the matter remains the state's efforts to provide security. Civil society can play a role in helping the state to fulfil its responsibilities transparently and accountably.

The effectiveness of a civil society organisation in influencing government policy or practice in a security sector seems to be dependent on several variables. First, is the character of the domestic political opportunity structure, or factors that facilitate or inhibit mobilisation in the political system. How does the political administration view CSOs generally and, specifically, with respect to national and internal security policy matters? Also, to what extent are CSOs involved in grass roots work and fostering political dialogue in this field? Or, alternatively, do they function as local clones of their major donors? Do they "talk the talk" of community outreach and grassroots support and other cherished Western norms, but don't walk the walk? CSOs may provide informal oversight (scrutiny), or participate in the policy and public debate on some issue related to security or the state security institutions. In that vein, some authors have identified the role of think tanks, research institutes, NGOs and the media as key civil society actors that have influenced public debate and government policy on national security affairs.

Nevertheless, debate also exists on the state's proper role in guiding and shaping society. In many post-socialist countries, for example, the virtual absence of civilian expertise in defence affairs was perceived as posing a serious obstacle to effective democratic control of the army. Paradoxically, it has been the responsibility of the state to create an enlightened environment and develop programs aimed at fostering such expertise among civilians, with the ultimate aim of creating a capacity within society to provide alternate voices and independent perspectives and assessments of security policy, challenge government decisions, and check the power of the state in specific and specialised areas.

Moreover, there is the possibility that civil society and social movements may in some instances overwhelm the capacity of

weak governmental structures to respond.[17] In some sectors, citizens seem to be perpetually in conflict with governments, particularly in the areas of environmental protection or urban development. The level of conflict with the state tends to depend on the ability of the civil society organisations to mobilise their constituencies as well as the flexibility and adeptness of governments to respond to citizen demands.[18]

V. Civil society and oversight of the armed forces

With regard to the armed forces and defence policy, civil society organisations, if they have sufficient means and capacity, have the potential to monitor military forces and provide input into the political debate on security policy. In practice, in various Western democracies, the roles of civil society organisations tend towards advocacy in the form of pressure groups or policy support groups.

Pressure groups may be generally focused, as with anti-nuclear, general disarmament, and peace groups. General groups were more apparent in the security sphere during the Cold War period. Pressure groups may also focus on specific policy issues, such as on the procurement of weapons systems and their deployment, demonstrated by the 1980s movements against INF deployment in Europe and against cruise missile testing in Canada, organisations supporting NATO or EU membership, and groups opposing hazing and human rights abuses in the army such as the Soldiers' Mothers groups in Russia. Furthermore, these groups can be local and/or transnational in character. Transnational issue networks affecting armed forces and military affairs include the campaigns against landmines, the conscription of child soldiers and the proliferation of small arms and light weapons.

Policy support is provided by CSOs that have established some degree of expertise in defence and security policy matters, such as think tanks, research institutes, and university departments. They may work closely with government policy-makers on specific issues or projects, and their membership may include individuals who move between government, public administration, academia and the non-governmental sector. Government ministries may call on them when outsourcing research and the management, coordination or implementation of projects. As

[17] Maria Elena Ducci, *Governance, Urban Environment, and the Growing Role of Civil Society*, trans. by Lake Sagaris, Comparative Urban Studies Occasional Paper 34 (Washington: Woodrow Wilson International Center for Scholars, 2000), 5. Available at: http://wwics.si.edu/urban/papers/ducci.pdf

[18] Ibid, 9.

these CSOs tend to enjoy a greater degree of access to decision-makers, administrators and opinion-leaders in defence and security affairs, they have the potential to exercise a greater degree of influence than groups more removed from centres of power.

Policy support CSOs are often lauded for the role they play in fostering the development of civilian expertise in defence and national security affairs, and providing independent assessments and views of security policy. This alternative source and home of expertise, outside of the defence ministry and military itself, is widely acknowledged as contributing to the effective democratic control of armed forces. CSOs may serve as a resource for parliamentary committees, take part in informed debate on policy issues, and help educate the public through outreach, lectures and seminars. It is important to bear in mind, however, that policy support CSOs can vary significantly in their relations with the state from complete financial independence (deriving their core funding from alternate sources such as philanthropic foundations or major donors, or from bidding on and implementing contracts) to complete reliance on state funding. It is important to recognise the possible implications of CSO financial dependence on government favour for the independence of their views and activities.

Consultation by government with CSOs in the defence, security and foreign policy fields is increasingly visible in many Western countries. This "new multilateralism" is characterised by a growing interaction and symbiosis between government and CSOs (especially NGOs) as CSOs provide specialised expertise to policy-making. Further, transnational issue networks play an important role in establishing normative standards, setting agendas and influencing the way that policy issues are viewed and discussed. "…[M]any negotiations today involve processes of mutual learning, with participants exchanging best practices and identifying comparative advantages in jointly tackling seemingly intractable multidimensional problems such as complex political emergencies."[19] In Canada's case, for example, NGO-government dialogue, exchange of lessons learned and best practices takes place primarily on issues of human rights, conflict prevention and peace building.

However, there has been very little empirical examination of the civil society situation in reference to the security sphere or of how local NGOs and other CSOs function and survive with the flow of personnel, or of their impact on policy and on public debate. Consequently, one of the objectives of the research program being undertaken by DCAF's Working Group on Civil

[19] Waschuk, 218.

Society is to "map" the CSO terrain in defence and security in specific national contexts.

Types of CSOs that have the potential to influence policy[20] on defence and national security issues are primarily drawn from those fulfilling the technical expertise function. These may include:

- Think tanks
- Public policy research institutes (partisan and non partisan)
- University-affiliated CSOs (academic departments, law schools, graduate schools, schools of public administration or research institutes)
- Advocacy non-governmental organisations
  1. Single-issue organisations in which members are devoted to a cause (eg. For or against NATO membership, anti-conscription).
  2. Umbrella NGO group (the need for a unifying force and combined voice when there is a fragmented group of small NGOs with minimal impact working on this issue). Example is the Council for Canadian Security in the 21st Century, an umbrella group of concerned individuals (defence experts, heads of institutes, researchers retired military) engaged in pressuring the Canadian government for a comprehensive defence and security policy review.
- Advocacy and pressure groups (environmental groups, anti-corruption groups, groups for an independent media and media watchdogs, government accountability)
- Human rights groups (e.g. Committee of Soldiers' Mothers, groups against hazing in the military, groups monitoring treatment of civilians in Chechnya)

Another type of CSO that may become involved in defence and security affairs is drawn from those fulfilling the function of representing the interests of their members:

- Churches
- Unions
- Ethnic and native associations
- Community and neighbourhood groups
- Professional groups (for example, federation of journalists, academic societies, bar associations, veterans associations, WIIS – Women in International Security)

[20] A very useful typology and discussion of policy support CSOs is found in Donald Abelson, *Do Think Tanks Matter?* (Montreal and Kingston: McGill-Queen's University Press, 2002).

- In addition, we will include here direct citizen action - i.e. individuals who take action (entrepreneurial policy types, individuals who make complaints to structures like ombudsmen, speak or write to parliamentarians)

VI. Civil society and oversight of the police

The role of civil society in the policing domain is perhaps more easily discernible than in the military domain, especially in democratic countries where democratic policing, and especially something called community policing, has become the guiding principle.

Briefly, democratic policing requires that police:

- always operate within and uphold the rule of law
- protect the public with full respect for human rights
- provide fair and impartial policing
- are neutral (politically non-partisan)
- are under civilian (not military) control and have a civilian, not military, orientation in training and practice (essential orientation to providing a public service to citizens, use force only when necessary, and only to the extent necessary to obtain an objective – i.e. minimal force)
- have professional and personal integrity (obey an explicit or implicit ethical code)
- are operationally responsive to the needs of individuals and groups in the community (responsiveness downwards to the community's needs, rather than upwards to a political party or regime)
- are individually accountable to the community for their actions
- are transparent and accountable to multiple audiences (including local communities) via multiple overlapping oversight mechanisms – executive, legislative, judicial, legal, administrative (internal), internal socialisation (ethical code), external (ombudsmen, grassroots initiatives, specialised NGOs focusing on policing and human rights, community consultation groups)

In democratic societies, it is maintained that policing rests on public consent. Implying that a value consensus exists in society; coercive policing implies a lack of or forced value consensus.[21] Policing with the consent of the community gives the police force, and by extension, the state, greater legitimacy. Consequently, civil society is supposed to play a very significant role, at least in theory, in community-oriented democratic policing.

[21] Ahmet Aydin, *Police Organisation and Legitimacy: Case studies of England, Wales and Turkey*, (Aldershot, England: Avebury, 1997), 96.

Civil society groups in democratic states are frequently involved in efforts to hold police accountable, to influence policing policy and practices and lobby public authorities concerning police action. Thus, even in countries where there is a coercive or military style of policing, citizens' movements for safety and against excessive police violence have been successful in pressuring, shaming and negotiating with police institutions and political authorities to change policing practice.[22]

Civil society groups may also directly encounter the police when they take to the streets in protest or direct action (sit-ins, teach-ins, locking arms and creating human chains, using banners and signs, demonstrations, protest marches and civil disobedience). Recently, harsh policing measures have been used and widely reported in suppressing demonstrations by the anti-globalisation movement at meetings of the World Bank, IMF, World Economic Forum and various other political conventions and meetings. For example, during the September 2000 annual meetings of the World Bank and IMF in Prague, police engaged with more than 15,000 protesters using water cannons, dogs, and smoke bombs. About 900 people were detained in the city's jails, with only a few charged. There was also widely reported police abuse of protesters held in Czech jails during the meeting, prompting the protesters to issue the "Prague Declaration" denouncing the "psychological terror and physical repression and overreaction by the Czech police forces", particularly the brutalisation of detainees by police.[23]

Types of civil society organisations that tend to play a role in oversight and accountability of police are drawn also from the representation and technical expertise groups, but additionally may include service delivery CSOs.

Representation CSOs may include:

- Neighbourhood and local citizens' advisory boards
- Business associations
- Community associations
- Ethnic associations

Technical expertise CSOs involved with overseeing policing may include:

- Human rights groups and networks
- Departments of criminology and sociology
- Police, legal and criminal justice research institutes
- Bar associations

[22] For an account of citizens' movements which succeeded in drawing attention to police violence against street children see Paul Chevigny, *Edge of the Knife: Police Violence in the Americas* (New York: The New Press, 1995).

[23] Maude Barlow and Tony Clarke, *Global Showdown: How the New Activists Are Fighting Global Corporate Rule* (Toronto: Stoddart, 2001), 42-43.

- Local branches of international NGOs such as Amnesty International, Helsinki Watch, Transparency International

Relevant service delivery CSOs may include:

- Community/neighbourhood watch groups
- Block parents groups
- Public legal aid groups and associations

VII. Civil society and the oversight of intelligence services

The intelligence sector is arguably the most difficult in which civil society organisations might influence policy and government practices. Ironically, it is also the sector which holds the greatest potential to impinge on the civil liberties, rights and freedoms of citizens during peacetime.

There is no real tradition of public consultation in intelligence policy-making. External oversight of intelligence and security agencies is an extremely recent phenomenon, even for mature democracies. External oversight and public accountability of the American intelligence community did not begin in earnest until the New York Times revealed various bungled attempts by the CIA to assassinate certain foreign leaders, a revelation which launched the Church Committee and ultimately an extensive system of oversight. However, several well established democracies have minimal or no external oversight and public accountability of their intelligence services.

There are three main structural constraints on the ability of civil society organisations to function as an oversight mechanism over intelligence. First, there is the requirement of secrecy in intelligence, which limits the amount of information made available about these agencies and their activities. Even basic information such as budgets are frequently not made available. Secondly, intelligence professionals are typically granted a wide scope of discretionary authority, in recognition of the unique conditions and requirements of the field. In this sense, they are similar to policing practitioners, who retain a wide scope of discretion in their day-to-day policing activities. However, police officers are held individually accountable for their actions, whereas intelligence agents are generally not. Thirdly, intelligence is particularly prone to the informal doctrine of "plausible denial", in which senior policy-makers are deliberately uninformed (or request to be uninformed) about potentially controversial actions undertaken by the intelligence service. This is most obviously the case with covert action abroad. It can however apply in the domestic context as well, as the consequences of a domestically-focused scandal are more likely to be harmful to political careers than externally-focused ones.

As a consequence, there are very few civil society organisations which possess the technical expertise that one may find

among counterpart CSOs in the defence or policing spheres. The few expert groups might include intelligence studies groups, which often include former intelligence professionals, human rights groups (which often include lawyers and others who hold specialised knowledge about the implications of security-related legislation) and public interest and civil liberties groups (such as those CSOs working to promote privacy or those against surveillance of internet users). Other groups may become active on a single-issue basis, such as ethnic or minority groups that find themselves especially targeted for surveillance. For example, the events of September 11, 2001 have resulted in heightened surveillance of Islamic and Middle Eastern ethnic communities, NGOs and religious groups, raising alarm among civil liberties groups and the leaders of the affected religious and ethnic groups.

One recent instance of CSOs pressuring (unsuccessfully) for change in a government's policy or approach to intelligence-related issues was the intense campaign undertaken by members of university faculties of law, the Canadian Institute for the Administration of Justice, the Law Commission of Canada, the Canadian Bar Association, the Upper Canada Law Society and other law societies across the country, and civil liberties groups on the Canadian government to reconsider its omnibus anti-terrorism legislation, Bill C-36, proposed in the aftermath of September 11, 2001. In two high profile conferences organised by and featuring many prominent members of these bar associations, specific provisions of the draft bill were heavily criticised for an overly broad definition of terrorism, expanding police powers without corresponding checks and accountability mechanisms, and impinging unnecessarily on the rights and freedoms of Canadian citizens[24]. Jean Chretien's Liberal government, which had not consulted the law societies in the drafting stage of the legislation, pushed through this legislation, which received royal assent on December 18, 2001. Nevertheless, the government subsequently withdrew another omnibus anti-terrorism bill, C-42, in response to similar widespread criticism, but particularly criticism within the Liberal caucus about provisions to declare restricted military zones anywhere in the country, and replaced it with Bill C-55, the Public Safety Act.[25]

[24] See the published proceedings of the first conference in *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, ed. Ronald J. Daniels, Patrick Macklem and Kent Roach (Toronto: University of Toronto Press, 2001) and its website at http://www.law.utoronto.ca/c-36/, and the summary of proceedings of the second conference, *Terrorism, Law and Democracy* at http://www.rcmp-learning.org/download/ciaj_march2002.pdf

[25] "Privacy commissioner 'deeply troubled' by anti-terror bill", *CBC News* online, 02 May 2002, http://cbc.ca/stories/2002/05/02/privacy_terror020502. See also Bruce Cheadle, "Despite Liberal unease over revamped anti-terror bill, PM promises fast-track", Canadian Press, 02 May 2002, http://www.geocities.com/ericsquire/articles/cp050202.htm

Another example of CSO activity in this area is provided by the legal challenges to several national security measures imposed after September 11, 2001 by the Bush administration (illegal detentions, law enforcement exemptions to freedom of information) being posed by the Centre for National Security Studies in Washington.[26] The challenges in American courts appear to be showing more signs of success, albeit limited, than the efforts of Canadian CSOs to affect security intelligence policy and approaches.

The media has been said to have an important, albeit informal, role as a mechanism of control in this area. However, in order for the media to serve as a watchdog for security and intelligence services, rather than reporting the occasional scandal, it is necessary that there be a number of journalists who specialise in the field. Non-specialists tend to use inaccurate terminology, sensationalise and personalise issues, and fail to put the issues into broader context.[27] Ongoing coverage of intelligence-related issues would ostensibly provide better scrutiny and accountability, but is unlikely except in states with large intelligence apparatuses (US) or a recent history of repressive intelligence agencies and deep societal interest (Romania). As a result, specialised civil society organisations may fill the gap by providing such coverage as a public service. *Statewatch*, for example, maintains an extensive database on civil liberties in Europe and has been at the forefront of efforts to educate the public through investigative journalism about the expansion of surveillance powers in Europe.[28]

The role of civil society organisations in scrutiny of security institutions and holding governments accountable for their decisions in security varies across sectors. Although this paper could only provide a preliminary comparative sketch, it appears that technical expertise CSOs tend to play a greater role in the defence and possibly intelligence spheres, while representation and service delivery CSOs are more predominant in the policing domain. Some issues and concerns common to CSOs acting in all the sectors include the dangers of being "co-opted" through a too-close association with the state ministry or service in question, dependence on the state for core financing with a corresponding loss of independence in voicing one's views and preferences, and the underlying motives of public consultation exercises. The holding of consultations with CSOs and the public more broadly serves a legitimising purpose for government decisions and policy in the

[26] http://cnss.gwu.edu/~cnss/

[27] This for example has been cited to be the case with the Scandinavian media. See Geoffrey Weller, "Political Scrutiny and Control of Scandinavia's Security and Intelligence Services", *International Journal of Intelligence and Counterintelligence*, 13, no 2 (Summer 2000), 185.

[28] See the Statewatch website at: http://www.statewatch.org/

security sector. More research is needed, however, to determine to what extent government outreach and public consultations with CSOs actually influence the formulation and implementation of government policy.

VIII. Conclusion

Civil society has undergone a major revival as a concept for understanding the relationship of the state to the individual and the value of collective political action in a democracy. This revival has taken place not only in the atmosphere of academic and especially philosophical musings, but also in the concrete programs, budgets, outreach and related activities of international and bilateral assistance programs and in the declarations and efforts by governments and international organisations to engage in dialogue with civil society and to be more inclusive of civil society perspectives in their decision-making and policy implementation processes. At its essence, civil society concerns the actual efforts of civic actors and groups to mobilise popular opinion, educate the public on security-related issues, lobby and pressure governments on policy decisions, and engage with other civic groups at home and abroad to effect political change.

By reflecting on the new interdisciplinary focus that has given rise to the idea of security sector reform, our understanding is only slowly developing the relationship between civil society actors on the one hand, and the various institutions of the key security sectors on the other hand. In this paper, I have only begun the process of identifying the types of civil society organisations which might be considered to play a role in each of the three sectors of security policy. Much more research needs to be done on a case study basis, within each sector, and within individual countries. Our task as scholars and members of policy and democracy-promotion communities is to look more closely at what civil society organisations actually do in specific contexts through their attempts to shift and influence power relations. It is also to look at the willingness of governments –declaratory and actual – to listen to, consult with and involve civil society organisations in policy formulation and implementation.

Approaching civil society from a security sector reform perspective is particularly valuable because it forces us to view civil society in ways that are more complex than the simplistic oppositional relationship that is often presumed to exist between state and civil society. The role of the modern state is central to the provision of security to individuals and society more broadly, and although other actors it has the capacity to contribute to security to some extent (via private military companies, private security companies for corporate and home protection, and community watch type

organisations). In this sense, the role of the state cannot be replaced. A security sector reform perspective enables us to view civil society organisations' varying range of relationships with the government and the state, on a continuum from opposition to collaboration, and to appreciate especially the partnership dimension that is inherent in good governance.

Inversely, looking at security sector reform through the prism of civil society emphasises issues of accountability, inclusiveness in policy formulation, responsiveness of governments to citizen needs, and ultimately, the legitimacy of governance. It reminds us that, in the final analysis, the client of state security institutions is the individual citizen, and that the reform of security sector institutions must be undertaken with a dual focus on efficacy and public accountability.

Johanna Mendelson Forman

PROMOTING CIVIL SOCIETY IN GOOD GOVERNANCE: LESSONS FOR THE SECURITY SECTOR[1]

Introduction

Perhaps it is no coincidence that this workshop on civil society and civil-military relations is taking place in Prague. In the modern history of Europe Prague has become a symbol of how democracy and human rights drive a revolution. From the famous Prague Spring of 1968, where dissidents challenged the repression of the Soviet state, to the Velvet Revolution and Charter 77 that launched the breakdown of Communist rule, civil society has played a central role in challenging the state's arbitrary use of force against its own citizens. What is more, Czech President Vaclev Havel has become a symbol of democratic dissent, not only in his own nation, but to all those who aspire to freedom and justice around the world.

Just as Vaclev Havel led civil society in a movement for democracy and human rights, as the freely elected leader of that state he also laid the foundation for democratic civil-military relations in what was once a Communist state. In his NATO Summit address of 1999, Havel made clear that even with the success of a democratic transition in his country and elsewhere in Eastern Europe, civil-military relations still challenges the state, its institutions, and citizens in sustaining a free society. To quote Havel,

> The fact that a former powerful strategic adversary has disappeared from the scene does not, however, mean that in the world of today human lives, human rights, human dignity and the freedom of nations are no longer in danger. They are, unfortunately, still being threatened, and collective defense of the democratic states of the Euro-Atlantic sphere of civilization, therefore, still remains a valid concept. [2]

[1] Paper prepared for the Workshop "Promoting Civil Society in Good Governance. Lessons For the Security Sector" held on 15-16 April, 2002 in Prague, Czech Republic. The Workshop was organised by the Geneva Centre For Democratic Control of Armed Forces (Switzerland).

[2] Havel's address at NATO summit on April 23, 1999.

The new security agenda of the post-cold war period requires a review of civil-military relations that goes beyond the traditional notion of subordination of the armed institution to elected civilian leaders. The increasing use of the world's militaries in non-combat roles is a phenomenon of the last decade that has significant fiscal and governance implications.[3] As countries transition from war to peace, or from authoritarian to more liberal governments, there will also be a growing demand for greater accountability and transparency within the security institutions of the state. It is no wonder that more people are looking at the security sector as an essential component of good governance. Just as the study of democratic civil-military relations emerged as a central feature of democracy promotion in the last decades of the 20th century, so security sector reform must become commonplace in the development dialogue of the 21st century.

In the last few years civil military relations has been included in a wider examination of post-cold war security. It is one element of many other complex processes that affect the human condition in many parts of the world. The use of the term "human security" to connote the impact of instability and poverty on development is increasingly becoming a proxy for the capacity of the state to provide a safe and secure environment for development.[4] Programs that address poverty reduction through reform of institutions that affect both internal and external security are more frequently referred to as security sector reform rather than civil-military relations.

If attempts are being made to rethink civil military relations in the context of democratization, it may be premature to assume that the armed forces of a state in transition are willing to take a back seat to civilian institutions when these institutions are in their formative stages. One need only look at the current situation in Serbia and Montenegro to appreciate that democratic elections do not easily translate into civilian democratic control of the military, or other democratically legitimate institutions that control the use of force. Looking beyond Europe to parts of Africa and Latin America, when militaries remain the major presence of the state outside the capital city, one must step back and ask what transitional steps may be developed that allow the military to withdraw from these broad roles and return to a more appropriate role as defender of the state against foreign enemies. Similarly, militaries must not become the long-term solution to internal enemies, when civilian police can be

[3] For example, see *Non-Combat Roles for the US Military in the Post Cold War Era,* edited by James R. Graham (Washington, DC, National Defense University, 1993.

[4] United Nations Development Program, *Human Development Report,* 1994, which used the term "human security" for the first time.

developed as a means of establishing a credible force to safeguard citizen security.[5]

In the years preceding the end of the Cold War, the concomitant transitions from authoritarian rule to democratic systems in southern Europe and Latin America gave rise to a need to support fragile civilian regimes by providing a wide range of programs in governance. The notion, while theoretically correct, was imperfect in practice. Institution building was central to this type of development assistance. Western donors concentrated funds on strengthening legislatures, supporting to judicial systems, and creating stronger civil society organizations that could provide appropriate advocacy for change. These first generation interventions in civil military relations were looked at not so much as supporting security as promoting democratic transitions.

In most areas undergoing transition to more open society in the post-cold war world, the state is weak, or sometimes non-existent. Its strengthening-a necessary concomitant of democratization-cannot be overlooked. But unlike other areas of public sector reform security is a complex issue where the state has been weakened by some form of authoritarian regime. The difficulty is especially evident in that lack of capacity and expertise that civilians have in managing security matters, or developing policies that will provide oversight for expenditures in this sector. Furthermore, when thinking about reforming the security sector there is also a need to withdraw the armed forces the dual role of guardian of both national defense, or external security, and its public safety or internal security role.

In transition societies discussions of military roles and missions are often avoided when there is weak democratic control. Such discussions also run the risk of challenging the status quo. This tension suggests the need for a more specific framework that addresses ways in which civilians might begin to take on the task of building what has been described as the "software" of civil-military relations, the development of civil society engagement on security matters that complements the "hardware" of democratic institution building.[6] There is also need for those involved in the support of programs in civil-military relations, and in the wider security sector, that the timing and sequencing of programs may not necessarily be linear. Sometimes it will not be possible to

[5] Claude Welch and Johanna Mendelson, "Transforming Civil-Military Relations Through External Donor Assistance: New Roles for USAID?" Paper presented at the 1999 Biennial International Conference, Inter-University Seminar on the Armed Forces and Society, Baltimore, Maryland 22-24 October, 1999.

[6] Douglas I. Bland, "Patterns in Liberal Democratic Civil-Military Relations," *Armed Forces and Society,* v.27, 2001, pp. 525-540.

address military reforms first, or traditional democracy building immediately.

This paper advocates a two-part approach to civil-military relations. It builds on the concept of generational reforms that have been articulated by different scholars of civil-military relations who see it an essential part of democratic governance.[7] I argue that traditional civil-military relations programs are still important components of donor interventions to support greater accountability of the armed forces to civilian government. But I also believe that civil-military relations that focus solely on elites, or on leaders, will not address the growing international public demand for citizen security. If donors are to be successful in their objective of promoting good governance, or developing strong and open societies, their investments will have to include more than the institutional reform and capacity building that characterize today's programming. They will also have to reach out to wider constituencies, to non-traditional actors in this area, who can also support and translate the more sophisticated concepts of national security to a local level so that meaningful reforms will reach all members of society, not only the leadership.

Security Sector Reform as a Component of Civil-Military Relations

While the study of civil-military relations has been a central component of research on democracies, the last decade has also underscored the importance of the broader security sector as a more holistic way in which to examine how states control the use of force, not only through their armed institutions, but also through such civilian institutions as the judiciary, the legislature, and the executive branch. Security sector reform has overtaken the more limited approach to civil-military relations as a more appropriate way to define the tasks within the state that ensure that development policies can actually take root, and so that citizens can live in peace, not fearing the security sector but understanding the respective roles of institutions and organizations that together ensure social and economic growth. Unfortunately, translating such a broad concept into actionable and sequenced programming has been more difficult for many donor governments because it would imply an end to the "stove piped" approach that has become so common in traditional democracy building efforts.

[7] Timothy Edmonds, Andrew Cottey and Anthony Forster, "The Second Generation Problematic: Rethinking Democracy and Civil-Military Relations in Central and Eastern Europe," a working paper of the project, *The Transformation of Civil-Military Relations in Comparative Context,* research sponsored by the UK Government's Economic and Social Research Council.

The definition of Security Sector**,** a central tenet of good governance, is the one developed by the British non-governmental organization, Saferworld has defined as "all those organizations which have authority to use, or order the use of, force, or the threat of force, to protect the state and its citizens, as well as those civil structures that are responsible for their management and oversight." It includes: a) military and paramilitary forces, as well as those civilian structures – such as Ministries of Defence – that are responsible for their control; b) intelligence services; c) police forces, both national and local, together with border guards and customs services; d) judicial and penal systems; and e) civil structures responsible for the management and oversight of the above."[8]

Stated simply, the objectives of security sector reform are:

1. Strengthening civilian management of the security forces and accountability of security forces to civilian authorities;
2. Encouraging transparency in security sector planning;
3. Managing and budgeting of security expenditures;
4. Creating a climate conducive for civil society to actively monitor the security sector and be consulted on defense policy;
5. Resource allocation in accordance with priorities of the society
6. Fostering an environment that promotes regional and sub-regional peace and security;
7. Making disarmament a priority; and
8. Demobilization and reintegration of ex-combatants from war, and rightsizing current forces if necessary.

While donors have frequently engaged in programming in all of these areas, the approach has not been strategic. Thus, the list of issues being grouped as integral parts of the security sector become less than their whole as donors tend to pick and choose interventions rather than approach the subject as matter of good governance. Perhaps one way to address this lack of strategy is to look at ways in which civil society can play a role in bridging the conceptual gap between civil-military relations and security sector reform.

Can Civil-Society Play a Role in Sustaining Democratic Civil-Military Relations?

What do we mean by civil society? I will use the definition that is most common in the US, but also is widely accepted among those states engaged in democratization efforts. Civil society is "an associational realm between state and family populated by organi-

[8] Malcolm Chalmers, Saferworld/University of Bradford, *Security sector reform in developing countries: an EU perspective*, January 2000.

zations which are from the state, enjoy autonomy in relation to the state and are formed voluntarily by members of society to protect or extend their interests or values."[9]

Donors involved in supporting democratization view civil society as the engine that drives the process that results in the opening of political space. This has been especially important since the end of the Cold War and in places that have transitioned from authoritarian to more democratic rule. The means by which civil society supports democratization is by helping to ensure greater inclusion of groups that previously had little or no voice in the deliberative process. Women's organizations, indigenous and ethnic minorities, and isolated communities outside capital cities are examples of this constituencies often victims of social and political exclusion. Civil society organizations also foster advocacy by working toward reforms within the state. Such organizations also provide important didactic functions by promoting civic values through the associations created and the trust and confidence building that are inherent in civil society organizations.

Too often, however, donors look to civil society as an end rather than a means. "It is not the existence of civil associations that strengthens civil society, but their purpose and the extent of their freedom to operate."[10] The result of such an approach is that organizations are funded by international aid agencies solely for the purpose of supporting particular agendas that may or may not advance local interests. The proliferation of internationally funded civil-society organizations has led some students of the subject to question the practice of donors who try and create organizations that may not, if left on their own, be truly representative or capable of sustaining themselves once international assistance is removed.[11]. Others have observed that donors have created an international civil society elite, engendering entrepreneurial spirit among groups who have learned to play the international funding game[12] But even more important, I might add, is that civil society organizations

[9] Gordon White, "Civilization, Democratization and Development (I) Clearing the Analytical Ground," Democratization 1(3) Essex: Frank Cass &Co., Ltd. 1994, at 374. and Christopher A. Sabatini, Whom Do International Donors Support in the Name of Civil-Society? Unpublished Manuscript, 2002.

[10] Neil Cooper and Michael Pugh, *Working Papers: Security sector transformation in post-conflict societies.* London: The Conflict, Security and Development Group, Center for Defense Studies, King College. 2002. "In the context of security sector reform, civil groups can be singled out for support if they further bottom-up democratic processes for building trust, co-operation, compromise, inclusion and pluralism."

[11] See studies by Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve,* Washington, DC 1999 and Anita Isaacs, "International Assistance for Democracy: A Cautionary Tale." In Jorge Dominguez, editor, *The Future of Inter-American Affairs,* New York: Routledge, 2000.

[12] See Isaacs article for specific details.

that are not truly representative of the popular will are often doomed as they no longer serve the intermediary function, or the means, by which citizens negotiate with the state.

When one thinks of the role of civil society in influencing civil-military relations in a society transitioning from war to peace, or in a society transiting from authoritarianism to greater political openness it would seem obvious that creating organizations demanding a greater say in defense and security policy in such states might be difficult among the general population. It would, however, be possible to work with specific elites in such an environment to begin the process of educating them about security matters. If we believe that civil society organizations provide the means to raise issues between government and citizen we must also gain a better understanding of citizen priorities in such societies before imposing external and often Western demands for civil-military relations in places were individual freedom and personal security are still at risk.

Talking about civil military relations in general among groups who were at one time victims of military or police abuse may be a difficult entry point for civil society engagement. Reform of the broader security sector, however, may be easier to comprehend. The conjecture is based on a recent World Bank survey of the poor. When queried about the most pressing priority security was always ranked number one, before food or shelter or employment.[13] "It is vital that poor people should have a say over government spending decisions. The voices of the poor can be strengthened by support those parts of civil society that help poor people organize and influence decision makers."[14] Thus, dealing with security should become an immediate priority for donors who want greater civilian participation in governance. Dealing with security will require focusing not only on establishing appropriate civil-military relations within the state, it will also require reforms in a wide array of institutions, such as the police, the courts, the penal system, the legislature, and in the education system, so that citizen security becomes a priority rather than an afterthought. The complexity of different types of political environments also renders a less than holistic approach inefficient, if not inadequate.

Generational Reforms: What Do They Imply?

If first generation reforms are the stuff that the traditional civil-military relations literature describes, to what extent have these changes been implemented. In first generation reforms the

[13] Vital Voices, The World Bank Group, (1998).

[14] United Kingdom, Department for International Development. *Eliminating World Poverty: Making Globalization Work for the Poor.* London, 2000.

focus has been on establishing appropriate structures for democratic civilian control, and measures to depoliticize the security sector actors and remove them from partisan intervention in domestic politics. As Tim Edmonds notes, "the key elements of first generation security sector reform include the establishment of civilian control over the security sector, with a clear delineation of responsibilities between different levels of government (federal, republican and local)."[15]

A key lesson learned from first generation interventions in civil-military relations is the importance of dialogue to create space and develop consensus about roles and missions of the armed forces and other security services in the state. "It is the responsibility of civilians, rather than the military, to decide when and how armed force is used. The latter, however, should play an important advisory role. The relationship is best achieved through frank and constructive dialogue that recognizes the political responsibilities of civilian elected officials and the technical expertise of military professionals."[16]

If the first generation programs opened a window to an exchange of ideas and efforts at institutional restructuring, then the challenge of the "second generation problematic" in civil military relations is to lay out the framework of ideas, principles, norms, and conditions and modify the behavior of politicians and officers in mature liberal democracies. This is a long-term process, but one where greater emphasis must be placed on civil society as a partner in this educational process. Second generation civil-military relations programs go beyond developing institutional structures for civil control in emerging democracies. They are about providing citizens, civilians and soldiers, with a new way to think about security in a liberal democracy.[17]

Although there has been a history of donors working on civil-military relations as a part of democracy promotion activity, it has often been done with great reluctance, or has been done through very formal academic arrangements that focus more on elites than on the public at large. Making the leap from civil-military programs to security sector programs may even cause more donors to hesitate as issues of internal security, democratic policing and intelligence reform may even further alienate traditional development

[15] Timothy Edmonds, *Security Sector Reform: Concepts and Implementation,* Report for Geneva Center for Democratic Control of the Armed Forces, Kings College London/Joint Services Command and Staff College, 2001.

[16] Donald E. Schultz, *The Role of the Armed Forces in the Americas: Civil-Military Relations in the 21st Century.* Carlisle: The US Army War College. April 1998.

[17] Douglas L. Bland, *Patterns of Liberal Civil Democratic Reform,"* p.526.

thinking away from what is now considered a sine qua non of democratic governance.

It is understandable that in "first generation" civil-military relations program this type of institutional approach to democratic control of the armed forces would make sense. Creating the political space for politicians and bureaucrats to negotiate with those who once controlled the use of force through violence is an important step in negotiating the balance between military and civilian worlds.

Institutional reform is central to full civilian democratic control. This means creating civilian expertise in defense matters, providing legislative offices with the capacity to review and exert oversight on military spending. It means reorganizing the defense establishment so that civilians understand and assist with the preparation of defense budget. It means a civilian defense minister whose powers are not circumvented by armed forces that can challenge elected authority by appealing directly to the head of the military cabinet. (This was the case in Chile from the until the late 1990s when the constitution reformed the shadow military cabinet.)

Institution building efforts, however, fall short of the more immediate needs of citizens who require a safe and secure environment in which to seek employment, or bring products to market, or rebuild community life. Building a culture of democratic values, norms, rules and principles that support civilian control are often like learning a foreign language, and then putting it into practice. Total immersion might have you speaking quickly, but only time and practice will lead to a fluency that becomes second nature to the person who is forced to speak and use it in daily conversation. Just as creating institutional capacity is a long-term process, so is learning the language of democracy. Let us not be fooled by appearances. One only need look at a map of modern Latin America to understand just how fragile security is when the approach to the security sector is limited to only the institutional architecture.

For citizens to feel secure the so-called "second generation" civil-military programs must extend to the security sector as a whole. They must address citizen demand for security at the local level, using existing civil society organizations whose advocacy on behalf of women, the poor, the abused, or the under-represented as a means of educating the public about rights, responsibilities and citizen-state obligations. Such programs must put into practice what is now quite clear. No development will take place in the absence of a safe and secure environment.

Even though international donors have sought to generate citizen demand for greater transparency and accountability in the security sector, such concepts are often too abstract to fire up local organizations unless there can be a linkage made between individual well-being, pocketbook, and survival. The challenge is not so much getting individuals to demand accountability, or fighting corruption.

The challenge is actually characterizing these issues in ways where local communities take ownership of specific aspects of security sector reform, thus laying the foundation for greater citizen involvement. New constituencies derived from other forms of advocacy can become partners in the quest for greater accountability of the military to civilian institutions. These groups can also form the basis for developing policy recommendations to ensure that the security sector will provide citizen safety, but also guarantee democratic processes from the courthouse, to the legislature, to the training and formation of future generations of security forces.

Who are these new constituencies for security sector reform? Women's groups, victims of human rights abuses, former military veterans, demobilized military and police, widows and orphans, families displaced by war – all represent potential constituencies with higher stakes in reform than citizens who would like their taxes spent sensibly. Organizers must focus on existing resources, rather than succumbing to international donor demand for new organizations, or elite leaders to move what may become an artificial agenda, or an agenda unrelated to actual citizen needs. Security sector reform must also embrace the concept of "all politics is local" if it is to resonate among those in civil society who will take the lead as advocates for change. Without an effort to interpret the needs of the security sector in the context of the needs of the average citizen there will be little progress in improving the civilian capacity to sustain democratic gains.

Donor Strategies That Address a Dual Approach

The challenge today is whether appropriately conceived and directed external assistance can facilitate and redefine patterns of civil military relations that reflect the necessities of the 21st century. Perhaps with the exception of the United States (which I will explain later on), most Western donor agencies have embraced the concept of security sector reform as an important approach to good governance. To that end these governments, and the United Kingdom most notably, have undertaken the important process of consensus building among military and civilian agencies in creating a cohesive strategy for supporting reforms in both foreign militaries and among civilian leaders. There has also been a move to further explore how these top down approaches might also be integrated into poverty reduction strategies and programs that support conflict prevention.[18]

[18] Neil Cooper and Michael Pugh, *Working Papers: Security-sector transformation in post-conflict societies.* London: The Conflict, Security and Development Working Group, Center for Defense Studies, Kings College, London. (2002).

To advance the security sector reform agenda it has also been suggested that donors need to agree on a coherent approach to the sector, which would include: acceptance of a common definition of what is meant by the "security sector," support of institutions and programs that would provide countries with adequate capacity for civilian management of external defense and internal security, establishing new partnerships with internal and external organizations involved in this issue, and taking a more long-term approach to results in transforming one of the most difficult development challenges – a security sector that is responsive to civilian control, is transparent and provides basic protection to citizens, while providing for common defense.[19]

In the United States there has been reluctance to use the term "security sector" because of a long history of distinguishing between foreign assistance that supports military training and capacity and foreign assistance that supports institutions of internal security and the judiciary. The distinction between external and internal security issues is really a fiction, but even more than a decade after the Cold War, a holistic policy to assist the transformation of the security sector has yet to be articulated. This puts the US government at a great disadvantage in that investments made for long-term development are often considered without sufficient analysis of the security environment. While this is changing, and Afghanistan may be the exception that makes the rule, the US still lags behind other Western donor governments in its unsophisticated and pigeonholed approach to what in practice must be considered a larger part of the good governance agenda.

One Size Does NOT Fit All

What makes for appropriate programming in the security sector? In addition to the top down and bottom up approach that I recommend for donors in addressing the creation of indigenous civil society capacity in the security field, it is equally important that donors do not make the mistake of using a single template to craft a response to supporting democratic civil military relations or security sector reform. By identifying the type of regime it will be possible to more carefully determine the best mix of activities with which to construct at program in a give country. For the purposes of classification, four regime types that require different strategies include: failed states, post-civil war states, liberalizing former authoritarian states and relatively established civilian governments, but with strong and/or restive militaries.[20]

[19] Nicole Ball, *Spreading good practices in security sector reform: Policy Options for the British Government.* London: Saferworld. December 1998.

[20] Welch and Mendelson, *op.cit., Transforming Civil Military Relations through External Assistance.* p. 7.

In the case of a failed state, it is unlikely that any programming would be done on civil-military relations until basic security is re-established. Nevertheless, it would be important to assess demobilization and reintegration needs of fighters, their families, child soldiers, and other potential security needs that could help move a place back from the abyss. Post-civil war states, however, provide ample opportunity to act take the first serious steps toward democratization. Such an environment would also require basic security to be maintained, either by some external force, or through cooperation with indigenous groups, but planning for institutional development, capacity building in the security sector, and laying the foundation for governance can open many spaces for civil-military dialogue and action.

States that are undergoing a transition from an authoritarian ruler, much depends on whether the state had been militarized, or whether the new leadership came from a civilian background. It is in such states where serious civil-military interventions could help fill gaps in knowledge about civilian and military roles, and could also provide the environment to begin genuine confidence building measures between civilian and military institutions and their respective leadership. In such situations, elite training, capacity building and expertise are important components of civil military program development. In both post civil war states and transition regimes issues of military downsizing become central, not only because of the security implications that such shifts in institutions imply, but also because there are significant economic issues that arise from military downsizing that could benefit long-term growth. The euphoria of ending a war often creates the environment where many changes that were not possible during the war can now be introduced in the wake of fighting. In such states it is imperative to simultaneously address issues of policing, while also considering reform and restructure of the armed forces. Many examples of this arise from cases in the Central American civil wars in El Salvador and Guatemala. Similar types of transitions in Eastern Europe also underscore the need to expand programs that address institutional reform, citizen security and democratization in a sequenced and integrated fashion.

Towards a More Holistic Approach: Some Lessons Learned for Donors

If the last decade has taught donors any lessons one should be quite obvious. Ignoring the underlying security environment compromises other development programming. Donors who work in development have more to contribute to reforming the security sector than resources alone. Work that has been done in the area of democratization can also be translated into a more holistic strategy

to manage good governance by working with civil society on security issues that go beyond the strict boundaries of first generation programming in civil-military relations. What is needed, however, is some reorientation of how traditional types of advocacy support might support reforms in the security sector.

Some lessons learned about the security sector and particularly civil-military relations programs, if applied from the planning phase, should help avoid mistakes of a segregating the security sector from other democracy building efforts.

1. When developing a country strategy in transition environments, a security first approach to the development plan might avoid failure later on. By this I mean that donors must assess from the outset how the security environment may support or hinder efforts to pursue both institutional reforms and support of civil society. Understanding the security-related tasks that can be considered in different stages of a transition can help guide programming.
2. Support of democracy means using civil-military relations as an entry point for broader public dialogue about democratic values, norms, rules and decision-making processes that support political development.
3. Donors must send clear messages from the outset that both civilian leadership and civil society are all participants in efforts to improve security. Without local voices in the planning process work in civil-military relations and the security sector will not succeed. Donor's resources cannot build confidence unless there is local participation and ownership in the planning.
4. Creating civil-society organizations that focus on security, but have no ties to the local community will fail. Donors must seek local organizations with ties in the community, so that groups may begin the process of integrating issues of security sector reform into their own local agendas.
5. Donors must send a single message in their work in this field. Democracy/good governance must come first in the security sector. Anything less will not sustain development investments in the long run. Unreasonable demands on fragile institutions, however, will not necessarily yield the desired results.
6. Donor agencies work on five-year strategies, a very short time-line for reforming institutions or building the necessary civic culture of civilian control of security. While donors may not be able to change their funding cycles, they just change their thinking about impact and results. Reforming the security sector takes a generation. Thus, goals must be modest, recognizing that incremental change is important.

7. Programs that address the security sector, and civil-military relations in particular, must not threaten their beneficiaries. If the armed forces are not brought on as a partner in a restructuring plan, or if police are not brought into the reform process civilian authorities, civil society organizations, and the resources that support them will not advance any change. Too often early programs in this area approached the security institutions as enemies, not allies. Negative approaches are ineffective and may even compromise the broader development agenda.
8. Reform of public sector spending for security must recognize that an important effort must be made by donors to seek the basic data about military needs and actual expenditures if civil-society organizations are to become effective advocates. It is often impossible to make headway on reform of security spending without adequate data. Donors must invest in basic research about the security sector if it is to under gird civilian efforts to have a voice in budget considerations, or public financing of security needs. This is key to what is now called "capacity building."

The Way Forward

In the last twenty-five years information about the security sector and civil-military relations has been enriched not only by important academic research, but also by significant opportunities to test how theoretical knowledge can be applied in practice. Donor governments are just beginning to take note of how they can best support local initiatives in this area. It is evident that the more traditional approach to security, civil-military relations, must be modified to recognize that the post-cold war has brought us much more variation in the type of regime that needs assistance. The nuances of the governments that emerge from internal conflict, or from long-term state decline will require specific contextual approaches to security for those citizens of the state. Recognizing the type of environment in which to support reforms, developing appropriate strategies that will provide resources that address the timing and sequencing of security sector reforms, will be more important than ever. While we cannot turn back the clocks to a period when donors took a narrow approach to the problem, civilian democratic control of institutions will require a dual approach, institutional reform and support of civil society organizations. It will also require a leap of faith that development, per se, will be impossible unless the security sector provides the foundation for liberal democratic governance. This is a long-term process, an evolutionary process. We have only just begun, but we cannot turn our backs on

the poor, the oppressed, and those who demand of the donor community nothing less than a commitment to support reforms that will improve the economic, political and social well being of millions.

Annex

Johanna Mendelson Forman

Johanna Mendelson Forman is a senior fellow at the Association of the United States Army's project on the Role of American Military Power in the 21st Century (RAMP). For the last eight years she has held senior positions at the United States Agency for International Development (USAID), most recently as s Senior Policy Advisor for the Bureau for Humanitarian Response, where she managed the Agency's policy on post-conflict reconstruction, security, and governance. From 1998-1999 she served as Senior Social Scientist and Attorney at the World Bank's newly created Post Conflict Unit, on assignment from USAID. In 1994 she was appointed as a Senior Advisor to the newly created Office of Transition Initiatives. She also was one of the founders of the Conflict Prevention Network in 1997, a coalition of donor nations, working together to coordinate and support the reconstruction of war-torn societies.

Dr. Mendelson's work focuses on security and development issues, with a special emphasis on civil-military issues, arms proliferation, internal security and peacekeeping. Most recently, she has focused on the implications of HIV/AID's on security and peace-keeping. She has worked on Haiti's transition, Guatemala's peace accords, the transition in Rwanda, demobilization in the Democratic Republic of the Congo, and Tajikistan's transition. Her recent research on security sector reform and post-conflict reconstruction has also included many articles and a monograph on human security, poverty reduction and sustainable development, published by the World Bank's Post-Conflict Unit, and essays about the conflict in Colombia, also published by the World Bank. She has lectured on a wide range of issues including post-conflict reconstruction, humanitarianism and public policy.

She also holds a faculty appointment at The American University's School of International Service in Washington, D.C. and at Georgetown University's Center for National Security Studies. For over a decade, Dr. Mendelson has worked to develop a network of organizations in Latin America concerned with improving civil-military relations and good governance. Dr.

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Her extensive publications on civil-military relations, security sector reform and democracy in Latin America include Political Parties and Democracy in Central America, with Louis W. Goodman and William Leogrande, editors, (Westview Press, Boulder Co. 1992), Lessons from the Venezuelan Experience, with Louis W. Goodman, Moises Naim, Joseph Tulchin and Gary Bland, (Johns Hopkins University Press, 1994) and The Military and Democracy: Civil-Military Relations in Latin America, with Louis W. Goodman and Juan Rial, (Lexington Books, Lexington, MA. 1989). Dr. Mendelson appears regularly on the Spanish network, UNIVISION, Worldnet and the CNN Spanish Service.

Dr. Mendelson holds a J.D. from Washington College of Law at The American University, a Ph.D. in Latin American history from Washington University, St. Louis, and a Masters of International Affairs, with a Certificate of Latin America Studies from Columbia University in New York. She is fluent in Spanish and Portuguese. She is a member of the Advisory Board of Women in International Security and also serves on the board of the Institute for World Affairs.

Michael Pugh[1]

CIVIL SOCIETY AND THE SECURITY SECTOR: "SECURITY-SECTOR REFORM IS TOO SERIOUS A BUSINESS TO BE LEFT TO SOLDIERS."

(WITH APOLOGIES TO GEORGES CLEMENCEAU)

Introduction

In an idealised system of civil-military relations, the separation of powers, political pluralism and the engagement of civil society seem to be indispensable conditions for a non-politicised military, and a non-militarised society. As various researchers have argued, structures, rules and training policies may change the operations of armed forces, but one of the most difficult challenges is to change the mentality of the military, their political masters and of society at large.[2] This requires the 'transformation' of civil-military relations rather than simply 'reform' of structures.

Security sector reform in transitional societies has tended to focus on the following areas:

- reform of the uniformed security branches and the training of parliamentarians and civil servants;
- supporting the establishment of structures of proper civilian control over the military;
- training members of the military in international humanitarian law and human rights;
- strengthening national parliamentary oversight of the security apparatus.

But these areas do not necessarily address the problem of military/social attitudes. In common with other former Socialist-gov-

[1] PhD, Director, International Studies Centre, University of Plymouth, UK

[2] Wolfgang Manig, "Problems of Transformation of the Defence Establishments in Central and Eastern Europe", in Wilfried von Bredow, Thomas Jäger and Gerhard Kümmel (Eds.), European Security (Basingstoke: Macmillan, 1997), p.25. This paper draws on continuing research with Neil Cooper, "Security sector transformation in post-conflict societies", for the Centre for Defence Studies, London.

erned states, Yugoslavia already has a high level of capacity for reform, and even for transformation.

Structural and Ideological Legacies

It is true that the Party's claim to exercise control did not mean that civilians were in charge of the military. The military were brought into the Party. In the chief political decision-making bodies relating to security, the military exerted control over themselves, because they had the monopoly of expertise, and civilian expertise was lacking.[3] Nevertheless, in terms of reform and transformation, Yugoslavia has certain advantages. The principles of political control and Clausewitzian political subordination were assimilated by the military. Indeed, it is notable that even where the military in parts of Europe had excessive influence on security policy or were used for internal repression, there are fewer instances of rule by the military and praetorianism (intervention in politics) than in non-Communist or anti-Communist states (Brazil, Argentina, Peru and Chile in Latin America for example, in Turkey and Pakistan, Indonesia, Thailand and many places in Africa).

The principle of Party control, though deviating from civilian control in daily practice, became part of the culture and ideology of civil-military relations that could be asserted in times of crisis (with exceptions such as Poland and, possibly, Romania). Military rule was widely considered to be illegitimate. Institutionalised civilian supremacy was based upon: consensus about where legitimate sovereignty lies; consensus about processes for making policy decisions including procedures for political succession; and a capacity in the civilian sector to defend its rights through legal means.[4] But a culture of civilian supremacy does not necessarily ensure a successful transformation of attitudes.

Civilian control can be exercised for narrow personal or party interests and the suppression of political opposition. In Croatia under President Franjo Tudjman, for instance, army staff and the officer class were expected to be members of Tudjman's Croat Democratic Union, or face dismissal.

Nor does military professionalism guarantee transformation. According to Samuel Huntington, it may be possible to change attitudes by appealing to the concepts of 'legitimacy' and 'professionalism' in order to keep the military out of politics.[5] However, 'professionalism' can be interpreted as loyalty to some higher authority, such as 'the nation', rather than to political control. In many

[3] Manig, "Problems of Transformation", pp. 26-27.

[4] S.E. Finer, *The Man on Horseback: The Role of the Military in Politics* (London: Pall Mall, 1962), p. 226.

[5] Samuel P. Huntington, The Soldier and the State: the Theory and Practice of Civil–Military Relations (Cambridge, MA: Harvard University Press, 1957), p. 74.

coup-prone states, nationalism and the need for strong central government have provided gilt-edged invitations for the military to intervene.[6] Moreover, as Alice Hills has noted with respect to civil police, standards of professionalism are culturally dependent and often skill- and status-based, rather than linked to moral choices.[7]

A Security-Policy Community

A transformation in civil-military mentalities requires something else than structural reform, a culture of civilian supremacy and a reliance on professionalism. It also requires the creation of a security policy community that stretches beyond the military and politicians. For framing a transformative approach to civil–military relations, it is therefore important to note a difference of emphasis between:

- civilian control and management, which is constitutionally established through law and formal decision-making processes, and
- civil-society engagement, which is largely a matter of political and social mobilisation.

These are not differences – because the mobilisation of civil society can also be formalised as constitutional reform. For example, since Slovenia became independent, tribunals that hear claims for conscientious-objector status have a statutory obligation to include NGO representatives, such as peace activists, on their panels.[8] But the importance of civil society is in its role in creating an awareness of issues, debates and security-policy options. Yugoslavia has been engaged in this process, through CCMR, since 1995. One of its main objectives has been 'to animate [the] professional and political interest of citizens, their associations, political parties, parliamentary and state organs for a modern arrangement of civil–military relations'.

Support for Civil Society

However, the concept of civil society is imprecise and a difficult one to capture. It can be defined as an emancipatory political alternative to authoritarianism: "where progressive values and political practices can be articulated, counter-hegemonic institutions can be created".[9] Not all non-state associations are 'progres-

[6] Finer, The Man on Horseback, p. 210.

[7] Alice Hills, "Security Sector Reform and Some Comparative Issues in the Police–Military Interface", Contemporary Security Policy, Vol. 21, No. 3, December 2000, p. 4.

[8] Discussions with Marjan Malesic, Social Science Faculty, University of Ljubljana, 7 October, 1998.

sive', of course; some may be dedicated to racism and violence or, like the Mafia, may be illegal, or declared so. It is not the existence of civic associations that strengthens civil society, but their purpose and the extent of their freedom to operate.[10] In the context of security-sector reform, civil groups can be singled out for support if they foster bottom-up democratic processes for building trust, cooperation, compromise, inclusion and pluralism.

Engaging civil society may mean funding training, workshops and conferences and the provision of legal materials. It may also mean subsidising broadcasting or publications, such as special issues of journals that incorporate the views of non-uniformed commentators. It can also mean helping local NGOs to put forward their views on issues such as conscientious objection and freedom of information legislation, and the welfare of the military.

Examples can be found in overseas development policies. The UK's development policy, for instance, even includes the idea that:

> The voices of the poor can be strengthened by supporting those parts of civil society that help poor people organise to influence decision makers... Promoting effective and inclusive systems of government, including an accountable security sector, is an essential investment in the prevention of violent conflict.[11]

Specific UK and other programmes in Africa have included:

- a Netherlands–Mali initiative that has involved civil-society organisations in the formulation of a code of conduct on the role of the security sector in society;
- UK funding for the provision of legal materials and training to NGOs and professional organisations to underpin reform of, and wider access to, justice systems in Rwanda;
- Finnish and Swedish support to NGO projects for education and policy-making access on a range of democracy and rights-based programmes in Africa, and
- Norwegian and British funding for seminars and training on democratisation for defence researchers in South Africa and Zimbabwe.[12]

[9] J. Gershman and W. Bello, cited in Michael Edwards and David Hulme, *Non-Governmental Organisations –Performance and Accountability: Beyond the Magic Bullet* (London: Earthscan, 1995), p. 35. See also Robert Cox, "Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order", *Review of International Studies*, Vol. 25, No. 1, 1999, pp. 3–28.

[10] Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Hartford, CT: Kumarian Press, 1998), pp. 164–79.

[11] UK Department for International Development, *Eliminating World Poverty: Making Globalisation Work for the Poor*, White Paper on International Development, Cm 5006 (London: The Stationery Office, December 1999), pp. 25, 27–28, paragraphs 58, 59, 71, 77.

South-West Europe is generally far more modernised than Africa, but the level of civilian expertise or interest in defence and security policy may be extremely low.[13] Consequently, greater investment might be directed towards introducing processes that reduce the possibility of the militarization of societies, and the alienation of the military from society.

Of course, Yugoslavia has a more developed security-policy community than, for example, Albania. Nevertheless, in Yugoslavia investment could be used to gain the widest possible support for the definition of new military functions and security doctrines.[14]

Roles and Sources of Civil Society

Rights-based women's groups, experts in the media, researchers and professionals such as health workers can make important contributions to the formulation and implementation of policy.[15] They might be engaged in discussions concerning rules on conscientious objection, recruitment policies and the welfare rights of military personnel. For example, public-service workers and Red Cross/Crescent organisations might be involved in formulating rules governing the use of the military in civil disasters and emergency relief, such as the recent floods in Yugoslavia. Military aid to the civil authorities in non-political civil emergencies has considerable transformation potential.

The widespread criticism of the Turkish military's performance following the earthquake of August 1999 demonstrates that failure to participate effectively in disaster relief can damage the reputation and credibility of military institutions.

Three organisational categories can be identified: veterans' organisations, educational groups and functional associations.

Veterans' organisations. These groups might be expected to take a keen interest in military affairs, but they vary widely in their goals and objectives. There is no inherent predisposition for them to adopt transformative approaches. Indeed, veterans' organisations are not necessarily interested in depoliticising the military, or in curbing any praetorian political aspirations the military might have. Some are simply military coups or paramilitary units in waiting. Others are

[12] Malcolm Chalmers, *Security Sector Reform in Developing Countries: An EU Perspective*, Conflict Prevention Network for Saferworld, January 2000, pp. 11–12.

[13] See Biljana Vankovska-Cvetkovska, "Between the Past and the Future: Civil–Military Relations in the Balkans", *Sudost-europa*, Vol. 48, No. 1–2, 1999, p. 36.

[14] UK Department for International Development, *Poverty and the Security Sector*, p. 4.

[15] Kåre Lode, "The Peace Process in Mali: Oiling the Works?", *Security Dialogue*, Vol. 28, No. 4, 1997, pp. 409–24; Mari Solheim, "Microdisarmament in Mali: Single Success or Model for the Future?", unpublished MSc dissertation, University of Southampton, 1999.

committed to civilian primacy, but are highly partisan. However, others are driven more by the welfare needs and employment of former soldiers, and they can be highly critical of secrecy and intransigence in military establishments. Their potential should be explored.

Educational and intellectual groups. Within the academic/educational sector, courses and research programmes on issues ranging from military history to disaster response are a significant source of debate and contesting theories. Institutes studying military policy, strategy and defence are a recognised feature of many societies. They may be close to the prevailing military culture, overwhelmingly realistic in outlook and dependent on cultivating government politicians. But they will also often take a provocative line. NGOs engaged in campaigning and/or consultancy can present clear alternatives to existing military policy. An interesting and successful experiment in South Africa from the midnineties saw NGOs involved in the drafting of the country's White Paper on Peace Missions (1999).[16]

Functional associations and voluntary groups. Groups that have a direct or indirect role in forming public opinion on military issues include:

- trade unions and employers affected by changes in military expenditure and industrialisation;
- women's groups affected by the mobilisation and demobilisation of soldiers;
- church and welfare groups with interests in humanitarian, moral and philosophical aspects of security policy;
- environmental groups interested in protecting or managing areas affected by military despoliation or training;
- media organisations and journalists' associations that have a commitment to investigative reporting, and
- rights-based groups, such as branches of Amnesty International, local citizens' forums and local Helsinki Citizens Assemblies.

Conclusion

Democratic associations of civil society can play a transformative role in changing existing mentalities. This need not be limited to budgetary and performance oversight, but could include development of structures and regulations. The role of civil society groups would also be to mediate and translate security issues between the wider society and the defence establishment. They can make military questions meaningful to society and echo social concerns to the defence establishment. Such a transfer of knowledge can also occur by other means: official statements, military press briefings, and the election of parliamentarians with an interest in security matters. But official statements are only the beginning of dialogue, press briefings can be easily manipulated and parliamentarians are elected only every few years and do not usually devote much time to defence issues (except, importantly, through standing committees).

Obviously, transformation cannot occur without a solid constitutional foundation, a system of accountability, some concept of freedom of information and a degree of consensus about what needs to be kept secret for strategic reasons, rather than maintaining military privilege and power. But there also needs to be a level of knowledge and understanding of security issues in society and a willingness in the military to accept social change and civil society influence. It should be a genuine dialogue, in which issues are contested in a reasoned way, allowing for constructive criticism. Only then will it be possible to build a security policy community of mutual respect which becomes part of a transformation.[17]

[16] Rocky Williams, "South African Policy and Practice in Peace Missions", *International Peacekeeping*, Vol. 7, No. 3, Autumn 2000, p. 88.

[17] James Gow and Carole Birch, *Security and Democracy: Civil-Military Relations in Central and EasternEurope*, London Defence Studies No. 40 (Centre for Defence Studies, King's College: London, 1997), p.10.

Dr. Dušan Reljić

CIVIL SOCIETY, MASS MEDIA AND DEMOCRACY IN POST-COMMUNIST COUNTRIES[1]

Introduction

Media are often acclaimed as the "fourth power" in a democracy. They are hailed as the "watch-dogs" of democracy. As an integral force of civil society, the mass media is expected to play a prominent role in controlling the parliament, the government and the judiciary, in investigating whether private industrial and financial interests respect the law, sounding the alarm if the environment is polluted, and engaging in conflict prevention and resolution.[2] Mass media are omnipresent in modern times. Perhaps, therefore, people expect omnipotence from the media.

Television (and other media, of course) is certainly not, as one of the former chairmen of the US Federal Communication Commission stated, "just another appliance...a toaster with pictures".[3] Yet, indeed, media are first of all enterprises to be affected by the mechanisms of the market. However, at the same time, what the media produces is important for the public.. Communication channels that are established and operated by mass media are vital to society. Without free and balanced political communication, democratic institutions will corrupt. Without accurate business information, markets will collapse. Without uninhibited information about new artistic trends, culture will degenerate.

These are all truisms. It is simple to spell out what the media should and should not do in democracies, especially in post-authoritarian countries which are still building democratic institutions. However, in this paper there is little of a normative approach. It

[1] This is a revised and extended version of the paper 'Proliferation or Pluralism? Mass Media in post-Communist Countries' presented by the author at the conference on 'The Role of the Media in Public Scrutiny and Democratic Oversight of the Security Sector', held in Budapest, 6-9 February 2003, organised by the Working Group on Civil Society of the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

[2] cf. Ian Leigh, 'Civil Society, Democracy and the Law', Speech at the Foundation for Political Centrism, Moscow, 22 May 2003, p. 12.

[3] Quoted by C. Edwin Baker, *Media, Markets, and Democracy*, (Cambridge University Press, 2002), p.3.

intends to offer a basic analysis of the politics of media control and the media markets in post-communist countries.

The result should be an elementary overview into the complex interplay between public authorities, media owners and journalists in post-communist countries. It should offer a better understanding of the performance of mass media, as a central part of the civil society, in post-communist countries.

Yet there are limitations to this analysis. First, there is a problem with the term post-communist countries, or countries in transition. Central and Eastern Europe, and to an even greater extent the former Soviet Union, are anything but uniform when it comes to political liberties, economic development, media structures, cultural progression and the expansion of civil society organisations. Therefore, little more than a basic matrix can be applied when aggregating empirical evidence to determine the state of the media in post-communist countries – a region spanning over twelve time zones.

The second problem is the very concept of civil society. What is it? Something, to use a German proverb, neither fish nor meat (*Weder Fisch noch Fleisch*?). Is civil society essentially constituted by noble and unselfish groups of people concerned with the "public interest", rather than commercial gain, but with a sound distrust of the state? [4]Let's be frank: in many post-communist countries the concept of civil-society is still foremost associated with western democracy assistance because, evidently, most, if not all, non-governmental organisations would not survive without external financial assistance. In the case of the media in post-communist countries, it is obvious that the public does not perceive the most important non-governmental media to be working in the public interest. Most mass media are regarded as political instruments of the government or particular interest groups.

Activists in non-governmental organisations, in the "third sector" are, for instance, often ridiculed in Albanian as "*Sorosani*", meaning off-springs of George Soros, the New York philanthropist. If they are not considered outright to be foreign-paid elements, then there is certainly a wide-spread perception of civil society in post-communist countries as a kind of Western export meant to create problems for the democratically elected government. Many people in post-communist countries suspect that the reason the West would support NGOs, mass media and other segments of the nascent civil society, is associated with the Western conviction that there is only an imitation of democracy in the East. Democratic elections sometimes produce undemocratic politicians, or at least politicians who are not in accordance with the taste of some people in the West and, in fact, also in the East. In other words, western

[4] cf. Leigh, p.3

sponsored civil society organisations should help cover the democratic deficits of east European societies.

Even worse, many observers believe that, in spite of much Western money being poured into democracy programmes, civil society organisations are largely irrelevant for the so-called target societies. As if the people in the aid business and the majority of Russians, Ukrainians, Serbs or Albanians and other "new democrats", are simply sitting in two different trains, on two different tracks, with no intersection?[5]

Thirdly, there is dissatisfaction with the performance of mass media in established democracies. People, generally, do not believe in the veracity of information transmitted through the media. Governments often clash with mass media about sensitive issues (the on-going debate in the UK between the BBC and Prime Minister Tony Blair concerning the Iraq war). In some Western countries, civil society organisations, such as FAIR (Fairness & Accuracy in Reporting) in the US, monitor the media and often raise alarm about alleged or genuine bias in reporting. Objections are raised as to whether the Western prescriptions to new democracies concerning the role of mass media are not, to a certain extent, hypocritical.

So, what could be the purpose of a debate about the role of mass media in building democracy if reality, also in developed democracies, is never attaining the noble norms set by political philosophers?

In this context, there is a lot to be said in favour of the approach advanced by the late 19th century Austrian social democrat Eduard Bernstein: movement is everything, the final goal nothing. It is important to know where the social movement should lead to, but it is even more important to keep society constantly moving forward to avoid stalemates and even regression. Transition has an open end: we cannot know where the transformation from authoritarian social structures and mentality will lead to in various post-communist countries and how it will change, in this case, the mass media. But we know that there is a prevailing mood in the society not to have a re-creation of the old situation under a new label. No one wants Pravda without Izvestija and Izvestija without Pravda again.[6] Yet, it also true that most people do not want CNN or Bild Zeitung either. All that can be done is to determine where the transition has led to in comparison with the normative outset. The discrepancy between reality and the norm, if there is one, offers substance for a political debate and, perhaps, political action to change

[5] For this metaphor and a highly critical and inspirational analysis of 'democracy and business' see Steven Sampson, 'What Really Happens When We Export Democracy: Experiences from the Balkans', Paper presented at the Conference on Western Aid to Eastern Europe, Helsinki, November 28, 2002.

[6] *Pravda* means truth in Russian, and *Ivestija* news.

the direction of the development of the media industry and the public sphere.

The normative starting points of transition in the media field

The importance of being a business

A young journalist, who was later to become famous in a different profession, nourished a firm notion already before 1848 – the year in which the bourgeois revolutions paved the way for more civil liberties in Europe – concerning the basic condition for his trade to be really free to perform adequately its important social task. The privilege of not being a business was, according to Karl Marx, the precondition for the freedom of the press. A century and a half later, when the single-party Marxist regimes in Central and Eastern Europe and the former Soviet Union were collapsing, their opponents, the anti-communist revolutionaries, were demanding exactly the opposite: the freedom of the media to be a business. After decades of state and party dominance over every segment of public life, and especially remembering the iron grip of the security apparatus on the public sphere, it was self-explanatory that only the elimination of state control – and especially the eradication of police oppression - over the media would enable freedom of speech.

Another common demand in the post-communist countries, over the past fifteen years, has been that the media sector be reformed according to the "European" model, with matching legal regulations and administrative practices across the region. It was assumed that this model would counter the perils of the return of state control while simultaneously eliminating the pitfalls of US-type commercialisation of the media and television above all.

Sporadically, one could also hear the demands that civil society wielded more influence over the media. Such propositions came primarily by the intelligentsia, who had been at the forefront of the struggle against the previous regime and rejected the thought of simply exchanging state domination for subservience to business interests.

Western media scholars looked at the back-ends of their bookshelves for dusty studies on the role of the media in development and modernisation – a topical issue in the de-colonisation debate of the fifties and sixties. The mantra in that discourse was quite similar, if not identical, to the normative role currently ascribed to the media in the process of transition. Half a century ago, Western scholars expected the population in former colonies to develop an "empathy" for, Western life-style through exposure to relevant messages in the mass media and to modernise accordingly.[7] Nowadays, the media are expected to "transmit western democratic norms and

role models to the public and thus act as a major agent of political re-socialisation".[8]

However, even fifty years ago it was easy to observe that the prevalent Western media products, especially in Asia, Africa and Latin America, were cowboy serials such as *Bonanza* and other similar American-made entertainment. In modern times, every accidental tourist will confirm that the most frequently shown foreign shows, between Albania and Kazakhstan were, if not Latin American telenovellas, American smash hits, portrayals of wealth, power and matrimonial crises, such as *Dynasty*, or the German crime evergreen *Tatort*.

The image of the West and Western values, as transmitted by the majority of its exported programmes, seldom relates to reality and, certainly, does not intend to propagate democracy, market economy and civil society. Evidently, the prevailing picture of the world in the media of post-communist countries is not an essentially European one. In post-communist societies, there is an overwhelming presence of American fiction on the screens. An analysis of the world-wide news-flow confirms that reporting on US politics, economy and culture remains a predominant feature in the international exchange of information.[9]

It becomes apparent that exposure to Western produced media content is definitely not the channel through which societies in transitional countries will receive a decisive impetus to modernise.

Additionally, the intelligentsia's ambition to exert an influence on the shaping and running of the new media system has obviously been thwarted. Non-commercial media outlets such as Open TV channels, representation of the listeners and viewers in supervisory agencies of major public service broadcasters, and related forms of civil society representation in the organisation and creation of the public sphere have remained marginal in most post-communist countries.

The "European" model

The only operational criterion to measure the progress in the transition of mass media seems, therefore, to be the achieved degree of introduction of the "European" model. In essence, this would denote, on the one hand, the existence of a private media sector that is acting responsibly and respecting law, the code of

[7] Cf. Daniel Lerner, *The Passing of Traditional Society: Modernizing the Middle East* (Glencoe: The Free Press, 1958).

[8] Cf. Peter Bajomi-Lazar & Istvan Hegedus, *Media and Politics*, (Budapest: Uj Mandatum Könyvkiado, 2001), S. 8ff

[9] Cf. Denis H. Wu, 'Systemic Determinants of International News Coverage: A Comparison of 38 Countries', *Journal of Communication*, Vol.50, Spring 2000, No.2, p 110-130.

journalistic ethics and the rules set out by independent broadcasting authorities and similar institutions of social control.

On the other hand, the "European" way of organising the media system also postulates the existence of the public service media, mostly in the field of broadcasting. Such media is meant to provide public interest programmes that commercial media could not afford, or, for other reasons would not offer, without the negative aspects of political meddling.

At this point, it is necessary to call attention to the fact that some analysts tend to perceive public service media as "autonomous state media organisations".[10] Also, one has to remember that the "European" model evidently exists only as a normative prescription: "Public service broadcasting is more of an ideal, more of a consummation of citizen desires and an element of a perfected democracy."[11] Political interfering by the public authorities and political parties as well as the influence of economic interests, irresponsible behaviour by the tabloids and other deviations from the noble postulates are daily occurrences.

In reality, the match between the norm and actual media performance differs from one polity to another and depends on many interconnected variables.

Once the former regimes, to use another Marxian phrase, have landed on history's pile of rubbish, the audiences expect from the media perhaps not as much as to enlighten them, but at least not to tell untruths again. Specially when dealing with the security apparatus, which had sinned so much in the past. Nevertheless, critical, or even investigative reporting on the murky world of the "services" or the armed forces is still a risky business.

The politics of media control

More freedom for the press was one of the first visible changes after the breakdown of the old regimes. Actually, in the first years after the collapse of the single-party rule, the media was in a chaotic, unstructured state as much as the rest of the society. Only in the mid-nineties and later, were attempts made to regulate the media. Media developments inherently lend themselves to more public scrutiny. Therefore, the public was generally quick to react to violations of media freedoms. The Czech Republic, which was lucky enough to experience a tranquil regime change in 1989, astonished the world when on 3 January 2001, some 100 000 people took to the streets of Prague to protest against, what appeared to be, the political muzzling of the nation's public television.

[10] c.f. *World Development Report 2002*, (Washington D.C.: The World Bank, 2003) p.186.

[11] Monroe E. Price & Marc Raboy (eds.), *Public Service Broadcasting in Transition: A Documentary Reader* (Düsseldorf: The European Institute for the Media, 2001), p.1.

Similar strife, though on a lesser scale, has erupted in Hungary, Poland, Bulgaria, Slovenia and other, more or less, "settled" new democracies. In Hungary in March 2001, an expert group from the International Federation of Journalists (IFJ) accused the then government of Prime Minister Viktor Orban of having "weakened to the point of destruction" the national system of public broadcasting through "political manipulation and wilful neglect."

"Regrettably, even those countries closest to accession to the European Union have not been able to fully transform public media into a genuinely professional and democratic institution," said the IFJ.

Authorities in Central and Eastern European countries have typically moved to transform the state broadcaster into a public broadcasting service (PBS). The British Broadcasting Corporation (BBC) and its German offspring, the Öffentlich-rechtliche Sender, served as models for reformed radio and TV systems in most countries of that region. The BBC's celebrated autonomy was the ideal but rarely achieved goal.

In most countries facing transition, fierce disputes have broken out over issues of the influence of television, as well as over the type of media perceived to have strongest political clout. Particularly, in times of approaching elections, there were frequent clashes over the influence of TV – because it was widely assumed that voters were prone to follow the lead offered by TV stations. It was usually difficult to reach an agreement on how national broadcasting councils, editors, and executive officers of PBSs were to be appointed and supervised. More often than not, allocation of frequencies proved a divisive issue. Politicians, journalists, and civil society activists often clashed over the limits imposed on foreign investors and producers.

The fact that these questions in many cases remain unresolved indicates that the struggle for influence in the post-communist electronic media is far from over. It will be most interesting to watch the outcome of the debate re-allocation of broadcasting licenses and frequencies in Serbia after the law on the national broadcasting council has finally been passed. Will Slobodan Milošević's pet TV stations, such as BK and TV Pink, that are now shamelessly supportive of the democratic government, survive or even prosper under new political circumstances? It is an alarming signal that the ruling parties have stood firmly behind the leading members of the new Broadcasting Council, although several well-known media experts resigned, pointing out that the president of this body had been elected contrary to the law.

The media in "unconsolidated presidential democracies" – and most countries in the former Soviet Union - have done far worse than its counterparts in Central and Eastern Europe. Countless incidents revealed that current governments can deal with outspoken media professionals as brutally as the previous regimes.

The still unresolved disappearance of Ukrainian journalist Georgiy Gongadze in September 2000 in Kiev is one spectacular example because it involves the highest level of power at the state level. A headless corpse was later found, but there is still no confirmation that the body was Gongadze's. Since then, President Leonid Kuchma has been pressured to resign in light of audio recordings made by a fugitive presidential bodyguard, in which the president appears to order the abduction of Gongadze. In a bizarre twist in Ukraine in May 2001, the Kuchma administration claimed that there was no political aspect to Gongadze's disappearance: criminals killed Gongadze and, in turn, they were killed. This is the account the authorities offered to a sceptical public.

The most recent interpretation of the case blames initial investigators of gross errors. Nevertheless, a credible explanation of the events surrounding Gongadzes's disappearance has not been provided for by the authorities. Several other journalists have lost their lives in similarly suspicious circumstances. When asked why there was not more foreign companies willing to invest in the Ukrainian media industry, one veteran editor in Kiev recently replied, "You know, journalists get killed in this place".

Media markets in the post-communist countries

A mind-boggling proliferation of broadcasters has occurred all over the post-communist realm. Even poor countries such as Serbia or the Former Yugoslav Republic of Macedonia maintain hundreds of locally owned radio and TV stations with revealing names such as TV Pink or Pop TV. As a rule, they offer programmes of the poorest quality – they do not rebroadcast without permission or without paying royalties for foreign satellite channels. In Hungary, Poland, the Czech Republic, Slovenia and some other new democracies, there is also a well-established presence of foreign commercial television.

While authorities have paid a lot of attention to retaining some leverage over public service broadcasters, commercial broadcasters have, for the most part, been spared their efforts. One likely reason for this is that commercial broadcasting in Central and Eastern Europe has yet to prove that it will be as lucrative and influential as had been assumed initially. Whatever the case may be in future, up to now foreign-owned commercial TV stations have been flooded

with soaps, quiz games, B-movies and soft-porn with offensively long commercial breaks.

The largest television company in the region, the U.S.-owned Central European Media Enterprise Ltd. (CME), with stations in Slovenia, Slovakia, Romania, and Ukraine and an audience of 110 million, announced losses in last several years that were partly connected to an ongoing legal dispute over ownership of the Czech TV station Nova, once the CME flagship. CME finally won the dispute and was awarded compensation of more than US$300 million, more than the Czech state spends per year for its public health system.

It remains to be seen how the Balkan News Corporation, a company owned by Rupert Murdoch, will fare after having acquired, in 2000, the broadcasting rights to the former second channel of Bulgarian state TV.

Most print media in Poland, the Czech Republic and Hungary swiftly fell into the hands of foreign investors. There are estimates that between 60 and 80 percent of the print media market in those countries is now controlled by primarily German companies. In south-east Europe, it is the German newspaper company WAZ from Essen that is the dominant regional investor – with full or part ownership of many daily and weekly papers – perhaps as many as two dozen - in Croatia, Serbia, Montenegro, Hungary, Romania and Bulgaria (with a leading position in Austria, as well). German Springer, Bertelsmann and Neue Passauer Presse, as well as the British Maxwell and Murdoch together with some Nordic companies now constitute the core of the print media industry in all of post-communist Europe, with the exception of Russia and Ukraine.

As a rule, foreign investors moved quickly to position their papers within the mainstream and thus avoid spectacular confrontations with the authorities. Many critics believe that this compromised the quality of investigative reporting. On the other hand, foreign ownership provided a solid shield against government intrusion in its extreme form, facilitated technological innovations and offered job security to their employees: "They don't pay much, but they pay regularly," were the words of a Bulgarian journalist whose weekly was taken over by WAZ.

A novel approach, understood as part of democracy building through the media, has emerged in some post-conflict countries of south-east Europe where capital coming from philanthropic or other Western political motivated sources was funnelled to media pursuing pro-democracy and anti-nationalistic editorial policies. The US billionaire George Soros is the founder of the Media Development Loan Fund (MDLF) in Prague which has sponsored through soft-loans non-government media in many post-communist countries. Such loans and non-returnable grants from the Soros

Open Society Institute, the European Union's Human Rights and Democratisation Initiative and other EU budget lines, the US government backed Eurasia Foundation, USAID, the Norwegian People's Aid, various German political foundations and other Western sources are, in many cases, still the most important pillar for the economic survival of pro-democracy media. In the recent past, the MDLF has become co-owner of some media in south-east Europe such as the Riječki Novi List and Feral Tribune in Croatia, or the famous B92 radio and TV station, once a symbol of resistance against the previous regime.

In Russia, with some 40.000 registered media outlets, and most other former Soviet Union countries, much of the print media, especially in outlying regions, still depends heavily on state subsidies - that is, if it is not owned outright by the state. There are huge privately owned media holdings as well which usually belong to some industrial oligarch. Some of them like Gusinski and Beresovski, who were the biggest media owners in President Yeltzin's times have been in the meanwhile ousted from control over their assets – which were initially bought through loans from the state that were never reimbursed. These two mega-oligarchs have fled Russia in the meanwhile. Some observers abroad believe that the recent arrest of Gusinski in Athens is connected to the forthcoming elections in Russia.

The growth of Gazeta Wyborcza, the leading Polish broadsheet, from a dissident paper into a joint-stock company remains one of the few post-communist media business success stories in which foreign capital did not play a decisive role – although foreign political support, especially from the US, should not be underestimated.

"Berlusconisation" as the next stage of media "Europeanisation"?

Media transition, understood as the emphasis on private ownership and the promise to transform the former state-owned electronic media into public service broadcasters, yielded dissimilar results in different parts of the former communist world. The introduction of market mechanisms created new opportunities - and risks – for journalists and the media in post-communist societies. While private competition is certainly a most important corrective to state dominance in the public sphere, it is still not the ultimate guarantee that the noble goals of the freedom of the press will soon materialise in the predominantly pauperised world of post-communism.

In any case, private ownership remains the driving force behind the proliferation of mass media in post-communist territory. It has already produced a non-reversible change in the former

Soviet Union. Unlike in the times of one-party rule, there is choice for the reader and the viewer, although it is often reduced to an assortment of low-end commercial offers.

In the former Soviet Union, and there is empirical proof for this statement, the state owned media are still firmly under control during elections by the parties in power.[12] Sensitive topics, such as security issues, are difficult to discuss in the media and attempts to do so still entail considerable risks for the journalists. Even so, it is not any longer lethal to criticise the army, the police and the "services" as it used to be in not so ancient times. With the exception of some neo-Stalinist polities in Central Asia, in most part of the former Soviet Union, the interested reader and viewer can find information critical of the powers that be. Depending on the internal political situation and the pressure from the West, the rulers gauge how much liberty they will permit in the media channels.

The initial ambition, the "Europeanisation" of the media, still continues to be a distant goal in most parts of the former Soviet Union. With great speed Russia (and Ukraine that, in many aspects, demonstrates copycat similarities to Russia) has moved from an initially anarchistic media situation after the collapse of the empire towards re-asserting formal and informal control mechanisms by the Kremlin and many lower levels of the power over the media.

The situation is far worse in the majority of Central Asian countries that are firmly in the grip of neo-authoritarian leaders who do not hesitate to infringe heavily the freedom of the press. The three Trans-Caucasian countries are trapped in economic misery, civil strife, lingering ethnic conflicts and unresolved wars which all reflects heavily on the plight of the media.

"Europeanisation" has become far more factual in those countries of Central and Eastern Europe that are pursuing a successful economic transformation and retain a political consensus about national priorities such as EU accession and integration into Euro-Atlantic security mechanisms. However, they are often at the verge of a new danger – the "Berlusconisation", a recently erupted European malaise, comprising the persistence of government control over TV, private monopolies in the broadcasting industry, strong overt and stealth collusion of business interests and media ownership, blatant partisanship in the media and other flaws.

The Western Balkans area – actually former Yugoslavia and Albania – displays a confusing mixture. Not so recently leading media outlets in Serbia, Croatia and other parts of the region were part of a huge propaganda and hate machinery closely reflecting the whims of their autocrats. Although all countries in the region have democractically elected new governments and have pro-

[12] Gillian McCormack, *A Model of Post-Soviet Media Control in Elections*, (Düsseldorf: The European Institute for the Media, 2002).

claimed their willingness to cast away the nationalistic past in favour of the European future, political and economic stability is far from guaranteed. As always, media reflect this precarious state.

Liberal news magazines, (glossy imitations of Western tabloid magazines), try to gain ground against nationalist and populist pamphlets. Laws on public service broadcasting are adopted all over the region – but their implementation seems to over-stretch the political elite's enthusiasm for democracy. WAZ, Bertelsmann and some other mostly German and Austrian investors have bought off huge chunks of the print media market – but their local products such as Politika in Serbia or Jutarnji List in Croatia only faintly resemble the mainstream West European press. The proliferation of mass media continues. Whether prolific quantity will transform to pluralistic quality remains to be resolved.

A concluding canine typology of the media:

Mass media are often called the watch-dogs of democracy. This is when the media, through investigative reporting, uncover misdeeds by the mighty and the wealthy. In such situations, they act in the interest of the public good and affirm their importance in civil society. They help build society's institutions and mobilise public opinion. This is how we would like the mass media to be.

However, mass media often act in other roles. The following is an attempt to develop a typology of such roles using analogous metaphors from the canine world:

Some media are definitely the pet-dogs of the mighty and the wealthy. They offer nothing but praise for their masters. State-owned television, radio stations and newspapers usually fit this description, as do privately owned media that avoid any trouble. They are part of the imitation of democracy in some countries. This is how we do not want the media to be, but more often than not, this is how they are.

On seldom occasions, the media act as fighting dogs, similar to pit-bull terriers. A lot of what one can see before elections in many post-communist countries resembles this. Yet recently, in Serbia, there were examples of television and print media acting in the interests of organised crime groups that were trying to bring the state into submission. It is a danger for democracy for such mass media to be unleashed on society.

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Part Five:

THE SICURITY SECTOR: INSTITUTIONAL DEMOCRATIC CONTROL ISSUES

I

POLICE

Marina Caparini and Otwin Marenin

REFORM AND PROGRESS IN THE POLICING SYSTEMS OF CENTRAL AND EASTERN EUROPEAN COUNTRIES

Introduction

The idea that policing matters to democracy and in processes of democratization has slowly but firmly taken hold among politicians, scholars, policy-makers and the police themselves. The provision of security, of a sense among citizens and community that the routines of their lives are to a reasonable degree protected by the actions of the state and its social control apparatuses, is one of the basic demands laid against the state by its society. Ineffective, arbitrary or repressive social control undermines the legitimacy of existing state-society relations, complicates efforts to promote development, and severely limits the (re)building of democratic forms of governance and order. The police occupy a crucial political role in any society by their structural position in state-society relations, by what they do and how they do it, and by the symbolic representations of their work and its impacts which enter the political and social discourse (Shearing, 1996). The police matter in processes of state creation, the reproduction of peaceful social relations or peacefully resolved conflicts, and in the creation of social identities and bonds which underpin political life (Loader and Walker, 2001).[1] They matter beyond their merely functional work. The police will both reflect and affect societal changes.

In changing societies, (transition, development, failed states) the need for new effective and legitimate security systems is self-evident. The can be no expectation that people are secure and their property safe when surrounded by turmoil, violence, ethnic and religious hatreds, or corrupted state institutions (Caparini, 2002;

[1] Concluding their review of the literature, Loader and Walker (2001; 20) think it a reasonable argument that, "through their presence, performance and voice, the police are able to invoke, affirm, reinforce or (even) undermine many of the prevailing cultural characteristics of particular political communities, thereby serving as a vehicle through which such communities may be imagined." This seems a large catalytic burden to place on the police

Duffield, 2001; Hendrickson and Karkoszka, 2002; Neild, 2001). As Winkler (2002: 5) notes, "without security there can simply be no sustained development, nor any progress towards democracy, stability and peace." A minimum of social order, political stability, economic well-being and a sense of human dignity, are essential prerequisites for societal and individual survival and growth. The police are one of the agencies which can help create and sustain these threshold conditions. In Bayley`s (2001: 5) succinct summation, "security is important to the development of democracy and police are important to the character of that security."

Democracy, loosely defined by a few emblematic principles of social life, political participation and shared values, has become the stated goal and end-state societies in transition or development are struggling toward, and much of transnational support for reforms is conditioned on acceptance by recipients that democratic societal systems are a worthy and desirable goal. Progress is measured in establishing the institutions and processes which define a democratic polity.[2] Salient among indicators is the policing system being brought into existence, for the nature of policing experienced by society is democracy (or non-democracy) in action.

A democratic police and a democratic society exist in symbiosis. Without a supporting democratic context - a culture of tolerance and trust and without a supporting legal framework and institutions - democratic police cannot be created. Yet, at the same time, if the police are undemocratic, claims that state and society are democratic or moving toward democracy rest on shaky ground (Hills, 2000; Tanner, 2000).

Democratic Policing

Policing systems are given great power, extensive authority, and they possess much discretion in the day to day application of their authority and skills. The police can protect and they can kill, sometimes with impunity. The police can serve the interests of the few or they can support the basic preconditions which enable all members of a society to live a reasonably secure personal and community life. Being powerful, the police must be controlled. They must be held accountable for their actions. They cannot be granted the authority to determine their work, yet they must be given enough leeway and autonomy to exercise their discretion and judgment on when and how to employ their expertise to promote a just, secure and stable social order.

In democracies, maintaining this balance between autonomy (or developing trust in the police which underlies the granting of autonomy) and control (or the essential yet subtle distrust of any organization or individual given great power) present the most formidable challenge in police reform. The police must be given enough power and authority to do their work but not enough to risk harm to the well-being of society and individuals. The normal response to this dilemma, in theorizing and policy on democratic policing, stresses three notions: legitimacy, professionalism, and accountability. The goals of democratic police reform (or creation), then, are sustained legitimacy, sustained professionalism, and sustained accountability. All three conditions must exist before policing can be considered democratic; and all three must work in harmony. Professional behavior and accountability sustain legitimacy; accountability helps professionalize the police; legitimacy grants the police a necessary degree of professional autonomy.

Legitimacy is an essential trait for any state institution, including the police, which seeks to function efficiently. Legitimacy allows governments to make difficult decisions without needing to resort to persuasion or force to have groups or individuals accept policies which are not in their (immediate) interests. A legitimate police has gained the trust of its publics and of the state. The public has had a chance, based on experienced interactions with the police and accurate descriptions and assessments (which requires transparency) of their occupational cultures and behaviors by outsiders (e.g., scholars, policy folk, journalists), to evaluate how well the police do their job. If the job is well done, according to the expectations and norms of society, the police sustain the trust they have earned. If the police fall short of those public expectations and standards in the performance of their duties, they will lose public trust and confidence. Legitimacy balances, in the overall assessment of the police, morality and norms with effectiveness and security. A legitimate police not only protects society; it does so in a just fashion (Reiner, 1996).

Professionalism, in its largest sense, argues that the police have accepted the need for balancing effectiveness and justice, that they have acquired the skills on how to reconcile both demands in the varying conditions of their work, and that they apply such skills consistently. In practice, balancing justice and effect requires the

[2] As Schmitz and Sell (1999: 39-40) note, democratization must mean more than just copying from democratic countries, which can lead to "structures and organizations that are `empty`, although they are formally democratic. They are frequently created before they are really needed and do not respond to domestic political requirements. Instead, they are a copy of ideas from outside or from international cooperation partners."

Conversely, analysts of democratization must look beyond the rhetoric and institutions to assess whether effective democratic practices are being built in a society. That is, a slow process which must have roots in society. Schmitz and Sell (p. 33) identify the major dynamics of the process. Democratization "is the result of a complex interaction of international and domestic factors where initially competitive claims about the better social order are exchanged, and significant pro-democratic actors appear. In the course of time, a gradually emerging democratic setting slowly re-frames the interests and behaviour of actors"

capacity to make reasoned judgments. A professional police should not engage in the arbitrary (discriminatory), sporadic, corrupt, or abusive exercise of their powers. The (limited) autonomy granted to the police is based on the trust by society that the police will have internalized a set of values, a code of ethics and professional conduct which embodies a democratic balance. They can be trusted to exercise self-control.

Yet things do go wrong. The police will be corrupt, they will misuse their powers, they will violate their code of conduct, agency and external regulations, they will engage in criminal conduct, as there will be violations of prescribed conduct in any other occupation with a large membership. The police can be trusted, but not too much. Accountability to outsiders is crucial. In a democratic society, the police have a duty to explain themselves when challenged or asked about their conduct (Stone and Ward, 2000).

There exists, by now a general consensus on the basic principles for democratic policing. Some can be found in academic discussions of what democratic policing should be; some are stated as codes of conduct for police officers anywhere (e.g., Council of Europe, UN codes on police conduct and the use of force; CIVPOL operational standards); some are elaborated in policy documents; some appear, almost, incidentally, in more general discussions of democracy and democratization..

The basic terms and phrases overlap. Mainly the sequence in listings of desirable or necessary traits, and possibly the implied priorities or rankings of principles, differ. Commonly mentioned traits, which point to general and more specific traits, include: non-partisanship; representation in the composition of personnel; integrity; fairness; accountability; transparency; sensitivity; moral consensus; civilian control; a public service orientation; obedience to law; concern for human rights; responsiveness to civic society; impartiality; minimal, last resort use of force; accessibility; separation from military forces and cultures; or general order (e.g., Bayley, 2001; Das, 2000; Jones, Newburn and Smith, 199; Marenin, 1998; O'Rawe and Moore, 1997; OSCE, 2001; Sheptycki, 1996; UN, 1994, 1996; US Congress, 1996; USGAO, 1994; Walker, 1993).

These terms relate to the three basic traits sketched above. For example, non-partisanship, moral consensus, responsiveness to society, or representation are basic factors in sustaining legitimacy. A partisan police which favors and is seen to favor particular social and political groups, especially if numerically small, or serves the state has little legitimacy in the eyes of the general public. Moral consensus points to the notion that what the police stand for, the laws they enforce and their manner of enforcing must be in some accord with dominant societal values. Responsiveness to society reflects the demands that the police listen to and take into account

what society wants them to do. A non-representative force, especially in divided societies, will always be suspect, no matter how effective and professional its actions.

Professionalism is a categorical term which refers to particular values, skills, occupational orientation and policies of a police. The principles of fairness, integrity, sensitivity, concern for human rights, impartiality, and minimal force are core elements in any conception of democratic policing. Accountability encompasses the notions of transparency, civilian control and separation from the military.

In short, defining what democratic policing should be like in its occupational cultures, operational policies, and relations to state and society is not problematic anymore. A basic agreement on general principles exists among progressive police officials, policy-makers and scholars. The real difficulty now is how to implement democratic policing. What needs to be done, specifically, in creating and sustaining organizational arrangements, managerial strategies, personnel policies, training and education, operational supervision, internal control and accountability mechanisms and interactions with outsiders (public, media, scholarship, political agencies) - that is the policy and practical question now. Some themes in the discussions of the process needed to move toward democratic police systems and forces stand out.

Doing Reform

Principles, not Models

There is no one model of democratic policing that can be bought off the shelf. There is no one set of organizational arrangements, managerial strategies, operational policies, accountability mechanisms or structured relations with society and the state which embody democratic norms and expectations. There are some specific policies and practices, which reflect democratic principles and which can be inspected and adapted. Lessons can be learned, best practices can be described - but these are always solutions developed in different societal settings. Whether they are appropriate to the conditions of change experienced in a society has to be assessed, mainly by the people who will have to live with the reformed policing systems.

Policing itself is changing in democratic societies and states, as it always has. New foundation ideologies are rethought (e.g., community policing; risk based policing). New policing strategies (e.g., relations to informal social control and civic society; social capital augmentation) are being developed. Accountability mechanisms appropriate to changing times and expectations are the order

of the day. Basic organizational arrangements (centralization, decentralization, devolution) are tested or develop incrementally. This then leads to a second theme.

Adaptation and Sustainability

Adaptation has a negative and a positive side to it. A central feature of developing and transitional countries is the existence of police forces which have a history, much of it non-democratic. Before reform promoting democratic policing can be conceptualized and implemented, existing features which militate against reform must be eliminated.

In the transitional countries which were subjected to Soviet hegemony, policing served the needs of the state and ruling group, was heavily politicized, and militarized in orientation, structure and often equipment. There are no blank slates on which reform can be written. Before reforms can be undertaken with the hope that they will be sustained and legitimated, existing policing systems have to be depoliticized, demilitarized and decentralized. The adaptation of democratic principles to local conditions requires decisions both on what to do away with (or what will disrupt or oppose efforts of reform) and what to put in place that is new, whether these be personnel, occupational orientations, legal policies or structures.

Much of adaptation has to be left to the imagination and energy of stake holders in reforms, that is, the people who will have to live with the new police. These include the political leadership, civic society generally understood, but also the police themselves. International advice on lessons and practices can only serve as a resource, not as the vehicle for reform. The need for adaptation, and the corresponding limits on external advice and assistance, is much greater for ideological and strategic rethinking and less so for the incorporation of technical skills into systems being reformed. Without adaptation done by local stakeholders, reforms will not be sustained.

Contexts and Leverage

Adaptations require a precise specification of the contexts which have sustained existing or prior policing systems. Reforms of policing affect fundamental political values. Power rests with the police, and, in reforms, there will be some who are winners and some who will lose out. New and effective democratic policing redistributes power, resources, rights and privileges. Protection becomes available to those groups who may have been repressed. The police begin to service the majority of the population equitably. Political control of the police which rested in the state and those who controlled the state is lost to more non-partisan interests. There will be resistance, always.

Implementing reforms is not a self-executing process. Someone has to do it and do it consistently, persistently, and with an acute awareness of the social and political consequences of reform, which extend beyond the police themselves. Understanding where the resistance will come from and preventing, as much as is possible, issues that symbolize resentment and loss from arising, is a necessary task for reformers. Disarming potential opponents to reform is another, as is gathering the resources to sustain reform efforts.

Remember Justice

Reforms are often advocated in a climate where crime and fear are prevalent and growing. There will be a tendency, and this is often the major reason for international assistance, to achieve reforms which will make the police more capable in dealing with crime, especially organized crime. In that process, so it is argued, justice concerns will, of necessity, but on a temporary basis, be relegated to the background. Of course, justice matters, but this is not the time to stress policies which sustain justice but might hamper crime control.

But reforms become inert once they become institutionalized and part of the occupational and managerial culture of the police. Justice relegated to a second level priority, even though only temporarily, will remain relegated. The necessary democratic balance will be permanently tilted towards effectiveness. In the short run, effectiveness may lead to feelings of legitimacy in the general population. In the long run, effectiveness is not enough to sustain legitimacy.

One practical implication for reform is that police cannot perform their job in isolation or without support from other control institutions. Reform must be of the criminal justice systems as a whole with the police but one part of the system. Legal reforms, prosecuting offices which make efficient and fair decisions, courts which function, sanctioning systems of various sorts, reintegration mechanisms need to support the police in their work. The police often object to the workings of other criminal justice institutions, especially courts, when judges and prosecutors insist that legal limitations on the power of the police be observed by the police in investigations, interrogations, arrests and the use of force. Those are necessary constraints within a system that abide by the rule of law.

Not Words But Acts

In the end, reforms must show up on the street, in the normal work of the police. It is comparatively easy to devise plans for reform, to state new missions, goals, and values. The tough part is implementing plans on a sustained basis. There are two points which follow from this observation.

For one, police reform must be based on the police, on understanding why personnel hired by the state to do a job would be willing to abide by the reforms, accept new ways of looking at their occupational arenas, learn and apply new skills and attitudes for interacting with the people they serve. In short, the police, who know more about what the job is like than outsiders, even though they may have the "wrong" attitudes and values, have to be participants in the planning and design of reforms.

Second, the fundamental intermediary goal of reforms is a police culture which incorporates democratic values. Without that culture, there will be nice plans, cogently designed policies, soothing rhetorical flourishes - but little action. Creating a democratic police culture is a hard task, but an essential one.

Police Reform in Central and Eastern Europe

The collapse of the Soviet Union, the expansion of Europe into a vacated political and economic space, autonomous domestic political dynamics which cleared the way for a structural rearrangement (in varying degrees) of powers and rights of the state and civic society, and new international and domestic threats to security created immense pressures to reform a discredited security system inherited from the old order. That system, including the police, lacked legitimacy. The Soviet Union collapsed as completely and quickly as it did because it was hollowed out from within. It had no passionate supporters outside the favored elites and their hangers-on. Instead, the state and party achieved compliance and acquiescence by an apathetic society and by groups whose interests were forcefully repressed. The state rested on fear, political opportunism, and the exit, from the state, of large numbers of people (underground economic activity, informal social control, crime, and the wholesale manipulation of rules and laws through corruption, evasion and informal networks). The security services contributed much to the slow leaching of legitimacy. Reforming the security sector and the police, that element of the sector most widely encountered by publics, became a priority.

The chapters in this book examine how such reforms have fared over the last thirteen years. What has really changed in systems of policing?

Prospective authors were invited to follow a set of three general questions in dealing with this question. The first was to describe reforms and changes since 1989 along five dimensions.

Goals: What were the goals of reforms as stated by reformers? What policing rhetoric and ideologies, what mission of the police were stressed? Where did the pressures for reform come from? Where did opposition arise?

Legal status and powers of the police: What was the mandate, the roles and functions of the police? What legal protections for the police and for public were incorporated into law?

Organizational Structures and Policies: What changes in organizational arrangements have taken place? How have personnel practices changed? Have efforts been made to increase the representation of the police?

Operational Policies and Work Patterns: Have police resources been directed to implement democratic patterns of work? What roles and functions of the police have been emphasized? What policies to shape and control discretion by officers are in place? What efforts have been made to create an appropriate occupational culture?

Oversight and Accountability Mechanisms: What external and internal oversight mechanisms have been adopted and implemented? How are complaints against the police handled? What actions of the police have become subject to oversight?

Secondly, authors were asked to assess and evaluate the implementation and success of reforms.

Democratization: To what degree have reforms moved the policing system toward a professional, service oriented, accountable and effective police force? What efforts were made to de-politicize and de-militarize the police? Has the notion of service taken hold in the cultures and working practices of the police, or moved the police toward that goal?

Legitimatisation: Are there any indications of *how* legitimate policing structures and practices are in the eyes of the public? What are the relations between the police and civic society? What are the relations to non-state security services?

Problems and Obstacles: What obstacles exist to further reforms? What problems remain to be addressed?

Integration: How do the police fit into the larger political and social changes which have taken place? Have policing systems been a hindrance or a support for societal changes?

Third, what insights for policy and theory do the descriptions and evaluations of police reforms suggest?

The reforms contemplated, advocated and implemented in these countries have drawn heavily on the experience of Western democratic countries and on developing international norms and standards of democratic and accountable policing. Reformers in all countries have become intimately familiar with the expectations of international and regional bodies, external states, international and domestic NGOs, private consultants and scholars, and foreign police officials. Candidate countries to the EU have been told what it would take to upgrade their policing system to acceptable standards. International visitations and assistance by a vast army of consultants, aid donors, NGOS representatives and police officials have introduced widely accepted norms and policies on how to democratize policing systems and what the end-product should be in practical, that is, policy and operational terms. Lessons extracted, so far, largely from the experience of Western democracies, on "what to do and how to do it" (Bayley, 2001) have been passed on through this large diversity of

channels of advice and assistance. (Bayley offers a useful and concise summary of 87 basic lessons and corollaries.)

Thirteen years of experience in these fourteen countries provide insights into the utility and applicability of such lessons. Have they worked in these countries? Do some and not others? Do lessons have to be modified, and in what ways? What lessons about lessons have been learned?

So far, the flow of information, advice, best practices and lessons learned has been largely on a one-way street from West to East. But as the experience of reform, as it is interpreted by policy makers and police officials and studied by scholars and analysts, begins to accumulate, the one-way street should and will become a two-way, reciprocal flow of information, a feedback loop in which all who study and practice policing participate and share information and advice.

Lessons embody, or are based on, theoretical notions of how to produce change in policing ideologies, organizations and practices, which can be also be quite resistant to reforms. What theoretical insights from the experience of transitional countries can be gained?

Accountability and Oversight

The papers were written for a workshop (and ultimately this book) organized under the auspices of the Geneva Centre for the Democratic Control of Armed Forces (DCAF). DCAF was established to encourage, within a context of good governance, the reform and democratic control of the security sector in transitional and developing countries. DCAF promotes the exchange of information on best practices, lessons learned and effective policies on democratic control of security forces, including the police.

Accountability - and the concomitant requirements for transparency of security forces, the development of the necessary skills among civic society, the media and legislative bodies to assess security performance, and the willingness to challenge, confront and control powerful agencies of the state – lies at the core of DCAF`s mission.

The third question asked of contributors – what insights can be gained for theory and policy – connects directly to DCAF`s interests. Currently, the flow of best practices and lessons learned goes primarily from West to East and South. Yet as transitional societies undergo change and consciously reform security institutions, best practices and lessons will be learned form that experience. Such lessons might start to flow back, may lead to modifications of existing views on what works in reforming the police, converting a largely one-way street into a circle of mutual learning (Pagon, 1996).

As policing systems change, oversight, accountability, control mechanisms need to change as well. For example, the movement toward community policing in the USA and UK has led to demands for new forms of participation, cooperation and control among the

police and the communities they serve and protect (Greene, 1993; Greene and Pelfrey, 1997). Existing external control methods will shift in their priority, accessibility and impact as the mission of the police force, and its basic strategies, shift from crime control to crime prevention, from working autonomously as professionals to partnership and co-production, from detachment to involvement in civic society. Similar changes in the salience and effectiveness of accountability methods will have to occur in transitional societies as reforms take hold. What lessons can be drawn from such developments?

We hope this project will help illustrate some of the challenges and dynamics of reforming policing systems in former Communist countries, outline the various approaches and courses of action taken in these countries to promote democratic reforms, and assess the difficulties that are being encountered en route. The descriptions and assessments presented in these pages should help policy-makers, practitioners, scholars, donors, and police officials at the international and national levels gain a better understanding of the requirements and obstacles to democratization and good governance for an institution which so directly and visibly embodies the power of the state and that so directly affects the well being and security of individual citizens. We are grateful for the participants for helping all of us take some long steps down that road.

Organization of the Book

Most of the chapters were first presented at a Workshop organized by DCAF on "Police Reform in Central and Eastern Europe" which was held in Prague, the Czech Republic, on November 8-9, 2002. Participants had been selected by the editors based on the authors` familiarity with the policing systems of their countries. Some were known to us personally; some we knew by reputation and publications; some were recommended to us by outside experts. Once they agreed to our invitation to write and present a paper, we asked them to submit the papers to all participants some time before the Workshop. Four authors could not attend due to conflicts with their busy schedules.

The Workshop proved extremely valuable. Each author presented her/his paper. Two other participants had been asked to be lead commentators on a paper. After the presentation and initial comments a free, respectful and often quite vigorous conversation ensued during the formal panel sessions, conversations which continued during informal activities. The coming together of 12 experts - some practitioners, some scholars, some who are both - in the field of policing created an intellectually rich environment which would be difficult to duplicate. Similarities and differences in the experiences of their countries, questions of analysis and interpretation, the issue of standards for evaluating changes and performance (what really was now and what had not changed?) – easily recognized as core issues to be

discussed in each chapter, quickly led to critiques and challenges, to continuous discussions on perspectives for description and analysis which should be adopted, policy choices to focus on, lessons to be drawn, evaluations to be conducted.

The editors culled general guidelines for rewriting papers from these discussions which were communicated to the participants after the Workshop. Some of the initial guidelines suggested by the editors to participants were modified slightly as a result of this process. The goal of the guidelines was to provide a more cohesive framework for harmonizing descriptions and analyses across chapters thereby assisting readers in making comparative assessments of reforms.

The chapters which follow provide a snapshot at the end of 2002 of the state of policing systems and the implementation of reforms in these countries in transition to more democratic forms of governance. We will summarize general conclusions in the final chapter, and point to unresolved issues of policy and research.

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REFORM OF THE POLICE AND SECURITY SERVICES IN SERBIA AND MONTENEGRO: ATTAINED RESULTS OR BETRAYED EXPECTATIONS

Introduction

The first part of this paper describes the main and the most general characteristics of the legacy of the police, followed by the results of the police reform achieved so far. The second part of the paper deals with the state security services and the relevant changes, with a somewhat greater emphasis on its legacy compared with that of the police, bearing in mind that this topic is less frequently addressed in professional literature. In addition, the legacy of the police is also partly included in the review of the situation after October 2000, since the reports of the experts date from that period. The survey of results covers the period from early 2001 until the end of 2004. The main focus is on the situation in Serbia as opposed to that of Montenegro, which is given comparatively less attention. This is due to the different appearance of the issues concerned in the two republics, and the difficulty of obtaining data and critical sources relevant for the situation in Montenegro. The paper concludes with a number of general assessments and an indication of the prospects for a thorough reform of the police and state security services. The attachment reviews the current organizational structure of the Ministry of Internal Affairs of the Republic of Serbia with a brief explanation of its individual elements.

Reform of the police

Basic characteristics of the police legacy

The police institutions in Serbia in their almost two-century long history registered a lot of ups and downs. The "downs" were particularly difficult when the police excessively placed itself in the service of political power holders. This susceptibility of the police to political influence is, in a way, a lasting and general characteris-

tic of its role. The police department *maintains law and order*, and is thus at the same time one of the main supporters of the government (i.e. an instrument of power), as well as the provider of a service required by the whole society, which is dependent upon order (i.e. social regulation).

However, because the state is lacking well-established, democratic and civic institutions capable of controlling the government, the police force becomes a mere tool in its hands. In that case, its activity shall give an authoritarian mark to the whole regime, thus questioning its legitimacy. Overall experience teaches us that regimes which rely on limited participation of social subjects in the political process give rise to a need for an ever-growing police presence in political life. If the road of dictatorship is chosen, the police shall be forced to unreservedly place its forces in the service of the dictator and its actions will be tainted by intolerance and aimed at persecution. The police may also endanger the monolithic nature of the regime structure or its very survival. In such circumstances the control of people's views by spying and surveillance and the repression of dissidence, will become the most important tasks of not only the political police, but of every single ordinary policemen.

We have just emerged from a period of this kind, but its consequences have yet to be overcome. This is not an easy task. It is not only that the police was politicised in the past decade, as emphasized by the first and main problem of the legacy of Milošević's era (1988-2000), but there were also numerous other important causes which account for the negative elements in the legacy of the police.

The effect of these causes is revealed by the fact that, at the beginning of the 21st century, the police in Serbia and the police in Montenegro, did not meet the needs of the society, which was being reformed and democratised at a faster rate. The Serbian police were also lacking when compared to the corresponding services of the EU candidate countries, including the ones that had the same or even inferior starting position at the outset of the past decade. From that perspective one could, first, say that the police in Serbia and Montenegro is, on the general level, still primarily characterized by an *insufficient deflection from the communist militia model* and, consequently, also an insufficient ability to grasp the basic values of policing in a democratic society.

Despite the different natures of the political environments for police activity in Serbia and Montenegro over the past decade, the fact remains that both in formal and substantial terms, the two countries now display no major differences apart from those related to their numerical size, technical capacities and the dispersion of their organizational setup. The police in both republics have the same constitutionally and legally described role and authorities, the

same internal rules and systems of selection, education and personnel training. Their policemen have inherited and share the same values in the police subculture, which – along with the major part of the currently effective police legislation – originate from the times of the former state – the Socialist Federal Republic of Yugoslavia.

Thus, for instance, the basic legal act governing the police in Serbia (The Law on Internal Affairs) was adopted in 1991 and is actually a slightly revised legislation of communist times, while its textually identical counterpart in Montenegro dates from 1994. These two laws still represent the legal framework for the organization and activity of the police, although they are both outmoded and in contravention of reform efforts. The situation has meanwhile been partly improved to the extent that the most important police authorities for crime repression were regulated in a more appropriate way by the new laws on criminal procedure passed in Serbia and Montenegro in 2001 and 2003 respectively.

Essentially, the police of Serbia and Montenegro were completely bypassed by the reforms in the formerly communist countries of Central and Eastern Europe after the toppling of the Berlin wall. Instead of being subjected to reform, the police forces which remained after the disintegration of the SFRY were used by the holders of power in the two republics. In other words, the police were most directly involved in the political process and were turned into a repressive instrument for the perpetuation of the political regime. This resulted in a complete politicisation of the police, which changed its role and led to a confrontation with the public. In parallel, the structure and the role of the police were modified in line with the increasing security challenges and conflicts in the country's surroundings, as well as in a part of the territory of the Republic of Serbia (Kosovo and Metohija). Throughout that period a disastrous series of processes and phenomena directly affecting the role of the police kept unfolding: economic difficulties grew deeper (due to the deteriorating situation in the economy, crime, the external wall of sanctions, postponement in paying the price of economic reforms, etc.); corruption spread throughout political bodies, the judiciary, public administration and services; the regime developed a tolerant attitude towards lucrative criminal activities and the "grey economy", and occasionally directly participated in such activities; the judiciary was subordinated to politics; and the anomy of law prevailed with the general collapse of the social system of moral values.

In addition to becoming politicised, under the influence of the above-mentioned processes and phenomena of the last decade of the past century, the police *kept regressing in functional as well as organizational and personnel terms*. The main characteristics of this regression are the following:

- A decline of professional work standards and, proportionately, of standards for the selection, training and advancement of cadre, as well as of the quality of management;
- Technical, technological and material deterioration (although on a smaller scale than in other parts of the state apparatus and especially if compared with the impoverishment of the economy and citizens);
- A high level of corruption and criminalization;
- Excessive militarization;
- Increased violence towards the citizens and absence of public accountability;
- Decreased efficiency in the persecution of organized and certain other forms of major crime**;**
- Widespread dislike for the force in the domestic and international public and its exclusion from international police cooperation.

Although each of these characteristics of the situation in the police requires a separate review in order to evaluate its specific forms and general influence, we shall briefly dwell only on the element of militarization in view of its remarkable importance. The *militarization of the police* in Serbia was given a strong impetus especially by the idea of the police as a potential substitute for the army, or its partner, embraced in the early 1990s after the military top ranks had failed to manifest the expected degree of loyalty to the Milošević regime. The regime itself partly understood that there were certain differences in the internal use of the army and the police. On the other hand, Montenegro sought to make the police a sufficiently powerful defensive force in the event of a possible military intervention of the Yugoslav army. This fear of intervention was fully manifested towards the end of 1997 with the straining of relations between a more democratic and pro-independence Đukanović's regime in Montenegro, on one side, and Milošević's regime and the army, on the other. In that period the police in Montenegro numerically increased from about 5 thousand men (end of 1997) to about 20 thousand active and reserve members (end of 2000), while the key role in the force's profiling was assigned to former army generals.

The specific characteristics of the police militarization in Serbia are reflected in the increase of the force's human potential (regular and reserve units grew to up to 100 thousand men, according to domestic analysts), equipping the police units with arms typically used by the army, introduction of military ranks in the police in 1996 (from the lowest ranks of non-commissioned officers to those of a general), as well as the creation of a number of specialized police units for the so-called high risk operations. Furthermore, a four-year Police Academy was established in Belgrade in 1993 (emulating the model of a military academy). It

was given the task to educate the officer class of the police for the needs of Serbia, Montenegro and Republika Srpska. Until that time an outfit of police officers was educated at the Military Academy and the largest number of highest commanding officers of the police in Milošević's era, as well as in present times, come precisely from their ranks.

Work on the police reforms: early 2001- end of 2004

The government which appeared on the political scene in January 2001, formed by the Democratic Opposition of Serbia (headed by prime minister Đinđić, followed by Živković) came up with a clear request for the reform of the police, but throughout its terms of office failed to draw up and publicly present a complete and accurate inventory of the situation inherited in the police, or to make the police reform its priority. Neither has the Government of Prime Minister Koštunica, formed in the first half of 2004, managed to do that, at least so far.

Therefore, four years after the change a strategy for the implementation of the police reform has not been adopted. Furthermore, only some of the problems of our police forces are explicitly recognized by the political and police management structures, responsible for the reforms, while the rest are only mentioned, if not altogether unrecognised. This fact, by itself, clearly testifies to the insufficient reform potential of the new Serbian authorities in this particular sphere.

Interestingly enough the official elaboration of relevant characteristics, causes and manifest forms of problems in the Montenegrin police went lacking, despite the doubtless understanding that this is a precondition for the start up of a thorough reform, since a diagnosis is the first step in the successful treatment of any ailment.

The refusal to openly acknowledge the real deficiencies of the police had different causes in Serbia and Montenegro. The Democratic Opposition of Serbia, which was victorious in October 2000, had a highly critical attitude towards the police in the stage of takeover of power. At that time three key demands were articulated for the de-politicisation, decriminalisation and decentralization of the police ("triple D"). However, at the beginning, the government formed by the members of this coalition of necessity applied itself to resolving the inherited, extremely difficult social problems, as a matter of priority. Later on, it managed to start the reform processes in a number of important spheres (energy, banking, privatisation, etc.), but it simultaneously wasted its strength on inter-coalition squabbles and political strife. In that situation the Government relinquished the care for the police reform to the competent minister whose measures were reduced to the principle of

"doing what appeared possible, instead of the necessary" already seen at work in transition countries. The assassination of Prime Minister Đinđić on 12 March 2003 failed to create the reform potential, although it in a tragically clear way demonstrated the need for the reform of the police and security services. The government of Prime Minister Koštunica has also failed to manifest the required readiness.

On the other hand, it would be hard to expect a complete and open acknowledgement of the weaknesses of the police in Montenegro. This would involve an admission by the government and the party of their own mistakes and weakness in forming the police. Đukanović's government claims to be officially committed to police reform, but this, therefore, is contradictory since it is calling for changes of something that is has never found to be at fault.

An additional difference between Serbia and Montenegro is revealed in the fact that the opposition and the civil sector in Serbia are highly committed to the reform of the police and are sufficiently strong to keep raising the issue with the government, which is not the case in Montenegro.

Particularly helpful in diagnosing the situation in the police of Serbia and Montenegro, and especially in channelling the reform in the desired direction, were two reports written by prominent OSCE and Council of Europe experts Richard Monk and John Slater during 2001.[1] In briefest terms, these two reports especially underline the following deficiencies of the Serbia and Montenegrin police:

- The role of the police in the society, its structure and manner of functioning rest on outdated legislation, which does not reflect the need for an efficient protection and consistent respect of human rights and freedoms, or the need for a more efficient response of the police to the huge challenges imposed by the new forms of crime in the country and its surroundings. The police is a state body, rather than a public service, it is responsible to the government and not the public, it is guided by the interests of politics and distanced from the interest of citizens and local communities, all of which corresponds to the model of a police force in authoritarian states as opposed to the model of the police in a democratic society;
- The structure of the police system is overly centralized and militaristic, and the police are isolated from the local community and public control. Bearing in mind that it is not subject to democratic civil control, nor accustomed to act outside the influence of politics, the police do not enjoy the appropriate trust and good reputation among many citizens;

[1] Reports by Richard Monk ("A Study on Policing in the FRY", Belgrade, OSCE: 2001) and John Slater ("A Report on the Evaluation of Human Rights, Ethic and Standards of Police Functioning in the Federal Republic of Yugoslavia, Serbia and Montenegro", Belgrade: The European Council, 2001).

- By contrast from the large number of employees in the internal affairs ministries, police operatives are few, poorly equipped and insufficiently remunerated. They often lack the basic means and equipment for the performance of their official duties. The personnel structure of the police reveals a clear absence of capable lower and mid management, as well as specialists in specific fields. The system of training and education for police purposes is costly, outdated and ill adjusted to modern needs. An efficient system of career monitoring and development does not exist and promotions are made without clearly defined criteria. Women are a proper rarity in the police and the ethnic composition of the force does not reflect the ethnic structure of the population;
- Professional ethical standards are not developed and neither is there an ethical code of conduct for the police. International standards for the observance of human rights are insufficiently known and are not respected in policing, and clearly articulated legal requirements for the observance of such standards do not exist.

Each of the above-mentioned deficiencies was described and substantiated by relevant data, observations and evaluations and accompanied by specific recommendations for reform (over a hundred recommendations in total). By the nature of things, part of the existing problems, and especially their causes, could not be fully known to the foreign experts so that their elaboration of the situation in the police remains, in a sense, incomplete and partly explained. Along with additions related to that, a more complete and topical picture of the situation in the police would also require new insights, especially in the light of the tragic event of March 12, which unambiguously pointed to yet another body of problems, as well as the necessity to re-examine the purpose and results of certain changes in the police accomplished since 2001. An important contribution to that effect is expected from the new expert report soon to be completed by the OSCE and the Council of Europe.

On that basis, the government of Serbia should continue its work in preparing and adopting a complete and efficient strategy for the reform of the police, taking especially into account the fact that the state union of Serbia and Montenegro has meanwhile undertook important international obligations in this respect (following the country's admission to the Council of Europe on April 3, 2003 and its ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment).[2]

[2] Both conventions were ratified by laws adopted on December 26, 2003, "Official Journal of Serbia and Montenegro – International Agreements", no. 9, December 26, 2003).

The Serbian government's omission to elaborate and adopt the strategy of police reform, as well as its activity in that particular sphere, are discussed below.

On the whole, the balance of the four-year work on police reform in Serbia is rather modest, and one may say that efforts in that period had more to do with thinking about and outlining the direction of reforms than with practical steps. Actually, two parallel processes developed: the first had to do with palliative changes (reorganization "along the way"), and the other with the preparatory work on the strategy for a comprehensive reform. In time, the former process completely prevailed and the reform was substituted by a less painful reorganization (changing the form, but retaining the substance).

The Ministry of Internal Affairs of Serbia has so far made certain personnel, organizational and other changes of different scope and contents, most importantly the following:

- Abstraction of state security from the Ministry to form a new government Security Information Agency (BIA) in July 2002;
- Establishment of a number of new organizational units, including most importantly the Gendarmerie (special police units with over 2,500 men), the Department for Organized Crime Suppression, the Security Directorate (concerned with the security of state officials and facilities, until 2002 within the competence of the State Security Department), a new Department for Financial, Personnel, Common, Administrative and Technical Affairs (incorporating previously separate services);
- Formation of multiethnic police units in three municipalities on the Serbian south (Preševo, Bujanovac and Medveđa);
- Introduction of the programme of *community policing* on experimental basis in the three above-mentioned and another four municipalities;
- Employment of a number of women on police duties (over 3,000)[3];
- Establishment of intensive bilateral, regional and multilateral police cooperation;
- Inclusion of a number of policemen in different training courses and programs (human rights etc.);

[3]This reform objective is to all appearances implemented to the highest extent. It remains to be seen what shall become of the more difficult part of the same issue, i.e. whether women doing police work will really be treated as equals by other members of a typically masculine profession.

- Adoption of a document representing a direct contribution to the reform, namely the Directive on the Police Ethics and Policing[4] (drafted upon the initiative and in cooperation with the experts of the Council of Europe), which reflects the achievements of the European Code of Police Ethics (adopted by the Council of Europe Council of Ministers on September 19, 2001). Although it will take a long time for the real effects of this Directive to be felt in practice, there is no doubt that this is the most important reform document elaborated so far.

However, preparatory work on the strategy for police reform took a long time and has yet to be completed. In contrast to the reform of the judiciary, the government has left the work to be done by the competent minister (while it immediately formed a council for the judiciary). Thus in the autumn of 2001 with the support of the Danish Centre for Human Rights, an advisory body for the reform of the Ministry of Internal Affairs was set up, but without a clearly defined status. In April 2003, this body – comprising the few domestic experts, foreign experts from the above-mentioned Danish Centre and a much more numerous group of professionals from the Ministry (mostly the "tested old cadre" and trusted men of the then minister D. Mihailović, who himself spent a large part of his career in the police) - came up with a draft of a strategic document for the reform of the Ministry of the Inferior. Having presented the document to the government ("Document on the Vision of the Reform of the Ministry for Internal Affairs"), the interior minister in July passed a Directive concerning the establishment of a committee to manage the program of the Ministry's reform.[5] The Directive stated that the purpose of the Committee was to *coordinate the completion of the document on the vision of the reform and elaborate a long-term reform strategy*, including the definition of the frameworks for the reform and subsequently also the measures for the implementation of projects within the reform process. The Committee was headed by the internal affairs minister and included the Ministry's professional staff, one representative from each of the following entities: the national assembly, the judiciary and the Council for State Administration, along with two "independent" members, designated by the minister. The composition of the Committee was subsequently expanded by one representative from the Council of Europe Office and one from the OSCE mission in Serbia and Montenegro. To the best of our knowledge this body has never met. In any case, the institutional arrangement for the planning and implementation of the reform needs redefining, espe-

[4] "Official Journal of the Republic of Serbia", no. 41/2003.

[5] "Official Journal of the Republic of Serbia", nos. 62/2003 and 65/2003.

cially in terms of strengthening its expert part and its opening to the influence of the professional public.

Quite independently from the work on the reform of the police, the total four-year reform efforts of the Serbian Government (in other areas) brought about some important results, both at the general level of democratising the Serbian society and in terms of adjusting the monetary and financial systems followed by reforms in a number of other areas. These results had an indirect positive reflection on the role and activity of the police. Of highest interest for the role of the police was the adoption of a new Law on Criminal Procedure (in late 2001), which to a large extent specified and reduced its authorities in this procedure.[6] Along with a number of other new legal regulations, which enable the outlining of a different role for the police, particularly important was the adoption of special regulations on the organization and competences of Serbian state bodies in fighting organized crime (mid-July 2002), which are yet to be tested in practice and supplemented as required. Appropriate importance of this kind was also expected from the law on the responsibility for the violation of human rights (lustration),[7] which however remained a "dead letter" in the absence of political will for its enforcement.

Moreover, the reforms in the above-mentioned areas and the general trend of democratising the society have inevitably led to a certain (although still overly selective) opening of the police towards the public, as well as the increase in the abilities of the media, NGOs and the general public to criticize the work of the police and voice louder demands for changes in the force. These are, in fact, the most valuable indirect results of the government having to do with the police.

We should also mention the effort to strengthen the role of parliamentary control over the police, where some progress was achieved, especially compared with the situation before 2001.[8] Any further development of this kind of control will largely depend on its legal basis (assignment of precise control authorities to the parliamentary committee by the future law on the police) and specialization for the fulfilment of that role.

The police reform processes in Montenegro now generally unfold in a similar manner. This republic has prepared the documents for police reform,[9] including the texts of reform laws for the police and state security service (agency), but their adoption has

[6] The law was adopted by the national assembly, and following the proclamation of the Constitutional Charter it is applied as a piece of republic legislation.

[7] "Official Journal of the Republic of Serbia", nos. 58/2003 and 61/2003.

[8] See *Study on the Parliamentary Committee Structure, Principles and Practices in the Serbian Parliament,* OSCE, Belgrade, 25 February 2003.

[9] See: Martinović, R., "Police reform + The Case of Montenegro", Belgrade, March 6, 2003 (Security Sector Reform School, G17 Institute).

been postponed for almost two years now. It is understood that some of the basic problems in the republic's police to be solved through the reform process appear somewhat easier than those in Serbia, and that the Montenegrin government is highly interested to carry out the police reform as fast as possible, since the issue is viewed as an important step to achieving state independence. Along these lines the Montenegrin police last year already rushed to take over border security from the army. Naturally, the road from the adoption of reform documents to actual implementation of the reforms shall be neither fast nor easy.

The reform of the police (and other parts of the internal security sector) in Serbia and Montenegro has an indisputable international dimension. The situation in the sector is of interest not only for the citizens of Serbia and Montenegro, but also for all their neighbours and other countries in the region. That is why the police was integrated into the flows of international police cooperation (bilateral cooperation, Interpol, SECI)[10] immediately following the downfall of Milošević's regime. In parallel, the Council of Europe and the OSCE, as well as some other international institutions and a number of individual countries, offered Serbia and Montenegro their assistance in the police reform. Initially, this cooperation largely developed through the Federal Ministry of Internal Affairs (dissolved by the Constitutional Charter of February 4, 2003). After that this cooperation became the exclusive task of the republic internal affairs ministries as the only bodies with the police function in Serbia and Montenegro. This foreign assistance gave rise to numerous initiatives and valuable material incentives for police reform, which obviously have not been put to the best use so far. The governments of Serbia and Montenegro should manifest a greater degree of readiness to use the assistance of this kind in the coming period, while the size of this assistance will certainly depend on the speed of changes in the police.

The legacy of state security services and reform efforts

After the disintegration of the SFRY there were three civilian and two military services operating on the federal level with different intelligence-security tasks: 1) State Security Service within the composition of the Federal Ministry for Internal Affairs, practically non-existent since 1992 and formally disbanded in July 2002; 2-3) Research and Documentation Service (SID) and

[10] SECI is a form of regional cooperation of SEE countries in the area of preventing and fighting trans-boundary crime. The SECI seat is in Bucharest. See: *Agreement on cooperation with the view to preventing and fighting the trans-boundary crime* ("Official Journal of SaM – International Agreements", no. 5, June 20, 2003).

Security Service within the Federal Ministry for Internal Affairs; and 4-5) Military Intelligence Service attached to the General Staff of the Yugoslav Army and Yugoslav Army Security Service attached to the Federal MoD. In addition, both republics had State Security Departments within the republic internal affairs ministries. The authorities of the seven, or rather six, services have never been clearly delimited, nor have institutional channels been established for their regular cooperation and coordination. This accounts for the obvious "field clashes", or rather their competitive and disparate actions. That is particularly visible in the operations of military security services, on the one hand, and the republic services on the other. The Perišić affair is one of such examples best known to the public.[11]

The present-day state union of Serbia and Montenegro, as redefined by the Constitutional Charter of February 4, 2003, still has six separate services. We shall focus on the security services in the republics and partly also on the two military services, without dwelling on those within the Ministry for Foreign Affairs. The Constitutional Charter does not anticipate any form of obligatory coordination, or at least exchange of information, between the intelligence services, while the two republics have so far shown no intention to establish cooperation in this sphere.

The first thing that requires some explanation is the issue of the origins and roles of our state security services. Emerging from the idea of a revolutionary break with similar services of the Kingdom of Yugoslavia, they first followed the model of the Russian NKVD and KGB, and then East Germany's Stasi and similar communist services. Their activity was conceived to completely fulfil two roles: the role of a political police (supervision of the political process and persecution of political adversaries) and that of a traditional national (state) security (intelligence and counter-intelligence of importance for the security of the country and its bodies).[12]

[11] The case has to do with the arrest of the then Serbian Government vice president by the military service without notifying the police or civil security services (on charges of cooperation with foreign intelligence services).

[12] Specialization by activities (spheres of interest) in our security services throughout the existence of the SFRY and the FRY, as well as today, mostly followed the traditional and simplified division into military, foreign policy and state security aspects. The "state" related aspects of the former state security departments, i.e. the BIA today, relate to intelligence concerning the internal and external dangers for the constitutional order, counter-intelligence protection of state bodies and holders of state offices, and repression against the so-called political offenses (aimed at undermining the constitutional order and security of state officials), including terrorism and extremism. Moreover, these security aspects were not clearly delimited, nor is that easy to do under the circumstances, especially in view of these services' aspirations to assume the relevant police authorities, i.e. both the preventive and repressive functions.

At its very beginnings, especially while they operated under the name of OZNA and UDBA (from the end of WW II until 1966) these services prominently played the role of political police and in that context concerned themselves with the defence of the communist regime from its actual and imaginary opponents among the proponents of ideas of the old civic society, emigrants, dissidents and other people not to the liking of the regime. Consequently, they were both in functional and personnel terms subjected to the full control and guidance of the communist party. As required, they departed from the elementary legal and moral basis of their operation, guided by the slogan that the ends always justify the means however immoral they may be. Just like the security services in other countries of the socialist block, our services protected the power of the communist party and for that purpose widely interfered in the activities of the regular police, courts and prosecution, enforced various limitations of individual freedoms and rights and were most often the organizers and executors of state violence aimed at political persecution. They were also proper armed formations and had, at their disposal, all police authorities and means, including firearms along with the whole arsenal of "secret police" powers and even their own prisons.

Bearing in mind that the processes to rehabilitate the victims of communism have not yet been made possible in this country, neither the precise number of victims is not known, nor is the role of the security services in activities of that kind. The hope that the rehabilitation of the victims of communism will be possible after the disappearance of the League of Communists (in the late 1980s) immediately fell through since the Socialist Party of Serbia (Slobodan Milošević's party) formally proclaimed itself the successor of the dissolved communist party and went on to rule Serbia until October 2000.

The Brioni plenum (1966) and the events that ensued in the next few years, regardless of their true motives, resulted in the reorganization of UDBA and the first serious reforms of security services. Along that line, the first parliamentary commissions for the control of state security services in this country were formed, at all three levels of government existing at that time (federation, republic, and autonomous province). Most importantly, some changes were made in the role of the service with a shift away from political police towards the protection of institutions of the state order. In fact, it had to do with a trend of ideological relaxation of the society, where the SFRY was ahead of all other Central and East European socialist countries of that time. This positive trend continued during the 1970s and 1980s, although not always consistently, since the services still occasionally embarked upon political persecution, most often incited by orthodox communists in their ranks, or acting on decisions of the communist party bodies.

However, two things kept slowing the process down and repeatedly frustrated the chances to finally take the role of the political police away from the services, namely the powerful resistance their influential core staff unwilling to be deprived of its traditions and levers of power, on the one hand, and the decreasing prospects of the political system to transform and stabilize itself and continue its existence, on the other.

In contrast to the army (JNA) and its security services, which remained captivated by the already collapsed ideology and has yet to suffer the process of breaking down along the lines of their own multinational being, the republic security services awaited the disintegration of the SFR and the advent of their new masters with much more ease and with greater readiness. They openly supported the political ascent of nationalist leaders in the republics (future independent states) all the more eagerly because the ideology promoted by the emerging regimes was the closest to the previous ideological body. Thus the republic security services already in the stage of the SFRY disintegration readily placed their services at the unlimited disposal of the new republic powers that be and once again became political police.

Along with providing overall support to the regime, the services and some of their armed parts also engaged in certain activities that may be classified as state terror and organized crime. During the previous decade, especially in Serbia, there was a series of political assassinations, cases of people disappearing, liquidations and other grave affairs. The crime on the Ibar highway (when four leaders of the opposition party – Serbian Renewal Movement were killed), the kidnapping and murder of the former president of Serbian Presidency Ivan Stambolić, and the attempted assassination of Vuk Drašković in Budva, are only a few of the solved or partly solved crimes involving the members of the republic security service. The bulk of these activities from the time of Milošević's rule have yet to be resolved or brought before the court, as well as those of more recent date, according to available information, again seem to point towards certain members or protégées of this service. Leading men of the internal affairs ministry have on a number of occasions stressed that the investigation has been stalled, in the absence of cooperation or having actually been blocked by the omnipotent "service". The question of the obscure affair of March 2001, when over half a ton of heroin, allegedly the property of the republic security service, was uncovered in a vault of a business bank downtown Belgrade still remains without a proper answer.

Most of the above-mentioned criminal affairs may, to all appearances, be attributed to the inglorious JSO – the Special Operations Unit (known as the "Red Berets"), which in many ways represents by far the most convincing illustration of the overall police legacy from the period of Milošević's rule, as well as the

subsequent problems caused by this legacy. Formed in 1991 during the armed conflicts in Croatia, the unit was initially a para-police and party army, which in 1996 officially became an armed formation within the composition of the State Security Department. It was a unit of considerable strength with up to 5,000 men at times. It participated in armed conflicts in Croatia, Bosnia and Herzegovina and later on in Kosovo, and admitted into its ranks various members of para-police and party units, some of them known criminals, including its commander Milorad Luković - Legija, formerly of the French Foreign Legion – the first defendant in the trial for prime minister Đinđić's assassination. In November 2001 this unit rebelled and blocked one of the main roads in Belgrade, in full gear, and demanded the deposing of the minister of the police and heads of the republic security service. This event served to publicly display its disagreement with the arrest of its members and other accused by the Hague Tribunal for war crimes on the territory of the former Yugoslavia. Seeking a compromise, the Serbian government deposed the leader of the republic security service and his deputy, going along with the Special Unit's request to appoint its candidates instead. Furthermore, the government abstracted the unit from the service and placed it directly under the cabinet and the internal affairs minister. From that time on the unit was out of sight of the public, which made increasingly overt guesses about the links between this unit and organized crime, as well as its role in the unsolved liquidations of opponents to Milošević's regime. After the assassination of Prime Minister Đinđić (March 12, 2003), the police investigation revealed not only what the public had already known (namely the link between the JSO and organized crime), but also direct participation of its members in the assassination. Thus on March 25, 2003 the Serbian government decided to disband the unit,[13] suspecting that one of its members (assistant to the unit commander, Zvezdan Jovanović) carried out the assassination of prime minister Đinđić, and that its incumbent commander (Maričić-Gumar) was one of Ivan Stambolić's murderers, bearing also in mind other evidence confirming the links between the unit members and the strongest criminal clan (the so-called Zemun Clan). However, most unit members were transferred to the Gendarmerie.

Another major aspect of the criminal and non-ethical legacy of our civil and military security services is found in their illegal interference in the lives of many citizens, which began at the very creation of these services. The scope of these activities is revealed by the number of files kept on the so-called internal enemies,

[13] Decision to disband the Special Operations Unit of the Ministry for Internal Affairs ("Official Journal of the Republic of Serbia", no 31, March 25, 2003).

extremists, cominformists (those who in 1948 sided with Stalin in his attacks against Tito), anarcho-liberals and other "proponents of anti-socialist ideas", i.e. people of different mind and opponents of the regime – their own citizens.

The gravity of the problem may be illustrated by the data of the first large "revision of the documentation" of the SFRY state security service, after the Brioni plenum (1966). The federal and republic state security services (UDBA) at that time had the total of 2,754,923 "personal files", i.e. 9,620 meters of material. In addition to active files recording the activities of adversaries and dissenters (emigration, clergy, cominformists and other proponents of "anti-socialist ideas"), these included materials of the police of the Kingdom of Yugoslavia as well as enemy and occupying forces from WW II (including the German Gestapo),[14] records of checks done for the purpose of issuing travel documents (so-called passport files), and checks on nominees for offices in social-political organizations and communities,[15] records on the reserve and demobbed army staff, etc. Out of the total number of "personal files" Serbia was to deal with as many as 692,250 and the federal UDBA 364,326 files. After the revision completed by the end of 1968, the federal and republic state security services retained 613.768 files. Thus, over two million files were destroyed or transferred to historical archives and other organizations (for instance the Institute for International Labour Movement), or ceded to military security services. As for Serbia, of the total of 692,250 files 503,800 were destroyed, 126,700 were given to historical archives, while 61,750 were retained. The opening of new files and their periodical revision naturally continued after that time, but the relevant data are not available.

The exact number of "active" files and those considered as historical material, which are today at the disposal of civil and military security services in Serbia and Montenegro is not known. It is believed that number of files of this kind ranges from 100 to 400 thousand. All these highly sensitive documents, or at least what has remained of them after the "cleansing" of information which may

[14] Part of these doubtless historical material has recently been given to the City of Belgrade Archives. In the absence of relevant legal regulations, this is clearly a gesture of the BIA's good will, and the agency apparently selected the transferred material. We can only hope that the agency leadership was guided by the interests of the people whose files these had been as well as the interests of their descendents.

[15] The concept of "social-political organization" in the SFRY included the League of Communists of Yugoslavia, Socialist Alliance of the Working People of Yugoslavia (SSRNJ), The Alliance of Trade Unions of Yugoslavia (SSJ), The Federation of Veterans of the People's Liberation War (SUBNOR) and the Socialist Alliance of the Youth of Yugoslavia (SSOJ), while the concept of "socio-political community" implied all territorial levels of power (municipality, city, autonomous province, republic, federation).

have incriminated the service members and their orderers, are still in the possession of the services concerned, and open to their abuse.[16] The governments of Serbia and Montenegro as well as the previous federal government (FRY) failed to demonstrate the required resolve in this matter and tried to deal with the problem by sweeping it under the carpet. Moreover, the files are still occasionally used for political showdowns on the Serbian political scene.

Looking for the answer as to how it was possible to distort the role of the state security service to that extent, we should recall that throughout the period from the end of WW II until July 2002 the legal framework for its operation did not exist. Not one of our security services (civil or military) was explicitly mentioned in a single legal regulation. They literally operated as the "secret police" since their structuring was a secret not only to the public, but also the legislative power.[17] In this way the services had for half a century developed a habit of acting outside clearly defined legal limits and of basically defining their own rules. The State security force was therefore "a state within a state", i.e. *power in themselves and by themselves*, while the aura of their secrecy and mystification of its role were crucially supported by a decade long subordination to the Communist Party which bestowed on the security force its own methods of organization and operation. Throughout this time and to this date, the state security services have had at their disposal all police authorities, along with the right to interfere in the work of the regular police and the licence to substitute certain competences of the police.

The attitude of the Democratic Opposition of Serbia, and then of the Serbian government, towards the issue of security services reform, was to put it mildly, unprincipled. In terms of facts, this view may be substantiated by the following three, in our view, key points: (1) the relationship towards the Special Operations Unit (discussed above), (2) the relationship towards the issue of opening the files, and (3) different approaches to republic and federal security services reforms.

[16] After October 5, 2000 the republic security service was for full four months headed by the man appointed by Milošević and it is quite clear that this was a time of "spring cleaning" in the service's archives. Even after the takeover of power in Serbia (January 2001), the files were not protected from alterations, destruction or falsification and are to this date under the control of BIA – the successor to the republic security service. Furthermore, the files of military security services, or those of the League of Communists have not been seized and protected against abuse either.

[17] Speaking about the legal framework for the activity of state security service, we do not have mind the Law on the bases of the state security system of 1984, since it was a typically "front-type regulation" which regulated only the common places and left it to the executive authorities and the services themselves to regulate the usual legal matter by their internal acts (establishment, functions, authorities, organization, manner of operation and responsibility of services).

In addition to what has already been said about the Serbian government's attitude towards the opening of files, we must add that the Democratic Opposition of Serbia included that particular issue among its pre-election promises, but then avoided to solve it. Its attempt at a decree regulating the possibility of Serbian citizens to see certain files (published in the "Official Journal of the Republic of Serbia, no. 31/2001) was ended by the Constitutional Court of Serbia ruling that the act was unconstitutional. The government failed to change its attitude in this matter during the subsequent adoption of legal regulations on the BIA.

A still more interesting example of unprincipledness is seen in the different attitudes towards the republic security service reform adopted by the Serbian government and political forces which supported it, on the one hand, and the FRY security services on the other. In the first case great care was taken to formally retain the transformed republic security service under the full control of the government, while in the case of reforms in the military security services and those within the foreign ministry a much higher degree of actual will for true reforms was manifested. It so happened that in the same period of time (July 2002) we obtained two diametrically opposed legal texts governing essentially the same subject matter.

The FRY law on security services regulated the issues of organization, functions, authorities and supervision of security services in a generally satisfactory manner. The power of external control was vested in the parliament, with correctly defined supervisory authorities, while the general legal framework for the operation of the services was adjusted in line with the relevant operating regimes of comparable services in democratic countries. As could be expected, the provisions of the law on parliamentary control could not be promptly enforced, mostly due to the balance of political parties' power in the parliament and the understandable need to develop a habit for this kind of control. The military security services were meanwhile (November 2003) placed under civil control, i.e. directly under the defence minister.

On the other hand, the above-mentioned abstraction of the republic security service from the Serbian internal affairs ministry and its transformation into the BIA was praised on the part of the former government, and especially its internal affairs minister, as the greatest achievement in police reform during the government's three-year terms of office. It is true that the law on the Security and Information Agency (referred to as BIA)[18] is the first law governing this service in the history of Serbia and one could, in that context, note that any legal framework for this service is better than none. However, this legal text offers solutions that are in terms of

[18] The Law was published in the "Official Journal of the RS", no. 42/2002.

their quality far behind the federal law on the security services of the FRY passed a fortnight before. Namely, they reveal an overt aspiration of the service to largely continue the practice of the previous secret police and preserve its outdated substance unscathed, by camouflaging it with a new form. The main deficiencies generally boil down to the fact that the possibility for the BIA's intervention in the police (Ministry of Internal Affairs) operations was retained, along with a large leeway for BIA members to use police authorities for wiretapping. Most importantly entire control over the BIA was reduced to two (semi-annual) obligatory reports to the National Assembly, leaving the guidance for the agency's work in all other respects to the government. The new BIA director, appointed by the government of Prime Minister Koštunica, announced impending changes of the law to ensure larger parliamentary control over the work of this agency.

Concluding remarks

The situation in the Serbian police at the end of 2004 is certainly better than in October 2000, but it is still very far from desirable. While appreciating the fact that police and security services reforms cannot be carried out in a short period of time, the Serbian government should first complete and adopt the police reform strategy. This strategy should give rise to a new vision and role of the police, followed by the subsequent appropriate changes to the police organization and personnel. The functional organization of the police and a staff devoted to its profession, ethics and the community are indeed the most important objectives of reform. The tasks of the highest priority for the government should include the adoption of a new law on the police to be enforced in a specific period of time and should ensure that the reforms take the desired and legal course.

The system of police training and education should also be given priority, primarily because it will educate the young police staff who will work in the reformed police the longest. Instead of doing just that, the previous government continued the education of four more generations under the old programme and this doubtlessly generated new problems. Incidentally, the system of police schools is extremely expensive, autistic towards its environment and irrational (three separate schools of cadet type), as well as burdened with a series of deficiencies, so that one could logically ask whether it is required at all and if so, what necessary changes need to be made to it. Experience and making comparisons show us that instead of the current type of schooling, it would be better to turn towards the kind of the police training that is relevant for practical work and covers career development as a whole.

Concerning the reform of state security services, both governments should be expected to start the process of clearing the legacy of BIA and its predecessors, as well as implementing the necessary, thus far missing, functional, organizational and personnel reforms. The BIA and other domestic intelligence-security services should become institutions capable of efficiently protecting the strategic national interest and should thus be placed under strict control. The citizens and values of democracy, legal state and human right must be protected from its activities. Essentially, it is necessary to seek the establishment of a new balance between the interests of security and those of individuals, i.e. a higher degree of protection of man and his private sphere from the interference of the state and its security structures. These desired objectives should be provided for by a more complete legal regulation of the agency's position, functions and authorities and especially its placement under the control of the democratic institutions of society.

In view of the above-mentioned and other characteristics of the inherited situation and reform objectives, on the one hand, and the inadequate attempt at reforms through the Law on the BIA, on the other, it is understood that the implementation of the required reforms in the service is an undertaking which will yet cause a lot of contention. Knowing all that, it is obvious that all thought of small personnel and organizational adjustments in the service as the maximum outcome of the reform will have to be abandoned. That has already been tried and would, if continued, only perpetuate the semblance of reform.

In predicting the prospects for future comprehensive reform in this sphere it is important to keep in mind the existence of certain reasons which have a powerful influence on slowing down the reform (the body of issues of the so-called transition justice and facing the past; the attitude towards The Hague Tribunal; the form, contents and prospects of the state union of Serbia and Montenegro; outstanding constitutional issues regarding the extent of decentralization and the concept of possible regionalization in Serbia; the expected resistance to reforms from the structures of the police and security services and their importance as mainstays of the political regime, etc.).[19] The experience of former socialist countries of Central and Eastern Europe may be of help in addressing some of these problems. Although the individual experience of each of these countries are in many ways rather specific, it is quite clear that some of them may still be used here.

[19] For more detailed elaboration of these issues see our text "Dvogodišnji bilans i perspektive reformi policije u Srbiji", in: Janković, P. (ed.), *Reforme sektora bezbednosti - zbornik predavanja,* Beograd: Centar za proučavanje odbrane i bezbednosti Instituta G17, 2003, pp. 79-93.

The success of the reform will largely depend on continuing international support and assistance, as well as the awareness that the problems inherited in the police and security services of Serbia and Montenegro, although huge, are still surmountable. Police reforms are necessary and possible and in order to succeed will require a resolute approach of the parliament and the government, widespread engagement of the civil society and adequate international assistance. The past four years in Serbia, and a few more in Montenegro could have certainly been used far better to implement reform, although it is true that the initial steps were after all made in this period. Still more importantly, the public must develop an ever more influential awareness of the fact that the reforms in this sphere are crucial for the establishment of security and the rule of law. Ensuring that the police and security services are capable of protecting their communities while at the same time respecting human rights, constitutes the objective of needed reform.

Appendix:

A review of the organizational structure of the Ministry of Internal Affairs of the Republic of Serbia

The complex organizational structure of the Ministry of Internal Affairs is made of three large parts: 1) units and services directly subordinated to the minister for internal affairs; 2) the Public Security Department, and 3) the Department of Finance, Personnel, Common, Administrative and Technical Affairs (established towards the end of November 2004). Department heads are assistants to the minister holding the rank of general. According to the Report on the work of the Ministry of Internal Affairs for the year 2003, the Ministry had the total of 38,519 employees (compared with the 53,580 anticipated by the Ministry's job categorization). Of the total number of the employed 4,514 had the status of "authorized officials", 28,815 that of a "policeman", 6,094 of staff with "specified duties" and 5,906 "others".[20] "Authorized officials" are members of the criminal police; "policemen" are uniformed policemen, employees with "specified duties" members of the fire fighting and certain other police units, while the category of "others" refers to auxiliary civilian staff. Authorized officials, policemen and staff with specified duties carry arms and have ranks equivalent to army members.

[20] The data are provided on the Ministry's web page at www.mup.sr.gov.yu.

1. Directly under the minister are the following units and services:

1.1. Cabinet of the Minister with four bureaus:
- Bureau for Strategic Planning and Analytical Reporting;
- Bureau for International Cooperation and European Integrations;
- Bureau for Cooperation with the Media;
- Bureau for Petitions and Grievances.

1.2. The Inspector General of the Public Security Department (an internal control organ under the minister – a position established in 2001 by a ministerial act and filled as late as 2003);

1.3. The Department of Organized Crime Suppression, formed in 2002 to comprise the following divisions:
- Division to combat organized financial crime, itself divided in six sections;
- Division to combat general organized crime, also with six sections;
- Division for investigation into war crimes and search for missing persons;
- Division for criminology technique with specific sections, laboratory and groups;
- Division for operational technique, analyses and logistics, with two sections and groups; and
- Division for special actions.

1.4. Department for systemic-legal affairs.

2. Public Security Department comprising the following organizational units:

2.1. The Operational Centre;
2.2. The Crime Investigation Directorate;
2.3. The Uniform Police Directorate;
2.4. The Security Directorate,
2.5. The Traffic Police Directorate;
2.6. The Border Police Directorate, with border police stations (39);
2.7. The Police Fire Prevention Directorate;
2.8. The Analytical Directorate;
2.9. The Communications Directorate;
2.10. Special units (3):
- The Gendarmerie (formed in 2001 to include a) staff units under a commander, organized in the form of divisions for operational affairs, intelligence and counter intelligence, communications, training, logistics and systems; b) anti-terrorist unit; and c) gendarmerie detachments);
- The Special Anti-Terrorist Unit (SAJ); and
- The Helicopter Unit;

2.11. The Police Brigade; and
2.12. Regional police centres (secretariats for internal affairs formed to cover the territory of a few municipalities) number 33 in total and are subdivided into:
- Local departments of internal affairs (126);
- Stations of general jurisdiction police (2339);
- Traffic police stations (51);
- Railroad security police stations (6);
- Police stations on permanent duty (5); and
- Police stations for security (2).

3. Department for finance, personnel, common, administrative and technical affairs comprises the following:

3.1. The Common Affairs Directorate;
3.2. The Administration Affairs Directorate;
3.3. The Directorate for IT and Systems;
3.4. The Catering and Lodging Directorate; and
3.5. The Directorate for Professional Education, Training, Advancement and Science, with three organizational units as follows:
- The Police College in Zemun (five-semester, about 400-500 students per generation);
- The Police Secondary School (four-year with about 350 pupils per generation);[21] and
- The Police Training Centre.

[21] According to the law, Police Academy is outside the interior ministry's structure and lasts four-years at university level; enrolls about 115 students per generation.

II

INTELLIGENCE SERVICES

Hans Born

DEMOCRATIC AND PARLIAMENTARY OVERSIGHT OF THE INTELLIGENCE SERVICES: PRACTICES AND PROCEDURES[1]

Introduction

Intelligence services are an instrument in the hands of the state institutions, which can be used both for the better and the worse. If the intelligence services are in the hands of responsible democratic leaders, then intelligence contributes to the democracy's ability to function well. This is can be learned from the history of the 20th century: intelligence played a crucial role in helping to defeat Hitler, it played a significant role in preventing the Cold War from turning into a nuclear war and intelligence kept the super power arms race from getting totally out of hand[2]. On the other hand, if intelligence services are in the hands of those who are interested in conflict and coercion, intelligence can be used for the worse. Therefore, it is essential to secure democratic and parliamentary oversight of the intelligence services.

Parliaments are regarded as the cornerstone of a democracy. No area or institution of the government can be exempted from parliamentary oversight and this includes all organisations of the security sector. The use of the term "security sector" rather than "defence sector" in this paper is deliberate, as the military is only one of the important guardians of the state. The security sector includes *all services that are legitimately authorised to use force or to threaten the use of force in protecting society and the liberty of its citizens*. The security sector

[1] This paper is based on a presentation with the same title, by the author at the NATO conference on "Intelligence ad Security Services in the 21st Century Security Environment", Sinai, 10-14 April 2002. This conference was co-organised by the Romanian Government and received support from the Grand-Duchy of Luxembourg. The author would like to thank Matias Tuler for his research work.

[2] Jeffrey Richelson, 1995, p. 431.

includes the military, police, border guards, paramilitary units, intelligence services and private security organisations. Parliaments have to develop a comprehensive security policy as well as keeping track of all security sector organisations.

This paper deals with procedures, laws, best practices and the organisation of the parliamentary oversight of intelligence services. Consecutively, it addresses the functioning of intelligence services, the role of government and judiciary and the best practices of parliamentary oversight of intelligence services

Relevance for Old and New Democracies

Democratic and parliamentary oversight of the intelligence services is important for at least five reasons.

Firstly, parliamentary oversight should ensure a balance between security and liberty. Liberty refers to privacy and civil rights, which are vital elements of every democracy. It is clear that if an intelligence service does not possess special powers, it is unable to protect the state and indeed the liberty of the citizens in an effective manner. On the other hand, if an intelligence service becomes too powerful, it could infringe upon both civil and citizens rights. Every democracy ought to determine its own choice regarding the balance between security and liberty, in a responsible fashion.

Secondly, in an open and free society, there is a strong tendency among the citizens to mistrust organisations involved in secrecy, such as the intelligence service[3]. Mistrust can only be avoided if the citizens are ensured, mainly via public debates, that the intelligence services pursue legitimate and democratically accepted objectives. Furthermore, it is essential that the citizens believe that the intelligence services operate within the law and are subjected to legal standards and independent oversight that is announced publicly. Only then can intelligence services earn both respect and legitimacy from the citizenry.

Thirdly, new democracies are in the process of transforming their intelligence services on the basis of a legal framework, in line with the democratic principles of a free and open society. This process involves moving away from a closed and repressive state apparatus towards a transparent and democratically accountable government service. This process should be placed in the wider context of the democratisation of post-authoritarian societies or one-party states, under the guidance of parliamentary oversight.

[3] Elizabeth Rindskopf Parker, 2001, p. 12.

Fourthly, the intelligence services are growing in importance as an area of governmental activity. In the mid-19th century, no more than a few thousand people in Europe were employed by the intelligence services. Today, approximately one million people are employed in the intelligence sector throughout the world. Indeed, this sector has now become a multi-billion dollar enterprise, involving satellites, antenna farms, high-tech computers, and aircraft packed with cameras and economic, political, social and military analysts. It goes without saying that such an important and costly sector of the government needs to be subjected to democratic oversight[4].

Fifthly, the intelligence sector is confronted with different post-Cold War changes in terms of new threats and risks. These threats include the proliferation of ABC weapons, terrorism, organised crime and the illegal trafficking of drugs and people etc. It is important that the intelligence services make the right choices under democratic guidance. One important element of democratic guidance is the proper tasking of the intelligence services, which is discussed in the following section.

Intelligence Services in Open and Free Societies

Intelligence services can be described as those governmental services responsible for the collection, processing and dissemination of information, in order to ensure the security of the society and the freedom of its citizens. Intelligence services mainly operate in a secret and clandestine manner. The types of threats to national security that might require action by the intelligence services are defined by law in many countries. These types of threats may consist of (1) espionage, sabotage, terrorism and subversion, (2) actions or intentions of foreign governments, organisations or individuals. Some countries, such as New Zealand, also include 'international and economic well-being' in their definition of security[5]. Intelligence services also engage in counter-intelligence, which is defined as "those activities which are concerned with identifying and counteracting the threat to security posed by hostile intelligence services or organisations or by individuals engaged in espionage, sabotage, subversion or terrorism"[6]. Additionally, intelligence services are involved in covert actions, i.e. secretly influencing or manipulating foreign governments, institutions, organisations and individuals. The goal of intelligence services is to provide the required valid and up-to-date information concerning

[4] Jeffrey Richelson, 1995, p. v.

[5] New Zealand Security Intelligence Service Act, cited on the website of New Zealand's cabinet.

[6] Nato Glossary.

national security issues to governmental policy makers. Democratic oversight of intelligence services is enhanced if the intelligence services work and are organised according to following principles.

Legal Framework

The general rule is that in a constitutional democracy, no powers can be granted to any governmental institution without a legal basis for doing so. The laws on intelligence services should define the status, the purview, operation, co-operation, tasking, reporting duties and oversight of the intelligence services. In addition, the use of specific means of acquiring information and keeping records containing personal details should be arranged by law as well as the status of the intelligence services employees[7]. Furthermore, executive orders and ministerial mandates plan the daily work of the intelligence services. This seems all taken for granted, but it was only in the late forties that, for example, the USA was one of the first countries to enact public laws for its intelligence agencies, something that was heretofore unprecedented[8].

Tasking and Reporting

In a democracy, the democratically elected authorities, such as the Head of State, prime minister or relevant cabinet ministers issue the intelligence services with tasks. Tasking is an important tool for the elected authorities in directing intelligence services to focus their attention on gathering information within the desired areas of intelligence and security. After the end of the Cold War and the dawn of the new security environment, which was characterised by fewer traditional threats and many new risks, tasking, or rather re-tasking, became an important issue with regards to intelligence services. Indeed, at this time intelligence services had to refocus their activities from old Cold War military threats towards post Cold War risks. Such change not only involves re-tasking, but also the realignment of missions, work, departments and jobs within the intelligence services.

The tasking should be in keeping with the legally defined purview of the intelligence services. Harvard University professor and former US deputy Attorney General Heymann[9] made a list of tasks, objectives and special powers, which are permissible in a democratic society. In Professor Heymann's opinion, the use of intelligence services for gathering information for foreign and

[7] See for example the Intelligence Services Act of the Czech Republic.
[8] Elizabeth Rindskopf Parker, 2001, p. 15.
[9] Philip B. Heymann, 2001, p. 3-4.

defence policy is legitimate. It is generally accepted that intelligence services use their specific capabilities in carrying out the government's foreign and defence policy. These special powers include the ability to secretly collect information, conduct covert operations, keep files on individuals, and carry out centralised information analysis. When these powers are aimed at foreign or defence policy they only ever rarely threaten the civil rights of citizens. However, when these powers are used for domestic reasons, they may constitute a threat to citizen's rights. Therefore, in many democratic societies, intelligence services have only very limited powers and functions with regard to safeguarding domestic security. The reluctance to use intelligence services for domestic purposes is based on the protection of human rights and the fear of intelligence services being misused for (party) political reasons. Therefore, intelligence services only play a role domestically in cases that present grave dangers to society, such as terrorist attacks and organised crime.

The intelligence services periodically report (generally once a year) or whenever desired to the relevant authorities, i.e. the Head of State, Prime Minister and relevant minister(s). In many countries, the intelligence services also send a public report to the parliament to be debated in the parliament's plenary. In addition, a classified report is sent to the parliamentary intelligence overview committee, who deliberate behind closed doors[10].

A Healthy Division of Labour Between the Intelligence Services

The third principle refers to the idea of that the more focused a department is, the more effectively and efficiently if will perform. Each intelligence service should have just one mission. Too many missions being performed by a single intelligence service implies an accumulation of power. The foreign and domestic intelligence services are separated in many countries for precisely this reason. These two services perform different missions and operate under different rules and laws. Domestic laws do not apply to intelligence gathered abroad and the laws of foreign countries do not apply to the domestic intelligence services.

Separation of Law Enforcement and Intelligence

Law enforcement agencies, such as the police and intelligence services have different purposes. Intelligence services collect relevant information on potential threats whereas the role of

[10] See section 5, Best Practices.

the police is to maintain law and order. Police work should not be mixed up with intelligence work. Intelligence services should not stop or arrest suspects whereas the police are not allowed to practice 'preventive intelligence work' before they have convincing evidence that a crime has been committed[11]. Therefore, intelligence services should not be involved in the business of 'spying' on its own citizens. Intelligence services are tasked only with carrying out counter intelligence activities within its society.

Professional Ethos

A fourth organising and functioning principle, is the adherence of intelligence services employees to a professional working ethos. The professional ethos includes a willing compliance to the state institutions and constitution, dedication to public service, performing duties efficiently and effectively, not abusing power and avoiding improper use of public money[12]. A professional working ethos can only be achieved when it is backed by the management of human resources that aims for professionalism, based on open recruitment as well as a reward and promotion system based on merit. Moreover, the quality of staff will be enhanced if given the possibility for internships at other relevant institutions in society (for example in anti-corruption units of commercial banks) or within intelligence services abroad.

Post Cold War and Post September 11 Challenges

The post-Cold War threats and especially the attacks of September 11 have put some of these elements under pressure. The terrorist threats and other new risks of the post-Cold War era blur the borders between internal and external security. Therefore these new risks and threats also blur the division of labour between domestic and foreign intelligence services and between law enforcement and intelligence work. All these agencies have to work closely together and conduct joint operations in order to coordinate their activities. All these joint efforts are necessary for protecting society and the liberty of its citizens against new risks. On the other hand, the oversight

[11] For the German situation, see Livingston in the Washington Post, October 19, 2001. For a general description, see DCAF paper on "Democracy and Intelligence" (forthcoming).

[12] These elements were derived from the UN International Code of Conduct for Public Officials, as endorsed by the UN General Assembly in 1996.

institutions, especially the parliament, should oversee that the civil rights of citizens are not impaired by the need for better protection.

Other Relevant Oversight Institutions: Government and Judiciary

Before dealing with the parliament, we turn to the government and the judiciary as two other oversight institutions, relevant for intelligence services.

The Government

In this paper, the term "government" refers to the top political level, being the head of state, prime minister and ministers as well as the departments headed by those ministers. The government has two types of relationships with intelligence. Firstly, the government is a consumer of intelligence services. The cabinet, ministries and other governmental agencies use intelligence for improving their decision-making. Within this context, it is important that a tasking system exists, as described above. The tasking system defines who is entitled to task the security services and under what conditions. The tasking system should be based on a clear hierarchy and set of rules and procedures. In doing so, the chance of political misuse of the intelligence services is minimised.

A second type of relationship between the government and the intelligences services is that the government is supposed to oversee the activities of the intelligence services. Many governments, such as the British or the Canadian Government, have established oversight boards or offices, which oversee the intelligence services' activities. These oversight committees ("watchdogs") are staffed with highly respectable and qualified individuals, such as (former) Members of Parliament and/or experts from ministries or academia. Its remit is usually to review the performance of the intelligence services in terms of efficiency, effectiveness and legality. Some review committees, such as the Canadian Security Intelligence Review Committee (SIRC) also investigate complaints.

Judiciary

Intelligence services function within the limits of the law, which is subject to judicial oversight. As some data collecting methods (e.g. eavesdropping methods) may limit or infringe civil rights, in most countries the intelligence services have to secure authorisation from the judiciary (the Attorney General). An attorney general can only work properly if he receives and considers

reports from the minister responsible for intelligence services and if he establishes rules and procedures for (dis)approving requests from the intelligence services for the application of certain data collection methods.

Learning from Best Practices

Three issues are relevant for understanding the context of best practices: contextuality, political willingness of parliamentarians and the meaning of 'oversight'.

Contextuality

Contextually refers to the topic of universal or relative democratic standards. The best practice of parliamentary oversight or the best way to carry out parliamentary oversight of the security sector simply does not exist. Moreover, accepted practices, legal procedures and parliamentary structures in one established democracy may be unthinkable in another one. This variety of democratic practices and systems is the essence of democracy: every country has the right to choose its own way of dealing with relations between the political leaders and the leaders of the security sector. Although there is no single set of norms for dealing with these relations, a general agreement exists that democratic and parliamentary oversight of the security sector is a 'sine qua non' condition for democracy.

Political Willingness of Parliamentarians

In many countries parliamentary oversight is hampered by the lack of (parliamentary) organisation, parliamentary staff and expertise. The best practices, as listed in the following section, show how parliaments deal with these barriers to effective oversight. We would now like to turn to the issue of political willingness as another important factor that hinders effective oversight.

Unless elected representatives have a commitment or the political will to hold the government accountable, no amount of constitutional authority, resources or best practices will make them effective. If the parliamentarians do not choose to use their power to evaluate the government, then constitutional or other legal powers will be of little use. Parliamentarians may be less interested in scrutinising the security sector for various reasons. The most important reason is party politics. More often than not, parliamentary political parties that are represented in government are not very keen to oversee their governmental counterparts in a critical manner. As a result, the (best) practices and tools of parliamentary oversight are not used to oversee the government, except during

scandals or in emergency situations. Another reason is that some parliamentarians think that the security sector is not relevant or crucial for the voters. As parliamentarians strive for (re-) election, they may turn their attention to other governmental sectors, such as employment issues, welfare, labour issues or pension system or simply the price of bread and gasoline.

The Meaning of 'Oversight'

Many different words refer to parliamentary involvement in the security sector. A first concept is 'oversight', which consists in over-viewing the government and setting broad guidelines for the government and its agencies. A second concept is 'good governance', which refers to a whole system of democratic management of the security sector, in which the parliament should play a significant role. Thirdly, 'control' is a commonly used concept. In the English language, "control" has a broader meaning than in many other languages. In English, control means to rule, to instruct or even to manage, as opposed to the stricter concept of 'to check'. Each concept has its own advantages. Good governance refers to a systematic approach while oversight stands for a broad approach and control signifies a powerful approach by the parliament with respect to the management of the security sector. We have used the concept of oversight in this case, because governance has too broad a meaning (in that it refers to the entire political system). The concept of control is not used as it has the narrow connotation of 'to check'.

It must be clear that each concept represents a specific and particular political system and culture. With regard to parliamentary oversight, the essence is to grasp the 'dividing line' between the parliament and government: to what extent should the parliament be involved in the activities of government? It is, of course, clear that parliamentarians do not command intelligence operations themselves. Too much parliamentary involvement in the intelligence services could impair its efficiency. But it must be equally clear that parliament and government have a shared responsibility concerning the security sector. The idea of shared responsibility is equally valid for the relationship between political leaders and leaders of the security sector. These two groups of leaders should not regard each other as adversaries with antagonistic goals. On the contrary, they need each other in order to achieve an effective security policy that meets both the intelligence services' requirements and societal requirements. And in fact, such shared responsibility also performs the important function of "checks and balances", ensuring that no single branch of government completely dominates or abuse its authority.

Shared responsibility implies that democratic oversight not only means commands and orders, but also incorporates dialogue and communication between political leaders and the leaders of the security sector. This communication should be characterised by mutual trust, effective lines of communication, mutual inclusion and the mutual invitation to express one's opinion. However, the idea of shared responsibility resulting in parliamentary complicity instead of parliamentary oversight should be avoided at all costs. Parliamentarians should not allow themselves to be used for the parochial interests of the intelligence services, i.e. to put forward the interests of the intelligence services without keeping an eye on the interests of other governmental services or groups or individuals in society.

A final remark on oversight deals with the distinction between democratic and civilian oversight. Civilian oversight is a pre-requisite, but insufficient condition for democratic oversight. This is what the authoritarian regimes of 20th century teach us. For example, Hitler and Stalin had strong civilian control over their military, but this type of oversight is not really desirable in a democratic society. In this respect, parliament plays an important role in safeguarding the democratic element of overseeing the security sector.

Some Best Practices

All best practices address the main task of parliaments, which is to keep the government accountable on behalf of the people. The best practices come from various countries of the Euro-Atlantic area, from both 'old' and 'new' democracies. It is most certainly not the case that the 'old' democracies have stronger parliaments than 'new' democracies. Indeed, the new democracies in particular, are afraid of former authoritarian rule, and take care to invest substantive powers in their parliaments. The practices mentioned below constitute a catalogue of possible practices, legal arrangements and organisational set-ups, facilitating effective oversight.

In a similar manner to the relationship between the government and intelligence services, two types of relationships exist between parliament and the intelligence services:

a. The parliament as a consumer of intelligence;
b. The parliament as an oversight institution.

Not all parliaments throughout the world are regarded as consumers of intelligence. The main reason is that parliaments are subject to political pressure that increase the chance of political (mis)use of intelligence services. Therefore, most parliaments and especially the parliamentary committees on intelligence services, limit themselves to the role of the institutional overseer of intelligence services. In some other countries, however, the parliament is a consumer of intelligence information. In these countries, such as

the US, the parliament uses intelligence information as an input for its decisions and debates on, for example, ratifying international treaties, participation in peace missions or decisions on trade issues. In these countries, an elaborate system of rules and practices is in place for safeguarding the proper use of intelligence by the parliament. Elements of such a system of rules and practices are:

- Making it clear to parliamentarians that open sources provide relevant information too (they should not solely rely on intelligence);
- Making parliamentarians familiar with the restrictions associated with classified information;
- Intelligence briefing only to parliamentarians with a responsibility in national security, i.e. members of the committee on defence, intelligence, home affairs;
- Preferably tasking and briefing only to the entire committee on intelligence services and not to individual parliamentarians[13].

The best practices mentioned below refer to the parliament's role as overseer of the intelligence services.

The Parliamentary Committee on Intelligence Services

Parliamentary committees are among the most powerful organisations involved in parliamentary work. Through committees, parliamentarians have the opportunity to organise their work and to focus expertise. Given the complexity of the security sector, a well-developed committee structure is needed if the parliament is to exert real influence on the government. Effective parliaments have committees for each of a government's policy fields; a parliamentary committee for intelligence services is no exception. Committees are vital because they are able to scrutinise the work of government and because they allow for direct communication between parliamentarians belonging to different political parties. An effective committee has the following features:

- Their functioning and powers are based on rules of procedure;
- They have control over their own schedules (agenda, issues, dates, frequencies of committee meetings), have greater latitude in the initiation and amendment of legislation;
- They make use of minority reports;
- There is continuous inter-committee coordination between the committees relevant to the security sector: defence committee, home affairs committee, budget committee and the foreign affairs committee;

[13] L. Britt Snider, February 1997.

- The chairman is a senior member of the parliament in the field of defence and security policy;
- The committee has the power to demand that ministers, civilian and military experts testify at hearings;
- The committee effectively uses experts from academia and NGOs;
- The committee has its own meeting rooms, staff, budget and documentation system;
- The committee normally meets behind closed doors (for security purposes) ;
- The committee reports annually to the Plenary of the Parliament (but is careful not to disclose classified information), followed by a public debate;
- The committee is entitled to request any information, provided that it does not disclose information on current operations or the names of sources and employees;
- The parliamentary committee on intelligence services is able to build up a dialogue and trust with the minister responsible and the intelligence services. Mutual trust is essential for exercising effective oversight;
- The committee may disclose any information after it (with a majority or qualified majority) has determined that the public interest would be served by such a disclosure;
- The committee does not limit itself to the information that is requested. On its own initiative, the ministry should provide information to the committee, if it thinks that such information is appropriate for complete understanding. If the ministry fails to do so, it may lose the committee's trust.

From this extensive list of best practices and rules on parliamentary committee for the intelligence services, it can be concluded that the parliamentary committee should receive a complete picture of the functioning of the intelligence services, with all the information about what the intelligence services are doing and how they are doing it, taking into account the restrictions associated with classified information. It illustrates the classified work of intelligence services on the ground, but that there are provisions for access to this information by designated personnel in the parliament, government and judiciary, in order to ensure effective oversight.

Making Full Use of Other Oversight Organisations In Civil Society

Parliament alone cannot guarantee effective oversight and hold the government accountable for all activities and policies within the security sector. Politicians do not have the time, resources or expertise to keep a close watch over the complex and large security sector. Effective parliaments:

- Make full use of the reports and the work of other state institutions responsible for over-seeing the security sector, such as the judiciary, accountants/auditor-general (e.g. checking the accounts, procurement, criminal behaviour);
- Invite experts from civil society to participate in parliamentary hearings;
- Order independent think tanks, research institutes and universities to carry out research/audits in specific fields of the security sector (e.g. crime, procurement issues, personnel policies etc);
- Ensure that NGOs can have access to all relevant public policy documents;
- Stimulate the existence and functioning of NGOs, such as lowering the bureaucratic barriers for legal recognition of NGOs or giving financial support.

An informed civil society is essential for the democratic oversight of the intelligence services. With an informed and concerned citizenry and responsible critical/investigative journalists, it is much less likely for intelligence services to practice illegal activities without defection. Therefore, it is essential that parliaments support initiatives that provide for an educated civil society.

Parliaments and Budget Control

Budget control is at the heart of parliamentary control. Most countries have developed or are developing a systematic approach for the evaluation and approval of budget proposals. The key to effective budgeting is transparency and accountability. Effective parliaments:

- Enact laws and procedures for installing transparency and accountability mechanisms, giving the parliament the power to enforce transparency and accountability;
- Ensure that all appropriate budget documents are available to the parliamentary committee on intelligence services;
- Possess information on all appropriate budget items (not only on final totals);
- Classified budget items are made available to a selected group of parliamentarians (the relevant committee);
- Demand that external auditors report to parliament about the financial state of affairs of each security sector organisation;
- Have the power to approve, disapprove or amend the budget (allocating funds);
- Have the power to approve or disapprove any supplementary budget proposals presented by the Minister.

The essence of budget control is that the parliament can oversee and if necessary change the government's priorities. By rewriting the governmental budget proposals, the parliament is able to redefine the priorities of the intelligence agencies. Parliament can

block the intelligence services from certain activities by denying funds; Parliament can also qualify or limit funds granted to the intelligence services.

Parliamentary Staff and Other Resources

Effective parliamentary oversight of the security sector requires expertise and resources within the parliament or at its disposal. However, the expertise found within parliament is not at par with that available to the government and the security forces. In most cases, parliaments only have a very small research staff, if any, whereas the government can rely on the staff of all ministries dealing with the security sector. In addition, parliamentarians are only elected to sit in parliament for a limited term, whereas for the most part, civil servants and military personnel spend their entire career in the civil service. The basic problem is that parliaments mainly rely on information emerging from the government and the intelligence services, yet they are supposed to be overseeing these institutions. This creates an asymmetrical dependency between parliament, government and intelligence service. The situation is aggravated by the closed nature of the security sector due to the its work, culture, education and secrecy laws. Effective parliaments have developed strategies to cope with this disadvantageous situation.

- They often make use of the expertise of NGOs in their work (see above, e.g., ordering research from think tanks, inviting civil experts to participate in hearings etc.);
- International parliamentary assemblies and international think tanks are becoming increasingly active in supporting parliaments. Parliamentarians are active in international assemblies, in which they exchange experiences and viewpoints with their counterparts from other countries;
- They have parliamentary staff members who support both individual parliamentarians and parliamentary committees;
- A civil service system for parliamentary staff is in place (recruitment, selection, career progression, etc); parliamentary staff members are acknowledged (senior or junior) experts;
- Both parliamentarians and parliamentary staff members follow national and international seminars and study tours;
- They possess or strengthen parliamentary research services and libraries.

Conclusion

Intelligence services can be used for better and the worse. They can be used for brutal wars abroad or calculated repression at home. Democratic guidance, especially parliamentary oversight, con-

tributes to a proper role and functioning of intelligence services in free and open societies. The oversight of intelligence services according to democratic principles includes the following elements:

- A legal framework for the intelligence services that defines the mechanisms for transparency and accountability, the organisation, activities and objectives of intelligence services;
- Parliamentary oversight that gives a distinct democratic dimension to the oversight, in addition to civilian and governmental oversight as well as oversight by special committees/offices - "watchdogs";
- A parliament with a strong parliamentary committee on the intelligence services, including adequate powers, sufficient resources and staff;
- The parliamentary committee has full access to classified documents, except information that concerns methods, sources or employees of intelligence services;
- Ultimately, the parliament defines whether information is classified or not;
- Governmental or executive oversight, preferably with the aid of committees, individuals or boards mandated to oversee the intelligence services;
- A clear tasking system by the governmental agencies for the intelligence services, based on a legal framework;
- An informed and well-established judiciary that oversees whether the intelligence services' activities are lawful.

All practices and procedures of democratic oversight are not a goal in itself. They try to realise an intelligence policy that is truly in the interests of society. They also try to establish a desired balance between liberty and security. For, on the one hand, security without liberty means authoritarianism While, on the other hand,liberty without security implies that one is not free from fear.

To establish best practices of parliamentary oversight or to tear down inappropriate practices is not only a matter of knowledge and expertise, but also of resolve and conviction. In this respect, the political willingness of individual parliamentarians is crucial. Are parliamentarians mindful of their oversight powers and responsibilities? Do parliamentarians duly exercise those oversight powers, in particular when their 'political friends' are in government? Are they prepared to make the effort to become acquainted with the complex issues at stake? Are they willing to invest time, energy and political goodwill in establishing a system of good governance of the security sector? In answering these questions, one can learn a great deal from parliaments of old and new democracies. Political willingness, however, cannot be taught.

PARLIAMENTARY CONTROL OR OVERSIGHT ON INTELLIGENCE SERVICES

Provisional List of Examples of Parliamentary Control and Oversight Structures

(Work In Progress)

Note: the word "Service" is used instead of the complete name of the respective Intelligence Service.

USA	There are congressional oversight committees in both Houses, with remits to authorise funding for intelligence activities and conduct investigations, audits and inquiries as may be required; the two committees between them have around 60 staff; access to information is almost unrestricted and the Director of Central Intelligence has a statutory duty to keep Committees 'fully and currently informed of all intelligence activities', but the agencies are not expected to reveal details of sources and methods.
Canada	The Security Intelligence Review Committee (SIRC) acts as a 'surrogate' of Parliament, with between 3 and 5 Members who are Privy Councillors (but not members of the House of Commons or Senate) appointed by the Governor; its remit is to review the performance of the Canadian Security Intelligence Service (CSIS), to investigate complaints, and to consider reports concerning immigration and citizenship applications; it has a staff of around 12; it has wide access to information under CSIS's control except Cabinet confidences. There is also a Special Committee on the Review of the *Canadian Security Intelligence Service Act* (*CSIS Act*) and the *Security Offences Act* was established by an order of the House of Commons dated June 27, 1989. This order, based on the stated requirement in section 56 of the *CSIS Act*, required the Committee to undertake a comprehensive review of the provisions and operation of both the *CSIS Act* and the *Security Offences Act* and to report its findings to the House of Commons.
Australia	The statutory Joint Committee on the Australian Security Intelligence Organisation (ASIO) reviews aspects of the activities of ASIO referred to it by the Attorney-General, the Senate or the House of Representatives, but excluding such matters as activities relating to foreign intelligence, matters that are operationally sensitive, and individual complaints; it reports its findings to the Attorney General and, with his permission, to Parliament; it receives regular informal briefings from the Director-General of ASIO and the Inspector-General of Intelligence and Security

Germany	A Parliamentary Control Panel is responsible for scrutinizing the work of the intelligence services. The Bundestag itself decides on the number of its members, its composition and its working methods. At present, it comprises nine members. The Panel can demand the submission of detailed information by the Federal Government on the federal intelligence services' general activities and on operations of particular importance. The Bundestag re-appoints the Parliamentary Control Panel at the beginning of each electoral term; until it does so, the Panel appointed in the preceding election, under the preceding electoral terms, continues its work.
UK	The British Parliament does not have a direct channel in monitoring the intelligence agencies. Instead, it monitors them indirectly by studying reports by a statutory oversight committee, the Intelligence and Security Committee. Although all nine committee members are parliamentarians, the committee does not report to the Parliament. Instead, the committee reports to the Prime Minister who appoints the members to the committee. While the Intelligence and Security Committee is the main body responsible for monitoring the activities of the intelligence agencies, it does not have full access to information.
Italy	A Parliamentary Committee composed of four deputies and four senators, appointed by the Chairmen of the two Houses on a proportional basis may request the President of the Council of Ministers and the Inter-ministerial Committee on Intelligence and Security to provide information on the essential lines of the Services.
Czech Republic	There is a special seven-member committee. However, Parliamentarians are not authorized to interfere with personnel affairs of the Service and its management. Upon request, the Service submits a report on its activities. Should the oversight body suspect that the Intelligence Service restrains or damages the rights and freedoms of citizens beyond the legal limits in carrying out its work, it has the right to request an explanation from the Director; and if it finds out that a Intelligence Service member has acted in conflict with law, it has the duty to notify the Service Director and the Supreme State Prosecutor
Romania	There is a Special Commission for Control over Intelligence Services. The Service submits reports to this Commission on request. It checks that Constitutional and legal provisions are being respected by the Service. It can examine cases in which there are signs of such violations and also the way budget drafts for the Service are substantiated. It interviews cadidates proposed for the leadership of the Service.
Netherlands	The Second Chamber has a standing Committee to control the intelligence and security services. Its members are the leaders of the political parties in Parliament. The Committee meets behind closed doors with the Ministry of Interior being present. The Service provides the Chamber with its own annual report. If the Service leaves its legal scope, the Committee and the Chamber have to interfere, and the Committee can thoroughly investigate alleged abuse.

Belgium	There is a Committee to control the Services. This Committee guarantees the rights of individuals laid down by the constitution and law, ensures the coordination and efficiency of the intelligence and police services. The committee has an investigative staff at its disposal. This staff is able to obtain the necessary information and documents. However, in case of physical danger to third parties, the Committee Chairman has the final decision. The intelligence services must disclose information to the Committee.
USA	There are congressional oversight committees in both Houses, with remits to authorise funding for intelligence activities and conduct investigations, audits and inquiries as may be required; the two committees between them have around 60 staff; access to information is almost unrestricted and the Director of Central Intelligence has a statutory duty to keep Committees 'fully and currently informed of all intelligence activities', but the agencies are not expected to reveal details of sources and methods.
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Romania	There is a Special Commission for Control over Intelligence Services. The Service submits reports to this Commission on request. It checks that Constitutional and legal provisions are being respected by the Service. It can examine cases in which there are signs of such violations and also the way budget drafts for the Service are substantiated. It interviews cadidates proposed for the leadership of the Service.
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Belgium	There is a Committee to control the Services. This Committee guarantees the rights of individuals laid down by the constitution and law, ensures the coordination and efficiency of the intelligence and police services. The committee has an investigative staff at its disposal. This staff is able to obtain the necessary information and documents. However, in case of physical danger to third parties, the Committee Chairman has the final decision. The intelligence services must disclose information to the Committee.

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http://www.gwu.edu/~cnss/oversight/legisover.html Legislative oversight in the United States, by James X. Dempsey.

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http://www.nato.int/docu/stanag/aap006/aap6htm NATO glossary

http://www.bis.cz/eng/a_zakony_153.html Intelligence Services Act of the Czech Republic

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Peter Gill

DEMOCRATIC AND PARLIAMENTARY ACCOUNTABILITY OF INTELLIGENCE SERVICES AFTER SEPTEMBER 11TH[1]

Introduction: The Need For Democratic Accountability

In the past thirty years throughout Europe, the Americas and more sporadically elsewhere the issue of how to institute some democratic control over security intelligence agencies has steadily permeated the political agenda. There have been two main reasons for this change. In what might be described as the 'old' democracies (North America, Western Europe, Australia and New Zealand) the main impetus for change was scandal involving abuses of power and rights by the agencies. Typically, these gave rise to legislative or judicial enquiries that resulted in new legal and oversight structures for the agencies, some of these achieved by statutes, others by executive orders. The best known examples of these are the U.S. congressional enquiries during 1975-76 (chaired by Senator Church and Representative Pike), Justice McDonald's enquiry into the RCMP Security Service in Canada (1977-81) and Justice Hope's into the Australian Security Intelligence Organisation (1976-77, 1984-85).

Elsewhere, this shift has been a central, and sometimes painful, aspect of the democratisation of formerly authoritarian regimes, both civilian and military. For example, the death of Franco in 1976 precipitated democratisation in Spain that included the de-militarization of intelligence[2]. Military rule ended in Brazil in 1985 though the military dominated National Intelligence Service (SNI) was not replaced until 1990 as part of a continuing process of de-militarization (Cepik & Antunes, 2001). During

[1]Paper prepared for the Workshop on Democratic and Parliamentary Oversight of Intelligence Services, Geneva, October 3-5 2002. The Workshop was organized by the Geneva Centre for Democratic Control of Armed Forces (DCAF).

[2] Giménez-Salinas A. (2002) 'The Spanish Intelligence Services,' in J.-P. Brodeur *et al* (eds.) *Democracy, Law and Security: Internal Security Services In Contemporary Europe*, Alershot: Ashgate, 2002.

1993-94 a more rapid transformation of formerly repressive security agencies was attempted in South Africa[3]. The other major examples of this transition since 1989 are the countries of the former Soviet bloc where no agency has been immune from the changes although the amount of real as opposed to nominal reform varies widely[4].

Whether scandal or the democratisation of former authoritarian regimes (and sometimes both together) have been the main impetus for change, the main emphasis of reforms has been on increasing the legality and propriety of security intelligence operations. Although in some cases attention was paid also to the issue of obtaining effective security intelligence (e.g. McDonald, 1981), the overall direction of change was to the better control and accountability of agencies whose past activities had been dominated by the surveillance of political opponents rather than genuine security threats.

But since the September 11 2001 attacks in New York and Washington DC, the debates around security intelligence have shifted to the contemplation of 'intelligence failure' and how future threats can be averted. This is most obviously the case in the US itself but the impact of the global 'war on terror' has been much more general. This repeats the historical pattern in the respect that regarding propriety has increased following scandals while intelligence 'failures' such as 911 give rise to increased concern with efficacy. In this atmosphere it is easy to see how the democratic gains of the last thirty years might be swept away in the naïve belief that agencies 'unhampered' by oversight requirements might somehow be more efficient and effective.

It is a mistake to view efficacy and propriety as being in a zero (constant) sum relationship such that gains in one are outweighed by losses in the other. Rather, they should be viewed as being in a non-zero (variable) sum relationship such that both can be improved. This is not to say that there is no tension between the two: it is quite easy to see how, in the short run, the ability to conduct surveillance of an individual or group may be reduced by the requirement to follow procedures that seek to protect privacy but, in the longer term, such procedures are required if a state is to be entitled to call itself democratic. These procedures should be designed in order that, even in the short term, the invasion of privacy is proportionate to the alleged threat but also to prevent it being directed at the wrong person or conducted in such a way as

[3] Joffe A.H. (1999) 'Dismantling Intelligence Agencies,' *Crime, Law & Social Change* 32: 325-46., 1999.

[4] For examples see: A. Rzeplinski, 'Security Services in Poland and their Oversight,' in J.-P. Brodeur *et al* (eds.) *Democracy, Law and Security: Internal Security Services In Contemporary Europe*, Aldershot: Ashgate, 2002. and Szikinger, 2002)

to amount to intimidation. Thus legal rules themselves may contribute to efficacy as much as to propriety.

But in the search for better public control of intelligence, improved legal rules alone will be insufficient. The task of democratisation and search for efficacy/propriety includes shifting both the legal contexts for intelligence work and the culture of the agencies. Although the process of achieving legislative change can itself be difficult and require considerable political will, there is a danger that, once it is achieved, it will be assumed that real change in the agencies and their behaviour will result. This is a dangerous assumption: new laws themselves may only achieve symbolic change[5] so that people can be reassured that problems have been dealt with. If they are not matched by even greater effort in implementing those laws then little that is real may change. Beneath the surface of new laws, what the agencies actually do and how they do it might remain essentially unchanged. Achieving cultural change in agencies that may have long histories of complete autonomy from outside control or influence is a long term project that may require even greater political will than achieving initial legal reform.

It is important to define some key terms[6]. 'Control' is relatively straightforward: it refers to the management and direction of an organisation and can be exercised at various levels, for example, if a Parliament passes a law relating to the mandate and operations of an agency then we can justifiably talk of 'statutory control'. Closer to the agency, we might talk of 'executive' or 'political' control where a member of a government (such as an Interior minister or Attorney General) may issue directions to an agency. Then, within the agency itself we might talk of administrative control by a Director including the promulgation of internal regulations and guidelines.

'Oversight' is often used interchangeably with 'review'. This may be because in some languages the terms are interchangeable. For example, in the French version of the Canadian Security Intelligence Services Act 1984, the term surveiller is used to describe what is described in the English version as 'review'. In early days of the Act there was some controversy surrounding the role of the Security Intelligence Review Committee (SIRC – see further below). Critics of its activism argued that 'review' was a post hoc activity whereas those advocating a more extensive role including, if appropriate, ongoing operations preferred to rely on surveiller. Thus, the interchangeability of the terms can disguise

[5] M. Edelman, *The Symbolic Uses of Politics*, Illinois: University of Illinois Press, 1964.

[6] M. Caparini, 'Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy,' Paper presented to *Workshop on Democratic and Parliamentary Oversight of Intelligence Services*, Centre for the Democratic Control of Armed Force, Geneva, October, 2002.

what is actually an important distinction, as we shall see in the discussion below. For the purposes of this discussion it is useful to adopt Caparini's usage: to use review to describe an ex post facto process and oversight to describe a process of supervision that might include ongoing activities[7].

Some Principles of Control and Oversight

Even a cursory examination of developments in different countries during recent decades indicates that there is no single 'rulebook' for the architectural design of democratic control and oversight or review. Clearly, the sets of legal and institutional relationships that emerge in any specific country will be the product of the unique culture, history and politics of those places. Thus, any comparative enterprise such as that providing the inspiration for this DCAF project must start with respect for these varying traditions. However, there is no point in a comparative analysis if the only objective is to provide an exhaustive description of the variety of practices. If academic social science is to contribute anything to a debate that concerns immediately both intelligence and political professionals then it must be to clarify and explore more general issues pertaining to the governance of intelligence so that they can inform the specifics of debates anywhere.

Much can be gained from the comparative study of security intelligence[8]. The use of security intelligence by states displays certain common features regardless of their precise form. For example, secrecy, a tendency to confuse 'security threats' with 'political opposition' and the use of 'extra-legal' methods to obtain information and disrupt opponents are common dynamics seen in many states. Also, it is possible to see the development of cross-national intelligence 'communities' so that the differences between national agencies may be less than might be assumed. To be sure, this tendency is clearest within coalitions of nations, for example, the UKUSA pact of Anglo-Saxon countries, especially their SIGINT agencies or the Warsaw Pact between what were 'counterintelligence states' in Eastern Europe. Elsewhere, and sometimes even within coalitions, there are fierce 'intelligence wars' between agencies but there are clear signs now of convergence between agencies in the context of the globalized 'war on terror' led by a hegemonic United States.

Still, the actual structuring of any particular state's security intelligence agencies and the appropriate forms of control, oversight or review will be determined finally by the particular political culture and traditions of that state. Therefore, it is idle to suggest that states might simply pick and choose from institutions operating elsewhere. Political institutions cannot simply be transplanted from one political system to another. However, studying institutions elsewhere may well help to prevent a state 'reinventing the wheel'. It is clear that states can learn from each other. So, in this paper, the object is not to lay down some set of hard and fast rules for effective public control; rather, it is to suggest that there are certain fundamental questions that have to be answered and certain basic principles that can be enumerated based on the study of intelligence reform in several countries.

The Figure 'Control and Oversight of Security Intelligence Agencies' summarises key relationships. The horizontal axis is based on the proposition that 'states' are not single entities: they operate at three main levels, the demarcation between them often indicated by secrecy barriers. First, there is the most secret level occupied by security and military intelligence agencies; second, the executive branch (or government) and third, the broader array of state institutions including elected assemblies, judiciaries and bureaucracies. Since we are concerned with the issue of public control, we must also include a fourth – non-state – level in our analysis, representing citizens, groups and social movements.

The vertical axis seeks to summarise, first, the different institutions and forms of control that need to exist at each level and, second, the complementary institutions of oversight or review. Forms of control become more specific the closer the level is to the agencies. The manifestos generated by political parties or social movements are not strictly-speaking a form of 'control' because they may have no impact on agencies but they will provide a general set of demands that might at some point inform more specific statutes or court actions. Some Parliaments pass more detailed legislation than others; but in most cases ministers are likely to provide yet more detailed directions for agencies. Some legislation actually requires ministers to provide directions, for example, the CSIS Act. The most detailed rules or 'guidelines' will be those developed with the agencies and are normally unpublished.

Clearly, the central institutions of control identified in the Figure also play a role in oversight. Indeed, in some parliamentary systems prior to intelligence reform, it was claimed that it was inherent in the constitutional process that there could be no independent oversight of security intelligence and that both control and oversight was provided by a single institution, usually a minister. This was certainly the case in the United Kingdom based on the doctrine of 'ministerial responsibility' to Parliament. Even though the inadequacy of this doctrine has now been acknowledged, we can see that agency directors, ministers, parliaments and some

[7] M. Caparini, 'Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy,' Paper presented to *Workshop on Democratic and Parliamentary Oversight of Intelligence Services*, Centre for the Democratic Control of Armed Force, Geneva, October, 2002, p. 5.

[8] G.P. Hastedt, 'Towards the Comparative Study of Intelligence,' *Conflict Quarterly*, XI:3, 55-72, 1991.

judges will exercise both functions. This is inevitable but only becomes a problem if there are no additional institutions of oversight with their own organisational basis.

Thus oversight institutions must also exist at each level, must report to those responsible for control at that level and will normally be located there (for example, agency, ministry, assembly). This location within agencies or ministries raises concerns as to the real extent of their independence. However, the danger of their being compromised can be reduced by securing their right to communicate with oversight bodies at other levels (see further below). Regarding 'level' one, it may seem odd to talk of oversight functions within agencies themselves but if oversight is only an external function then it becomes easier for agencies to see it as something troublesome that should be resisted. Instead, ideas of propriety must be internalised within the culture of agencies. Despite this, although internal oversight is a necessary condition for public control, it is not sufficient: it must be backed up by external oversight at 'levels' two and three.

Oversight bodies are usually quite small with limited resources, but their effectiveness can be enhanced in several ways. One way of seeking to protect their independence is to require them to copy reports to the oversight body at the next level. Depending on the precise institutional arrangements, this may be subject to some secrecy constraints but it will help to reduce the dependence of oversight on the agencies themselves. So, for example, if an internal agency body such as an 'Office of Professional Responsibility' reports to the Agency Director on some matter the report should also be made available to whatever oversight institution exists within the ministry, for example, an inspector general. Similarly, reports from inspectors general to the minister should be made available to the review committee at 'level' three, whether it is a joint parliamentary committee such as in Brazil or the UK or a non-parliamentary body such as SIRC in Canada. If reports cross the secrecy barriers existing between the different levels of the state then how is appropriate security of information to be maintained? Ultimately this has to rely on consultation and trust between institutions at different levels and the discretion exercised by those involved. This is particularly the case for those working at 'level three' who, elected or not, must provide some accounting to citizens. Clearly these people cannot simply reveal all they know to the public (hence the diagonal 'secrecy' line in the Figure) but they must be prepared to challenge the fetish of secrecy and reveal what they discover unless it would clearly damage the security of the nation or the rights of individuals.

Secrecy is relevant to intelligence in two distinct forms: the first seeks to ensure that state officials will only have access to information if they have been cleared by security vetting for access

at the appropriate level of classification. Normally, the higher an official is promoted or the nearer she is working to military or security matters, the higher the clearance she will need – for example, from 'confidential' to 'secret' to 'top secret'. Within the security intelligence sector the second dimension is compartmentalisation. Even though officials may be cleared to the highest level, it is still believed that the circulation of knowledge with respect to particular techniques, operations or targets should be minimised in the interests of security. Therefore individuals only have access to the information that they 'need to know'.

With this in mind, these dimensions of secrecy have many implications. For example, they may hinder the efficacy of intelligence by reducing the flow of information both within agencies and, even more, between them. The failure of agencies to share information through some combination of proper concerns for security and petty bureaucratic jealousies is a common feature of intelligence 'systems' but there is insufficient space to consider this fully here.[9]. Clearly, secrecy presents a major hurdle to be surmounted if public control is to be achieved. The ability of outside bodies to oversee or review intelligence agencies depends on their ability to obtain relevant information; if the agencies themselves will not provide it then those bodies are stymied because there will be little information available that is independent and useful. In most areas of state policy there is a broader 'policy community' of research organisations, 'think-tanks', lobbying groups, journalists and academics that can provide a source of information and ideas independent of the state but in the area of security intelligence it is only small. There have been numerous information and secrecy struggles between executive and oversight committees since 911, some of which are discussed below.

In general, it is most important that oversight institutions at different levels co-operate and help each other. However this cooperation does not come without difficulties since the primary organisational loyalties of agency staff, inspectors general and parliamentarians are very different. Unfortunately, without such co-operation oversight will be fragmented and consequently less effective. This becomes increasingly important because of what might be called the 'decompartmentalisation' of intelligence. For example, in Europe (well before 911) a convergence of various issues was evident in what Bigo[10] called the 'security continuum' (terrorism-

[9] For a recently declassified CIA study of this problem, see Center for the Study of Intelligence, 'Critique of the Codeword Compartment in the CIA,' Central Intelligence Agency, March 1997, accessed at www.fas.org/sgp/other-gov/codeword.html.

[10] D. Bigo, 'The European Internal Security Field: Stakes and Rivalries in a Newly Developing Area of Police Intervention,' in M. Anderson & M den Boer (eds.) *Policing Across National Boundaries*, London: Pinter Publishers, 1994.

drugs-'organised crime-illegal immigrants-asylum seekers). 911 has reinforced this as is evidenced in institutional form in the symmetrical convergence of what used to be relatively distinct fields of intelligence: military, foreign, domestic/internal, law enforcement. If the control of intelligence networks is to be remotely effective then there must also be an oversight network.

Has 911 Reversed the 1990s Trend Towards Democratisation?

In order to provide an initial evaluation of the impact of September 11 2001 on the relative strengths of control and oversight, it is proposed to discuss briefly some of the actions taken by executives, oversight committees, courts and judges. Most of the examples are taken from Canada, the US and UK.

Control

Unsurprisingly, political executives responding to a perceived 'failure' on the scale of 911 will try to increase their capabilities both of a) action/power and b) information/intelligence. In the last year one can see changes made in each of the forms of control shown in the Figure. For example, new statutes have been passed: in Canada the Anti-Terrorism Act, in the US the Patriot Act and in the UK the Anti-Terrorism, Crime and Security Act. Each of these extends the legal powers of governments to carry out surveillance and act against individuals and groups identified as terrorist or, especially in the case of the UK, engaged in other serious crime.

But it is not just legal rules that have been re-written. Probably the most dramatic assertions of power have been those in the military field, but beyond the scope of this paper, especially those involving the extension of the traditional right of national self-defence to encompass pre-emptive attacks. In the wake of the intelligence scandals and inquiries of the 1970s the US Congress sought to restrict the autonomy of the intelligence agencies[11]. Many of these restrictions are now being modified if not abandoned. For example, questions have been raised concerning the extent to which the expansion of US Special Forces operations overseas has been consistent with the requirement for prior notice being given to the Intelligence Committees[12]. Another restriction was the erection of a 'firewall' between information generated for intelligence purposes and that used for the purposes of law enforcement evidence. Since the 1970s the increasing co-operation between military,

[11] For example see L.K. Johnson, *A Season of Inquiry: The Senate Intelligence Investigation*, Lexington: University Press of Kentucky, 1985; Olmsted, 1996.

[12] *New York Times*, Aug 12, 2002.

intelligence and law enforcement agencies in the targeting of organised crime and the increased use of tactics of disruption (rather than arrest and prosecution) had already put pressure on this division. In the wake of 911 that pressure has increased tremendously. This can be seen clearly from the dispute over the uses made of information obtained through wiretaps authorised by the special court established by the Foreign Intelligence Surveillance Act (FISA). After a series of court decisions the special appellate panel of the Foreign Intelligence Court of Review upheld the Patriot Act's grant of increased powers so that prosecutors would be permitted to use information obtained from FISA authorised interceptions in the prosecution of those accused of terrorism.[13] Ironically, this decision came shortly after it was revealed by the Senate Judiciary Committee that in 75 warrant applications, mainly during the Clinton administration, the FBI and Justice Department had misled the FISA as to the actual existence of the 'firewall' and information gathered from intelligence taps was used freely in bringing criminal charges.[14]

In the US itself a major manifestation of the Presidential need to be seen to be in control is visible in the plans to re-organise security intelligence structures. Legislation has been passed to create a new Department of Homeland Security (DHS). This proposal seems to have been guided by two main arguments: first, that the 'failure' of 911 was largely a failure to coordinate intelligence and security and second, that a grand political gesture was required to convince the US public that 'something is being done' to improve security. Thus the plan is based on the strategy of combining previously disparate security organisations in the apparent belief that increased hierarchical definition and coordination will improve matters. This strategy might well be criticised. For, hierarchical forms of organisation are infamously poor at effectively developing and disseminating accurate information, but the main opposition to the plan in Congress was less about its wisdom per se than directed towards accompanying Presidential assertions of power. For example, the executive wanted to exempt the DHS both from access to information rules with respect to 'critical infrastructure' information[15] and from whistleblower protection[16]. Consistent with an earlier Presidential order barring unionisation for over 500 employees in parts of Justice Department[17], DHS employees will enjoy fewer employment rights than elsewhere in the federal government.[18]

[13] *New York Times* Aug 1, 2002; *New York Times* Nov 24, 2002.
[14] *New York Times,* Aug 23, 2002.
[15] *Washington Post*, July 17, 2002; See also *Washington Post* Feb 24, 2002.
[16] *New York Times,* June 27, 2002.
[17] *New York Times,* Jan 16, 2002.
[18] *Washington Post,* Nov 21 2002.

It remains to be seen whether the DHS will succeed in its aim of co-ordinating domestic security programmes. The original White House proposal did not give much prominence to intelligence co-ordination. Finally, the Act establishes a division for 'Information Analysis and Infrastructure Protection'. Its analyses and warnings will be developed from a combination of products passed by the CIA, FBI etc. and information gathered by, for example, border guards and secret service who are to be brought into the department[19]. It is hard to see how this will achieve any co-ordination of security intelligence in the notoriously fragmented US 'community'. The most likely future scenario is of competing analytical centres with the presidency left to pick out the preferred intelligence.[20]

There are already signs of a politicisation of analysis in the reports that the Pentagon has established a new analytical branch with the task of resifting information in the search for the elusive 'intelligence' proving a link between the 911 attacks and Iraq after the failure of CIA analysts to do so[21]. More generally, the Pentagon is reportedly developing the infrastructure for increased covert operations (LAT Oct 27 2002).

The FBI remains outside the DHS apart from its critical infrastructure component that will be transferred. But the FBI itself has not escaped the reorganisation efforts. In fact, CIA personnel were deployed to advise the Bureau on establishing its Office of Intelligence[22]. However this and increasing the proportion of agents working on counter-terrorism have not proven that the Bureau can transform itself from a law enforcement into domestic security intelligence agency. There is clearly a debate underway in Washington DC as to whether the US should separate the two functions as Canada did in 1984 and as is exemplified in the separation of police and security service in the UK[23].

Of course, if executives are to deploy their new powers effectively then they depend on intelligence. Some highly significant shifts have been made in the attempt to increase both the quantity and the quality of intelligence developed with respect to 'terrorism'. This is hardly surprising but does reflect serious distortions in the understanding of just what kind of failure 911 represented. Arguably too much of the congressional and media discussion since 911 has centred on the search for pieces of information that would, it is assumed, have enabled the 911 attacks to be predicted

[19] *Washington Post* July 18 2002; *New York Times* Nov 20, 2002.
[20] Federation of American Scientists, Secrecy News, Sept 9, 2002.
[21] Guardian, October 9, 10; *New York Times,* Nov 3, 2002.
[22] R.Mueller, Testimony of Robert S. Mueller III, Director FBI, before the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, October 17, 2002.
[23] For example, see *Washington Post,* Nov 16, 2002.

and then prevented. If not the search for the 'smoking gun' then perhaps the search for the 'smouldering datum'! Given what is known about the modus operandi of those carrying out the attacks, it is extremely unlikely that such a piece of information exists. Nor was it just a case of the system failing 'to join the dots' between pieces of data so that warning could have been provided though this starts to get closer to the real failure of US intelligence: the failure of processing and analysis.[24].

Analysts have always been the poor relations of gatherers within intelligence communities: they enjoy neither the reputation for 'derring-do' associated with HUMINT nor the capacity to generate large profits for equipment suppliers associated with TECHINT. Certainly there were failures in gathering prior to 911, for example, the failure of FBI and CIA[25] to develop human sources home and abroad. But the US intelligence 'community' was already awash with data and it is far from clear that increasing the flow further will enhance the ability to prevent further 'failures'.

There are numerous examples of this desire to increase the gathering of information reflected in changes in the law or, in some cases, executive assertions that previous law does not apply. The clearest example of the latter is detention without trial, both of two US citizens and 1200 non-citizens.[26] The clear purpose of this is to gather information; whether people are ever placed on trial is a subsidiary consideration. The desire to gather information has led not only to US agencies cooperating abroad with agencies long associated with human rights abuses, e.g. Pakistan[27] but also transferring individuals arrested in one country to another 'that is able to extract information from them' for passing on to the US[28]. Transnational information exchange is one thing, brokering the use of torture is another.

Regarding TECHINT, in both the US and Europe executives are seeking improved access to electronic data. For example, the European Union has amended its 1997 Directive on Privacy so that obligation of communications service providers to erase traffic data is deleted and so that they retain data for 12-24 months[29], 1). The EU and USA are also discussing an information exchange agreement between Europol and US agencies that appears unlikely to include the normal EU data protection provisions[30].

[24] For example, R. Whitaker, 'A Poor Bargain,' New Scientist 174, June 29, p.26, 2002.
[25] R.Baer, *See No Evil*, New York: Crown Publishers, 2002.
[26] *New York Times,* June 23, 2002; HRW Aug 15, 2002.
[27] *Los Angeles Times,* Aug 25, 2000.
[28] *Washington Post,* Nov 1, 2002.
[29] *Statewatch,* 12(3-4) 2002.
[30] *Statewatch*, Nov 29, 2002, press release.

As well as executive assertions of power both to act and gather information, there have been significant struggles over 'information control' between executive (and agencies) and oversight bodies. The notion of 'executive privilege' in the US and the UK Official Secrets Acts are all premised on the belief that executives should be the sole determinants of what security information, if any, is passed to assemblies. For example, the UK Intelligence Services Act 1994 states explicitly that the 'gatekeeper' for information made available to the Parliamentary Intelligence and Security Committee is the Minister.[31]

In general, the more counter-terrorism is viewed as 'war' then the greater the emphasis given by executives to 'secrecy' (both as counter-intelligence and as an essential prerequisite for 'surprising' enemies). There are several areas in which the US executive has sought to reduce the flow of information. In a memo to federal agencies Attorney General Ashcroft encouraged resistance to freedom of information requests – not in relation to security but more broadly in relation to 'institutional, commercial and personal privacy interests.[32]. The Congressional Judiciary Committees criticised the Justice Department for seeking to deny information regarding its counter-terrorism policies under Patriot Act.[33]

The Joint Inquiry into 911 established by the two intelligence committees has also been critical of attempts by the Executive to deny them access to information, for example, the refusal by the FBI to make available for testimony an informer and his handler[34] and that of the Director of Central Intelligence to declassify references to the Intelligence Community providing information to the White House[35]. For those more familiar with Parliamentary regimes, this denial is probably less surprising. For example, in the Canadian Security Intelligence Service Act 1984 Cabinet documents are explicitly excluded from the general rule that SIRC has access to all information (CSIS Act s.39).

In the struggle for information control in the US the executive has also complained about the leaking of information from House and Senate Intelligence Committees regarding NSA interception of two 'warning' messages on Sept 10 2001 that were not translated until Sept. 12. In the face of these complaints, the committee chairs requested a FBI investigation of the leaks.[36] Thus

[31] P, Gill, 'Reasserting Control: recent changes in the oversight of the UK Intelligence community,' Intelligence and National Security, 11(2), pp. 313-31, 1996)

[32] *San Francisco Chronicle* Jan 6, 2002, Guardian Mar 6, 2002.

[33] *Washington Post,* Aug 21, 2002.

[34] *New York Times,* Oct 6 2002.

[35] E.Hill, Joint Inquiry Staff Statement, Part I, House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence, September 18, www.fas.org/irp/congress/2002_hr/091802hill.html, 2002.

[36] *Washington Post,* June 21, 2002.

the answer to the question 'who guards the guards who guard the guards' is….'the guards'! It is to the impact of 911 on oversight that we turn now.

Oversight

Oversight is an extremely difficult task to perform in the security intelligence area if for no other reason than the all-pervading secrecy (see above). The normal dependence of overseers for information on the agencies themselves may result in the undermining of the whole process. The example of the FBI misleading the FISA court was given above. Another interesting insight into the problems here was provided by Guardian journalist, Martin Bright who appeared before the UK Special Immigration Appeals Commission that hears challenges to minister's decisions on detention and deportation on security grounds. He described the types of information presented by the agencies: a small number of government documents including intelligence, court documents from trials and press cuttings. Since the last of these are often based on secret briefings by intelligence officers to grateful journalists, their production as independent 'evidence' is misleading, to put it mildly.[37]

The pressure on overseers generally to 'look the other way' is likely to increase following failures such as 911 and nowhere will this be greater than at levels one and two (see Figure) where there will be enormous political pressure on the ministries and agencies to deliver. Little has emerged of how these 'internal' oversight bodies have been performing since 911 but one example is that of the Office of Inspector General in the Justice Department investigating 9 allegations of excessive force, illegal detention etc. under the Patriot Act that was to present a report to Congress in October on treatment of 911 detainees.[38]

'Internal' oversight at levels one and two is very important-without it those working inside the system may more easily regard oversight as simply the product of meddlesome outsiders that should be resisted – but that at level three is the most crucial if public confidence in the security intelligence agencies is to be maintained. Here, the most systematic review or oversight is likely to be provided by specialist committees either inside national legislatures, for example, the Intelligence Committees of the US Senate and House of Representatives[39] and the joint committees made up of members of both houses in the UK and Brazilian Parliaments or

[37] *Observer*, July 21, 2002.

[38] Federation of American Scientists, Secrecy News, July 16, 2002.

[39] For overview see P.M. Holt, 'Who's Watching the Store? Executive-Branch and Congressional Surveillance,' in C. Eisendrath (ed.) National Insecurity: US Intelligence after the Cold War, Philadelphia: Temple University Press., 2000.

outside such as SIRC in Canada and the Committee for Monitoring of Intelligence, Surveillance and Security Services in Norway. The other potential oversight institution at this level is judges who, in some countries, are involved in the authorisation of warrants for intrusive surveillance (in terms of the earlier discussion of terminology this role involves elements both of control and oversight). Also, more episodic review may be provided by courts.

Legislative and Other Committees

In the US the primary effort of the congressional committees has been its investigation of the 911 'failure'. For example, a report of the Subcommittee on Terrorism of the House Intelligence Committee noted the lack of HUMINT in CIA and poor dissemination to other agencies; that FBI counter-terrorism was hindered by decentralisation and the culture of 'crime-fighting'; and that the NSA needing to be more proactive in gathering.[40] The major congressional effort in the year following September 11 was a joint inquiry by the two Intelligence Committees. This identified seven areas of investigation including: evolution of the terrorist threat to US and the Government's response; what the Intelligence Community (defined as 14 agencies) knew prior to 911; what the Intelligence Community has learned since 911 about perpetrators and clues to explaining the failure; what has emerged about systemic problems impeding the Community; how the Intelligence Community interacts with each other and the rest of the Government in countering terrorism. The overall interim conclusion was that:

> the Intelligence Community did have general indications of a possible terrorist attack against the US or US interests overseas in the spring and summer of 2001 and promulgated strategic warnings. However, it does not appear to date that the Intelligence Community had information prior to September 11 that identified precisely where, when and how the attacks were to be carried out.[41]

The concern of senior members of the inquiry at what they described as inadequate co-operation from the executive branch led them to endorse the idea that a separate commission of inquiry into 911 should be established.[42] This idea had been growing in strength for some months, was supported by the families of victims

[40] STHS, 'Counterterrorism Intelligence Capabilities and Performance Prior to 9-11,' Report of the Subcommittee on Terrorism and Homeland Security of the House Permanent Select Committee on Intelligence, July, 2002.

[41] E. Hill, Joint Inquiry Staff Statement, Part I, House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence, September 18, 2002, www.fas.org/irp/congress/2002_hr/091802hill.html.

[42] Federation of American Scientists, Secrecy News, Sept 19, 2002.

of 911 and the House of Representatives had voted to support the idea in July. The White House had opposed the move, saying it would distract the agencies from their primary tasks but on September 20 signalled it would abandon its opposition[43]. However, it was only after further wrangling between White House and Congress that agreement was reached in the last session before Congress adjourned for the year[44] and the 10 member Commission, required to complete its work within 18 months, is to be headed by Henry Kissinger.[45]

In Canada the main burden of oversight at this level is the responsibility of the Security Intelligence Review Committee (SIRC). Members (there are currently three but may be up to five) are appointed by the PM and serve part time. SIRC has a full-time staff of 16 and two main functions: to review the activities of CSIS and investigate complaints about the Service. The Committee may also hold hearings on challenges to CSIS security assessments. Overall, SIRC regards its role as reviewing whether CSIS 'has acted appropriately and within the law'.[46]. Building on previous reviews of CSIS' counter-terrorism work, SIRC established the following objectives for its study: 'the reach and focus' of CSIS investigation of Sunni Islamic extremist activities; the 'nature and quantity of assessments, analyses' and other advice disseminated to government and law enforcement; and the 'character and quantity of information exchanges' with allied services.[47] SIRC made no claim that its review was comprehensive, saying that it concentrated on how the Service ran its investigation, its analytical outcomes and the advice disseminated to government. Its conclusion was very similar to that of the US Joint Inquiry Staff Report quoted above:

> Although none of the intelligence products or threat warnings we reviewed pointed directly to the events of September 11, the Service clearly was aware of the potential for Al Qaida-inspired terrorist attacks of some kind and communicated this information to the appropriate bodies in government. In the Committee's view, however, none of the advice or communications the Committee reviewed warned of a threat sufficiently specific in time or place to have alerted government authorities to the events of September 11.[48]

[43] *New York Times,* Sept 21, 2002.

[44] *New York Times,* Nov 15, 2002.

[45] *New York Times,* Nov 28, 2002.

[46] SIRC Report 2001-2002: an operational audit of the Canadian Security Intelligence Service, Ottawa: Public Works and Government Services, Canada, 2002, p. 3.

[47] SIRC Report 2001-2002: an operational audit of the Canadian Security Intelligence Service, Ottawa: Public Works and Government Services, Canada, 2002, p. 5).

[48] SIRC Report 2001-2002: an operational audit of the Canadian Security Intelligence Service, Ottawa: Public Works and Government Services, Canada, 2002, p. 7.

By comparison with the extensive external inquiries in the US and even the more modest SIRC enquiry, that in the UK has been minuscule. The 2002Annual Report of the Intelligence and Security Committee identified some resource pressures in the Security Service, Secret Intelligence Service and Defence Intelligence Staff (para 61), referred to a Joint Intelligence Committee July 2001 assessment that al-Qaeda attacks were in the final planning stages but that timings, targets and methods were unknown (para.65); noted the re-deployment of staff post-911 (paras. 67-9) and the increased Security Service resources in collection and dissemination (para. 72) but, significantly, said nothing about analytical deficiencies. Finally, it noted the lack of linguists (para. 77).

Comparing these three reports, it is noticeable that they are all entirely concerned with issue of 'efficacy'. Was there anything that the agencies could have done to prevent the September 11 attacks? The only acknowledgement of propriety issues is the SIRC comment that their review did not examine the compliance with law and policy of CSIS warrants and handling of human sources[49]. It is also important to note the significant methodological differences between these reviews, largely but not entirely determined by the availability of staff. The US Joint Inquiry team had 24 researchers divided into five investigative teams that interviewed officials, reviewed documents and submitted questionnaires not only at the FBI, CIA and NSA but also other departments.[50] We might assume that about ten of SIRC's staff at most would have been involved in its 911 inquiry and they made no claim to have examined 'all the raw intelligence' available to CSIS.[51] But these staff would also have carried out interviews and reviewed documents.

The UK effort, by comparison, was hampered from the start by the fact that half of the nine-person committee (including the Chair) was newly appointed after the 2001 election. The members themselves 'took evidence' over the year from 37 witnesses (ministers, heads of services and other officials) and made 'visits' to the agencies. But what might properly be described as 'investigative' work fell to the single investigator who was tasked to carry out five investigations during the year none of which appear to have concerned 911.[52] The conclusions drawn by the I&SC appear to have been based entirely on briefings from agency heads; at least, there is nothing in the Report to lead one to suppose otherwise.

[49] SIRC Report 2001-2002: an operational audit of the Canadian Security Intelligence Service, Ottawa: Public Works and Government Services, Canada, 2002, p. 5.

[50] E. Hill, Joint Inquiry Staff Statement, Part I, House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence, September 18, 2002, www.fas.org/irp/congress/2002_hr/091802hill.html.

[51] SIRC Report 2001-2002: an operational audit of the Canadian Security Intelligence Service, Ottawa: Public Works and Government Services, Canada, 2002, p. 5.

Courts and Judges

It is in the US where security intelligence issues are most likely to end up in court, though even here, special arrangements have been made to hear some cases, e.g., FISA courts. But the Bill of Rights remains a fertile field within which lawyers have sought to test the constitutionality of some of the executive and legislative measures taken since 911. For example, federal judges in various parts of the country have ordered an end to secret deportation hearings, have tried to limit the executive's use of the material witness law to sustain unlimited detention and have ordered the executive to publish the names of the 1200 people detained after 911[53]. A federal judge in LA ruled as unconstitutional a 1996 law making it a crime to provide 'material support' to any foreign organisation deemed by State Department as 'terrorist' on the grounds that groups have no chance to defend themselves[54] but prosecutors continue to use the law pending appeals.[55]

In the UK one of the most controversial elements of the Anti-Terrorism, Crime and Security Act was that it empowered the Government to detain without trial non-citizens who the Government could not deport because of fears for their safety in their home country. The Special Immigration Appeals Committee ruled this to be discriminatory and therefore contrary to the Human Rights Act 1998 because it applied only to non-British citizens. However, this decision was reversed subsequently in the Court of Appeal.

Finally, what examples have there been of 'oversight' taking place at level four? First, a number of the cases reported above have been challenges supported by civil liberty groups such as the American Civil Liberties Union who have filed 24 relevant lawsuits since 911[56] and Liberty in the UK. Second, there have been efforts at more wide-ranging critiques of executive initiatives: for example, The Electronic Privacy Information Center (EPIC) and Privacy International produced a joint report regarding the impact of current and proposed laws in 50 countries since 911. It identifies four main trends: swift erosion of pro-privacy laws (as in the EU example above); greater data shar-

[52] I&SC, Annual Report, Intelligence and Security Committee, Cm, 5542, June, 5, 29-31, 2001-2002.

[53] Los Angeles Times, Aug 6, 2002.

[54] *New York Times,* June 24, 2002.

[55] *Washington Post,* Oct 15 2002.

[56] Wired News, Oct 16, 2002.

ing between corporations, police and security agencies; greater eavesdropping (see above); and, sharply increased interest in people-tracking technologies.[57]

Conclusion

What are the lessons for the future of the control and oversight of intelligence of this necessarily brief review of some developments in the last year? Clearly, the impact of September 2001 is still working through intelligence and governmental systems across the world and will do so for the foreseeable future. It is not possible to predict the direction of these changes, especially given the essential uncertainties surrounding the outcome of an US-led attack on Iraq and of further attacks by al-Qaeda. But if much has changed in the security intelligence world in the past year, it is still important to maintain a grasp of some hard-learned lessons so that the democratic gains of the 1990s are not squandered in a security panic in the 2000s.

First, we should not accept the 'balance' metaphor: rights relating to privacy, speech etc. cannot simply be weighed against security factors. Limitations on rights can only be justified in terms of proportionality to the nature and size of the security threat.[58] Reductions in rights and freedoms do not make for greater security, they make for less democratic societies in which the possibilities of abuse and harm by the state or vengeful populations are increased.

Second, (often very small) oversight bodies at different levels must co-operate with each other, including sharing information wherever possible subject to minimal necessary secrecy requirements. The trap to be avoided is that oversight itself becomes compartmentalised as it is in the UK where the Government still denies the Parliamentary Committee access to the confidential annexes of reports made by the judicial commissioners regarding interception warrants.[59] Though the term intelligence 'community' often attracts hollow laughter because of the inter-agency conflicts and 'turf wars' that take place, we must acknowledge that ever-increasing sharing of information is occurring both within and between public and private intelligence sectors. This is clearly necessary in the interests of efficacy but also raises higher the potential risks of abuse, for example, by the sub-contracting of operations to agencies less imbued with a culture of human rights. Oversight bodies, both within particular countries, and in different countries must seek to assist each other; what is needed is an oversight community.In the post-911 environment it is natural that oversight bodies have been primarily concerned with their agencies' effectiveness and, as we have argued, this is entirely in keeping with overall democratic control of intelligence. But it is important that they we wary of incorporation by agencies into management rather than oversight tasks. All oversight bodies owe important duties to uphold human rights and liberties and thus their engagement with the agencies must always retain a critical and sceptical approach without which they may be reduced to the role of mere management consultants.

[57] CNET Sept 3, 2002.

[58] See L.Lustgarten & I.Leigh, *In From the Cold: National Security and Parliamentary Democracy*, Oxford: Clarendon Press, 1994.

[59] PM, 2002, para. 23

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LAT: Los Angeles Times

NYT: New York Times

SFC: San Francisco Chronicle

WP: Washington Post

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III

BORDER SECURITY

Alice Hills

BORDER CONTROL SERVICES AND SECURITY SECTOR REFORM

1.Introduction

The case for a comprehensive approach to reform in state security sectors is widely accepted but attention has, until recently, focused on military and, to a lesser extent, police forces. Security sectors are composed of many visible and invisible forces and special units but most are notoriously evasive, if not inaccessible. Not surprisingly, it is only recently that analysts and policy-makers in the liberal democracies promoting security sector reform (SSR) have looked beyond the military and police to other forces with a coercive function. Of these, the most accessible appears to be those associated with border control services; that is, border guards. The logic behind this is clear as far as donors are concerned, but the rhetoric and policies associated with it raise many unanswered questions.

This paper addresses two questions related to the incorporation of border control services into SSR programmes. It asks whether inclusion is justified. Then, on the assumption that civilian control is a central element of SSR, it asks how important civilian control is to the democratic control of border systems. It discusses the vested interests that shape SSR as it applies to border controls on the basis that although border guards perform a technical function they also fulfil important political and economic roles. The relevance of civilian control to the democratic control of border services is assessed, and factors that facilitate or threaten accountability are listed.

In border control, as in all other aspects of SSR, context is important — border management in central Europe cannot be equated with that in southern Africa — so the paper's focus is on border management in the European region because it is there that the notion of reform is most widely accepted.[1] The term *border*

[1] The situation in sub-Saharan Africa is illustrative of this. The border forces of Africa have received little attention from donor governments over the last four decades. This is partly because of the institutional incapacity — and vested interests — of many of those charged with border control, and partly

control is used throughout with the caveat that borders, like conflict and crime are, at best, managed — control is rarely possible. *Border control services* is used as a generalised descriptive term, while *border guards* refers to the agents fulfilling functional security roles in border regions. The term border guard and border police are often used interchangeably but border guard is the preferred term here. Its use emphasises that border forces should be independent and specialised multi-purpose organisations, subordinated to ministries of the interior but not forming part of a national police force.[2]

1.1. Border services in security sectors

With a small number of exceptions, such as the paramilitary border guard in Georgia, SSR has ignored the role of border control forces in the borderlands of Europe. Border forces demonstrate sovereignty, manage migration, and often represent an important source of budgetary income, but their role was seen as of technical interest only. Border guarding was understood as a craft in which skills are acquired through experiences, and which are limited to those in the same occupation. This situation is changing as a result of the reconstruction programmes implemented in the aftermath of conflict in the Balkans, increasing levels of transnational crime and illegal migration, and the European Union's (EU) political agenda, expressed in terms of the Schengen *acquis*. The need for comprehensive SSR in the Federal Republic of Yugoslavia (FRY) is, for example, widely recognised as essential if the legacy of Milosevic is to be overcome. Conflict in the Balkans has also drawn attention to the role of border guards because, in the absence of an acceptable indigenous force, KFOR troops had to secure Kosovo's contested borders and boundaries. At the same time, insecurity spilt

because of the sheer scale and inaccessibility of the borders involved, to say nothing of their insecurity. In South Africa, for example, people and goods can be smuggled across borders at will. Border posts are 50% understaffed, and often lack basic facilities such as electricity and living quarters. The government has received international assistance but has failed to meet its own goals of better regulation. The main obstacle to effective control is often said to be the lack of communication between police and army units but it is also difficult to distinguish officials in many African states. The border police in Lesotho, for example, wear a form of uniform while customs and immigration officials may be in civilian dress, but there is no clear division of roles and responsibilities between the two organisations, which often seem interchangeable. In practice the police assume regulatory roles at borders simply because they are centralised and available. For the situation in Angola and Namibia see Glenn Oosthuysen, 'Shooting the Golden Goose: Small-Arms Proliferation in Southern Africa', in Robert Rotberg and Greg Mills, eds., *War and Peace in Southern Africa: Crime, Drugs, Armies, Trade* (Washington: Brookings Institute Press, 1998), pp. 64-88.

[2] See DCAF Workshop, 'Missions, Goals and Objectives for a Modern Border Security System', Geneva, February 2002.

over from the Balkans wars into central and eastern Europe (CEE), and transnational criminality and illegal trafficking increased, as did migration. In turn, crime and uncontrolled migration threatened the EU's goal of regional integration, which is based on a series of inclusionary and exclusionary policies whose enforcement depends on effective border management. As a result, the promotion of efficient, effective and politically acceptable systems in the states surrounding the borders of the EU has become more important. The integration of expanded notions of SSR and conventional security imperatives (including those of post-conflict reconstruction) in the context of southern Europe illustrates this trend.

The necessary interaction between border guards and the military and police in border regions strengthens the argument that border systems should be included within SSR. All SSR programmes must set priorities but partial reform that excludes border systems encourages obstruction and corruption. The role of border guards invariably involves close working relationships (and rivalries) with both military and police forces, not least because the geographic border is also the psychological and professional border between military and police roles and duties.[3] The rationale for including border forces within the broad political processes and reform programmes that address the function and role of military and police is clear.

1.2. Borders and border guards

The relevance of borders to our understanding of the nature of the state, the international system and conflict means that analysis of borders is a well-established academic sub-field. Borders are generally understood as a phenomenon of the nation-state, nationalities and social groups, and they retain validity even within the European project. Borders perform various political and social functions, the most important of which are protection and the formation of legal, economic, ideological, social and psychological identities. The legal function is the most significant to developed states because it provides the framework for constitutional and legal systems and administrative organisation. Globalisation has not seriously challenged this understanding. In a globalised economy, borders can seem to lose many of their functions, but the security implications of migration, illegal trafficking and international terrorism still have to be addressed. Political borders may vary but such threats are invariably defined in cross-border or trans-national terms.

The literature on the management of borders focuses on four main interlinked topics:

[3] Ottwin Marenin, personal communication, December 2001.

- the changing nature of borders and the need for co-operation
- apprehensions
- measures to combat trafficking
- means for making border control more effective.[4]

The first is essentially political and professional; it concerns developments in regional integration and the internalisation of some policing activities. The last three are of professional and technical interest but have potential relevance for SSR and democratic control because of their possible implications for human rights. The case of trafficking illustrates this. Trafficking is a major challenge to border control that is usually understood as a policing issue. Its management is open to abuse — not least because of its close association with organised crime — and so the role of the border guards managing it in fragile or transitional states are increasingly seen as relevant to SSR.

1.3. Defining SSR

Many questions about the role of border control services and border guards in relation to SSR remain unanswered. This is primarily because SSR has tended to ignore border guards, but it is also because of the ambiguities of SSR and the value-laden nature of its aspirations. A comprehensive approach to SSR is generally regarded as uncontroversial and fundamental, yet SSR is selective and often partisan. Not only is there no such thing as holistic SSR — many well-funded security agents and special units remain inaccessible — but there are no universally agreed definitions of SSR. SSR is at best a broad and ambitious notion concerned with developing and maintaining certain types of security relationships and architecture most commonly associated with liberal democracy.

SSR has no universally accepted standards, and is invariably defined in terms of the concerns of specific political policies or communities. Its scope ranges accordingly. Some commentators adopt a statist approach in which SSR is limited to the reform of formal organisations such as the military, paramilitary, police, border guards and intelligence communities. Others define SSR very broadly to include 'new' security issues such as health and environmental concerns, together with notions such as human security and civil society. There is also the problem-driven approach; this identifies a problem, asks who provides security and links it to the relevant actors. In all these cases SSR is an inherently value-laden

[4] Major omissions include systematic analysis of comparative data, the effectiveness of border control, and the identification of best practice and analyses of likely future trends. International Organization for Migration, *Migrant Trafficking and Human Smuggling in Europe: A review of the evidence with case studies from Hungary, Poland and Ukraine* (Geneva: IOM, 2000), p. 79.

process, reflecting liberal democratic values such as good governance, economic development and conflict prevention. However, SSR is valuable as it indicates an important liberal democratic aspiration.

The question arises whether SSR exists solely for democratisation and conflict prevention. That this appears to be the case suggests that SSR is an inherently political notion that can only be applied to particular forces in special circumstances. This interpretation is supported by the fact that SSR is rarely, if ever, internally generated; fundamental reform is never in the interests of the forces concerned. Much depends on case specifics but it is misleading to suggest that SSR strengthens the overall institutional framework for managing security policy and is the key to ensuring that states can respond to security problems in a cost effective way. SSR may be politically necessary but it has nothing to do with operational efficiency and effectiveness. Furthermore, most SSR programmes are developed and funded by established liberal democracies that can afford to promote democratic control at the expense of other security imperatives and requirements. As a result, insufficient attention is sometimes paid to balancing the need to increase physical security against reducing the size and influence of poorly regulated security sectors. That SSR is rarely translated into operational or tactical terms is, perhaps, a result of the fact that most of its advocates (as opposed to those providing military training assistance or police education) are civilians.

The general goals of SSR obscure a number of inter-linked political and policy imperatives and challenges, with tension existing between the 'professional' values of efficiency and effectiveness, and socio-political norms such as accountability and transparency.

2. The discursive field

Relating border control services to SSR is not straightforward. SSR is not a distinct area of policy-making in which arguments are discussed and initiatives developed. Most approaches to the subject are narrow and exhibit specific institutional mandates. Thus the concerns of civil-military relations and development studies, from which SSR developed, have ensured the dominance of military and paramilitary reform, and the consideration of socio-economic factors. However, SSR has also become sufficiently all encompassing to include conflict prevention, the promotion of peace and democracy, and sustainable development.

Many actors have an interest in SSR. To relate border services to SSR it is best to look at the various discourses of those involved. This means civil-military relations, development agencies, and the political agenda of the European Union (EU), which

now drives SSR within Europe. Civil-military relations is relevant to border guards as paramilitary agents, especially in fragile or conflict-ridden countries, such as Macedonia, where they may act as border brigades. Development studies address their role in policing migration and economic development in Europe's southern borders. The EU's security requirements apply to their conventional guarding and policing roles, and to the fact that borders serve as important symbolic points of economic connection. In practice, meeting the requirements of the Schengen accord is likely to be the most important factor shaping the transformation or reform of Europe's border control services.

We need to acknowledge the perspectives and opinions of the various groups involved if we are to understand the place of border services in relation to SSR. We need also to locate decisions and innovations in the context of SSR politics, which may be partisan. We must recognise that border control services are about both functional and symbolic security, so the rhetoric involved is important — as is an awareness of the interaction of the various influences, frictions and synergies. Acknowledging the various strands within SSR also emphasises the complexity of the security architecture SSR aims to transform.

3. Border services in relation to SSR

There are three main reasons why border control services should be considered in the light of existing SSR. The first concerns the place of border control services within Europe's security strategies. The second results from the fact that the agents of that control, border guards, operate at the interface between military and police. The third is that border guards provide access to the margins of security sectors.

3.1. Border services manage migration

A major security fear within Europe concerns migration. The fear is not the current rate of the flow but its potential scale if the state does not interfere. For uncontrolled migration places pressure on the central socio-political institutions of sovereignty and its component communities. And sovereignty lies at the basis of the Westphalian state, operating as a tool of statecraft

[5] Sovereignty is a social construct that defines how we think of international society. Regional integration and trans-border flows do not define sovereignty but they do challenge the conventional Westphalian norms under which international relations operates. The EU's integration project provides an advanced example of sovereignty bargaining in order to promote strategic and other dimensions of sovereignty.

and retaining its validity even within the EU.[5] If the policies implemented in response to excessive migration are thought to be ineffective, they may confirm general fears of a potential flood of migration. This in turn has implications for national or regional security policies. It also creates a public demand for tighter control.

Tightly controlling migration may be interpreted as contrary to the neoliberal norms of SSR but seemingly uncontrolled migration, invariably, creates a demand for more robust control policies by state or regional authorities, especially when migration is prompted by economic motives. The current system of border control within the EU enables the EU's members to pursue liberal economic integration while restraining anxieties about open borders. The promotion of SSR in Europe's border regions forms part of this strategy.

3.2. Border guards at the interface

Border guards have military and police functions and roles. They occupy a significant space on the security spectrum because their operational environment covers a range of security-related activities, from those of militarised units to customs duties. Some border systems use conscripts but most aspire to professionalism, which reduces the role of relatively untrained conscripts. Some border guards are effectively interior troops, more are paramilitary, and most are technically police. The Russian Federal Border Guard Service may be directly subordinate to the president but the majority of NATO and non-NATO forces report to ministries of internal affairs rather than ministries of defence. Most EU governments and reform programmes advocate an independent and specialised role for border guards that emphasises policing responsibilities at the expense of combat-related capabilities.

Geo-political circumstances dictate the focus of their role. Being border forces, often working in dangerous environments, they have a traditional affinity with military units. Indeed, the operational demands of managing green (that is, land) borders on the outer edges of Europe make the police organisation and capabilities often advocated by SSR inappropriate.[6] Even police-oriented border services require a mobile or rapid-reaction response that depends on military-style discipline to be effective. Yet, at the same time, the management of illegal traf-

[6] That the stakes are too high to permit a conventional police response is evident from the fact that much of the heroin intended for the European market crosses the EU's eastern borders. That market is reputed to be worth up to £12bn a year. See 'Rebels spend drug millions on guns', *Daily Telegraph*, 16 February 2002.

ficking and migration is essentially a policing activity. This means that responding to migrant and alien smuggling in Hungary involves the border guard working with the aliens police, the criminal police, other government agencies, NGOs, and international organisations.

3.3. Access to security sectors

A practical reason why border guards have become increasingly attractive to advocates of SSR is because border guards represent an entrance to the little-known margins of the security sectors.[7] In the absence of information, it is easy to argue that SSR is relevant to border guards because they, like other coercive agents, form part of an overlarge sector, a state within the state, which uses scarce resources that should be directed to socio-economic development. This argument is not convincing, and there is no firm evidence to support it. Anecdotal evidence may suggest the argument holds true for some security forces in certain states, but most border control services are, like most police systems, deliberately underfunded and lack status. Security forces may share a special (often defensive) culture but this does not necessarily make them a separate sector within a state.

It appears that the role of border guards, customs, immigration, and the specialised police units investigating money laundering attracted attention once corruption became a concern of development-oriented SSR programmes and 'new' security concerns expanded to include transnational crime. The imperatives of Schengen highlighted their role. As a result, border guards, customs and immigration are now the most visible of the secondary layer of statist agents. Customs officers may be presented with the best opportunities for corruption but it is the border guards that

[7] This is not grey security, which refers to social control by means such as identification or welfare schemes. The number of non-military security forces in Ukraine indicates the potential scale of the margins. See Tara Kuzio, 'The Non-Military Security Forces of Ukraine', *Journal of Slavic Military Studies,* 13: 4 (2000), pp. 29-56. Kuzio's list includes Ministry of Interior (MVS) troops, National Guard, security service, border troops, customs service, tax police, civil defence, national space agency, and state communications department. These forces (which are now larger than the military) are militarised formations with poorly defined objectives and overlapping tasks. Their function is to address new threats the elite considers a danger. As a result the border troops were expanded to cover new border regions of Ukraine not covered by the former Soviet external frontier. From an initial number of 17,000, they have expanded threefold and include a 1,000-man rapid reaction force based on a former airborne brigade. The border paratroopers can be dispatched to any border region to conduct special operations, combat illegal smuggling and deal with border disputes. The border troops (which are as under-resourced as the armed forces generally) work closely with the customs service. Initially created as a demonstration of sovereignty, the customs service is now a major source of budgetary income.

attract the attention of SSR.[8] This is probably because of their actual or potential paramilitary capabilities, which may be easy to rechannel in undesirable ways, though politico-economic factors also play an important part in the EU's sphere of influence.

4. Military, development and security perspectives on border services

Each of the three main perspectives of SSR takes a slightly different approach to border services. Civil-military relations emphasises the defence and paramilitary requirements of the border as a working environment, development stresses its socio-economic roles, and security highlights its political function.

4.1. Civil-military relations and SSR

Much of the recent analytical work supporting SSR's development results from the requirements of specific academic or policy-related projects. Most projects reflect the national interests of the organisations funding them and most confine themselves to specific countries. Issues such as the transferability of democratic methods of control remain contested but projects such as the UK's 'Civil-Military Relations in Central and Eastern Europe' (funded by the Economic & Social Research Council) have brought a new perspective to traditional civil-military relations, which had previously focused on military interventions in politics.

The emphasis of civil-military relations is undoubtedly relevant to border guards, as border services retain paramilitary capabilities in many states. These range from extreme examples such as those occurring in Chechnya in June 2001, where Russian border guards used helicopter gunships carrying flamethrowers against a group of rebels trapped in the Caucasus, to Ukraine, where the border guards are based on a former airborne brigade, or Hungary where rapid reaction forces were used during the Bosnian war.

The link between civil-military relations, the border environment and SSR can be seen from the situation in Macedonia. In 2002, Macedonia's border brigade was formed within the Macedonian Army and was fully integrated into the military chain of command, partly because the situation on the borders demands a degree of combat readiness. Macedonia has long had some of the most porous borders in the Balkans, but the scale and intensity of the confrontations has escalated in recent years as a result of conflict and economic instability. A high percentage of the so-called

[8] While border guards and customs may be separate, as in Bosnia, they tend to be interchangeable at border posts in most of the developing world; separate forces are expensive.

illegals cross the border regularly, using fake travel documents, while smugglers of small arms, drugs and other goods are increasingly clashing with Macedonian forces. Border security units of the regular police provide security at official border crossings, while NATO units undertake patrols in the northern border area (though they are understood to remain outside the border belt). Meanwhile the customs service is unarmed, its officers relying on the police for personal protection. Left to themselves the Macedonian authorities will struggle to stem the flow of illegals across Macedonia's borders and so, given Europe's concern over immigration, Skopje has to find some way of tackling the problem is if it is to entertain any serious hopes of European integration.

Such a close relationship between military and civilian interests emphasises that effective border control requires paramilitary resources and capabilities. This need is not confined to fragile post-conflict societies, as two comparative examples make clear. There is tight collaboration between the Border Patrol and the US military in the US-Mexico border region. Indeed, the US-Mexico border has arguably served as a proving ground for the militarization of American law enforcement. More strikingly, border guards fulfil a robust internal security role in democracies even where civilian control is nuanced but effectively assured. Israel's Border Guard units are lavishly equipped with specialised equipment, including advanced communications, night vision, grenade launchers, ballistic helmets, and a large fleet of all-terrain 4x4 vehicles, complete with armour plating and toughened glass. The Israeli Border Guard is close to attaining the status of an independent gendarmerie with substantial paramilitary capabilities.

In summary, civil-military relations represents an important theme in SSR. The environment of border control further reinforces its value, as is evident from the experiences of CEE, the USA and Israel. Paramilitary capabilities appear to be an integral aspect of effective border control services, which suggests that they need to be tempered by civilian control.

4.2. SSR and development

SSR from the perspective of civil-military relations is valuable but needs to be supplemented by insights from development studies if it is to accommodate the challenges of migration and the development thought necessary for stability. Simply repackaging civil-military relations to incorporate non-military security forces may introduce comprehensiveness but it is unlikely to increase understanding of the more police-oriented role of non-military actors.

Border guards and other paramilitary forces may have different roles, constitutional arrangements and ethos to those of the regular army or police. The relevant relationships for all forces will be complex, especially when unconventional forces, such as militiamen, are involved or when personal relationships bring senior officers into close contact with governing elites. Vested interests play a part too. In other words, the role of border forces in relation to SSR is probably more nuanced than civil-military relations — and the experience of the countries of the Former Soviet Union — sometimes allow. Some aspects of those nuances are indicated by the development studies that exert a strong influence on SSR, especially in the countries of the South (that is, those outside the major Western-based economic and financial institutions).

Post-Cold War disengagement provided new opportunities for development agencies to address security problems. Indeed, SSR (which is strongest within the development community) forms part of the trend towards what is sometimes called the 'new humanitarianism' or 'liberal peace'.[9] Instead of emphasising humanitarian assistance itself, the new humanitarianism has invested developmental tools and initiatives with transformational powers; its aim is to transform dysfunctional or war-affected societies into co-operative, representative and stable entities. Security is seen by development's advocates as an essential precursor for development, and the goals of 'human security' (the notion incorporates an ambitious range of issues, including health and pollution) are regarded as valuable developmental goals. Security sectors are usually thought to obstruct or destroy such objectives.

Such trends encourage donor approaches to SSR that tend to be incoherent and short-term. At the same time, the aims of SSR programmes are often over-ambitious since they will never be able to accommodate the plethora of formal and semi-formal, visible and invisible agencies encompassed by the term security sector. In addition, the various donors supporting military and police reforms have different perspectives on the practical challenges of restoring security and stability. Many provide training assistance at the expense of the wider institutional environment, arguing that this buys the support of powerful forces but the complex tradeoffs required are not always acknowledged. Neither is the fact that many of the countries to which SSR is applied are not ready for such fundamental reform. SSR as currently conceived assumes a minimum democratic framework, a set of functioning institutions and a basic administrative capacity — but these may not exist. SSR policies are also partisan and selective. The UK's sponsorship of SSR in Sierra Leone, for example, is strongly partisan in relation to the government of Kabbah and its war with the RUF. But the

[9] For a critical reflection on the merger of conflict and development see Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books, 2001), p. 11.

EU's policy with regard to Macedonia is similarly shaped by political imperatives such as the withdrawal of US forces. SSR is something that a small number of liberal democracies choose to apply to (or encourage in) specific countries in specific circumstances.

SSR from a development perspective emphasises that SSR is a not a policy so much as a policy framework, which a growing number of donors use to give practical expression to their broadening concept of security: 'The overall aim of SSR is to enable governments to provide for security and stability within policy and budgetary constraints that are consistent with national development goals.'[10] It also explicitly links to democratic control, emphasising that SSR is part of the wider issue of governance. It focuses on state capacity and force accountability, on democratisation rather than simply specific transition. Development actors tend to place great emphasis on accountability and transparency, revealing their primary interest in social and economic issues, and in how states allocate resources.

SSR understood from this perspective is of potentially wider relevance than SSR understood from a military-oriented perspective. Nevertheless both approaches place value on strengthening democratic civilian control over security forces as a pre-requisite for achieving a well-functioning security sector.

4.3. SSR and security considerations

Civil-military relations and development studies give valuable, but insufficient, understanding of border control services in relation to SSR in the European context. Both perspectives acknowledge the problem of corruption and the challenge it presents to democratic control, but both underestimate the importance of security interests and the implications of current trends. More precisely both underestimate the security imperatives of the EU, which views the role of border control through the lens of fighting organised crime and illegal migration. These sources of insecurity and regional instability can no longer be addressed by conventional military power alone but policing cannot necessarily manage the scale of the threat they present. Instability in the Balkans is also important because regional security contexts are critical to border policies. This applies as much to SSR in southern Europe as it does in east Asia, for example, where the India-Pakistan relationship dominates decision-making. External and internal security have merged in the

[10] Dylan Hendrickson's work for King's College, London University is representative of this approach. See his, 'Security-sector reform: state of play', *The Conflict, Security & Development Group bulletin* 13 (2001), pp. 6-8.

face of the new threats and political opportunities, and this creates complications that SSR is unable to address. One of most important blurrings of traditional security boundaries in the post-Cold War era is between the internally oriented domestic police sphere and an externally oriented military sphere or, in the case of terrorism, externally oriented special policing. Border services operate at the crossover of these two spheres.

The security issues present at border crossings represent both local and trans-border problems. They include ordinary crime as a well as transnational crime, smuggling, and terrorism, each of which encourages the corruption that reform seeks to address. Terrorism has the highest profile though illegal trafficking and its associated organised crime and corruption is probably a more serious problem for many of the states concerned with SSR. Claims that members of Al-Qaeda infiltrated the Sangatte refugee centre close to the French entrance to the Channel tunnel attracted significant attention in November 2001, for example, and German authorities confirmed that Iraq has moved secret agents into Germany as part of illegal people-smuggling activities.[11] But such threats are closely linked to others such as the belief that Albanian gangs have used at least Đ5 million of their heroin profits since October 2001 to buy weapons to re-equip the rebels in Macedonia who gave up some of their weapons to NATO forces in the autumn of 2001.

Security threats are made more dangerous by the fact that border guards, customs services and immigration are major targets for corruption, especially in developing and trans-shipment states. This is partly because of their low pay but also because the demands made on personnel may be quite limited, often amounting to little more than looking the other way or being somewhere else when an illegal shipment comes through. Poor economic performance and weak government institutions increase the opportunities — which multiply in environments, such as those in Kosovo, characterised by criminal organisations and ambiguous ideas of ownership. Similarly, endemic corruption is characteristic of security sectors and society in states such as Serbia, even though it is hard to measure and define.[12] Addressing the problem goes beyond the precepts of conventional SSR.

[11] See 'Iraq smuggles secret agents into Germany', *Financial Times* 1 November 2001. The illegal smuggling of nationals from Iraq, Afghanistan and other countries via eastern Europe into Germany and other parts of western Europe is of increasing concern.

[12] Budimir Babović, 'On police reform in FR Yugoslavia and Serbia', paper presented to DCAF workshop on 'Democratic Policing', Geneva, November 2001.

To expect border control services to deal with such security threats, with their attendant potential for corruption, suggests that civilian oversight is needed. This leads to the second part of this paper, which assesses the relevance of civilian control to border services.

5. Democratic civilian control

A fundamental belief of SSR is that it cannot be separated from the wider processes of democratisation and liberalisation. Related to this is the principle that there is no point in reforming border guards if customs and the judiciary remain unregenerate. Civilian control of the security sector is accordingly held to be fundamental for SSR as a means of consolidating democracy. It is judged essential even in states, such as FRY, where different levels of government overlap in ways that are neither transparent nor accountable and where disputes over who is responsible for what at the highest levels of government threaten momentum towards reforms apparently mandated in elections.

The value of accountable or transparent mechanisms of management (and also the meaning of democratic civilian control) appears obvious to liberal democracies, but the meaning of democratic civilian control can be less clear than is sometimes thought. It can be argued, for example, that control through executive oversight, the courts and judicial system, or through legislatures, is really state control because governments remain the most powerful agents involved, allocating resources and acting as gatekeepers. Political imperatives are important, too. The role of regional institutions is critical in Europe where the prospect of eventual EU membership has played a central role in establishing the criteria for civilian control which applicants have to meet.

The best means for achieving civilian control are still uncertain and there are many obstacles to overcome. Civilian control may be achieved through societal control — for example, civilian complaint reviews — but such procedures (based on the experience of a small number of liberal democracies) require an established political culture that is comparatively rare. Many practical problems must be solved if civilian control is to become meaningful. Those involved may not, for example, have the knowledge or authority to discipline officers seeking to obstruct or pervert the reform process. Operational considerations are important too; public accountability can threaten the integrity of covert operations.

Structural procedures and limitations are undoubtedly required for accountability, but civilian control also requires a degree of technical expertise, which may not be available. Improved internal accountability at the most senior level may be a more effective means of achieving better accountability than does

the application of notional civilian control. This could mean that the quality of senior officials and officers is critical, with all that this entails for recruitment and promotion, for without it reform and oversight will have little impact.

5.1. Balancing democracy and threats

Balancing liberal democratic norms and security calculations in order to pursue SSR is a complex matter. Many factors, including political imperatives, ideology and threat perception, influence the extent of civilian control. The political need for SSR in FRY, for instance, is now recognised by much of the Yugoslav population as well as the international community. New security threats associated with economic migration, ethnic minorities, environmental challenges, or transitional processes also promote civilian control. The management of migrant trafficking, to take a topical example, is usually defined in terms of police powers, as it does not appear amenable to a military solution. New security threats are thought to require a police or intelligence-related approach that could, however, threaten civil liberties if the agents responsible are unaccountable. Civilian control is seen as an acceptable way to manage the problem.

The emphasis on civilian control is linked to the trend to use SSR to frame new national security policies. The response to migration of the countries of CEE illustrates this; it also suggests that the degree of civilian control is dependent on threat perception. Migration was negligible during the Communist period, but is now a significant problem for countries such as Poland, Slovakia and the Czech Republic. On opening their borders after 1989, the countries of central and eastern Europe became popular destinations for economic immigrants from the Far East, Russia and the CIS, with the inevitable spillover effects for the EU. The problem intensified during the Balkan wars when massive refugee numbers flowed into countries that are inexperienced and financially unable to handle the consequences of such migration. As a result, CEE security concepts and strategies specifically address the consequences of illegal migration caused by conflict and ecological disasters in the region.[13] The relevant Polish document, for instance, concludes that the 'present scale of economic migration poses a serious challenge to state structures and services.' The Czech security strategy of 1999 registers similar concerns about 'massive migration waves', and so do those of Estonia and Latvia. That such threats underline the continuing symbolic and functional value of borders is evident from the Latvian policy statement: 'In order to prevent the mass influx of refugees and

[13] See Gábor Stojanovits, 'Perceptions of New Security Risks by Central and Eastern European Populations and their Political Elites', *Journal of Slavic Military Studies* 14: 3 (2001), pp. 1-12.

illegal migrants across the nation's borders, effective national borders are insured, territorial water and airspace control is provided...'[14]

The seriousness of such threats emphasises that SSR is never complete. The best way to maintain an appropriate balance between democratic norms, security calculations and national security policies is to encourage the accountable and representative political processes associated with democratic control.

5.2. Democratic control and border services

The relevance of SSR to border services appears clear cut at first sight but much of the knowledge required to translate democratic control into meaningful terms remains unavailable to outsiders. The general principles of accountability or transparency may seem obvious but it is not always clear how systems or governments use various bureaucratic instruments to regulate cross-border traffic and trade flows, to distinguish legitimate from illegitimate trafficking, or to identify corrupt officials. The answers will depend on local conditions. Even so, there are many unresolved problems. The question of who collects the duties on the border, for example, is critical but it is not clear that there are general principles concerning the democratic or non-democratic nature of the role.

The major areas in which SSR appears to have relevance to border control services are those of corruption and the abuse of human rights of refugees or asylum seekers. But SSR alone cannot deal with corruption or the discriminatory handling of refugees as an obstruction to reform. Schengen's requirements provide guidance on suitable standards within Europe, but the means to the agreed goal could differ. SSR tends to be proposed or imposed by international organisations or donors, whereas it is arguable that local initiatives may produce more fundamental reform. Oversight is undoubtedly required to ensure the eradication of corruption or brutality but such problems are probably better addressed by internal means, backed up by external sanctions as necessary. The chosen means may differ but all should reflect the democratic objectives of SSR. Leadership will be a key issue in determining the effectiveness of reform; the acceptance of the general principles of SSR at the highest and most influential levels is essential.

5.3. Civilian control is not a good in itself

Civilian control cannot be a goal in itself — the behaviour of many recent civilian leaders and their factions is an obvious warning. There are innumerable factors that can weaken its seeming value. The level at which control is to take place is one such variable. Civilians concerned at the highest levels may themselves form part of an elite in which senior security officers play an integral role. The military's role in an elite is usually obvious but that of the police is much less so while the place of senior border guards is unknown. Another variable is that civilian control is not necessarily synonymous with participation at any level. Participation is probably the least important means of ensuring the democratic control of a security force, being possible only in a highly stratified society in which political activity is confined to a small elite.

The meaning of civilian control is neither self-evident nor value free. But the fact that the criteria employed to effect it, its purposes, goals, and instruments reflect normative if not political values is not a serious problem in the European context. For practical purposes, it is enough that the EU, OSCE or NATO have agreed criteria for membership, to which applicant countries are expected to adhere. That these are drawn on the basis of administrative and business practice, and the extent to which they meet established standards of honesty and transparency by such organisations is thought sufficient in itself.[15]

The best means for promoting civilian or democratic control in border control services remain contested. Neither is necessarily promoted by increased outside scrutiny. Parliamentary oversight is probably a key factor at the highest levels of government but the means of civilian oversight becomes less clear at the lower levels. This is because external agents may not understand the technical or operational constraints under which border guards operate. A related point was made recently in a paper from the US National Bureau of Economic Research. In it the author, Canice Prendergast, addresses the advantages and disadvantages of external (civilian) oversight.[16] He suggests that that the characteristics that make coercive forces such as the police — and by extension border guards — effective also make them bad at controlling themselves since their preferences are not the same as society's as a whole, and they tend to take their colleagues' side against those who pay their wages or authorise them. He proposes that external monitoring may be no better. Monitors (independent overseers, civilian committees, the press and so on) rely on complaints to initiate investigations and this means that their actions are skewed towards cases where complaints are made against officers. Prendergast studied a rise in investigated complaints against the Los Angeles Police Department in the late 1990s that coincided with what appeared to be a decline in pro-active policing. External

[14] Stojanovits, 'Perceptions of New Security Risks', p. 8.

[15] See Chris Donnelly, 'Rethinking security', *NATO review* 48: 4 (2000), p. 33. Donnelly also refers to an 'ethical base for security' but does not elaborate.

[16] Canice Prendergast, *Selection and Oversight in the Public Sector*, NBER Working Paper No. 8664, www.nber.org.

scrutiny had increased after a series of scandals in the mid 1990s, and resulted in an enormous rise in complaints. Faced with changed incentives, officers stopped pursuing cases, arrest rates fell and gang-related violence rose. The external overseers did not have full information on the problem, so officers were faced with what seemed to them a clear choice: aggressively pursuing cases at the risk of inciting complaints, or letting things slide in the knowledge that rising crime would be blamed on the police collectively rather than on them individually. Prendergast's paper shows that monitoring and controlling agents in the public sector, especially when their outputs are complex and unclear, is more difficult than it may appear.

Civilian control of the military or police or border guards in established liberal democracies works reasonably well but it is probably inappropriate to suggest that it alone represents true democratic control. It is not, in any case, the answer to some of the myriad security threats confronting fragile states on the edges of Europe. The linkages and points of interface between the various attributes are complex and often case specific. The Netherlands has civilian control, for instance, at the same time as Amsterdam is an organisational centre, a central brokerage point and a safe haven for drug trafficking, but no one suggests that the country's border guards are corrupt because they do not prevent the smuggling of heroin, cocaine and amphetamines by rail, air and post. Geography makes a difference too. The position of the Netherlands cannot be compared to that of Hungary, which is a perfect transit country, or to Bulgaria with its rugged and inhospitable border with Greece.

Civilian control is of value only if the civilians concerned (governments, civil servants or local inhabitants) are themselves accountable in some way. In other words, though civilian control may be a characteristic of SSR, civilian control is not sufficient for SSR; it must be combined with other factors such as accountability, transparency, fair promotion, and an intolerance of corruption. The question then arises as to which of the many factors are critical. The answer is probably to be found in accountability, as an aspect of good governance, rather than in civilian control. Good governance provides the best overall framework because real civilian control, like genuine democratic control, needs a certain type of environment.

5.4. Accountability is more important

It is probable that the key to accountability is to be found in multiple structures, at multiple levels of control. This again raises problems of scarce skills and conflict with operational requirements, but no single accountability structure is likely to be sufficient to ensure democratic control. Structures at the internal, state

and social levels are all necessary, and the balance among them will vary according to factors such as threat levels, the extent of corruption, and societal norms. The choice of representatives will be difficult too because those concerned must act in a way that the population know, understand and, more importantly, accept.

Democratic control requires that oversight incorporates a respect for human dignity and that duties are discharged in a non-discriminatory manner.[17] This ideal is clear even if its practical implementation is less so. In the UK, to take an illustrative case, it is usually assumed that the police act with the consent of most people and that most people support liberal democratic values. The police are given powers to fulfil their function, though limitations are placed on those powers to ensure that the rights of others are protected and that the law is respected. The system is far from perfect but it appears to suit British norms and most people have confidence in most of the police most of the time. That the police are accountable to civil authorities at local and national levels is one reason for this. So too is the fact that EU legislation and UN guidance on human rights sets relevant practical standards for policing by not allowing guilty individuals to go free and the innocent to be punished.

In an ideal world, accountability increases public confidence, and contributes to the peaceful resolution of conflicts and complaints. Unfortunately, of course, the precepts of SSR are usually applied to fragile countries that are in an imperfect world. Case specifics are critical — Schengen's requirements are a tremendous advantage for the European region in this respect — so the next question becomes how existing problems of repression and corruption can be mitigated. This usually results in a return to the ideals of accountability and civilian control, which, despite their flaws, seem to promise the most satisfactory results for the international community.

5.5. Border control within good governance

Achieving democratic control of border services requires the development of a receptive and special environment. The methods we have of promoting this are contained in the notion of good governance. Good governance is more than just good government; it is a means of achieving wider developmental goals such as social and political development, poverty alleviation and protection of the environment. It stresses liberal values such as legitimacy and consent, accountability, competence (including the provision of security), and respect for human rights and the rule of law. It is not a

[17] See Christopher Stone and Heather Ward, 'Democratic Policing: A Framework for Action', *Policing and Society* 10 (2000), pp. 11-45.

single design so much as a set of principles that can be applied according to local circumstances.[18]

Good governance is about relationships. The relationships between institutions will be critical to their democratic characteristics, though other functional and personal relationships will also be important. The quality of interaction among social actors and between social actors and the state, and the sharing of decision-making between local state structures, the private sector and civil society (which is seen as defending the interests of civilians) is critical. Good governance appears to be attainable in a way that comparable ideals, such as the eradication of poverty, do not.[19]

6. What promotes accountability?

It is difficult to identify the specific factors needed to facilitate or ensure accountability. We know that no single factor is sufficient, but we do not know where the points of friction or possible synergies lie. Legitimacy is not enough, neither are aid programmes. The European Commission's (EC) programmes to Macedonia and Albania provide clear evidence of this, and indicate the problems that could affect the reform of border services when accountability or civilian control are promoted in isolation. The EC programmes lack clear strategies, are trapped in bureaucratic delays and infighting, and compete rather than co-operate with

[18] The categorization here reflects that adopted by the UK's Overseas Development Administration (the ODA was the predecessor of the present Department for International Development, DFID). See Overseas Development Administration, 'Good Government, Fact or Fiction?'(London: 1995). It follows that of United Nations Development Program (UNDP), which defines governance as the exercise of political, economic and administrative authority to manage a society's affairs. See also United Nations Development Program, *Reconceptualising Governance,* Discussion Paper 2, Management Development and Governance Division. Quoted by Ton van Naerssen, 'Cities and the Globalization of Urban Development Policy', in Frans Shuurman, *Globalization and Development Studies: Challenges for the 21st Century* (London: Sage, 2001), p. 189.

[19] SSR cannot be divorced from issues such as poverty, if only because of their implications for corruption. The degree to which successful SSR is dependent on the mitigation of extreme poverty is, however, unknown. It may or may not be significant that iinternational efforts to address extreme poverty have lost momentum over the past decade though the World Bank still has visions of abolishing poverty, giving the poor a voice, and embracing global civil society. See Jessica Einhorn, 'The World Bank's Mission Creep', *Foreign Affairs* (Sept./Oct. 2001), http://www.foreignaffairs.org/articles/Einhorn0901.html. In a famous speech in Nairobi in 1973, Robert McNamara, then president of the World Bank, called for the eradication of poverty by the end of the twentieth century. In February 2001, however, the UN agency the International Fund for Agricultural Development stated that 'Pledge to halve poverty by 2015 'doomed to fail'', *Financial Times*, 6 February 2001. See also J Randel, T German and D Ewing, eds., *The Reality of Aid, 2000: An Independent Review of Poverty Reduction and Development Assistance* (London: Earthscan, 2000).

other international institutions such as the World Bank. Programmes for Macedonia and Albania also reflect the differing strategic priorities of donors, with the World Bank focusing on poverty while the EC's priority is EU integration. These two are not necessarily incompatible but have in practice led to conflict as each institution tries to influence key areas such as budgeting. Nor is the provision of resources enough, especially when goals have been fragmented or are too ambitious. Since 1991, Đ1.5bn of EC aid has failed to build institutions of civilian society or tackle corruption in the region. In Macedonia, it failed to tackle corruption in the administration, or address poor pay and the politicisation of the public administration.[20]

Answers to the question of what promotes accountability are most likely to be found in police studies, rather than civil-military relations or development studies, because this sub-field has the greatest experience and research base for dealing with such issues at the theoretical and practical levels. According to research conducted in the UK and USA, the main candidates for criteria for judging adherence to democratic principles are as follows:[21]

Equity: In so far as border guards are delivering services, these should be distributed fairly between groups and individuals, and the pattern of enforcement should be fair.

Delivery of service: This should be appropriate, efficient and effective (though effectiveness is of contested value in relation with coercive forces).

Responsiveness: In determining priorities (that is, the allocation of resources between different activities, objectives, and measures) border guards should be responsive to the views of representative bodies.

Distribution of power: Power to determine policy should be concentrated but distributed between a number of different bodies.

Information: Information on funding, expenditure, activity and results should be published regularly. Representative bodies should be well informed and be able to elicit relevant information.

Redress: It should be possible for a representative body to dismiss incompetent or corrupt chief officers, or those who exceed their powers. Some means of redress should also be available for unlawful or unreasonable treatment by or of individual officers

Participation: As far as possible, 'citizens' should participate in discussions of local policy with managers.

How the process should be sequenced deserves discussion, as does the identification of the critical markers and appropriate goals.

[20] The judgement is that the Investment Development Consultancy, France, and Development Strategies, Italy. See 'Reports blast failure of EU aid programme for Macedonia', *Financial Times*, 10 December 2001.

[21] See Trevor Jones, Tim Newburn and David Smith, *Democracy and Policing* (London: Policy Studies Institute, 1994), pp. 44-45.

Transferability also remains an unresolved issue. Time scale is important as well because SSR is, by definition, a long-term process that affects complicated power structures, but short-term success is needed if the process is to gain momentum. Attention to potential 'quick wins' is therefore necessary. Policing experience suggest that introducing a diversity of activities provides a receptive base for this. These include education programmes at national and joint service institutions; training programmes in, for example, languages and computer skills to enhance status and effectiveness; assistance from overseas specialists; exchange programmes, training exercises, seminars and workshops to stimulate professional knowledge or pride. The role of the civilians managing the service, especially in terms of policy planning, procurement and budgets, also deserves (but rarely receives) attention. This is especially important for many states in CEE where decades of a command economy means there are few appropriately trained accountants and effective accounting procedures. Similar comments apply to assistance in developing the parliamentary expertise necessary for oversight and the provision of impartial advice.

6.1. Professionalisation

The meaning of professionalism and its role in promoting accountability is contested. Professionalism may have the potential to facilitate accountability when allied to the notion of civilian control. It may ease the transition from a tainted and corrupt force to one that is civilianised, accountable and reasonably impartial. It may be indispensable for democratisation and demilitarisation. Professionalisation also has ethical suggestions, for Western donors at least, of humane policing, and it is frequently used in a pseudo-technical sense to imply improved operational standards. There are, however, fundamental problems with these understandings. Four can be listed here:

- The reform implicit in the notion of professionalisation is inevitably 'swallowed up by the social and political realities'.[22]
- The ideology of professional border guarding will hold few attractions in the face of demands from central and local functionaries, keeping a job or feeding a family.
- It may be used as a cover for illiberal purposes.

[22] Otwin Marenin, 'United State's Aid to African Police Forces; the experience and impact of the Public Safety Assistance Programme', *African Affairs*, 85: 341 (1986), p. 540. The experience of several decades of police and military aid by liberal democracies to non-European states may not appear directly relevant to SSR within Europe but its lessons should not be dismissed out of hand.

- Professionalisation may achieve the opposite effect to that desired by liberal democracies. [23]

Professionalism, like efficiency or effectiveness, may be a misleading concept. Historically professionalisation does not of itself stunt systematic corruption or repression; it restructures it. Further, an emphasis on professionalisation is usually imposed by outside agents. Established democracies promoting SSR employ it as a means to ensure civilian control but it is rarely in the institutional or personal interests of security forces to pursue it as a self-imposed goal. Senior officers may, however, use it as an aspirational goal related to status, rather than to effectiveness or efficiency, or it may be used to emphasise civilian incompetence in security matters.

To talk of professionalisation as a value in itself is misleading for there are no self-evident standards of policing or military professionalism that could apply to border forces. There is a UN code of conduct for police that, combined with international human rights and anti-torture legal instruments, could be held to have a bearing on how border guards should behave, but this is not the same as professionalism.[24] There is no coherent written body of knowledge underpinning border services. The Schengen *acquis* may speak of border guards as a specialised profession that

[23] As one Guatemalan trade union leader said of professionalisation in the Guatemalan military, 'Maybe they will be better equipped to torture us.' Quoted in Jennifer Schirmer, *The Guatemalan Military Project: A Violence Called Democracy* (Philadelphia, PN: University of Pennsylvania Press, 1998), p. 185. The tension between civilian control and its security agents is repeatedly emphasised by Schirmer, who concludes that the CIA 'is deeply complicitous' in the brutality that is Guatemalan professionalisation and democracy.

[24] There is an extensive literature concerning these points in relation to police and military forces. That concerning police forces is relevant to border guards because their role, like that of the police, is more like that of a craftsmen or skilled worker than a regular soldier, lawyer or medical doctor. See Jerome H. Skolnick, *Justice without Trial: Law Enforcement in Democratic Society* (Chichester: John Wiley, 1966), p. 231. For standards of democratic policing and professionalisation, much of it developed in the context of UN peace support operations, see, for example, Nassrine Azimi (ed.), *The Role and Functions of Civilian Police in United Nations Peace-Keeping Operations* (Hague: Kluwer, 1996); Andy Bair and Michael Dziedzic, 'The International Police Task Force', in Larry Wetz (ed.), *Lessons from Bosnia: The IFOR Experiment* (Washington DC: NDU INSS, 1998), pp. 139- 66; Philip Heymann, 'Principles of Democratic Policing', in *Policing in Emerging Democracies: Workshop Papers and Highlights* (Washington DC: National Institute of Justice Research Report, 1995), pp. 9-24. See also Nigel Rodley, *The Treatment of Prisoners Under International Law,* second edn. (Oxford: Oxford University Press, 1999), pp. 354- 69, 436-46. Compare the more critical approach towards professionalisation evident in police-studies publications such as Otwin Marenin, 'The goal of democracy in international police assistance programs', *Policing* 21: 1 (1998), pp. 159-77; Cyril D. Robinson *et al.*, *Police in Contradiction: The Evolution of the Police Function in Society* (Westport, CT: Greenwood Press, 1994).

requires specialised training but the means to achieve this requires significantly more systematic attention than it has so far received.

It is difficult to know what is meant by professionalism, not least because it is applied to administrative, ethical, technical and status-related issues. The term is used in an administrative sense by international bodies who assume that professionalisation, as a facilitator of democracy, can be achieved through training, education and organisational means. It commonly means establishing a politically acceptable training academy, recruitment and selection criteria and procedures, training, the establishment of internal control mechanisms, a disciplinary code, and it acts as a means for codifying the role of border guards in relation to other agencies. But this addresses only one aspect of its meaning.

Even if the notion was highly developed there are theoretical and practical limits to its relevance and applicability to border services. Although SSR often refers to professionalising security forces and inculcating 'appropriate norms and patterns of behaviour' so as to create 'a disciplined force that is trained and capable of fighting within rules', what those rules are is unclear.[25] The Schengen *acquis* provides guidance for implementing accountable, reliable and effective border control but this is not the same as professionalisation. Donors may agree that officers should develop a 'professional' self-image, internalising values associated with corporate non-involvement, but they tend to do so in specific contexts. Furthermore, the value of professionalisation varies according to circumstances and the donors concerned. It may be seen as a fundamental objective by established democracies such as Switzerland or the UK, but the training programmes of other democracies, of which France or the USA are representative, emphasise it as only one goal amongst several.

This situation reflects the fact that professionalisation is essentially concerned with status. It emphasises the internal value of the expertise it represents, for professionalism 'commands status and respect' and mitigates the impact of external influences on the organisation and behaviour. Thus the 'motivational ideology of the professional is skill- and status-based, rather than essentially linked to moral choices.'[26] This can work to the advantage of civilian control. In most regions, the precise procedures and conduct required to achieve it are debatable, as is the question of how adherence to the prescribed standards can be achieved, but this is not a problem in Europe, as Schengen's immediate requirements are reasonably

[25] Nicole Ball, *Spreading good practices in security sector reform: Policy options for the British government*, Executive summary. www.gn.apc.org/sworld/publications/ssr - html, 4 Jan. 1999, Recommendation 5.

[26] Mark Findlay and Ugljesa Zvekic, *Alternative Policing Styles: Cross-Cultural Perspectives* (Deventer: Kluwer Law and Taxation for United Nations Interregional Crime and Justice Research Institute, 1993), pp. 23- 4.

clear. Understood in this politicised sense professionalism can be used to facilitate appropriate performance standards and accountability to civilian authorities. It is a flawed notion in relation to border forces but, combined with published codes of conduct and independent checks on those codes, it is probably the best internal means to provide a receptive environment for the democratic control advocated by SSR and facilitated by good governance.

6.2. Corruption threatens reform

Institutional processes and mechanisms cannot produce democracy on their own, partly because of the complex bargaining and vested interests involved but also because of the significance of functional and personal relationships. Accountability is, like professionalism, threatened by many factors, such as poverty, conflict, and the abuse of discretion. Corruption remains a major threat to forces that are undermanned, underfunded, poorly equipped and untrained. Russia's 58,000 customs officials, for example, earn about $50-100 a month. They have a vague and voluminous rulebook, the tariffs and classification systems of which are Byzantine. But they also have discretion on which rule to enforce and when, and they operate in a corrupt society — with the inevitable result. They used to receive cash but this is now disguised as fees to well-connected customs brokers dealing with leased equipment. Surveillance equipment is not the answer; newly installed video monitoring systems at main crossing points in Moscow are seemingly plagued by disabling lightning strikes that cause no other damage.[27] Similarly, accountability to civilian control is probably easier for regularly paid German patrols to accept, equipped as they are with four-wheel drive vehicles, helicopters and electronic monitoring equipment, than for the Alien and Border Police of the Czech Republic. In some areas of the Czech boundary with Slovakia, four-man foot patrols are responsible for 16km stretches, communication equipment is old, and one week's petrol is allocated per month.

It must be recognised that reform threatens vested institutional or personal interests. This will be evident when reform addresses, as it must, corruption. Moreover, corruption is always difficult to eradicate because of the competing incentives, goals and opportunities inherent in border control. Accountability alone cannot achieve acceptably low levels of corruption as an organisational norm, and certainly cannot prevent it. But failure is not exclusively a function of resistant subordinates or inadequate organisation. It may result from a lack of managerial expertise to achieve such goals. In such circumstances, adopting unambiguous directive- or

[27] See 'Border bore', *Economist* 15 December 2001, p. 68.

control strategies may be the best approach. Directive strategies could use such means as establishing clear goals, policies and procedures; shuffling personnel (and boxes) by means of periodic transfers or organisational structures; changing individual incentives and attitudes; and inducing productivity. Control strategies could include reporting misconduct and employing investigative activities, supervising personnel, or imposing sanctions. Corruption could be penalised, as could excessive use of force, unwarranted discrimination, or abuse in interrogation.[28] Yet such strategies and their associated rules of conduct are insufficient because combating corruption it is not just about legislation, training or international co-operation. If it were, the EU and US wars on drugs and organised crime would have had a more noticeable effect on the proliferation of illegal supply networks. Under-resourced forces in countries in the throes of great change to their security systems are unlikely to solve the problem. A realistic assessment of what constitutes crime and the threat it poses may be more useful than exhortations against corruption.

6.3. Combat capabilities

Although corruption is one of the greatest threats to the democratic control of border control services in most European states, outside the European core threats may include excessive reliance on combat capabilities in volatile environments. Such threats relate to border guards as the functional agents of border control rather than the system itself.

The principles of SSR emphasise that border guards should be responsible to ministries of the interior or home affairs, rather than defence; they should be regarded as police, not military. Yet, it is clear that the effective (and efficient) management of green borders demands that border guards possess a rapid reaction or mobile capability; the environment in which they operate and the adversaries they confront makes some form of disciplined paramilitary response essential. On the other hand, combat capabilities seem conducive to brutality, especially when allied to quasi-military structures in which violence tends to be legitimised and habitual, or when fulfilling internal security roles.

Recent events in Chechnya make the problem explicit but two other examples are illustrative of the role combat capabilities may play. The Bangladeshi Rifles responsible for guarding the frontier with India have been repeatedly accused of the torture and murder of prisoners of war during the bloody fighting in spring 2001. The

[28] Classic texts on police corruption include Allan Kornblum, *The Moral Hazards: Police Strategies for Honesty and Ethical behaviour* (Lexington, MS: Lexington, 1976).

evidence from Israel is more interesting because levels of conflict are significantly lower and because civilian control of Israeli forces is strong even if the integration of civil and military is tight. In a recent article, Sergio Herzog asks if factors beside combat capabilities are important in determining brutality or unacceptable behaviour. His answer is affirmative.[29] Herzog examined complaints against police officers accused of using excessive physical force. He compared the cases involving regular police, who fulfil traditional police functions, and those involving the Border Police (BP). The BP is essentially a gendarmerie forming an integral part of the National Police; it fulfils mainly internal security-related tasks among the Arab population and acts as a rapid reaction force. The BP was the subject of many complaints. This was partly a result of its work within the Arab population, but Herzog also attributes differences in behaviour to factors related to the role and organisation of the BP. It serves as the operational branch of the police force in internal security matters involving anti-terrorism, security in border areas, and the handling of public disorder. It also serves as a multipurpose supplementary military or police force where necessary. Most of the complaints Herzog investigated were against younger officers with little training, and he noted that the low rank and youth of the conscripts involved played a part, as did fact that the guards usually worked as teams against groups. For the purposes of SSR, Herzog's work emphasises that civilian control itself is not enough; that the function and role of border control requires some form of combat capability; that the balance of regular and conscript guards is significant; and that training and accountability are critical.

7. Conclusions

The case for a comprehensive approach to SSR is now widely accepted. It is generally acknowledged that the aspirations and processes of SSR are of potential relevance to all coercive agents, as is its inherently political and developmental nature. As a result, the strongly liberal-democratic goals of SSR are increasingly balanced by greater attention to local ownership and the knowledge that reform must be internally driven if it is to succeed.

Contemporary SSR is shaped by factors derived from civil-military relations, development studies, and political imperatives. All affect border control services. Insights from civil-military relations are relevant to border services because border guards usually operate in an environment that demands paramilitary capabilities. They are balanced by insights originating in development studies,

[29] Sergio Herzog, 'Is there a distinct profile of police officers accused of violence? The Israeli case', *Journal of Criminal Justice* 28 (2000), pp. 457-471.

which highlight the socio-economic aspects of reform and the relationships between state institutions. Development's emphasis on accountability and transparency is especially valuable because it emphasises that reform is a process, rather than an end in itself. This, in turn, suggests that SSR is best promoted by a problem-driven approach that pays due attention to the relationships and complex trade-offs that mark reform and transformation. SSR must, however, be seen in the context of the political and security environment in which it is to operate. The formative effects of Schengen's requirements on Europe's border control services cannot be under-estimated; the Schengen *acquis* has also facilitated the process of identifying appropriate 'professional' standards.

Until recently, border systems were ignored by SSR. Border control was seen as a narrowly technical occupation that did not deserve specific attention. Its coercive impact was comparatively ignored in the post-Cold War context. That is no longer the case. Not only has the impact of illegal trafficking and migration on the European project for regional integration ensured that border control is seen as a primary defensive measure, but the analytical and practical significance of border guarding is increasingly recognised. The importance of the border guards' role at the intersection of military/ police, national/international, and internal/external security is now clear — even if their categorisation as military or police remains contested. Answers depend on the geo-political context of the specific system concerned; managing Hungary's green borders often requires a rapid reaction capability whereas dealing with migrant trafficking needs police powers.

The major areas in which the principles of democratic control apply to border systems are those where corruption, unwarranted discrimination, or the excessive use of force are tolerated or permitted. More generally, all the key characteristics of SSR apply to border systems to some degree, depending on the specific circumstances of the system concerned. These include civilian control, accountability, transparency, fair promotion, and realistic anti-corruption policies, though none are sufficient in themselves. Which factor is critical, and the sequence in which they should be introduced, is debatable, but, assuming that a degree of reform already exists in the society concerned, accountability as an aspect of good governance is probably the most important factor. Its relationship to civilian control is complex but civilian control tends to be a matter for elites or officials whereas accountability implies a wider if more diffuse oversight. It is probable that accountability to multiple structures, at multiple levels of control, provides the key to genuine democratic control. No single accountability structure is sufficient, and structures at internal, state and social levels are necessary. The balance will vary; some environments are clearly corrupt though this may be offset by appeals to professionalisation as a

means of attaining acceptable standards and culture. Improving the status of border guards represents an important aspect of professionalisation.

Many of the problems SSR wishes to change are complex or inaccessible. How to address the fact that many of the countries encouraged to undertake SSR are not ready for fundamental institutional reform is one such challenge. The value-laden nature of policy transfer is another. So too is the fact that reforms prompted by the EU's justice and home affairs criteria have probably worsened some operational problems because they mean resources are diverted from local crime to international concerns. Other important issues remain unanswered. We do not, for example, know how SSR relates to democratisation or economic development in terms of policy, or what are the best ways of accommodating discrepancies between the perspectives of donors and recipients. Analysis of internally generated SSR is almost non-existent, while the reasons why specific organisations or governments promote SSR has received insufficient attention, as has the impact of regional security concerns.

It is clear that there is no one correct approach to achieving SSR. There is no template for reform though existing SSR programmes offer a general framework for analysing certain institutional security problems and designing donor interventions. Many of SSR's principles, such as the requirements associated with resources, training and education are widely accepted, but expanding the conceptual and empirical parameters of the field and explaining the transformations remains a challenge. This is especially true for border control services, which cover both paramilitary and police roles, but have been somewhat neglected. Not surprisingly the question of how democratic control might make border management more efficient or effective is still to be investigated.

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Part Six:

ANNEXES

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The **Geneva Centre for the Democratic Control of Armed Forces** (DCAF) was established in October 2000 on the initiative of the Swiss government. The Centre's mission is to support States in their efforts to strengthen democratic and civilian oversight of armed and security forces, and to promote security sector reform in accordance with democratic standards.

To implement its objectives, the Centre:

- **collects information and undertakes research** in order to identify problems, to gather experience from lessons learned, and to propose best practices in the field of democratic governance and reform of the security sector;
- **provides specific expertise and support through practical programmes** to all interested parties, in particular governments, parliaments, international organisations, NGOs, and academic circles. Particular emphasis is placed on rendering the experience of countries that have already gone through transition processes at the disposal of those States which have more recently embarked on the process of reform.

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- standards, norms, and best practices in the field of democratic governance of the security sector;
- theory and practice of security sector reform (including defence reform);
- parliamentary and civilian oversight of armed forces, police, internal security forces, intelligence, and border guards;
- legal aspects of security sector governance (including document-ing relevant legislation);
- civil society building as means of strengthening democratic security sector governance;
- security sector reform as a means of ensuring human security, sustainable development, and post-conflict reconstruction;
- challenges of security sector governance in regions outside the Euro-Atlantic area, especially Africa and the Middle East;
- emerging issues in security sector governance (e.g. the treatment of women and children, mechanisms of civilian control of nuclear weapons, etc.).

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- interacting with parliamentarians and civil servants to promote accountability and effective oversight of the security sector;
- funding and training of expert staffers in support of oversight structures, such as parliamentary defence and security committees;
- assisting in drafting legislation related to defence and security;
- providing advice and guidance to governments on ways to organise professional and accountable border security structures;
- advising on demobilization and the retraining of downsized forces;
- assisting governments in encouraging openness in defence budgeting, procurement, and planning.

CENTRE FOR CIVIL-MILITARY RELATIONS

THE CENTRE FOR CIVIL-MILITARY RELATIONS is a non-party, non-political and non-profit association of citizens. It was founded and registered in August 1997 with a view to researching into the totality of relations between the Army and the society from the viewpoint of modern thought and pursuit of individual, national, regional and global security. For that purpose the Centre specifically deals with problems of the reform of the security sector and armed forces in post-conflict countries in transition and prospects for placing them under democratic civil control and public supervision.

The focus of the professional and public activities of the Centre has been placed in the security sphere of Serbia and Montenegro. From that standpoint of the Centre and its associates record and measure the effects of changes in the regional, euroatlantic and global environment in respect to the security of SCG. Further, on the basis of analysis of external and internal challenges, risks and threats, it looks into the country's security capacities. Hence the focal point of research and public activity of the Centre is needed for the content, scope and dynamics of reform of the security sector and armed forces of SCG, along with placing them under democratic civil control. Special attention is paid to research into and public presentation of the need for, course and pace of the security incorporation of SCG into regional, euro-atlantic and global processes of cooperation and integration.

The Centre regularly presents its research results, in different forms, to the expert and broad public, hoping to contribute to spreading and strengthening public support for reform of the security sector in SCG. For that reason, the Centre is systematically engaged, on its own or in cooperation with other scientific and educational institutions, in education and publishing in the domain of security. To that end, the Centre cooperates with domestic and foreign, governmental and nongovernmental institutions and organisations.

Web site of the Centre:
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