Democratising Security in Transition States
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Findings, Recommendations and Resources from the UNDP/DCAF Roundtable for CIS Parliamentarians
Prague, October 2005
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Foreword
Foreword

In the past 15 years, the international community has paid increasing attention to the development of the security sector, recognizing the link between human development and human security. Security sector reform, and security sector governance in particular, are critical to protect human rights, and reassert civilian control over a state’s affairs. For states in transition, security often remains a fragile public good, which needs to be protected by a multi-sectoral strategy that is developed, owned and implemented by national and local stakeholders. These stakeholders include the executive, but also the legislative and judicial branches and civil society. Parliament’s active role in oversight and reform of the security sector ensures that such oversight is not just civilian in nature, but democratic too.

The findings presented in this publication demonstrate that there remains significant potential to increase parliamentary power in general, and democratic security sector oversight in particular, in the Commonwealth of Independent States. A number of parliamentary development activities are critical to effective security sector oversight and promoting human security, for example: establishing dedicated oversight committees; professionalizing standard procedures; making the budget process transparent; integrating a human-rights perspective into legislative practice; strengthening the diversity of views; facilitating public debate on key policy issues; developing parliamentary cooperation with civil society; and, last but not least, increasing expertise and capacities on human security issues, including the gender dimension.

With a view to furthering human security in transition states, we encourage parliamentarians, civil society institutions and international organizations to use the following resources and follow up on the findings and recommendations presented in this publication. UNDP is grateful to the Czech Government for hosting the CIS parliamentary dialogue in Prague, and to the Geneva Centre for the Democratic Control of Armed Forces (DCAF) for the excellent collaboration and partnership with UNDP on this important topic.

Kathleen Cravero  
Assistant Administrator and Director  
Bureau for Crisis Prevention and Recovery

Shoji Nishimoto  
Assistant Administrator and Director  
Bureau for Development Policy
Regional Dialogue on Security Sector Oversight

Report on CIS Parliamentary Roundtable, Prague, October 2005

Katrin Kinzelbach
Introduction

On 24-26 October 2005, the UNDP Regional Centre for Eastern Europe and the Commonwealth of Independent States organized, in collaboration with DCAF (Geneva Centre for the Democratic Control of Armed Forces), a Parliamentary Roundtable on Security Sector Oversight. Forty-five participants from Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Russia, Ukraine, and Uzbekistan, as well as international experts, attended. The event was held in Prague and co-sponsored by the Czech Government. It represents UNDP's first initiative on parliamentary oversight of the security sector and constitutes a starting point for regional and national-level programming in the CIS region.

In preparation for the roundtable, DCAF conducted baseline research on the current state of security sector governance in the region (see research report by Eden Cole, pages 16-37). In addition, all parliamentary delegations made presentations on the situation in their respective country.

Unlike the dynamics during previous roundtables, and due to the sensitivity of the topic, participants initially restricted their interventions to diplomatic statements. A frank and informal dialogue only emerged slowly. This experience reconfirms that dialogues on security require careful facilitation and an overall setup that promotes a candid exchange. On the other hand, it is also emblematic of the relative weakness of legislatures in the CIS region, where debate takes place, but where sensitive issues, especially those challenging the power ministries, are not typically discussed in the open. The political culture is defined by majoritarianism rather than consensus-building, and it is still influenced by a tendency to praise the leadership rather than to criticize it. As one participant put it: We have the rights, but the rights are not exercised.

Box 1: Roundtable Evaluation

- 67% of the parliamentarians stated that they had increased their knowledge on parliamentary security sector oversight “to a great extent”; 33% stated that they had increased their knowledge “to a reasonable extent”.
- 78% of the participants recommended that workshops on security sector oversight should also be organized for other parliamentarians and for parliamentary staff. There were no participants who advised against further events of this type.

Note: The views expressed in this article are those of the author and do not necessarily represent those of the United Nations or UNDP.
• 82% of the participants felt that the roundtable was "fully" useful in light of their professional tasks, while 18% felt it was "partially" useful.

• 64% of the participants judged the length of the Roundtable as "adequate", while 36% judged it as "too short".

Some parliamentarians suggested that in order to strengthen democratic oversight in their countries, civil society and the media also needed guidance and support to improve their understanding of a) democratic governance and b) the mechanisms available to them to affect positive change on security issues.

Security and Democratization

The recognition that oversight rights are not fully exercised sparked an exchange of views on basic concepts of democratic rule and democratic transformation. Some parliamentarians argued passionately that change depended on personality and could be brought about by charismatic leaders. Others countered that a country should not be built around persons but that the focus must be placed on strengthening institutions, reforming legislation, promoting adherence to the rule of law, and ensuring respect for the opposition. It was possible to observe a correlation between the views expressed by individual parliamentarians and the different stages of democratization in their countries of origin.

Dr. Daniel Smilov from the Centre for Liberal Studies in Sofia offered an academic analysis highlighting, amongst other issues, the different institutional factors in presidential and parliamentary regimes. He also suggested that effective parliamentary oversight of the security sector were likely hindered in countries that are engaged in nation-building, rather than state-building. This appears to be an important distinction when looking at countries that emerged from one block but which are now struggling for self-expression. However, Dr. Smilov’s point was, not surprisingly, refuted by those parliamentarians that had previously explained why their young states should focus on building a strong national identity. Some also argued that countries have different histories, making it inappropriate to apply rules from elsewhere.

Dr. Philipp Fluri and Dr. Hans Born from DCAF emphasized that the intention of the roundtable was not to preach one model, but to share views and experiences on approaches that have worked. Although different points of departure exist, it was emphasized that democratic security sector governance always required emancipation from history. What the roundtable discussions brought to the forefront is that some countries in the region are undergoing quite significant democratic transformation and that their parliamentarians have taken steps to strengthen oversight of the security sector and enhance human security. Participants from other countries, however, questioned basic concepts of democracy and were evidently less willing to promote structural reforms that would make security decisions more transparent to citizens.
Security and Oversight

There were conflicting views on who is to take decisions on security issues. In this regard, the executive, and most importantly the president, was identified as key actor. While none of the participants opposed some form of parliamentary oversight, views on the appropriate scope differed. One participant remarked: *Don’t overestimate the role of parliaments.* Some parliamentarians even argued that strong parliamentary oversight would weaken the security sector, and expressed the view that most security related decisions should be made by security experts – i.e. representatives of the uniformed forces. This view became most evident when the participants tried to prioritize different oversight tools (see Box 2).

Box 2: Parliamentary Tools for Security Sector Oversight

1. General powers of parliament
2. Budget control of defence issues
3. Parliamentary powers concerning peace-support operations
4. Powers concerning defence procurement
5. Powers concerning security policy and planning documents

A number of parliamentarians remarked that they did not need powers concerning defence procurement as they did not have the necessary technical expertise. Indeed, this is an area where parliaments frequently only have very limited powers. Although opinions on the importance of different mechanisms varied, it can be concluded that all participants were familiar with general oversight powers at their disposal (such as holding hearings, mounting inquiries, holding a question hour, summoning the defence minister to appear at committee meetings, gaining access to classified information, and so on).

A key objective of the presentations made by invited experts during the roundtable was to demonstrate that civilians can and must understand security matters if security is to be guaranteed as a public good, and that democratic oversight makes the security sector not only more accountable, but also more effective in protecting citizens. The experts also addressed knowledge gaps on more technical issues. For example, Dr. Yuriy Kryvonos from the OSCE Conflict Prevention Centre lectured on regional commitments specific to democratic security sector oversight as agreed upon in the OSCE Code of Conduct on Politico-Military Aspects of Security.

The discussion of concrete case studies allowed participants to review their opinions. In the context of a case study on military reform/ downsizing, one working group looked at a procurement case and concluded that the executive must provide in-
formation on defence procurement to parliament, including on tender processes to prevent corruption, together with longer-term strategic plans that justify expenditure at requested levels. With an atmosphere of trust slowly emerging, participants admitted that important decisions on security issues were out of view of the parliament and that they needed to learn more about how parliamentary control could be strengthened.

Security and Human Rights

At the opening of the roundtable, Marcia V.J. Kran from the UNDP Regional Centre introduced a notion of human security interrelated to human rights, and highlighted that the security sector can be responsible for human rights abuses. Jaromir Stetina, Member of the Foreign Affairs Defence and Security Committee in the Czech Senate, remarked that transition from communism to post-communism to democracy implied risks, especially in the security sector. Several parliamentarians stated that an undemocratic regime and a lack of democratic oversight over the security sector represented a threat to citizens. These statements were either related to reflections on the communist past or to new restrictions placed on citizens’ freedoms in response to terrorist threats. One parliamentarian warned: *If all security institutions are fighting terrorism, then they can turn into state terrorists.*

During the course of the roundtable, it became clear that most parliamentarians equated security with national defence: the concept of human security was not well understood. In addition, discussions on security were predominantly gender-blind. Participants’ understanding of security seemed largely rooted in the idea of secrecy rather than in that of common good. Continued efforts should be devoted to furthering understanding of the human dimension of security, including the linkage between human security and human rights.

A working group that discussed a case study on the abuse of conscripts during initiation rituals in the military, recommended firm action by parliament to ensure that those responsible be punished and that future human rights abuse in the military be prevented through structural reform. Ombuds institutions were identified as useful redress mechanisms for human rights abuses. The group also suggested initiating a public debate to raise awareness of the human rights obligations of security forces; televising parliamentary debates was considered a good practice to raise issues for public discussion. The group agreed that human rights violations in the military had implications going far beyond the individual cases. One participant summarized this by remarking: *The military is a reflection of the society.*

Another working group looked at a case study on the proportionality of law-enforcement measures in response to a demonstration. The group unanimously concluded that the police may only use force when strictly necessary and to the extent required
for the performance of its duty. In case law-enforcement officials use excessive force, commanding officials should be reprimanded and the police reformed. The discussion of the working group benefited from a presentation by Martin Linhart, Deputy Director of the Department for Security Policy in the Czech Ministry of Interior. He reported on the steps that his government had taken to reform the Czech police force. Community policing was presented as an effective mechanism to reduce tensions between law-enforcement agencies and communities and address the risk for conflict inherent in adversarial relations.

Security and Conflict

The discussions on security sector oversight also raised broader questions on the role of parliaments in crisis prevention and conflict resolution. Several parliamentarians expressed the wish to become more proactive in solving border and territorial conflicts through dialogue, and expressed an interest to learn about models of regional parliamentary cooperation on conflict resolution. Parliaments are not only oversight bodies. At the national level, they provide society with an important platform to promote dialogue on contentious issues. This potential should be used to resolve conflicts; parliamentarians from different countries can cooperate to approach effectively regional / cross-border conflicts, including frozen ones. The roundtable confirmed yet again that a regional parliamentary network is a useful platform for discussions on such sensitive issues.

Conclusion

During the course of the three days, the following agreement crystallized:

1. Democratic governance and reform of the security sector must be applied contextually to each country.

2. Conditions for effective parliamentary oversight include:
   - Authority (legal powers)
   - Ability (resources, expertise, staff)
   - Attitude (broad understanding of security and willingness to hold government to account).

3. Competency of parliamentarians and parliamentary staff in security sector oversight is insufficient in the region and should be enhanced. Knowledge and skills of the political elite are underdeveloped, due in part to its high turnover since the breakdown of the Soviet Union.

4. All relevant oversight bodies should work congruently, draw on experiences of established democracies, and apply international best practices.
5. One of the main problems of managing democracy in a transition state is the lack of cooperation between civil society and parliament. Open parliamentary hearings and the engagement of civil society institutions/ the public are important tools for making the security sector more democratic.

6. Increasing democratic oversight is a difficult challenge because the various security agencies tend to be closed institutions.

7. A better understanding of technical issues is not enough to increase oversight. The key is to foster political will, respect for the opposition, and the rule of law.

Some suggestions put forward by participants of ways UNDP and its partner institutions could pursue the work on security sector oversight include:

1. Organize sub-regional follow-ups to allow for a more in depth discussion on various political and institutional realities.

2. Provide technical advice on how to strengthen the role of the opposition in parliamentary oversight and, in contrast, on democratic options for effectively counteracting parties which promote extremist views.

3. Present best practices on:
   a) Effective parliamentary investigation
   b) Confidentiality procedures
   c) Interaction and coordination of all structures involved in security sector oversight (including various parliamentary committees, executive organs, the judicial sector, ombudsman institutions, and civil society organizations).

4. Help develop civilian expertise on security issues and train parliamentary staff.

5. Share experiences on the role of parliaments in the resolution of conflicts.

All participants agreed that any work on parliamentary security sector oversight should be linked to broader assistance programmes for parliamentary development, aiming at the professionalization of parliamentary staff and greater institutional effectiveness of parliaments.
Box 3: Czech Trust Fund

UNDP would like to thank and recognize the Czech Trust Fund for providing financial support for this roundtable initiative. The close cooperation between UNDP and the Czech Trust Fund was established in 2000 as the first example of “emerging donor” cooperation in Central Europe. Since then, the partnership between UNDP and the Czech Trust Fund has not only contributed expert knowledge in the areas of focus, but has also helped to build a network of contacts between Czech experts, national representatives from various countries in the region, and members of international organizations.
The Status of Current Security Sector Governance in the CIS and its Relevance to Parliamentarians

Eden Cole
Introduction

Nearly fifteen years after the end of the Soviet Union, the status of democratic control over the security sector in the Soviet successor states remains a vexed issue. The dissolution of the USSR was itself preceded by a succession of clashes in which the powers and vested interests of the Soviet security sector were set against the aspirations of popular national movements in many Soviet republics in ever more pronounced ways: popular perceptions of the illegitimacy of the sector’s response to mass protests directly spurred increasing opposition to the central regime and, ultimately, precipitated its downfall and the mentalities which had sustained a national security state.

Since independence, the transparency and accountability of the security sector in former Soviet states has remained a prominent issue. At their worst points, the civil wars in Georgia, Moldova and Tajikistan raised the issue of whether there was any effective political control of the security sector at all, and, if there was, whose interests were being served though the conflicts concerned. The Caucasus region was particularly embroiled with conflicts in the disputed territories of Abkhazia, Nagorno-Karabakh and South Ossetia, all of which were, in terms of coverage, intensity, and casualties, ultimately eclipsed by the conflicts in Chechnya. In regional terms, each conflict raised the issue of control and accountability of the security sector, its policies, and its decision-making processes; particularly as some of the security agencies involved appeared to act exclusively in their own interests.

With the establishment of many de facto presidential republics across the region, security sector actors across the defence, intelligence, and law-enforcement spheres became perceived, just as in former Warsaw Pact countries, as critical actors in the new political, social, and economic landscapes. As successor states, the countries became signatories of the OSCE Code of Conduct on Politico-Military Aspects of Security in 1994, joined democratic fora such as the Council of Europe, and interacted with regional and international organisations with embedded democratic governance agendas. Hence, the obligation to develop demonstrable democratic civilian control of security sector actors increased over time. As democratic transitions progressed, civil society increasingly expressed dissatisfaction at democratic deficits precipitated by a lack of transparency, accountability, and widespread corruption, all of which were most commonly encountered in every day life through corrupt policing and public insecurity, but which also affected the political landscape through interventions in executive and governmental decision-making. Parliaments increas-

Note: The views expressed in this article are those of the author and do not necessarily represent those of the United Nations or UNDP.
ingly faced issues which, if acted upon, could affect the power of the executive, and they were, as a result, the focus of strong lobbying for such action by national and international civil society.

Thus, as advocacy on democratic governance, institution building, human security, and human rights increased in the region through vectors supported by international organisations, the critical issue of democratic control of the security sector coalesced. Despite its salience, the issue remains under-mapped at the regional level. As at least the principle of parliamentary scrutiny of governments and executive became embedded, an opportunity to explore the issue of democratic oversight of the security sector, focusing most closely on the parliamentary component, was provided by the UNDP Regional Network of CIS Parliamentarians discussing democratic control of the security sector and security sector governance issues at the Roundtable on Parliamentary Oversight held in Prague in October 2005, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

**Research Objectives**

At this event, to begin the process of filling a knowledge gap and to gain background on and ascertain the needs for improved democratic security sector oversight, particularly in the context of parliamentary oversight, UNDP’s Regional Centre for Europe and the CIS requested that the Geneva Centre for the Democratic Control of Armed Forces (DCAF) undertake a survey of the current status of parliamentary oversight in the former Soviet countries which made up UNDP Regional Network of CIS Parliamentarians in order that the results could be presented and discussed at the Roundtable. Consequently the survey focused on the successor states in the network, grouped here into three sub-regions following the typology: Western CIS (Moldova, Ukraine); the Caucasus (Armenia, Azerbaijan, Georgia): and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan). As a result, the Baltic States (Estonia, Latvia, Lithuania), Belarus, the Russian Federation, and Turkmenistan were omitted from the survey. Finally, a desk study was prepared with materials elaborating the status of security sector governance in the former Soviet Union as a broad-ranging background document for the attendees.

With the specific aim of addressing parliamentary and democratic oversight issues, a questionnaire was prepared to gain insight into both issues, as well as on the status of security sector governance in each of the states concerned. Parliamentarians and civil society groups from each country were asked to respond to the survey. A modified form of the questionnaire was also used to request data from international development actors working in each country. From the findings, a baseline could be drawn, which would help to indicate what assistance was needed in order to improve governance and to help create recommendations for national and international actors working on relevant issues.
The aim was two-fold: firstly, to assess the current status of parliamentary oversight and security sector governance in each former Soviet country and by sub-region; secondly, to use the findings to identify national and regional security sector governance needs; gaps in democratic oversight mechanisms, instruments, knowledge and understanding; and formulate policy-relevant conclusions for empowerment and capacity building projects among: parliamentarians; civil society; the media; and democratic institutions, particularly those responsible for the rule of law and human rights.

To locate the security governance issues and needs identified by respondents, current analyses of democratic security oversight and governance issues across the region were examined to provide a context for the survey findings. Their limitations were also assessed with a view to further clarifying the gaps and resulting research needs on these issues. The value of the study was that it was the first of its kind in the area on this issue, not least as it aimed at addressing the issues of sustainable democratisation and local ownership.

The findings are outlined in the next section to provide a context for the research findings generated by the questionnaire.

Mapping Security Sector Governance in the Former Soviet Union – A Brief Outline

Although an in-depth, thematic, systematic, book-length regional analysis of the status of security sector governance or democratic oversight of the security sector in the former Soviet Union does not yet exist, the issue has been addressed in strategic terms by the OECD-Development Assistance Committee (DAC)’s 2005 study on Security System Reform, and other preliminary investigations by the ‘security and development’ community into the issue of security sector governance in a regional context. The regional inter-relationship between security, governance, and development issues has been addressed in over-arching terms in the South Caucasus;¹ and the role of the OSCE in the post-Soviet space has also been assessed in terms of mandate-fulfilment.² But it is the OECD-DAC survey which incisively states that:

“The main [security system reform] challenge facing the post-communist states is to limit the influence of the old military and secret police cadre and to restore democratic control over use of force by state institutions. This challenge encompasses not just internal mili-

DEMOCRATISING SECURITY IN TRANSITION STATES

Identifying the ability to foster economic growth, create social stability and respect for law and order, and for democratic parties to achieve consensus on the strategic priorities of national security constituted the critical developments which led to successful reforms in the Baltics and Central Europe, the survey also attributes the lack of security sector reform (SSR) processes as follows:

“The process in […] CIS countries has been slower and more politically controversial due to the generally slower pace of economic and political reforms.”

But, at the same time, political and other factors slowing reforms can be linked to the security sectors themselves, particularly for actors who forge links with former secret police and military intelligence

“Paramilitary and internal security forces as well as intelligence services, police and border guards remain outside of any meaningful civil control in many SEE and CIS states, particularly those emerging from conflict.”

“Mechanisms of accountability in governments are either weak or non-existent. Corruption in the public service, the weakness of civil society, and dysfunctional parliaments slow down the process of SSR. In CIS countries, control of the state security apparatus is typically in the hands of one man – the president – who has reproduced the role of the old Party Secretary General.”

Studies by international organisations concerned with governance issues provide an invaluable reference point when comparing the development of the countries in the region. In this regard the World Bank’s ‘Governance Indicators’ are crucial to gauging progress on an array of issues, including voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption. The 2004 statistics showed that the indicators for voice and accountability and those for corruption did not overlap perfectly in the region: while Central Asian states and Azerbaijan fared least well in terms of voice and accountability, Central Asian states, Azerbaijan, Georgia, Ukraine, and Moldova all had problems controlling corruption. Evaluation of the status of such issues is also supplemented by the work of Transparency International and the Freedom House Nations in Transit Country Reports and

4 Ibid. p. 137.
5 Ibid. p. 138.
6 See http://www.worldbank.org/wbi/governance/govdata/ The resources available for European and Central Asian countries provide an invaluable reference point for the development community.
Country Ratings, which both reached similar conclusions (although with different methodologies). In the same way, despite not being concerned with the issue of security sector governance per se but rather with issues which are indicative of the status of democratic security governance, the human rights monitoring, awareness raising and advocacy programmes of organisations such as Amnesty International and Human Rights Watch by their very nature draw attention to the consequences of ineffective security sector governance. Other media NGOs such as the Institute for War and Peace Reporting (IWPR) also provide an invaluable touchstone on democratic oversight failures, especially when actively documenting events in the regions.

With the OECD-DAC study proving the exception rather than the rule of ‘strategic’ security sector governance analysis across the region, whilst there is an awareness of documentation and knowledge-gaps, the omissions have not yet been fully remedied. Most studies focus exclusively on defence and strategic issues and, by default, on the political control of the security sector as relevant to determining the power structures in the region. Relevant information must instead be gleaned from the limited number of nationally-focused security sector oversight studies which have been published, related governance surveys, and the activities of analysts and NGOs involved in monitoring security sector issues, such as Saferworld and DCAF (see below). Overall, interest in the topic is, however, increasing and the analyses are becoming more sophisticated. In the following section the extant literature and its relevance to the security sector governance agenda and the status of parliamentary oversight is outlined by country preparatory to the subsequent analysis of the questionnaire findings in the next section.

The most relevant research to date has focused on the Western CIS, particularly Moldova and Ukraine, states which are now included in the EU’s European Neighbourhood Policy and which have been in close proximity to relevant Stability Pact activities in South East Europe. Both countries have participated in security sector governance mapping exercises aimed at creating local ownership of security problems, and, particularly in Ukraine, there is an increasingly clear understanding of democrat-

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9 See for example the relevant FSU chapters in Philipp H. Fluri and David M. Law (eds.), Security Sector Expert Formation: Achievements and Needs in South East Europe, (Vienna: LaVAK, 2003); Philipp H. Fluri and Jan A. Trapans (eds.), Defence and Security Sector Governance and Reform in South East Europe: Insights and Perspectives Volume 2; FYROM Macedonia; Moldova; Romania; A Self-Assessment Study, (Belgrade: CCMR, 2003).
ic oversight issues. Applying as much to Moldova as to Ukraine, the main security sector reform issues remain de-politicisation, legal reform, transparency, democratic accountability, and force reductions. Whilst the Russian Federation is not included in this survey, the issue of democratic civilian oversight and security sector reform has not been as neglected as elsewhere in the CIS, but has been no less controversial, particularly as the interaction of vested interests within the defence and intelligence sector have often been seen as instrumental in determining military policy in the North Caucasus. Whilst a detailed study has demonstrated how, even in the midst of bureaucratic ‘conflicts’ and socio-economic upheavals, a profound consensus between some civilian and security actors on the need to create a minimum of democratic oversight shaped not only the dissolution of the Soviet Union but also the early years of democratic Russia, and the theory and practice of democratic civilian control at the executive level having been formally elaborated by officials, sceptics have differed. It is often generally accepted that ‘a severe breakdown in civilian control over the military took place during the Yeltsin period’, and that his successor Putin ‘faced a serious problem: not only restoring unity in the military command but also strengthening his control over the armed services, which had started doing as they pleased under Yeltsin’, a sentiment echoed by a Swedish survey

“To enable a democratic culture … in which civil society takes part, Russia has to cease to use its State forces to control … conflicts with violence and other coercive means. Chechnya is but the most obvious example of this reliance on violence to solve social conflicts. To secure military subordination (and subordination of other power agencies) is a purpose which has not been fully achieved by the Russian presidents’ political control of the State forces.”

Thus, the full interaction of the executive, civil society and security institutions in Russia has still not been fully mapped in detail despite the great interest in the issue both within and outside the country.

An increasing EU interest in the Caucasus, particularly in Georgia and Armenia, has also precipitated a growing body of literature on democratic oversight issues.

11 See, for example, the proceedings of 2002-2005 DCAF-Verkhovna Rada security sector conferences on oversight issues available at http://www.dcaf.ch/lpag/_publications.cfm?navsub1=4&navsub2=3&nav=3
Initially approached in general terms as a regional issue,\textsuperscript{17} the specifics of security sector governance in each successor country have subsequently been addressed more methodically. A recent study by Saferworld itemised Armenia's security sector reform progress, problems, and needs.\textsuperscript{18} Georgia's security governance progress and problems have also been addressed,\textsuperscript{19} including a preliminary study on the legal framework for security sector governance.\textsuperscript{20} Analysis of Azerbaijan's security sector reform needs, however, still have not directly addressed controversial issues such as the use of law enforcement units to heavy-handedly disperse pro-democracy demonstrations during the last few years. On the other hand, in common with much of the relevant former Soviet Union (FSU) literature, the issue of security governance is alluded to whenever the country's security issues are discussed.\textsuperscript{21} Overall, the challenges remain the same:

"The three states...face many of the developmental and security problems that plague other former Soviet republics, including weak transparency, rule of law, and democratic institutions."\textsuperscript{22}

Similarly, Saferworld’s recommendations on the steps to be taken by the Armenian government reflect the wider regional security governance needs. These are, to:

- publish a national security concept;
- formulate a policy on the future of the security sector;
- clearly delineate the roles and responsibilities of security sector actors;
- tackle corruption and human rights abuses in the security sector;
- increase transparency in the security sector;
- improve budgetary oversight;
- make a strong commitment to police reform;
- exchange international information and experience of security sector reform.\textsuperscript{23}

Across the region, the status of security sector governance has been addressed least comprehensively in Central Asia, despite the issue’s salience. Some preliminary broad-based studies are available,\textsuperscript{24} but they have a tendency to focus solely on de-
fence issues and only analytically survey the inter-relation of the executive and key security sector actors. In general terms, studies which included a dedicated defence component tended to be more interested in the geo-political relevance of political control of the security sector as opposed to empowerment in democratic terms. However, the role of the OSCE in norms transfer has been explicitly addressed as more purely-military technical assistance to the region increased in the wake of the war in Afghanistan.

In contrast, the broader literature on governance in the region has provided complementary insights into its status of governance and that of other norms transfers. The governance issue has been perceived as most critical in Central Asia, wherein governance issues addressed as a problematic of pervasive neo-Sovietism which precludes the establishment of democratic governance. The same shortcomings have been identified in the legal sphere. Even in apparently unrelated contexts, transparency and accountability have been shown to be lacking in the region.

However, the OECD-DAC study included Central Asia in its series of Asian case studies. It specifically addressed the security sector reform problematic in Central Asia as part of a wider survey of oversight needs in Asia finding that:

“The climate for SSR in Central Asia is weak as a consequence of both the global ‘war on terror’ and the nature of political regimes that prevail across the region. Weak legislatures and judiciaries, emasculated medias and low levels of civil society activity have only reinforced the conservativeness of the Central Asian regimes.”

During the post-Cold War era, little has been done to develop oversight capacities, transparency, and accountability. In common with much of the post-Soviet space, but more acutely:

“On the whole, little progress has been made on the domestic front, particularly with regard to governance reforms. Remnants of Soviet military form the backbone of the security forces in each country with the same legacy of total state control. Political and policy initiative that address security problems rarely involve the legislature. In the policy arena, civil management bodes and civilian capacity-building initiatives are generally conspicuous by their absence.”

The quotations above exemplify the post-Soviet experience of security sector governance in the former Soviet Union. Whilst improvements to governance have occurred in countries who have actively sought out assistance from international and regional organisations, in most cases, the security sector has remained moribund, plagued by the same problems, and ultimately unaccountable and at the disposal of the executive. In conclusion, sufficient data from multiple sources exists to enable judgements on the status of security sector governance, even if the specifics are often lacking.

**Questionnaire Survey: Outline & Research Findings**

The questionnaire used to ascertain the current status of parliamentary oversight of the security sector in the former-Soviet countries concerned addressed three thematic categories, classified as legislative and policy framework; the role of institutions; and empowerment and capacity building. Each was subdivided into eight or more questions (see Box 4 for a list of issues addressed by the categories; the full text of the questionnaire can also be found in the ‘Resources’ section of this publication). Respondents were also asked to identify elements of the current security agenda in their country, identify whether there would be a budget increase or decrease, and whether reform plans were known. Respondents from the international development community were asked to identify relevant donor activities in the region in order for the roundtable organisers to gauge a picture of relevant donor-assistance in the region.

The questionnaire was structured as per the format in Box 4 in order to quickly identify a baseline in parliamentary oversight and democratic oversight of the security sector. The results of the survey are summarised in Box 5.

**Questionnaire Survey Results: The Caucasus**

In the Caucasus, there was a correlation of findings from parliamentarians, civil society and other primary sources: in each country developments had a different character, but with Armenia and Georgia differing from Azerbaijan in terms of the capacity to debate and scrutinise the status of democratic security oversight. Nevertheless,

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33 However, due to the then imminent elections in Azerbaijan, no data was received from the Milli Mejlis.
in each country there remains a common need to develop the capacities of parliament and civil society organisations (CSOs) to meaningfully participate in oversight structures.

The form and quality of parliamentary oversight was questioned in each country. Despite the ‘democratic’ ‘Rose Revolution’, a consensus emerged that security sector oversight had not improved in Georgia. In fact, to some, it seemed to be back-tracking. Although many criticisms had been made of the Defence Ministry’s and new Defence Minister’s lack of accountability and transparency, the Defence Minister has recently appeared at an exhaustive question and answer session in parliament. In Armenia the parliament has played a weak oversight role, although it has sought to monitor the security policies of the executive in some detail. In terms of defence committee activity, closed hearings have sometimes been held where the president or senior ministers appear to account for policies and decision making, usually concerning the Karabakh problem, and information about the discussions at those hearings is often leaked. In Azerbaijan, respondents saw no discernible or meaningful parliamentary oversight of the security sector either in scrutiny of laws or policy. Whereas in Georgia and Armenia a clear understanding of legislative process and its limitations has emerged, Azeri respondents saw little utility in the process at all.

Box 4: Issues Addressed in Questionnaire for Parliamentarians & Civil Society Groups

<table>
<thead>
<tr>
<th>Legislative and Policy Framework</th>
<th>Role of Institutions</th>
<th>Empowerment and Capacity Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extant Security Sector Laws</td>
<td>Parliament and Budget Oversight</td>
<td>Specialised Civilian Parliamentary Staff</td>
</tr>
<tr>
<td>Application of Laws</td>
<td>Formulation of Laws</td>
<td>Interaction of Parliamentarians and Civil Society</td>
</tr>
<tr>
<td>Availability of Laws &amp; International Agreements</td>
<td>Powers &amp; Capacities of Committees</td>
<td>Civil Society and the Media Involvement in Security Sector Oversight</td>
</tr>
<tr>
<td>Parliamentary Oversight &amp; Scrutiny</td>
<td>Role of President</td>
<td>NGOs Dealing with Soldier’s Rights</td>
</tr>
<tr>
<td>Drafting of Laws &amp; Consultation</td>
<td>Role of Ministries</td>
<td>NGOs and Media Focusing on Security Oversight Issues</td>
</tr>
<tr>
<td>Use of International Precedents</td>
<td>Role of Judiciary</td>
<td>Armed Forces &amp; Human Rights</td>
</tr>
<tr>
<td>Access to Classified Information</td>
<td>Role of Ombuds Institutions</td>
<td>Training</td>
</tr>
<tr>
<td>Negotiation of International Agreements</td>
<td>Most Important Actors</td>
<td>Prosecution</td>
</tr>
<tr>
<td>National Security Policy</td>
<td>Unaccountable Sectors Effectiveness of Oversight Identifiable Assistance Needs</td>
<td>Representation of the Military in Parliament</td>
</tr>
</tbody>
</table>
In line with the findings above, whilst security sector legislation in Georgia and Armenia was available to the general public, it was not available in its entirety in Azerbaijan. International precedents used to frame legislation varied, with Georgia now using more Western (especially US legislation) and Armenia and Azerbaijan using a variety of CIS and Western precedents. International agreements were available in Armenia and Georgia, including those on NATO Partnership for Peace ( PfP) membership, CIS documents, bilateral agreements, anti-trafficking measures, and arms limitations; these documents were unavailable in Azerbaijan. Georgia now has a national security policy, Armenia advanced in drafting a new one, and Azerbaijan must draft one in keeping with its commitments under its NATO Individual Partnership Action Plan (IPAP).

Democratic institutions were still playing a limited role in each country. The most important policy and decision makers in the security field were the President and the Ministry of Defence, although this was most pronounced in Armenia and Azerbaijan. The role of the ombudsperson, even in Georgia which has perhaps done most to legitimise the independent authority of its Public Defender’s Office, was perceived as weak, with very limited effectiveness. Similarly, in the region, the independence of the judiciary remains a vexed issue: it is seen as weak in Armenia, with ‘no power to affect policy or practice’; in Georgia, the independence of the ‘reformed’ judiciary is increasingly being questioned, even being termed as ‘in crisis’, as legal reforms clash with the political prerogatives of a new generation of leaders; and in Azerbaijan the judiciary is seen by survey respondents as being utterly politically compromised.

The vibrance of civil society serves as a contrast, although their formal capacity to assist democratic oversight is limited by the factors already outlined. Although limitations on the capacities of Armenian civil society were acknowledged, they did not perceive it as systematic, deliberate attempts to limit freedom of speech: it is possible to publish articles on security topics. Moreover, the Minister of Defence regularly meets with the media and answers parliamentarians’ questions, but the community does not affect decision making. Civil society organisations and the media monitor the security sector as much as possible, and discuss oversight issues in different degrees, but there is a limited scope to conduct investigations or advocacy. In Azerbaijan, civil society’s role remains severely curtailed by the actions of the authorities and freedom of speech is limited by the threat of arrest. There is no informal interaction between the two sides. In Georgia, civil society is well informed about developments in the security sector, just as the media keeps abreast of critical and controversial issues in the same field. Both interact well with the principals across the sector, as well as with parliamentarians, but their ability to affect policy and practice has become, particularly in the defence field, more and more difficult despite hopes to the contrary after the ‘Rose Revolution’. Positive developments in policing have been examined, and civil society groups will soon participate in the local community boards to
be set up as part of the ongoing police reform. However, accountability problems exist (or are rampant) elsewhere in law enforcement.

Another particular problem is the issue of human rights in the military; both Armenia and Azerbaijan have NGOs dedicated to monitoring transparency and accountability in the armed services. Although the Georgian NGOs can operate more freely than their Azeri counterparts, their actions have created a lot of tension with Georgian defence agencies.

Respondents in all countries identified an urgent requirement for independent civilian experts well-trained in security sector issues, not only to assist committees in parliament on security matters but also to reinforce the substance of civil society and the media’s activities. Some respondents also identified the need for such training for parliamentarians to help orient them with democratic best practices and the capacities of parliament to affect oversight.

In sum, in the Caucasus the principles of democratic control are understood by civil society and by many parliamentarians. Georgia has taken key steps towards creating the framework of laws and democratic institutions needed to implement democratic oversight, but the substance is still lacking. In Armenia, limited progress has been made, although the exchange of information on security sector issues is not inhibited. In Azerbaijan, however, there is currently no basis for the creation of democratic control instruments over the security sector. The means of transforming the understanding of democratic control principles face challenges arising from scepticism, misunderstandings, limited capacities and institutional resistance.

**Questionnaire Survey Results – Central Asia**

The results from Central Asian states illuminated sometimes pronounced national differences in practices but also reflected common themes negatively affecting democratic oversight. Notable cross-societal enthusiasm for democratic oversight in Kyrgyzstan and Tajikistan were not fully matched in Kazakhstan and Uzbekistan where, in contrast to civil society, representatives of the governmental and representative structures were cautious if not dismissive of the benefits of transparency and accountability in the security sector. Great attention has been paid to the region during the last year not only due to the ongoing US-led intervention in Afghanistan, but also due to the political upheavals in Kyrgyzstan during the so-called ‘Tulip Revolution’ in March 2005, the controversial events in Andijan in May 2005 when ICRC delegates were denied access to the scene of an allegedly deadly confrontation between civilians and Uzbek law enforcement units, and the subsequent withdrawal of US military assets and security cooperation programmes from Uzbekistan.

As with Caucasian countries, the form and quality of parliamentary oversight was questioned differently in each country. In Kyrgyzstan the preparation of laws was
‘taken seriously’ and the parliament ‘has become more professional in scrutinising them over time via relevant commissions and committees’, and in Tajikistan civil society’s role in consultation processes was also positively commented. However, no comments of a similar nature were made for Kazakhstan and Uzbekistan. Moreover, in some instances in Kyrgyzstan committees and civil society have been able to investigate controversial issues. In one particular case, a commission was able to gain access to formerly secret documents related to internal problems in the security services, most notably concerning abuses within the security forces; however, this event has remained exceptional within the region. Overall, committees region-wide did not systematically address security governance issues. In a few instances this was due to a lack of resources, in most due to a lack of capacities and, critically, will; deference to the executive precluded such initiatives.

Overall, security sector legislation and relevant international agreements are available to interested parties in each of the Central Asian countries, but the issue of accessibility remained particularly controversial to Uzbek civil society respondents. Despite relevant legislation having been made available in the years after independence, Uzbek respondents stated that promulgated laws remain inaccessible to interested parties beyond parliament. However, Uzbek parliamentarians substantively refuted the charge, stating that all the laws are, at the very least, available in public libraries. The issue may be clouded by the fact that, as in many other countries, regulations (or ‘sub-laws’ as some in the region refer to them) which govern the everyday practices of government agencies are neither formulated nor ratified by parliament and thus remain unavailable to the general public: Uzbek respondents may have considered these different instruments as one and the same.\(^\text{34}\) On the whole, legislation in the region tended to be drafted more from CIS (especially Russian) than from Western precedents.

Democratic institutions again played a limited role in each country. To different degrees, the role of the President in security sector decision making was seen as crucial. In most cases, it was seen as unlimited (Kazakhstan, Uzbekistan and to a lesser degree in Tajikistan and in Kyrgyzstan (where the Prime Minister is now more dominant)) being able to appoint high level security sector managers. On the whole, democratic institution building has been insubstantial across the region, with even externally mandated police reforms proving controversial in Kyrgyzstan prior to the political upheavals of early 2005. Overall, security sector assistance to the region has focused on technical defence diplomacy capacity building issues rather than – and arguably at the expense of – governance and democratic oversight capacity building issues. Unsurprisingly, conspicuous democratic institutions were seen as weak, ineffective,

\(^{34}\) Of the Soviet successor states, only the Central Asian states (and Belarus) are not subject to the jurisdiction of the European Court of Human Rights in Strasbourg, whose so-called ‘quality of law’ test asserts that a law can only qualify as a law if, among other criteria, the law is publicly available.
or severely compromised. Across the region, the judiciary and the ombuds institutions remain uniformly perceived as weak and un-independent, their activities compromised by the interests of the executive. Admittedly, in Kyrgyzstan the judiciary had demonstrated its independence prior to the political changes of 2005, and the Constitutional Court remains one of the only functioning and respected institutions. Still, generally speaking, on security sector issues, the judiciary region-wide has remained subordinate to the interests of the authorities, with weak capacities.

Civil society and the media’s role varies across the region. In Kyrgyzstan it is active, and in Tajikistan civil society has actively monitored the activities of the security sector. In Kyrgyzstan both civil society and the media monitored the police’s role in anti-democratic actions. They have also been involved, in close coordination with parliamentary committees, in monitoring and investigating the security sector. As aforementioned, in Tajikistan civil society has a constitutionally-mandated special role to play in legislative consultations, a legacy of the 1997 Peace Accords in the aftermath of the civil war; the role has substantive aspects. But in both countries the ability of civil society to systematically influence and wholly participate in democratic oversight is limited by not only the small size of the CSO sector and its resources, but also by the stability of the society itself. In Kazakhstan, CSOs have focused mainly on human rights issues, but the direct role in oversight, with demonstrable effects, has been limited. In Uzbekistan civil society remains entirely marginalised and their monitoring of security sector issues often endangers their liberty – civil society is firmly excluded from any oversight activities. Human rights NGOs monitor the treatment of security sector personnel, but have only made a notable impact in Kyrgyzstan. Registration for NGOs is also compulsory across the region. Thus, whilst there is an understanding of the function of civil society in security governance, its role, to varying degrees, remains limited across the region.

As for the Caucasus, the respondents in all countries identified an extremely urgent demand for independent civilian experts well-trained on security sector issues, not only to assist committees in parliament on security matters but also to reinforce the substance of civil society and the media’s activities; but they also went beyond this and identified the critical need for assistance in creating democratic, transparent, and accountable institutions to preserve civil liberties and ensure that a functioning set of checks and balances existed in their societies. In this vein, the need for such training was identified not only for parliamentarians but for many societal actors as well, including those working in government ministries, to help orient them with democratic best practices and the capacities of parliament to engage in effective oversight.

In sum, the bare lines of formal mechanisms for parliamentary oversight exist in Central Asia but have no substance in terms of ensuring democratic governance beyond the limited examples seen in Kyrgyzstan and Tajikistan. Participatory forms of con-
consultation exist in Kyrgyzstan and Tajikistan but are not embedded in Kazakhstan and Uzbekistan where, manifested in different ways, the security sector is accountable solely to the executive power. The OECD-DAC findings for the sub-region are thus borne out.

**Survey Results – Western CIS**

Despite their very different political, social and economic bases, the findings for Moldova and Ukraine were, when abstracted, remarkably similar. Despite scepticism among certain vested interests in the security sector, in both countries there is a clear societal and institutional intention to develop democratic security governance capacities. The capacities to do so remained more limited in Moldova however. The determination to internalise democratic Western norms was manifested systematically in several different ways.

Parliamentary oversight already exists in form and, to varying degrees, in content in both countries. In both there is a consensus that committees do scrutinise policy, practices and laws. Committees could apply to get access to classified information, although this remained severely restricted in Ukraine. Moreover, there was a self-awareness in both countries that the division of powers between the executive, government, and security sector were becoming well-defined and that transparency and accountability were growing, although not yet irrevocably established. However, although oversight of law-enforcement actors remained difficult, especially in Ukraine, it is interesting to note that during the events of the ‘Orange Revolution’ during November-December 2004, Parliament played a crucial role, interceding with the Interior Ministry to prevent the forced dispersal of protestors at mass-demonstrations in Kiev by law enforcement personnel.

In both countries legislation and international agreements are available to interested parties across a number of platforms. As to the substance of the laws and decrees, contradictions existed. Interestingly, in Ukraine respondents identified the contradiction in legislation which existed when President Kuchma’s decrees never referred to NATO structures in any way whilst agreements were made on related issues elsewhere, a reflection of the self-awareness of parliamentarians and civil society of their national security governance mechanisms. Both countries were using a wide range of international (especially Western European precedents to craft their legislation, with Ukraine tending to use more from CIS countries).

As democratic institutions are still being built in each country, their role in security governance is increasing, but still limited. Both countries receive assistance to build up certain agencies of their security sector, with a principal focus on law-enforcement. Overall, in Ukraine, the president still wields significant influence over the security sector, but in Moldova there is more of a balance of power between the Presi-
dent and government of the day. The ombuds institutions in both countries are still perceived by society as weak, and it is striking that, in Ukraine, it was felt that parts of the security sector remain unaccountable, a critical national issue following the notorious murder of Giorgi Gongadze in 2000. In Moldova the judiciary is perceived to have a limited role in assisting democratic oversight; the same is felt in Ukraine but to a lesser extent, partly due to the role of the Supreme Court during the ‘Orange Revolution’ of 2004.

The ongoing development of civil society in the region, if more limited in Moldova and Ukraine, has already been reflected in the levels of self-awareness described above. More specifically, in Ukraine, civil society is now engaged with security governance issues, including technical reform issues across defence and law enforcement agencies. Newly created public boards are intended to allow civil society to participate more in local and national legislative consultation processes. Human rights NGOs also monitored violations in the security sector, but the internal management of security forces, in relative terms, appears comparatively better than it is among many of its FSU peers. However, there was still a belief that civil society remains under-developed overall. In Moldova, a smaller CSO sector monitors security governance issues but is far less developed. In both countries there was a good interaction between CSOs and the media on oversight issues. The media in both countries have some journalists specialising in security matters and investigation of controversial security issues is no longer taboo.

As is typical of the region in the findings outlined, in both countries there is a wish to increase the number of civilian defence experts both in parliament and civil society. In Moldova such staff are already being trained, and in Ukraine civilian experts already consult on policy issues with state institutions and agencies, but there is a belief that their number and training could be improved.

Thus, despite difficulties, both countries demonstrate an understanding and enthusiasm for the principles of democratic oversight across the range of factors affecting security governance. In Moldova a clear intention to continue reforms aimed at meeting a basket of democratic norms to facilitate EU and NATO accession was identified. In Ukraine, a similar basket of norms was identified but with a greater emphasis on EU and Euro-Atlantic integration.

Survey Results – The International Donor Community
The picture of donor assistance that emerged denoted an overall interest in improving the technical capacities of parliaments and parliamentarians to perform their functions in general, with differing levels of assistance aimed at building the capacities to effect democratic security sector governance. Vis-à-vis parliaments, UNDP and the EU (via the auspices of the EU-Tacis programme) have both invested in improving
## Box 5: Key Country Findings - Security Sector Governance (SSG) Issues in the Former Soviet Union

<table>
<thead>
<tr>
<th>Country</th>
<th>Key Findings by Country</th>
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<tbody>
<tr>
<td><strong>Caucasus</strong></td>
<td></td>
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</tbody>
</table>
| Armenia | • Growing interest in oversight issues  
• Officially seeking to develop SSG oversight capacities  
• Civil society critically engaged with but not decisively affecting SSG  
• Opaque security sector |
| Azerbaijan | • Popular interest in oversight issues opposes executive’s disinterest  
• Oversight issues cannot be openly discussed  
• Civil society critically engaged but excluded from SSG issues  
• Closed security sector |
| Georgia | • Oversight mechanisms beginning to function  
• Officially seeking to develop SSG oversight capacities further  
• Civil society critically engaged and occasionally affecting SSG  
• Translucent security sector; increasingly transparent law enforcement agencies |
| **Central Asia** | |
| Kazakhstan | • Growing interest in oversight issues  
• Officially seeking to develop democratic institutions further  
• Civil society monitoring SSG issues  
• Opaque security sector |
| Kyrgyzstan | • Strong interest in oversight issues  
• Seeking to develop SSG capacities but limited by political instability  
• Civil society critically engaged and occasionally affecting SSG  
• Weak, but partially reforming security sector |
| Tajikistan | • Good understanding of oversight issues  
• Broad interest in developing SSG capacities  
• Civil society able to engage with legislators on security governance issues  
• Weak, partially opaque security sector |
| Uzbekistan | • Oversight issues cannot be openly discussed and availability of laws disputed  
• No demonstrable executive interest in developing SSG capacities  
• Civil society unable to engage internally on SSG issues  
• Closed security sector |
| **Western CIS** | |
| Moldova | • Growing interest in oversight issues  
• Seeking to develop SSG capacities  
• Limited civil society engagement on SSG issues  
• Translucent & opaque security sector elements |
| Ukraine | • Very strong interest in oversight issues  
• Rapidly developing SSG capacities  
• Civil society engaged & participating & affecting SSG issues  
• Translucent & opaque security sector elements |
the technical capacities of parliaments and promoting understanding of democratic governance practices and instruments across the region. In some instances, such as the EU-Themis programme in Georgia, assistance has sought specifically to improve the rule of law through revision and expansion of extant legislation. USAID has also had a region wide profile promoting understanding of a basket of issues centred on economic reform. Similarly, the US Central European and Eurasian Law Initiative (CEELI) supported legal reform processes region-wide.

In the security sector itself, the OSCE has provided training for law enforcement agencies, focused on assisting police reform initiatives (particularly in Georgia and Kyrgyzstan) as well as on training prison service and staff from other detention agencies. UNDP and the EU have also promoted substantial border management training programmes in Central Asia (BOMCA) and in Moldova, providing assistance to the Ministry of Interior, Border Guards and Customs Services. For Moldova, intersecting the former Soviet space and South East Europe, has also benefited from Stability Pact programming, including small arms and light weapons destruction programmes as implemented by UNDP/SEESAC. To differing degrees, Armenia, Georgia and some Central Asian states have benefited from SALW programmes with Ukraine still awaiting implementation of major programmes to reduce its huge Soviet arsenals. UNDP, the EU and US agencies’ programmes focusing on anti-trafficking measures, and preventing the spread of HIV/AIDS have, however, been evenly applied region-wide.

Whilst international actors had, in the main, identified local partners specialised in security governance issues, specific assistance on security sector governance issues has however remained limited beyond those programmes already outlined. Military-technical assistance has been supplied by the US and/or NATO to some former Soviet states, principally Georgia and to a lesser degree Moldova, Ukraine and Uzbekistan, but whilst these cooperation programmes have stressed interoperability on humanitarian issues (emergency situations, peacekeeping) a governance component of the programmes has not been conspicuous.

Overall, differing levels of international assistance have reflected the level of national government’s enthusiasm for reform, particularly in terms of access to democratic representatives, key personnel, security actors and freedom for civil society to interact with international actors. In this way the feedback on international assistance programmes mirrored the data gathered found for each region: the intensity of interaction with the international donor community being contingent on each government’s demonstrable enthusiasm for official and unofficial cooperation with each donor.
Research Findings: Needs Assessment

The research findings presented here reflect many of the causes and consequences of security sector governance weaknesses identified in the literature presented at the start of this article. The security sector remains, on the whole, opaque across the former Soviet Union and only in those countries where systematic efforts have been made to reform security sector agencies and create the necessary instruments and mechanisms to affect improved democratic oversight of the security sector have constituent elements become more transparent over time. In cases where improvements have been made, the involvement of international and regional organisations has been sought out by the country concerned. Wherever a consensus exists between the two groups that oversight improvement needs to be made, many of the states have limited means with which to improve their institutional capacities making external assistance ever more vital.

Many parliamentarians continue to see the issue of parliamentary oversight of the security sector in formulaic terms, while others seek (international) assistance to help them shape the tools of democratic oversight to improve currently imperfect mechanisms. Whilst for some, parliament merely ratifies the wishes of the President rather than scrutinising the legislative agenda of the executive, for others the vital role of independent committees is limited only by a lack of relevant capacities to mobilise their full potentials as independent, democratically mandated actors.

In contrast, civil society groups are increasingly aware of the disparities between their legislatures and governance structures and those in democratic states. CSOs were able to identify common shortcomings and malpractices, including a lack of capacities, accountability, transparency, and legal protections; unsurprising given that many of them were involved in human rights monitoring related activities. Overall, CSOs voice more criticisms of their national security sector than parliamentarians.

Moreover, there is also a conceptual confusion on a number of issues. There is a misperception that transparency and accountability will somehow compromise effectiveness of the security sector rather than enhancing its capacities – a notion which also applies to the over-arching issues of democratic and parliamentary oversight of the security sector. The belief that the security of a state only applies to the effective defence of a state against external enemies remains pervasive: that notions of security have moved beyond the state-level and that other indexes – such as human security – can directly illuminate the level of democratic governance within a country remains unperceived and/or misunderstood.
In terms of immediate needs, several can be identified from the questionnaire findings to help improve the situation:

- Many states still need an audit of security sector functions – to differentiate law-enforcement, intelligence and defence functions from each other and to secure relevant re-structuring and oversight assistance for each of them. Consensus on these issues among international organisations has been distorted in some instances by defence diplomacy initiatives which only sought to improve technical capacities.

- Greater freedom is needed for the media to discuss security governance problems even in ‘reforming’ states, combined with a greater role for civil society to contribute to security governance dialogue and problem solving, not least through a greater role in legislative consultation processes.

- The capacities of democratic institutions need to be built up. In particular, the ombuds function needs strengthening to help create more effectively functioning democratic institutions and monitoring.

- Region-wide, there is a widely perceived need for civilian defence experts to be trained to better enable scrutiny of security sector governance, both within parliament and across civil society and the media.

- Across the board, there is a need for greater transparency and openness of the security sector. Without them, accountability of the security sector remains obsolete; without them, at times of elections, voters cannot make a proper assessment of government behaviour. National security is all too often used as blanket cover for secrecy which in turn can be used for covering up waste, inefficiency and corruption within the security sector.

**Conclusion**

In the field of security sector governance, empowerment and capacity building in former Soviet parliaments remain a key area for international engagement. Although there are specific national and sub-regional issues and differing developments at each level, the same principles could be applied across the region to help parliaments develop the necessary capacities and instruments to affect improved democratic parliamentary oversight of the security sector.

Whilst there is growing self-awareness of the expectations that are concomitant with democratic security governance among civil society groups, they are not always matched among parliaments who often view security conversely as a top-down issue (President-Parliament-Public), perhaps given their position in the power vertical and lack of exposure to democratic practices. This perception has even been held by those who are aware of the need to oversee the security sector.
Moreover, coupled with the empirical evidence from the region, there is an awareness of a lack of security sector accountability. Whilst Western models and practices sometimes remain imperfect, there is a demonstrable interest in developing the tools available for use in the democratic systems in the former Soviet Union.

Overall, states which have engaged most closely with foreign donors (including international and regional organisations as well as the development community) on governance issues display the signs that norms transfer is underway and that as the norms are ‘internalised’ democratic understanding is becoming entrenched. In different degrees, this may be seen in Moldova, Ukraine and Georgia. Their proximity to the EU has also been a relative advantage in this context as recent outreach activities have underpinned the activities of the international development community, particularly on legislative capacity building issues.

On the other hand, states more isolated from the international development community or democratic norms transfer schemes mandated by regional organisations, either by deliberate decision or a lack of capacity to engage, have in comparison been much more isolated from the relevant norms transfer processes. In the cases where a lack of capacity provides an explanation, it is incumbent on the development community to engage on these issues as much as they are morally obligated to monitor countries which have either deliberately withdrawn from or shunned democratic norms transfer processes. In this way, the states with the least accessible laws were also those most well-known for repressive and anti-democratic practices.

A selection of resources which may be used as tools to increase awareness may be found in the final chapter of this publication. A summary of recommendations based in part on the findings outlined here follows in Chapter 4 of this book.
Parliaments in Conflict and Post-Conflict Situations

Lessons Learned from Eastern Europe and the Commonwealth of Independent States

Dr. Daniel Smilov and Dr. Rumyana Kolarova
Introduction

This paper draws on the findings of six case studies on the role of parliaments in conflict and post-conflict situations that were prepared in the period January to June 2005 by the Centre for Liberal Strategies and its partners in the CIS countries studied. The case studies cover five countries (Georgia, Macedonia, Moldova, Serbia, Ukraine) and the UN-administered Kosovo region, within the federation of Serbia and Montenegro. The purpose of this paper is to elaborate trends and problems, which are common to the region of Eastern Europe as a whole. In doing so, the paper resorts to certain generalisations which do not do justice to the complexity of the six individual case studies.

The case studies focus on two groups of countries, each of which emerged after the collapse of the respective communist federation, the Soviet Union or Yugoslavia. This paper does not discuss the intensity of the conflicts nor their current status. However, it is important to accentuate the comparability of the political transformations the six studied countries went through and the institutional and international contexts of the examined political interactions/ processes.

Before discussing the role of parliaments in the selected case studies, it is important to point out that most of the parliaments analysed were elected by generally free and competitive elections. However, these legislatures are by no means fully-fledged democratic institutions; instead, they are legislatures with a fragile, problematic legitimacy, struggling for emancipation from powerful executive bodies. Finally, it is presumed that post-communist parliaments, regardless of their degree of democratisation, function as representative bodies where political elites may interact and reach political decisions. Therefore, the degree of democratisation should be considered a secondary factor in the assessment of the role of parliaments in conflict resolution.

All six states have been the target of intensive international initiatives and pressure. In these efforts by international organisations and Western governments, parliamentarians have been among the key representatives of the targeted countries. As a rule, in all six countries the legislators were recognised as legitimate partners in efforts at conflict resolution, while the role of the legislatures was often marginal and subject to criticism.

These commonalities make it possible to compare the roles that representative parliamentary bodies have played in conflict and post-conflict situations. In this vein, all of the studied countries also share similar cultural and historical backgrounds: they all constitute part of the broader Eastern Europe, and they have all experienced the long spells of communist rule, preceded by authoritarian rule of various sorts. Moreover, none of these countries have enjoyed stable and durable democratic governance. Their similar backgrounds facilitate comparative analysis and make it easier to assess the impact of institutional arrangements on the success and failure of democratisation.

The views expressed in this article are those of the author and do not necessarily represent those of the United Nations or UNDP.
The main goal of this paper is to present recommendations and suggestions to solve problems typical to the discussed countries and to other countries possessing similar characteristics. Needless to say, these recommendations need to be tailored appropriately to suit the specific context of each country.

The structure of the paper is the following. Section 1 discusses two methodological approaches in the study of parliaments. Section 2 introduces a taxonomy of different roles a parliament can play in conflict and post-conflict situations. Sections 3 and 4 provide a brief assessment of the experiences of the six case studies and a more systematic discussion of the differences among them. Subsequently, sections 5 to 7 outline three traps which the examined parliaments have fallen into: the traps of nationalism, majoritarianism, and the state of emergency. Section 8 summarises the elements of success in the work of parliaments, according to the six case studies. Sections 9 and 10 contain a final assessment of the performance of parliaments in the six countries under consideration as well as a set of recommendations.

**Studying the Role of Parliaments**

When assessing the role of parliaments in conflict and post-conflict situations, there is a preliminary methodological dilemma which needs to be addressed. On the one hand, there is a significant body of literature on the institutionalization of parliaments and on how they function to strengthen the routine operations of liberal democratic regimes. After the crisis of parliamentarianism in the 1930s in Europe, there was a constitutional movement for the “rationalisation of parliamentarianism” in order to strengthen parliamentary government, avoid government crises and ultimately to provide for a more efficient relationship between the legislative and executive branches in a democracy. Most of the post-WWII democratic constitutions, especially those in Germany and Italy, borrowed heavily from the ideas of this constitutional movement. One example is the introduction of the “constructive vote of no confidence” in the German Basic Law, which is an instrument designed to avert governmental crises.

Yet, despite the abundance of literature on the strengthening and rationalising of parliamentarianism, little attention has been paid to the specific roles of parliaments in preventing and managing conflicts and in dealing with their consequences. In extreme political situations, there has always been a shift of focus to the executive branch, which is supposed to be the main actor. There are of course good reasons for such a shift – the executive has the advantage of acting swiftly, while legislatures, as collective bodies, are usually more difficult to mobilise, and their actions are often not as decisive and unanimous as the actions of governments and presidents. As a result, there has been little systematic analysis of the role of legislatures in conflict and post-conflict situations.
The present paper faces two groups of methodological options, each with different initial assumptions:

**Approach 1:**

(i) Institutionalisation and strengthening of parliament is always beneficial in a representative democracy;

(ii) Increasing the role of parliaments in conflict prevention, management and resolution necessitates enhancing the general capacity of the legislature in terms of legislative powers, oversight of the executive, material resources, etc.

**Approach 2:**

(i) General strengthening of parliaments may not prevent their marginalisation in a conflict situation, or, even worse, may lead to their involvement as an exacerbating factor in the crisis/conflict;

(ii) Attention should be focused on those factors which prevent parliaments from playing a constructive role in conflict and post-conflict situations.

Below, we choose to employ the second approach. We recognise that a general strengthening of parliament, as one of the key bodies of liberal democracy, is almost always beneficial. Yet, the paper focuses on the specific roles of parliament in dealing with conflicts, and on the basis of these roles we elaborate problems and suggest possible remedies.

**Roles of Parliament in Conflict Situations**

The roles of parliament could be divided roughly into two main groups. The first group covers cases in which the role of parliament was not constructive, while the second group accounts for those cases where the role of parliament was constructive. Indeed, in group one, parliament had the potential to provoke a conflict or even exacerbate it. Although all of the roles that parliament has are formally legitimate in a constitutional democracy, their abuse might lead to the worsening of a conflict situation.

**Conflict provocation:**

(i) Expression of national/popular sovereignty and forum for identity politics

One of the main functions of the representative body in a liberal democracy is the expression of popular and national sovereignty. A lot of the acts adopted by parliaments, such as new constitutions, declarations of independence and language laws, aim to define and promote specific nation-building projects. Most of the case studies we have examined emphasize the fact that after gaining independence from the
Soviet and Yugoslav Federations, legislatures have been busy adopting acts with the specific aim of promoting national ideals. However, in a pluralistic society such acts may contradict the aspirations of certain (minority) groups on the territory of a given country and, as such, may lead to a conflict situation.

(ii) Instruments for majoritarian oppression of the minority

When the traditions to tolerate minorities and protect individual rights (which was the case in the six countries we studied) have not been established in a given polity, democracy may turn into an instrument of majoritarian oppression of groups and individuals. The political opposition may be systematically marginalised by the ruling parties. This can be done through administrative harassment, control over the media and draining the opposition of resources. All of these instruments of majoritarian oppression require some form of legislative action in order to be realised. This may come in the form of laws regulating the media or party funding, tax and party laws, or simply by means of lax parliamentary oversight of abusive action by the government. In this sense, if parliament becomes a tool for majoritarian oppression of the opposition, it may provoke or exacerbate a conflict.

(iii) Subservient bodies to a powerful executive

Parliaments need a degree of independence from the executive in order to be effective in a parliamentary democracy. Of course, in a modern democracy, governments and the executive always dominate the work of the legislature by providing most of the draft laws, and by dictating the government’s will over the opposition and recalcitrant backbenchers. Yet, there is one form of executive domination, which is particularly dangerous: when the executive (be it a president or a government) is able to control the composition of the legislature. This control could be exercised by manipulation of elections, by influence over the media or by depriving the opposition of resources. If the executive dominates the parliament in such a way, a country’s democracy is problematic, and a crisis or conflict might be expected, as the Ukrainian case study suggests. In any event, subservient legislatures are not conducive to the establishment of a healthy democratic regime.

The second group of roles played by parliaments in conflict and post-conflict situations tries to capture the positive experience. These are roles which have been conducive to the successful resolution of a conflict situation.

Conflict prevention

(i) Parliaments as constitutionally constrained powerful players in a system of separated powers

When parliaments or other centres of power are absolute sovereigns, the result is likely to be the abuse of prerogatives, ultimately leading to the alienation of some members
of the polity. On the contrary, when constitutional bodies participate in a system of separation of powers with checks and balances, the likelihood of abuse of powers decreases. This may seem a trivial observation but its force is often underestimated. Many of the conflicts discussed in our case studies have been exacerbated or even provoked by excessive concentration of power in legislative majorities or powerful executives.

(ii) Guarantors of political pluralism: fora for the opposition

Parliaments are the key bodies when it comes to building trust among members of a given community. Parliaments can adopt the norms guaranteeing the rights of minorities and provide a forum for the political opposition to express its interests. If they play this role well, the outbreak of violent conflict in a country becomes less likely.

(iii) Instruments of political learning:

Parliaments are instruments of political learning. In none of the countries we studied were there established democratic traditions. Therefore, parliaments could facilitate the accumulation of political knowledge by providing the citizens with the possibility to explore different political alternatives. Parliament, as the main forum for the opposition, becomes the place where alternative political platforms are articulated and defended. In case governmental policies fail, parliaments provide new, viable political solutions and new actors who could carry them through. If parliaments are weak and/or the opposition is completely marginalised, the articulation of political alternatives is stalled, and a country could enter into a period of repetition of mistakes. Needless to say, government failures and the lack of political alternatives drive conflicts outside the political arena, where outbreaks of violence may become more likely.

Experiences of the Six Case Study Countries

This section provides a brief evaluation of the experiences of the six countries:

(i) Parliaments have more often than not played a marginal or even conflict-exacerbating role;

(ii) The main reason for the failure of parliaments to play a constructive role: in all six cases, parliaments have been mainly seen and used by the public as instruments for nation-state building after the collapse of the Soviet Union and the breakdown of Yugoslavia. Conflicts have been mostly about the issue of national self-determination (with the exception of Ukraine);

(iii) Part of the problem facing the six countries was that the existing national and political projects for their future conflicted with each other. In this respect, it is useful to compare the failures of these countries to deal with conflict with the success stories of Central Eastern Europe and the Baltic States. One major difference that
comes to mind was the prospect for EU integration, which was lacking in both the former Yugoslavia, and especially in the Caucasus and in Moldova and Ukraine. The EU accession perspective provided a universally accepted political project, which was instrumental in keeping communities together, or, as in the case of Czechoslovakia, in ensuring a peaceful transition to national independence.

**Dimensions on which the Case Studies Differ**

This section discusses four dimensions on which the six case studies differ:

**Time of conflict**

The time when a potential conflict escalated to cause a political/social crisis is an important factor to take into account. In most cases, this happened during the first phase of democratisation or transition: the liberalisation of the authoritarian regime. But even within this first stage there are important distinctions to be made. In many post-communist countries, the prolonged stage of political liberalisation has coincided with the initial stage of a state-building process, when the parliament lacked established and efficient practices and had not yet developed efficient communications with the other state and public institutions because the horizontal accountability networks had been working only at the federal level. To summarize the capacity of parliament to channel conflicts and contribute to their peaceful settlement correlates mostly with the process of the establishment and social entrenchment of nation-state institutions.

Analysis should not differentiate between those countries which could rely on developed state institutions (e.g., Yugoslavia) and those which had very peripheral and underdeveloped government structures (e.g., Moldova) during the collapse of the federal state, but rather between countries where the conflicts erupted during or right after the secession (e.g., Georgia and Moldova) and countries where viable state institutions were established more than a decade before the emergence of conflict (e.g., Macedonia and Ukraine).

**Attitude towards international peacekeeping efforts**

There is a substantial distinction between cases where international peacekeeping missions were a key player in conflict resolution and cases where these missions have had little or no impact. But for the purpose of the current report, what matters is the attitude of the representative political elites. Two examples are symptomatic:

(i) Yugoslavia/Serbia and the unanimously negative attitude of MPs towards international pressure, resulting from the persistent application of sanctions by the international community.

“There was no international assistance, since the country was for most of the 1990s under heavy international sanctions. They (the sanctions) were first introduced by the EC in
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1991, then in several waves by the UN Security Council, starting in May 1992. After suspension of some sanctions at the end of 1995 and a year later, they were, as it was already said, reintroduced exactly because of the excessive use of force by the Serbian police and the Army in Kosovo, in Spring 1998.¹

(ii) Moldova with the **gradual shift in the attitudes of the political elite** from accepting the presence of the Soviet army and relying on membership in the CIS and the mediatory role of Russia to recognising the role of the Council of Europe and unanimously approving partnership for accession to the EU as a priority”

“Consequently, on the first day of its activity, the newly elected Parliament unanimously approved the Declaration of Political Partnership for achieving the objectives of accession to EU. The document provides for the consensus of the four factions on the consistent and irreversible promotion of the strategic course towards European accession.”²

**Separation of powers**

It is important to distinguish between states with strong presidential powers and states with parliamentary systems in which the president’s powers are mostly symbolic. The interaction between parliament and the president has a strong explanatory value in all cases to the extent that even presidents with symbolic powers play a crucial role in conflict resolution because of the emergency powers bestowed on each head of state. However, this is not a distinction which could explain the weaknesses or the strengths of legislatures as preventers of conflicts or mediators in conflict resolution in the selected group of countries.

An important dimension of diversity stems from the different role/powers of presidents in day-to-day politics. It is empirically proven that presidents have a tendency to impede the establishment of responsive and vibrant political parties and that they seek to promote a presidential majority in parliament, which as a whole delays the development of a competitive party system.³ Parliaments with obstructed party competition tend to underestimate the risk of political exclusion.

**The degree of party system institutionalisation**

It is common for a state’s first election to set the main political cleavages for the coming decades. However, this was not necessarily the case in the countries under investigation: Georgia is a symptomatic case with its dramatic shifts in the main parties’ characteristics, while Moldova may be considered as an exemplary case of a stable, though evolving, party system. It is important to figure out how these dramatic shifts


in voters’ preferences and party alignments affect the legitimacy of parliament in conflict or post-conflict situations.

**The Trap of National Sovereignty**

Evidence from the six case studies suggests that in conflict and post-conflict situations, parliaments tend to get trapped, taking action which seems attractive and legitimate at the intuitive level, but which ultimately tends to create a potential for conflict.

The first of these traps is *legislative obsession with national sovereignty*. Parliaments in the six case studies have all been vulnerable to such an obsession and have undertaken the following actions:

(i) Adoption of a constitution legally entrenching a contested national project: Georgia, Serbia, Moldova, and to a lesser degree, Macedonia;

(ii) Adoption of legislation insensitive to national, ethnic and religious minorities: Georgia, Serbia, Macedonia and Moldova. Such legislative acts concern, in particular, official language issues, state symbols, regional autonomy issues and educational matters;

(iii) Denial of regional autonomy: with the exceptions of Moldova and Ukraine, in all other case studies, the parliaments had been active in denying regional autonomy;

(iv) Exclusion of minority representation through prohibitions or through specially designed electoral laws; boycott of parliament by the minority (e.g., Kosovo);

(v) Rejection (by the parliamentary majority) of cooperation with international organisations (e.g., Serbia);

(vi) Avoidance of significant external conditionality (either by NATO or EU). Conditionalities are generally efficient when they are accompanied by the provision of significant benefits by the foreign partners. Out of the six countries, probably only Macedonia is in a situation in which the foreign conditionalities are coupled with prospects for EU accession. Even there, however, the Ohrid Agreement was accepted very reluctantly;

(vii) Creation and encouragement of nationalistic media and civil society organisations: in virtually all the studied countries there was a degree of political control over the public electronic media (particularly evident during Milosevic’s regime) – parliaments have facilitated the exercise of such control.

**The Trap of Majoritarianism**

The second trap into which parliaments managing conflict tend to fall is the trap of majoritarianism. Parliaments fall into this trap when the majority becomes an instru-
ment for the suppression of the political opposition. The following activities are signs of aggressive majoritarianism:

(i) Marginalisation and fragmentation of the political opposition through control over the mass media, administrative harassment, starving the opposition of funding, administrative bias in favour of governmental parties and their supporters, and even through openly criminal methods such as political violence and bribery. Unfortunately, these problems have all plagued the political life of the studied countries. Political killings and harassment of the opposition were quite common in Milosevic’s Yugoslavia, and violence against political opponents has also taken place in Ukraine, Macedonia and Georgia. Administrative harassment against the opposition has been common in Serbia, Ukraine, and to a lesser extent in Macedonia. The same is true of government favouritism: granting favours to businesses close to the political majority and the government. All of these developments have been facilitated by parliaments, or at least have taken place with the tacit approval of parliamentary bodies, which have all but resigned from their oversight function;

(ii) Lack of an independent judiciary – governmental control over the personnel and budgetary policies of the judiciary. The independence of the judiciary has been problematic in all six studied countries. The role of parliament in ensuring independence of the judiciary is crucial – the legislature first needs to adopt proper laws, and then to monitor closely their implementation especially on issues concerning personnel policies and the budget of the judiciary;

(iii) Election fraud and manipulation of electoral laws in favour of governmental parties. The most egregious cases of this kind led to the recent “revolutions” in Georgia and Ukraine. Electoral manipulation has been common also in Serbia, and to a lesser extent in Macedonia. The Ukrainian example clearly shows that manipulation is much more difficult when parliament actively opposes it: there, the parliamentary reaction to the allegations that the President had manipulated the elections was a key element in resolving the crisis of the “orange revolution”;

The Traps of the State of Exception and the State of Emergency

The third trap consists of the temptation to resort exclusively to the powers of the executive in the resolution of conflict situations, hereby marginalising parliament completely:

(i) In exceptional circumstances, the role of parliament is reduced and the executive comes to the forefront: this is the main assumption of the third trap, popular since the German constitutional theorist Carl Schmitt introduced it in the 1930s. This argument is extremely popular in the six case studies. Actually, all their con-
Institutions are designed in such a way so as to make a charismatic president the ultimate guarantor of the constitutional order. It is no surprise that in most of these countries the birth of the new republic was intimately linked with the figure of a powerful (and charismatic) president: Milosevic in Yugoslavia, Gligorov in Macedonia and Shevardnadze in Georgia. In Moldova and Ukraine, presidents also have claimed to be the indispensable figures in the establishment of the independent state and its subsequent development (e.g., Kuchma and Voronin).

(ii) The Schmittean rationale of super-presidentialism permeates the constitutional regimes of Ukraine, Serbia, and Georgia. The “Orange Revolution” signaled the beginning of a process of parliamentary rehabilitation vis-à-vis the presidency, but the results of this process are by no means conclusive. On the basis of the evidence of the six countries, it is probably warranted to argue that “super-presidential” models of government marginalize parliaments more than any other form of government, making the emancipation of the legislature very difficult in such regimes.

(iii) One of the reasons for this difficult emancipation is the role of “oligarchs” — powerful businessmen who build their financial empires mostly on the basis of government favours and on their connections with the executive. The political power of oligarchs transforms the political process into a process of corporate representation, which further marginalizes parliaments.

(iv) The lack of internal democracy in political parties is another problem typical to all six case studies, but also for East Europe in general. It leads to diminishing confidence in the mechanism of representation, which in turn has a negative impact on the confidence in the legislature.

Elements of Success

It should be noted that the traps discussed in the previous sections have at times been avoided by the parliaments in the six case studies. Their stories are by no means stories of unmitigated parliamentary failure. Below we list some examples of positive roles played by the legislatures in the management of conflicts:

(i) Self-restraint in the pursuit of national sovereignty: One of the best examples of legislative self-restraint in the pursuit of national sovereignty is the Moldovan parliament’s granting of autonomy to the Gagauz region. Also, the Parliament of Macedonia was a key actor in the process leading to the Ohrid Agreement, despite the fact that the accord was not reached within the assembly itself.

(ii) Self-restraint by the political majority and the establishment of a viable opposition: instances of self-restraint were most visible in Macedonia during the conflict, and especially after the Ohrid Agreement was reached. Similar instances can be found in the Ukrainian and Moldovan case studies. The existence and strength of
the Macedonian opposition to the right-wing government of Lupcho Georgievski facilitated the relatively smooth implementation of the Ohrid Agreement: when this government fell from power, the socialist opposition took over and avoided governmental crisis. Parliaments are effective when they produce and articulate alternative policies – the Macedonian parliament was able to do so, and this explains in great part its positive role in the overall management of the conflict situation.

(iii) Rationalised parliamentarianism? It is difficult to speak of a stable process of rationalisation of parliamentarianism in any of the six studied countries. Yet, elements of success in this regard also exist. Macedonia stands out somewhat, given that a fairly serious effort is underway to make the legislature into an effective counterweight to the executive branch. Moldova appears to be following suit, while the other four legislatures are struggling to compete with powerful and aggressive executives. The existence of a strong parliamentary opposition in Macedonia is a good sign. In Ukraine and Georgia the opposition was also strong, but its strength was translated not so much into a strengthening of the parliament as it did to strengthen extra-parliamentary “revolutionary” activities. This side-stepping of parliament, although probably positive in the short-run, is questionable from a long-term governance perspective.

(iv) Parliamentarianism as a learning process? As mentioned above, parliaments have played a positive role as instruments for political learning. Again, Macedonia and Moldova stand out. Especially in the former case, parliament has been a breeding ground for political alternatives.

Overall Assessment of the Role of Parliaments in Conflicts

(i) Conflict Prevention: parliaments sometimes take measures and enact laws, which provoke conflicts. In this regard parliament’s role in avoiding conflict, by avoiding the traps discussed above, can be significant.

The conflicts discussed in the reports are mainly local conflicts (with the exception of Ukraine) of a limited duration. It is noteworthy that these conflicts emerged in territories where social peace had existed for over forty years. Another peculiarity is the relative weakness of the legislative institutions vis-à-vis the executive – in all countries under consideration, parliaments have been secondary bodies, in many cases rubberstamping decisions of single-party governments, with short working sessions and non-professional MPs.

The political context outlined above suggests that in the post-communist states examined, parliaments played a secondary role to the executive during violent conflicts. However, there are two noticeable exceptions, the first which is the proactive preventive role played by the Ukrainian parliament described below:
During the 2004 presidential elections, the parliament was a battlefield on which the pro-government majority and the de-facto opposition challenged each other’s presidential candidates. Under conditions of information blockade, the parliament was the only major forum for the opposition forces to voice their opinions. When opening the 6th session of the parliament on September 7, 2004, Speaker Volodymyr Lytvyn announced that the parliament must demonstrate profound responsibility so that the totally agitated present-day situation in Ukraine did not turn into yet another lost historic chance for the country. He described the deteriorating public divide as a national security challenge and called for measures to ensure stability in the transition period, prevent a vacuum of state power and keep the election processes within democratic norms. He also initiated the parliament’s leading role in monitoring implementation of the election law by establishing a special parliamentary commission, approved by 239 votes. The vote on the special ad hoc commission signified the de facto collapse of the pro-presidential and pro-government majority after the majority coordinator Stepan Hawrysh had announced on behalf of the majority the boycott of the commission-to-be. The parliamentary majority crisis in 2004 was reflected in major changes in the composition of the factions and groups. Within four months factions that supported the government’s presidential candidate lost substantial number of members, many of whom moved to the faction of Speaker Lytvyn.

Following the second round of the presidential elections in Ukraine on November 21, 2004, recognised as badly fraudulent by various domestic and international observers, the mass protests against vote manipulations began in Kyiv and a number of other major cities of Ukraine. The events, known as the “Orange Revolution” involved the participation of hundreds of thousands of people – supporters of either of the two presidential candidates, then Prime Minister Viktor Yanukovych and his challenger, leader of the united opposition forces Victor Yushchenko. At the height of the conflict the parliament of Ukraine, the Verkhovna Rada, remained the only legitimate body of power and played a critical role in preventing the violent development of the conflict and releasing the confrontation.

The exceptional role played by the Ukrainian parliament was the outcome of fifteen years of parliamentary practice, the initial five years which were characterised by the dominance of the parliament over the weak presidential institution and the last five years which resulted in the effective prevention of the unconstitutional attempts of the president to further strengthen his powers and to establish a dominant pro-presidential party in parliament.

The second exception is the case of the parliament of the Former Republic of Yugoslavia, which openly disregarded the dangers of escalation of the Kosovo conflict, as the overwhelming majority of parliamentary parties acted as “instigators of chauvinism, ethnic conflicts and wars”. In fact, the parliament deliberately excluded ethnic Albanians from politics and explicitly and consistently followed a policy of violation of local minority political rights, thus provoking and later intensifying the Kosovo conflict.

Internationalisation of the conflict that had been going on ever since the autonomous status of Kosovo had been revoked by the Serbian Assembly in 1989.

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5 Teokarevic, op.cit.
Elections for both the Serbian Assembly (held in August, 1996) and for the FRY Assembly (held in November, 1997) brought to power a coalition of parties that were key instigators of chauvinism, ethnic conflicts and wars in Serbia: Milosevic’s Socialist Party of Serbia, his wife’s party United Left and Vojislav Seselj’s Serbian Radical Party. In fact, Milosevic continued to rule, only with partners that were partly new, but this time – unlike before – his partners were eager and capable of making much bigger influence within the coalition…

The whole ruling coalition, to be sure, showed clear signs that it would tolerate neither an Albanian uprising, nor the enhancement of Albanian rights in Kosovo. Having lost previous wars in Slovenia, Croatia and Bosnia, the Serbian regime was not ready to allow yet another defeat on the territory it fully controlled with the help of extremely large and potent armed forces.6

The role of parliaments in the other cases is much less pronounced, as for example in the case of Georgia where the “sins of omission” (underestimating the danger of local secession or openly promoting nationalism) are to be explained with the very early stages of the political liberalisation process, when the legislature was just emerging out of the authoritarian institutions.

The series of events that eventually led to the outbreak of conflict in South Ossetia is sometimes termed the “war of laws.” It involved three layers of authority: The central government of the USSR, the Union Republic of Georgia, and the authorities of the autonomous entities within the Republic of Georgia. It started in November 1988, when a decree, known as On the State Program for the Georgian Language, was introduced. This decree caused serious complications in the relations with both South Ossetia and Abkhazia. In 1989, the Georgian Supreme Council, a nominally elected body in the best Soviet traditions, put forward a language program which was seen as discriminating by most of the minorities. This increased the feeling of insecurity and fuelled ethnic consolidation among the South Ossetians. In the spring of 1989, Ademon Nykhaz, the South Ossetian Popular Front, addressed the Abkhazian people in an open letter supporting their secessionist aspirations. In September 1989, the South Ossetian authorities came up with an initiative of giving equal status to Georgian, Russian, and Ossetian in the autonomous district, but very soon, the local Council made a decision to make Ossetian the state language of the region. During the same month, Ademon Nykhaz appealed to Moscow asking for the unification with North Ossetia. In November, the South Ossetian Autonomous District Council put forward a demand to upgrade the autonomous region’s status to that of the Autonomous Republic of South Ossetia. Georgia responded by declaring its right to veto the Union-level laws and to break away from the union. This led to the escalation of tensions and the period between November 1989 and January 1990 -- essentially the first stage of the violent conflict -- was marked with inter-ethnic clashes.

In April 1990, the Supreme Council of the USSR adopted a law which generally enhanced the position of autonomous regions vis-à-vis the central governments of Union Republics. The step that was taken by the Georgian Supreme Council in response gave a further impetus to the South Ossetians’ secessionist claims. In August 1990, the Georgian Supreme Council adopted a law that banned regional parties (i.e., Ademon Nykhaz, as well as the Abkhazian Popular Front) from participating in the upcoming Georgian Supreme Council elections in October. Zviad Gamsakhurdia succeeded in forcing this law through by blocking Georgia’s main railroad line. This act could only be interpreted by the South Ossetians as a means of disenfranchising them and cutting them off from influence. In September, the South Ossetian Supreme Council unilaterally upgraded the status of the autonomous district calling it the Independent Soviet Democratic Republic. The Georgian Supreme Council, which had

6 Ibid.
been elected in October, reacted promptly. It cancelled the results of the election to South Ossetia’s new legislative body and abolished the South Ossetian Autonomous District as a separate entity within the Republic of Georgia on 11 December 1990. The Supreme Council was unanimous in this decision. This led to the resumption of the violent inter-ethnic clashes between Georgians and Ossetians. Thus, although the processes that eventually led to the outbreak of the conflict in South Ossetia started much earlier, Georgia’s first elected legislature contributed to the escalation of tension which resulted in war.

The distinction between the parliament of the Former Republic of Yugoslavia and the first Georgian legislature was that in the latter an aggressive nationalist strategy could not survive for long. It did not even endure for a single parliamentary mandate since Gamsakhurdia only had very limited resources – there were no efficient government institutions nor institutionalized party structures.

(ii) Conflict Resolution: parliaments have very limited resources to deal with conflicts which have turned violent, especially secessionist conflicts where interests of other countries are involved as well. During violent conflict, the executive steps in parliament are crucial in terms of granting post facto control over the legitimacy of executive action and in adopting amnesty laws and so forth (see below).

(iii) Negotiations and Settlements: Parliaments are not particularly well suited for negotiating settlements, but they are indispensable for their endorsement and ultimate legitimisation: the Ohrid Agreement stands out as an example in this regard.

The direct role played by the parliaments in the case studies during the peace negotiations and settlements is rather insignificant. The Macedonian parliament is the only legislature that played a role by passing (without deliberation) constitutional amendments agreed to by the conflicting parties.

The Framework Agreement, signed in Ohrid on August 13, 2001, represented a formal end of confrontations between the Macedonian security forces and ethnic Albanian extremists of the National Liberation Army (NLA) in the conflict that started in March the same year. The Macedonian parliament was barely politically involved in the phase at the very beginning of the conflict, but mostly in the post-conflict implementation process of the Agreement. Both pre- and post-conflict periods were politically tense. As Albanian extremists were demilitarised, a process of radical change was drawn up for the old constitutional order of the republic. Certain political structures used every possible method to obstruct implementation of the peace process and a tough political battle was fought over those stressful months. Nevertheless, on November 16, 2001, two months after the NLA disbanded, the Macedonian parliament adopted the agreed constitutional amendments. This signified the conclusion of an important chapter in Macedonian history in which the Macedonian parliament played only an occasional role, and rarely fulfilled an essential political role.

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Though underestimated in the report, the role of the Macedonian parliament in legitimizing the constitutional and legal amendments envisaged in the Ohrid Agreement is extremely important. It can even be considered as being vital for the settlement of the conflict. The debates “for” and “against” the referendum initiative, the rejection of the proposals to limit the constitutional amendments and the decision to avoid the symbolic change of the constitutional preamble made the new constitution acceptable to the public.

Though parliamentary party fractions were the major agents in the debate on constitutional amendments, the process was open to civil society organizations, including the Macedonian Church. The debate outcome was also heavily influenced and de facto sanctioned by external/international agencies.

Parliament’s role in implementing the constitutional amendment into laws on local government and on amnesty is also significant. The Macedonian parliament approved “a package of legal reforms demanded by the Ohrid Agreement. These included the electoral laws, state administration legislation regulating the use of non-majority languages and a law to guarantee better representation of minorities in state institutions. Compromise and accommodation had produced a hard-won victory against ethnic polarization and confrontation.”

Post-conflict Recovery: Here parliaments do have a key role to play. They need to avoid the traps of nationalism, majoritarianism and subservience to the executive, and they ought to become rationalised legislatures.

In Moldova and Georgia the participation of parliaments in the negotiations and de-escalation of conflict were even more limited than in the Macedonian case. In both countries, the post-communist governments lost control over the secessionist territories. Therefore, the parliaments could only influence the post-conflict situation to a very limited extent, mostly by approving the multi-lateral or bi-lateral negotiations.

Since the ceasefire agreements were signed with Abkhazia and South Ossetia, the Georgian Parliament’s role regarding the conflicts has been essentially negligible. Both patterns can be explained by the tendency of the executive branch’s domination over the legislative authority (with only short-lived exceptions in 1992-1995 and between 2002 and 2003) when the decisions were made by the “ruling team” which unified the president and the government and the parliamentary majority.

Another reason why Parliament did little to prevent violence and to contribute to the negotiating process afterwards is the fact that the Abkhazian and South Ossetian secessionist parties were not represented in the Georgian Parliament (each had their own legislative body around which the events were concentrated) and, therefore, could not use it as a forum for dialogue between each other.

The status of the conflicts in Georgia -- they are often referred to as “frozen” -- has also contributed a great deal to the lack of involvement of Parliament in the aftermath of the ceasefire agreements. This essentially means that Georgia has no jurisdiction over the conflict territories, both regions are de facto independent and have their own leadership, they are not recognised by the international community as independent states, but there
is no large-scale violence or an active armed confrontation there either. This implies the ongoing process of negotiation is the prerogative of the executive authority in Georgia.\textsuperscript{9}

In Moldova it is appropriate to speak of the constructive role played by parliament during the peace-building process. There, parliament’s main contribution was the adoption of a new constitution and laws which guaranteed minority rights and regional autonomy.

The Moldovan Parliament wanted to put into evidence that human and minorities rights protection is a priority and to obtain in advance a kind of sympathy and support of international community in solving separatist conflicts.

At the same time, Article 111 of the Constitution stipulates that, “The places on the left bank of the Dniester river, as well as certain other places in the south of the Republic of Moldova may be granted special forms of autonomy according to special statutory provisions of organic law”. The new Constitution was supported by the parliamentary majority of about 80% of seats in the newly elected 1994 Parliament. The pro-democratic and pro-Western Christian Democrats and liberals from the Intellectuals’ and Peasants’ Bloc refrained to support the new Constitution as it stipulated in article 13 that the state language was Moldovan, not Romanian as they insisted.

The most important success of the Parliament in solving the separatist conflict was the adoption on December 23, 1994 of the Law on the special juridical status of Gagauzia (Gagauz-Yeri) which in principle solved the Gagauz separatist conflict. The law established the political system of an “autonomous territorial formation” within the Republic of Moldova. The draft law was elaborated by the parliamentary majority supported by the Socialist Movement with the consent of the Government and the President. The opposition was against the bill as it stated the right of Gagauz to leave Moldova in case it loses its independence.

According to the law, in Gagauzia judicial, legislative, and executive branches exercise authority within the framework of Moldova. The People's Assembly, or parliament (Khalk Toplushu), of Gagauzia is a unicameral body of thirty-five deputies, elected for terms no longer than four years in duration. The law gives the assembly the power to nullify decrees and regulations of the executive committee if the decrees or regulations conflict with the code and other existing laws. The Governor (Bashkan) is the official Supreme person of Gagauzia. All public administration authorities of Gagauzia are subordinated to the Bashkan. The Bashkan is ab initio member of the Government of the Republic of Moldova.

No doubt that the success of the Parliament in solving the Gagauz separatist conflict was due to the fact that it was an internal one, without the implication of foreign countries and army as is the case of Transdniestrian one. However, the Moldovan Parliament continued to improve the human rights conditions. Through its Decision No.1447-XIII of January 28, 1998, the Parliament adopted a program to adjust the legislation of the Republic of Moldova to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It obliges the Government to submit to the Parliament the proposals of modification of the legislative acts that provide directly or indirectly for the fundamental human rights and freedoms. At the same time, the parliamentary Committee on Human Rights examines all draft laws to be considered and adopted or rejected by the Parliament as regards their compliance with the human rights standards. The Law No.1349-XIII on the Parliamentary Advocates of 17.10.1997 established an independent body consisting of three parliament-appointed Parliamentary Advocates (Ombudsmen), together with additional personnel from the Moldovan Centre for Human Rights, a legal entity with its own budget.\textsuperscript{10}

\textsuperscript{9} Maia Nikolaishvili, op.cit.
\textsuperscript{10} Igor Botan, op. cit.
What guarantees the efficiency of the process is the alteration of party majorities, which each seek to implement alternative strategies, as well as shifts in the balance of power, thus ensuring that neither the executive (the President) nor the legislature comes to dominate the political landscape.

The Moldovan case soundly illustrates the gradual nature of the peace-building process. The evolution of the adopted party strategies and institutional solutions, as well as the evolution of the partnership with international institutions, have been achieved despite the slow and limited democratisation of the political system.

It is also appropriate to discuss the role of the Georgian parliament in peace-building.

(v) Parliament’s Role in Transitional Administrations: here again, parliaments can potentially play a very significant role. Unfortunately, evidence from our case studies is not encouraging.

The peace-building activities of the Kosovo parliament are not only limited but also rather inefficient. It is acknowledged in the report that the executive is the internationally recognised and politically effective branch, while the legislature lacks legitimacy and is as a rule “sidelined” by the executive or by the peacekeeping international administration.

There is definitely a link between parliamentary crisis and the increase of tensions in general. There were two cases when the Kosovo Assembly insisted that they be consulted on issues that were of major interest to Kosovars and international community:

1. The issue of Kosovo agreeing to participate in talks with Belgrade in October 2003: these were the first high-level talks between Serbian and Kosovo Albanian officials. However, the then Kosovar Prime Minister, Bajram Rexhepi, stood by his decision not to attend the talks, brokered by the European Union. The Prime Minister’s argument for not going was that the government had not received authorisation from the Kosovo assembly. The international community tried to avoid the discussion of this issue in the parliament, since they were not certain of the outcome of the discussion.

2. The issue of implementing the decentralisation policy framework, which called for implementing different models of decentralization in five pilot municipalities. The selection of municipalities and the whole decentralization debate was politicized beyond repair. The assembly pressured the executive branch not to start implementing anything without the consent of the assembly. The international community did not favour any debate that would change the already agreed plans of decentralisation. This issue led to the polarisation of the opposition and even a split within the government coalition.11

Hence it is more relevant to discuss the activities of the Kosovo parliament in the context of interaction with the international peacekeeping forces and the transitional

administration. According to the report on Kosovo, this interaction is also in the stage of seeking efficient institutionalization.

As mentioned above, UNMIK very often has tried to push for decisions that affect Kosovo through individuals that they identify as allies within institutions at the cost of sidelining the role of the institutions, particularly the role of Assembly. This has many times created unnecessary tensions between the UN and local institutions. International communities’ issues have a sense of urgency attached to them so it always seems that the international community has no time for processes of building local ownership. There were many cases when the international community discouraged debate out of fear that the outcome of debate may not be the one they like. This fear and distrust in Kosovar institutions has not been productive and has resulted in outcomes that were not sustainable.¹²

Main Conclusions and Recommendations

(i) Notions of parliamentary sovereignty as an expression of national sovereignty are dangerous. Parliaments should be treated as constitutionally constrained bodies, working within a frame of domestically and internationally recognised rights;

(ii) The existence of a viable opposition is key to the establishment of parliament as a guarantor of political pluralism: the opposition should have sufficient funding, international contacts, media exposure and so forth;

(iii) Super-presidentialism is dangerous. It leads to the marginalisation of the political opposition and ultimately reduces pluralism and denies representation, which is a step towards violent conflict. The separation of powers should be well-entrenched;

(iv) International actors should attempt to enter, where possible, into processes of imposing conditionality in return for membership in prestigious clubs or other benefits;

(v) There is no parliamentarianism without political parties. Much more attention should be paid to the internal organisation of political parties, their funding, their levels of internal democracy and on public trust and confidence. The parliamentary process extends beyond the walls of the legislature, as it also covers areas such as coalition negotiations and coalition building, and the political education of its members and supporters. Sustained efforts are needed to improve the current practices;

(vi) Thus far, political education has been entrusted either with the government or with the nongovernmental sector. Hence, the German experience, where political parties (through their foundations) have been and still are involved in political education, is worth exploring. This approach will strengthen the influence of parliaments vis-à-vis the executive in the area of political education.

¹² Ibid.
Box 6: UNDP and CLS Cooperate to Strengthen Parliaments in Conflict/ Post-conflict Situations

In 2005, UNDP and the Centre for Liberal Strategies (CLS) collaborated on a project that aims to strengthen parliaments in conflict/post-conflict situations. This project brings together parliamentarians, practitioners, donors and other stakeholders to make recommendations on how parliaments’ role in conflict and post-conflict situations may be better supported by the international community. CLS contributed six case studies from Eastern Europe and the CIS.

Established in 1994 as a new generation think tank, and responding to the many political changes seen in Eastern Europe, CLS lobbies for change through the fields of research and policy.

Centre for Liberal Strategies; 1000 Sofia, Bulgaria, 135 A Rakovski Str, Second floor
Tel.: (+359 2) 981 8926, 986 1433; Fax: (+359 2) 981–8925;
Website: http://www.cls-sofia.org
Recommendations for Improving Democratic Oversight and Guidance of the Security Sector

*United Nations Development Programme/ Geneva Centre for the Democratic Control of Armed Forces*
Introduction

These recommendations are primarily intended to guide parliamentarians, civil society organisations and the international development community. Together, the recommendations aim to support countries that seek to establish and maintain substantive democratic oversight and guidance of the security sector.

The recommendations are grounded in the established principles of good practices in security sector reform and governance. Moreover, they assert the principle that good governance norms can only take hold in a society and its polity when there is ‘local ownership’ of security sector oversight issues. Establishing understanding of, and mechanisms for, transparency and accountability across the security sector remains a critical issue in many post-authoritarian countries.

To help entrench parliamentary oversight and guidance of the security sector within the context of democratic governance, and to strengthen the effectiveness of the security sector, it is recommended that the following concrete measures be taken to improve both the understanding and capacities of actors involved in ensuring democratic oversight of the security sector.

Recommendations for Parliamentarians

Create a Legal Framework

1 Develop an over-arching legislative framework that will create an optimal environment for democratic civilian oversight of the security sector, which reflects international norms and adjusts the constitution to reflect those norms.

States need to anchor firmly the concept of democratic oversight and guidance in their key constitutional documents. The principle of civilian supremacy over the security services, independently monitored and enforced by democratically elected parliamentarians, can be embedded not only in a state’s key legal documents but also in its consciousness. These principles then need to be applied in practice. One method is through the adoption of a law on civilian oversight of the security sector (see Box 7).

Another method is to include provisions that guarantee civilian oversight in each of the laws that regulate the security sector, e.g. the police act, protection of official secrets act, internal security services act, foreign intelligence act, states of emergency act, national defence act, financial accountability act, military (and alternative) service act, conscientious objectors act, defence procurement act, or freedom of information act.
DEMOCRATISING SECURITY IN TRANSITION STATES

Box 7: Model Law on Civilian Oversight of the Security Sector

Developed in 2002 by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in partnership with the CIS Parliamentary Assembly, the Model Law on Civilian Oversight of the Security Sector was created to help former Soviet countries create legislation, which embeds the concept of democratic civilian oversight of the security sector in their countries as per the obligations of the OSCE Code of Conduct. The model law can be found at http://www.dcaf.ch/_docs/bm_fluri_nikitin_cis_model.pdf (English) and http://www.dcaf.ch/_docs/bm_fluri_nikitin_cis_model_ru.pdf (Russian)

1 Develop legislation specific to each security sector component and law enforcement agency in accordance with international precedents.

Given their different mandates and competencies, it is important that legislation distinguishes between defence and intelligence services on the one hand, and law enforcement agencies such as the police and border guard services on the other.

2 Develop legislation which guarantees the independence, functioning and availability of suitable instruments for democratic institutions to monitor the security sector.

Parliamentarians must systematically develop and embed in legislation the tools necessary for democratic institutions to effect oversight. Within parliament, MPs need, as a minimum, statutory rights to hold inquiries and regular hearings; to ratify budgets, procurement decisions and international agreements; and to conduct these activities in the public arena.

Additionally, the legislative framework needs to ensure that the dialogue between democratic institutions and actors on security issues is underpinned both by laws defining the responsibilities and available means for each of these actors and laws ensuring that there is neither intended nor unintended immunity for any security sector actor.

Parliamentarians need to ensure that the ombuds institution has a statutory right to monitor, enquire and report on security actors’ activities; that the judiciary can oversee court cases against security actors; that prosecuting lawyers in those trials as well as law-enforcement investigators investigating crimes or accusations can gain access to documents, employees and premises of the security sector actors to fulfil their tasks; and that adequate state funding is made available for all of the actors concerned, not only for procedural activities but also in the event of emergencies.

Overall, although overlaps do occur occasionally, the division of labour is based on the free flow of information between all these institutions, as accelerated by the activities of civil society and the media.

3 Integrate human rights norms into laws relevant to the security sector.

Since the security sector is prone to human rights abuses - both within the sec-
tor as well as by the sector – it is vital to develop legislation on human and civic rights, including instruments for safeguarding such rights (e.g., ombuds institution and the right to access information). Equally important is to ensure that security sector legislation incorporates the same principles.

5 Develop strategic documents outlining the specific roles, taskings and means available to security sector components.

To develop a coordinated approach to security sector oversight, demonstrate the inculcation of security sector governance principles, and ensure common awareness of the roles and tasks of the security sector’s components, it is crucial that states develop policy documents such as a National Security Policy, Crisis Management Plan, Defence Doctrine and ‘White Book’ on Defence, as well as codes of conduct for servicemen and law enforcement officials, which specify the mandate, roles, powers and limits to those powers, resource costs, and available budgets for relevant security sector actors. These documents should build upon a broad understanding of security which extends beyond state security and integrates the issues of human and civic rights and specifies instruments for safeguarding such rights.

6 Demand democratic, accountable and effective executive control and well-functioning internal control mechanisms within the military, police, border police and intelligence services.

Parliamentary oversight can succeed only if the executive is really in charge of and accountable for the armed services and if the military and law enforcement agencies are disciplined and professional. Therefore, in addition to informal control by civil society organisations and media, there are three levels of democratic control, and each one of them is dependent on the next level, i.e., internal control within the agencies, parliamentary control and executive control.

7 Ensure that security services address the real security concerns of the people, and that taxes and other resources are used for their intended purposes, seeing to it that the security services operate in the interests of society and observe the human rights of men and women.

In terms of legislative measures, this can be facilitated by having security services which are:

- governed by statutory laws,
- operate on the basis of clear and transparent rules of procedure,
- staffed with officials who are recruited and selected through transparent and public processes,
- possess whistle blower protections,
- accountable to independent courts and ombuds persons.
Create the Means for Oversight Within Parliament

8 Create specialised committees to deal with each component of the security sector.

Just as each security sector component has a different mandate, committees on defence (armed forces), intelligence (domestic and foreign intelligence services) and law enforcement (police and border police) each face very different issues. Parliament should take responsible ownership of these committees by setting the agenda, planning activities, reporting on them to the plenary and public, and appointing the chair and membership of these committees.

9 Create ad hoc inquiry committees to deal with unexpected incidents and issues.

Ad hoc committees and inquiries are sometimes needed to address a particular incident or issue, and provide a way in which opposition parliamentarians can perform their democratic function by holding a government accountable for its policies. The right of opposition parliamentarians to request such inquiries provides a vital means for them to investigate underperformance and illegal activities in the security sector.

10 Establish balanced policies and clear terms of reference for the defence, intelligence and law enforcement committees based on the principles of transparency and accountability.

Clear terms of reference should include the following content and provisions:

- Full ownership over appointments of committee chairpersons, members and staff as well as ownership over the frequency and agendas of committee meetings, including committees’ budgets;
- Right to examine and report on any policy initiative announced by the ministry of defence or ministry of interior (or equivalent), including long-term planning, reorganisation and major equipment proposals;
- Right to conduct inquiries and public hearings on any issues raising special concern;
- Procedures for hearing petitions and complaints from citizens and from people working in the security sector;
- Right to consider draft legislation and relevant international agreements;
- Right to examine budget estimates and budget details, supplement any requests and audits, and to report on measures of efficiency and rationalisation;
- Right to have access to classified information;
- The power to summon any government official to committee meetings and to question them under oath.

11 Ensure balanced representation in all committees, including by opposition members and female and minority parliamentarians, facilitating fair representation of the interests of the whole population.
Committees that do not have a representative membership will suffer from a lack of credibility, thus weakening their impact. Opposition parliamentarians tend to have a greater interest in uncovering shortfalls of a government than do representatives of the majority. The participation of opposition parliamentarians thus leads to a more thorough oversight.

In most countries women are strongly underrepresented in security governance bodies. It is important to include them because they can provide important additional, but often overlooked, perspectives on security issues. Of course, the representation of female parliamentarians in security-related committees provides no guarantee that the gender dimension of security will be taken into account in committee deliberations, neither is their absence a reason to disregard women’s security needs. Still, the representation of female parliamentarians in relevant committees is an important measure to facilitate attention to women’s security needs to help create gender-sensitive decisions on security matters. It is moreover an important goal in itself to achieve a gender balanced representation.

12 Create effective rules and procedures for each committee.

Rules and procedures need to be strong enough to subject any issue to intense public scrutiny. Moreover, there may need to be exceptional procedures incorporating confidentiality issues in certain clearly defined circumstances whilst still allowing the parliamentarians access to all relevant information.

13 Hold regular committee hearings on security sector oversight issues.

By holding regular hearings on security sector issues and systemically interacting with other committees, each committee can ensure that it is fully briefed on key issues, aware of new and future developments, and reinforce its authority as a key instrument of democratic oversight.

14 Train and use civilian permanent parliamentary staffers within parliamentary committees to work alongside parliamentarians and advise on oversight issues.

Parliamentarians are generally busy on a range of issues, thus by building a team of civilian, professionally trained security sector expert staffers for the committees concerned, the ability of those committees to take informed decisions on oversight matters and keep abreast of contentious issues is greatly increased.

15 Insist on and participate in policy-making and review cycles.

The initial evolution of policies affecting the security sector is often the weakest link in the policy-making process. Parliamentarians can remedy this problem by planning interventions on security sector issues from the outset of a policy-making cycle, while also systematically reviewing the process as it becomes more advanced. Such a proactive oversight strategy enables
parliamentarians to anticipate events instead of reacting to past events only.

16 **Broaden the consultation process on policy development by holding public hearings on budget, legal, human rights, law enforcement and defence issues.**

The participation of experts from the public and from civil society groups working on security sector oversight issues at hearings on policy development and draft documents can greatly improve the legitimacy and effectiveness of proposed policy instruments by virtue of rendering the process more transparent and accountable. As with parliamentary staffers, by inviting independent civilian security sector, human rights and legal experts from national and international civil society to assess constructively policy and practices, parliaments gain objective advice on security sector oversight issues.

17 **Encourage parliamentary unity on security sector oversight issues.**

A lack of discipline within and amongst opposition parties is often identified as one of the major obstacles to holding a government accountable. In fact, such differences of opinion often allow an executive to exploit its position for its own ends. To give a clear voice to democratic oversight issues in parliament, it is important that opposition parties consider their positions on relevant issues not only within their own party but also with other opposition parties.

18 **Ratify all international agreements which facilitate democratic oversight and guidance of the security sector, including those which guarantee human rights, incorporate them into national legislation and monitor their effective implementation.**

Binding ratification of relevant international treaties by parliaments is a vital way to ensure that the executive and state agencies are bound by international law to meet and uphold certain minimum standards of democratic oversight.

19 **When existing capacity is insufficient, seek impartial assistance on meeting your country’s obligations under international law and international agreements relevant to democratic security sector oversight.**

Many development agencies now recognize the crucial importance of security sector governance and can offer assistance to reform initiatives.

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**Box 8: Parliamentary Empowerment and Capacity Building in Ukraine**

From 2002 onwards DCAF has cooperated with the Defence and Security Committee of the Parliament (Verkhovna Rada) of Ukraine on security sector oversight issues. The emphasis has been on ‘help for self-help’: the Committee identifies security governance problems and then requests international assistance with the
problem-solving process. In this way not only was understanding of security problems increased, but capacities to understand, solve and develop new instruments were also developed.

As of today, activities have included: Roundtables on the ‘Draft Law on Parliamentary Oversight of the Security Sector’ (incorporating hearings on money laundering issues) (September and December 2002); Conference on ‘Defence Policy of Ukraine: Reality and Perspectives’ (September 2003) focusing more closely on defence policy issues in the context of a reformed security sector; Conferences on ‘Ukrainian Security Sector Reform’ (May 2004), ‘Defence Institution Building – Establishing a Strategic Planning MoD Department’ (July 2004); Roundtables on ‘Parliamentary Oversight of the Security Sector – Defence Budget Transparency and Parliamentary Powers’ (April 2004); ‘Personnel Policy in the Defence and Security Sector: Oversight of Senior Cadre Appointments’ (July 2004); and Security Sector Governance Conference ‘Current Problems of Defence and Security Sector Reform in Ukraine’ (May 2005). The process of rendering advice on legislative oversight issues has also been underpinned by sponsorship of the collation, translation and printing of all existing Ukrainian security sector laws, which were collected by the Defence Committee of the Verkhovna Rada.

For further information see: http://www.dcaf.ch/lpag/_index.cfm?navsub1=4&nav1=3

Monitor Internal Security Sector Expenditures and Appointments

20 Systematically monitor procurement issues across the security sector.

Defence, law-enforcement and other security procurement issues merit careful scrutiny by parliamentary defence committees. Cumulatively, the goods and services involved form one of the most expensive items of a government’s annual expenditure. Secondly, the secrecy and high financial and diplomatic stakes often involved in the international arms trade means that decision-makers in the military, executive and parliament can be subject to corrupt approaches from internal and external actors. Thus, the legislative branch needs to be involved in monitoring defence and security sector procurement not only to monitor the executive branch but also the practices and policies of state agencies.

Parliamentarians need to make sure that they oversee the whole procurement agenda, including needs assessment, budget availability, equipment selection, selection of suppliers, approval of contract, as well as any ‘offset’ contracts which involve the provision of a particular asset or service as part of a procurement deal with a foreign firm.

In countries with a strong state defence sector there is a firm need to prevent the armament industry from gaining a disproportionate share of the state bud-
get and that government members, civil servants, departments, agencies, or corporate interests do not seek illicit profits from unregulated arms exports.

Parliaments should also enact laws for defence procurement processes, and the export of new and used defence equipment should be subject to parliamentary approval, in accordance with international treaties and law.

21 **Ensure cadre appointments are transparent through parliamentary ratification.**

The appointments of top generals and commanders in the various security and intelligence services should be subject to the approval of the relevant parliamentary committee. Such committees should have the right to give and withhold consent for appointees, not least through convening public confirmation hearings to review the qualifications of candidates. At the very least, parliament should be consulted by leaders in the executive on senior security sector appointments.

Legislation regulating security sector agencies should include a clear framework outlining the process for appointing the most senior officials. It is vital to independently verify the relevant qualities of leadership, integrity and independence in potential appointees. The appointment process should be transparent and consultative, commensurate the status of the position.

As a minimum, it is necessary that appointments should be open to scrutiny outside the executive and the agencies concerned. For this reason, in many states the top appointments in the security sector are subject to consent by parliament. The appointment verification role may prevent unsuitable candidates being proposed in the first place and may lead to the government discussing, and in some instances, negotiating with other political actors in order to avoid political controversy and to ensure a bi-partisan approach.

22 **To attract top quality personnel, check whether the government/executive is a ‘good employer’ for security sector personnel.**

For example, check whether the working, safety and health conditions of servicemen and women in the barracks are sufficient, whether salaries are paid on time, and whether pensions are paid according to plan.

**Create Adequate Means for Oversight Beyond Parliament**

For constructive cooperation on security sector oversight by parliament, the executive, democratic institutions and civil society, it is vital that parliamentarians ensure the adequate functioning of other oversight mechanisms.

23 **Ensure that an executive oversight body, e.g., a national security council, is established.**

As a body through which the executive can perform its role in security sector oversight, a national security council is also accountable for the executive’s actions in security sector policy-making and practice.
Ensure that an independent human rights ombuds person and a military ombuds person (sometimes called inspector-general) are established.

Independent institutions ensure the protection of civilians from human rights abuses and also monitor the rights of those working inside the security sector.

Encourage the establishment of inter-ministerial regulatory and oversight bodies comprised of senior representatives from relevant security sector ministries.

In transition democracies, the establishment of inter-ministerial regulatory bodies intended to focus on oversight issues can assist with promoting accountability within ministries.

Establish formal and informal coordination bodies at the national, district and local levels, including government officials and local NGO representatives.

The creation of coordination bodies provides a platform for constructive criticism of the policies and procedures of security sector actors and also allows civilians to increasingly gain local ‘ownership’ of security problems.

Participate in inter-parliamentary dialogues and cooperation aimed at increasing awareness and understanding of security sector governance.

Within a given group of states in a region, parliaments can cooperate to ensure that they all have at their disposal the same access to information, for example, by producing joint annual reports and by having regular conferences of the chairs of the national parliamentary defence committees. Such inter-parliamentary dialogues can promote the exchange of experiences and best practices and serve as a step towards greater standardisation of oversight practices, including those on human rights, democratic institution building and civil society participation. They can also facilitate cooperation on trans-border security issues such as trafficking and crime, or support dialogue on conflict issues.

Through dialogue on these issues, parliamentarians not only keep themselves well briefed and oriented on international legal issues, but it can also improve their understanding of issues and legal instruments available to help assert democratic oversight.

Democratic & Human Rights-Based Institution Building

Ensure that legally mandated institutions exist to coordinate monitoring, oversight and enforcement activities throughout the country, that they function effectively and cooperate with all relevant ministries and civil society partners.

Whilst paying attention to the security sector’s specific needs, it is important for parliamentarians to ensure equally that democratic institutions which monitor and enforce security sector oversight function adequately. The independence of the judiciary and the ombuds institution, and the availability of enforcement mechanisms, legal instruments and ad-
equate funding are vital to ensure the transparency, stability and accountability of the security sector.

29 Ratify international agreements which facilitate democratic oversight and guidance of the security sector, including those which guarantee human rights for men and women.

Again, binding ratification by parliaments is a vital way to ensure that executives and state agencies are bound by international law to maintain certain standards.

30 Work to create mutual confidence and understanding between civilians and the security sector.

It is important to see the relation between civilians and the military as an issue of shared responsibility, which should be characterised by trust and dialogue. Trust and dialogue are not natural phenomena – they both have to be earned. For example, if parliamentarians at the defence and security committee leak classified information to the press, the military and other security officials would be very hesitant to share such information with the parliamentarians at a later time. On the other hand, if the military covers up scandals, the trust of civilians in the military will be seriously damaged. A democratic parliament can act as a constructive intermediary between the various stakeholders.

Managing Change in the Security Sector

To ensure the emergence, inculcation and proliferation of best practices, a programmatic assessment of the status of security sector governance in a country can allow parliament to gain objective insight and benchmarks into both status and needs of democratic oversight. Donors are anxious to help new democracies make substantive steps in security sector reform and identifying areas for international assistance helps a country to create ownership of its security needs. The relevant committees can undertake and coordinate such assessments.

31 Identify needs for security sector reform programme implementation.

Undertake comprehensive assessments to determine the full impact of security sector reform needs by individual actor/agency, including police, border police, intelligence, defence, general staff etc., and ensure adequate follow-up.

32 Develop draft multi-year action plans with predictable funding commitments in order to facilitate oversight of planning and implementation and to guarantee feasible budgeting.

Such steps will also facilitate any approaches to the international development community for advice on technical issues. To ensure parliamentary involvement in the reform process, it is particularly important to insist that parliament be consulted and regularly briefed on assistance agreements entered into by the ministries of defence and interior.

33 Identify a list of the most urgent needs.

To help bring democratic security sector capacity development forward as a prior-
ity during consultations within the country but also with the international community, identify the most critical issues affecting security sector governance.

Seek expert assistance to foster consensus on the benefits of transparency and accountability in the security sector, including the inter-relation of and differentiation between human rights, human security, defence needs, policing, intelligence and law enforcement.

One of the greatest sources of resistance to democratic oversight of the security sector is the misperception that creating transparent and accountable institutions weakens defence and law enforcement agencies. Instead, countries with corrupt security agencies are usually less developed as excessive secrecy allows security agencies to conceal inefficiency and waste which, in turn, deters foreign investment due to their corruptibility.

Recommendations for Civil Society: Participating in Democratic Oversight of the Security Sector

Civil society organisations (CSOs) have a crucial role to play in democratic oversight of the security sector from the national to local level. Depending on their precise mandate, CSOs can provide vital testimony, information and analysis to parliament and other democratic institutions about the ways in which national security policies and activities affect their members and society as a whole. They often represent interests of marginalized groups and thus have the potential to bring a wider range of interests to the fore. In many post-conflict societies, CSOs have played a vital role in supporting the development and protection of the security sector through various functions, ranging from facilitating aid to facilitating trust between the general populace and the authorities.

Moreover, CSOs perform the same function by interacting with the media whom are often the first to either bring to light problems identified by CSOs or to ask CSOs for their opinion about controversial issues. CSOs can then also interact with the institutions concerned to develop solutions to problems in the security sector. In general, CSOs concerned with freedom of speech, human rights, policing, access to justice and defence issues tend to be in the forefront of discussions on security sector issues, but it is important to note that those concerned with minorities, women, gender relations and children also have a valuable contribution to make.

Develop monitoring and analytical capacities with which to document and report on the ways in which security sector actors affect not only CSO members but society as a whole.

CSOs are often best placed to perform these functions by virtue of their mandate as non-governmental organisations, which are not intrinsically concerned with the preservation of a government’s mandate. Data from a diversity of CSOs often allows common themes as well
as marginalised issues to be identified more quickly and for appropriate solutions to be rapidly developed.

2 Develop monitoring and analytical capacities with which to document and report on the effectiveness with which democratic institutions regulate security sector actors.

Assessments of the competence of democratic institutions with responsibility for security sector governance should cover the following principal institutions: parliament, the judiciary, the ombuds institution and local police boards.

3 Ensure that the governance mechanisms of your organisation are transparent and accountable.

CSOs must be as accountable as any other actor involved in debates on security sector governance. CSOs can be open to the accusation that they are neither accountable to anyone nor that their competences are measurable. CSOs should thus have, as a minimum: clear and easily accessible terms of reference, statutes and duty guidelines; prohibitions on conflicts of interest; an elected governing board; annual and other financial audits; and annual and other reports issued to outline the CSO’s performance of its mandate.

4 Enhance expert capacities to maximise the utility of CSOs’ input into discussions on and investigations into security sector policy and practices.

CSOs can enhance their skill-sets and knowledge bases by training their staff responsible for security issues. Subjects for training include awareness of international norms, precedents and best practices on security sector reform issues.

5 Interact with local and national media in discussions on security sector issues.

By monitoring and reporting on security issues, CSOs are often requested to comment on important security issues, while also having the capacity to bring to light such issues in the first place.

6 Develop awareness raising capacities.

At local and national levels, CSOs’ awareness raising capacities are dependent on their resources, skill-sets and budgets. CSOs need not only to be able to tailor their capacities to promoting solutions to problems at hand, but also to develop those capacities in direct proportion to their profile and available resources.

7 Develop training capacities.

At local and national levels, the capacity of CSOs to train civilians on substantive issues remains one of their most important functions alongside awareness raising. The ability to substantively inform and train civilians on relevant issues enables CSOs to simultaneously spread understanding alongside awareness.

8 Develop the capacity to mount sustained campaigns on critical oversight issues.

On the basis of monitoring, analysis, reporting and media interaction activities, when CSOs identify problems which remain unaddressed or unsatis-
factorily resolved they can lobby local and national representatives, institutions and the media to focus attention on these issues. Platforms can also be built with which to engage the same actors at the international level. Campaigns can have an informational nature but can also vividly draw attention to a particular problem and advocate a solution.

9 Seek to pursue a dynamic role in security sector oversight issues at local and national levels.

By virtue of their specialised focus, agendas and memberships, CSOs can provide a vital role by contributing their relevant input to discussions at national and local levels. At the national level CSOs can interact with parliament, national media, government departments and democratic institutions; at the local level with their parliamentarian, local media, and the local representatives of government departments and democratic institutions.

10 Build networks with other CSOs working on related security sector oversight issues.

For reasons of mandate, funding and human resources, CSOs often focus on a narrowly defined set of issues. Since each CSO has different skill-sets and resources, a dynamic interaction between CSOs on a particular issue helps to improve their capacities to campaign on that issue. Furthermore, the improved cooperation not only enhances advocacy, but also prevents the duplication of efforts by organisations with often limited means.

11 Use established networks to create and share campaign platforms with other CSOs working on security sector oversight issues.

Sharing a platform with local, national or international CSOs not only improves the availability and diversity of skill-sets to perform a particular task: the act also creates a mandated forum through which the collective consensus of CSOs can be expressed to others, including government authorities, the media and donors. Through the process of such networking, CSOs enhance their support-base, thus increasing their leverage to influence decisions.

12 Seek to actively participate in legislative consultation and the formation of regulatory networks.

On the basis of their expertise, CSOs have a crucial role to play in contributing to debates on legislative reforms in their countries, particularly those that support freedom of association, the establishment of regulatory frameworks, freedom of speech and the media.

13 Undertake a gender analysis and ensure that the security interests of men, women and children are factored into CSO agendas.

It is important to analyze the different security issues affecting men, women and children and to integrate these issues into CSO agendas and activities. Women and children are often affected by a range of issues – for example, human rights, access to justice, discrimination, law enforcement, minority rights and social welfare needs – which, whilst cumulatively form-
ing a large corpus of interests and needs, are often overlooked.

Activities can take several forms, based on prevention, protection and empowerment, whereby CSOs can seek to act as advocates on the following issues.

The prevention of violence against women through:

- Increased awareness raising on the rights of women and gender-based crimes
- Increased awareness raising on the punishment of perpetrators
- Effective training for the police
- Effective collection of gender-disaggregated data
- Furthering research on causes, consequences and solutions
- Effective monitoring and assessment
- Attention by relevant oversight bodies to cultures of violence, and gender relations that perpetuate violence against women

The protection of women against violence through:

- Universal ratification of international instruments on international human rights and humanitarian issues
- Effective implementation of legal reform and improvement of access to justice
- Ensuring adequate punishment of perpetrators in law and in practice
- Strengthening institutional mechanisms for protection, including through training on gender relations and women’s security needs
- Allocation of proper budgets
- Establishment of shelters and support mechanisms
- Protection of women in armed conflicts

The empowerment of women against discrimination through:

- Education and training
- Participation in decision making.

14 Ensure the needs of minorities and other vulnerable groups are addressed.

In the aftermath of conflicts, there are often displaced minorities, ex-combatants, and ex-prisoners who are particularly vulnerable when a security sector is weak. These groups can benefit from the application of the agenda for advocacy outlined above.
Donor countries and internationally mandated organisations can support post-authoritarian security sector reform. The relevance of security sector reform for democratic governance and human development is now broadly recognized, and a commitment to this issue has been made, for example in the OECD/ DAC process. Given that the national willingness for far-reaching reform is often identified as a stumbling block, assistance should not only focus on the functioning of security providers but also involve policy-oriented activities, such as briefing, advising and helping to embed oversight bodies.

Security sector reform assistance still tends to focus on the executive and the security providers, with parliaments and the public at large only marginally involved. This approach leads to increased competence of the security instruments at the disposal of the executive while not addressing the governance dimension, i.e. the accountability of those instruments to the elected parliament.

1 Document and explain the differences between concepts of defence, human security, transparency and accountability.

It is often not clear that transparency and accountability in the security sector, and in particular in the defence sector, can improve a state’s defensive capacities rather than weaken them. Conscripts and professionals alike who suffer repeated human rights violations are less effective than those whose rights are protected. These violations might also lead to the perpetration of a violence culture that contradicts and undermines the sector’s purpose. Similarly, corruption can lead to the loss of small arms ammunition, fuel and other high-value items. Parliamentarians must be encouraged to help create and maintain transparency mechanisms preventing such resource losses.

2 Explain the roles of specific security sector institutions in democratic governance and under the rule of law.

Elaborate the specific roles of the judiciary, ombuds person, inspector-general and civil society in security sector governance and the interrelation of each of these various institutions and actors, including limitations on absolute executive privileges. Moreover, it is important to elaborate the role of human rights in the security sector context and explain the ways in which security sector governance is a dynamic process.

3 Stress the role of civil society and the importance of consultation processes to create local and national ownership of security problems and seek ways to affect it.

Only by developing civilian interest and expertise in these issues can truly democratic oversight be effected. Civil society can serve the dual function of empowering parliamentarians through information on the one hand, and on the other by holding parliament, institutions and the executive accountable through monitor-
ing and media activities, as well as bringing to the fore interests of marginalised groups such as women and minorities.

4 Promote the notion of human security as an alternative vision to a state-centric security agenda.

The human security concept is still poorly understood in many transition and developing countries. Where the national security strategy and parliamentary debates are dominated by a state-centric vision of security, democratic oversight will remain weak, with a negative impact on human rights and human development for both men and women.

5 Offer financial and technical assistance to relevant parliamentary committees.

Relevant assistance for committees includes, but is not limited to:

- Advising on the composition of committees and rules of procedure
- Developing understanding of budgetary matters, audit, review and procurement
- Strengthening of investigative capacities
- Linking committees and MPs to defense experts, civil society and think tanks
- Providing expert advice on technical and legislative issues and facilitating access to specialized independent research on security matters
- Promoting exchange of experience with other committees, including through study tours
- Raising awareness of the human security concept, including specifically on issues affecting women’s security (e.g. rape, trafficking, etc)
- Explaining and tackling cultures of violence within the sector through training and dialogue

6 Support training of parliamentary staffers and civil society experts.

In many transition countries, there is a lack of civilian expertise on security issues, both within and outside parliament. Training programmes can help to address this capacity gap. While dedicated training programmes are important, it is more sustainable, where possible, to help revise existing national training schemes and integrate security-related content into them.

7 Adapt assistance programmes to promote democratic oversight of the security sector.

Most development agencies have separate management and implementation processes for their work on democratic governance, rule of law and human rights on the one hand, and conflict prevention and security sector reform on the other. Important synergies often remain unexplored. New entry points for reform can be found when conflict, security and democratic governance issues are approached hand in hand.

A first step would be to include security-related components into relevant governance programmes, for example on parliamentary development, and to include human rights and governance components into security/ conflict pro-
grammes, for example on policing. In all cases, special attention should be paid to ensure that the elected democratic bodies at national, district and local level are duly included in consultation, planning and monitoring processes.

8 In some countries, it may be difficult to address security oversight issues through direct support to the defense or internal security committees. This can be the case when there is no willingness for reform or because the powers of parliament or the capacities of the judiciary are severely limited. Rather than abandoning the objective of enhanced security sector oversight, it can be possible to use an indirect approach by:

- Strengthening parliamentary independence (civil service statutes, professional staffing, parliamentary immunity, revised rules of procedure for parliament)
- Addressing political corruption (revised political party laws; money laundering legislation)
- Focusing on the powers and competencies of the budget committee
- Promoting parliamentary interaction with civil society and other sources of non-partisan information
- Revising legislative frameworks for free media, access to information and journalist protection
- Developing whistle-blower legislation
- Supporting an independent judiciary as well as ombuds institutions
- Supporting parliamentary human rights committees and their investigations

This is where it is most crucial to integrate a security perspective into democratic governance programming.

Box 9: Laying the Foundation for Parliamentary Oversight - UNDP Support to the Kyrgyz Parliament

Parliamentary oversight is a core mandate of any parliament’s work. However, in most CIS countries, the capacity of legislators to conduct independent parliamentary oversight is still poor because of lack of knowledge and experience, and because of procedural and political factors that hinder parliamentary oversight. Any effort to enhance parliamentary oversight over specific sectors such as the security sector must therefore be informed by a critical assessment of parliament’s oversight capacity and underpinned by a long-term strategy to institutionalize and professionalize the oversight function of parliament. It sometimes takes a long time before it is clearly understood that the legislative function does not end with the adoption of a law, and that monitoring the implementation process is just as essential for the rule of law and human security.

In response to the challenge of effectively implementing parliamentary oversight responsibilities, UNDP Kyrgyzstan embarked on a long-term project in 2001, which aims to support the Kyrgyz Parliament (Jogorku Kenesh) improve its oversight, legislative, and representative roles. Designed as a consecutive process, the first steps
focused on raising awareness among Members of Parliament (MPs) and parliamentary staff on their specific responsibilities concerning oversight, and the practical mechanisms to enhance it. The Kyrgyz Parliament received practical, non-partisan technical advice on oversight procedures and instruments by UNDP international advisors, as well as best-practice studies and experiences from other parliaments. This information promoted debates among MPs on the institutionalization of parliamentary oversight and encouraged reform-minded MPs to be proactive in supporting a process of change.

The creation of a legal base was a special priority at this first stage, and resulted in the establishment of a normative framework for parliamentary oversight. A special provision on the oversight mandate of the Kyrgyz Parliament was introduced in the national constitution as a counterbalancing measure against the concentration of power in the hands of the president. In 2004-2005 a chapter on parliamentary oversight was inserted into the ‘Rules of Procedure’, and a law on parliamentary oversight was adopted. The creation of a legal framework promoted the institutionalization of parliamentary oversight procedures such as budget hearings, parliamentary investigations, debates, and government reporting.

UNDP also assisted the budget committee to conduct hearings in line with a standardized procedure – including public announcements, the identification of participants, advance distribution of the budget, and receiving public feedback. In 2005 the draft Kyrgyz budget was placed on the parliament’s official website for the first time and became available for those wishing to view it.

Additionally, one of the most important outcomes of subsequent stages of the project was the increased involvement of civil society organizations and non-partisan experts in the budget hearings. Not only parliamentarians attended these hearings, but also representatives of regional administrations and local community activists. In this way, civil society in Kyrgyzstan has an opportunity to interact directly with representatives of the central government concerning questions over government expenditures.

With the new situation in the country after the ‘March Revolution’ in 2005, and the new role of the Parliament in the national political arena, it remains important to continue this capacity development for parliamentary oversight and expand it into the monitoring of the implementation of laws and government reform projects in all public sectors, especially in vital social sectors.

Gulmira Mamatkerimova, Programme Advisor on Parliamentary Reform and Human Rights/Head of Cluster, UNDP Democratic Governance Programme in Kyrgyzstan
Conclusions

Dr. Philipp Fluri and Marcia V. J. Kran
Conclusions

Parliaments are crucial for ensuring civilian control over the security sector. Parliaments are the institutions through which people express their sovereignty. They ensure transparency and accountability across the security sector, primarily by creating an appropriate legislative framework. They also use their popular mandate to investigate the management of the security sector. By holding the security sector accountable, facilitating the constructive resolution of domestic conflicts, and discouraging an aggressive foreign policy, parliaments can contribute to human rights, rule of law, democracy and regional stability.

The security sector should be subject to the same level of scrutiny that other branches of state receive. The main principles of good governance are well understood, even though practice varies from country to country. According to the 2002 Human Development Report published by UNDP, good governance sees to it that:

• Human rights are respected, allowing people to live in dignity; and with respect;
• People have a say in decisions that affect their lives;
• People can hold decision-makers accountable;
• Rules, institutions and practices are inclusive and fair;
• Women are equal partners with men in private and public spheres and decision-making;
• People are free from discrimination based on race, ethnicity, class, gender or any other attributes;
• The needs of future generations are reflected in current policies;
• Economic and social policies are responsive to people’s needs and aspirations;
• Economic and social policies aim to eradicate poverty and expand the choices that all people have in their lives.

Applied to the security sector, the principles of democratic accountability require that:

• Institutions, including the defence and security spheres, be transparent and accountable to citizens;
• Human development be dependent on peace and personal security;
• Institutions, including the defence and security spheres, not be isolated from society, but subject to democratic civil control and guidance;
• Peace building in war-torn and post-conflict societies be democratic;
• All agents dealing with defence and security and/or democratic civil oversight and guidance thereof, be professionally trained.

The exchange of experience between parliamentarians at the October 2005 UNDP/DCAF Roundtable on Security Sector Oversight confirmed that parliaments in the CIS face similar challenges in managing the national security sectors. Some have responded innovatively and sought to increase the transparency of their sectors. Others have deferred more to the executive. But all have confronted problems created by vested interests within the security sector. Overall, the parliamentarians agreed that well-conceived decisions by the executive may help accelerate reforms, while the overuse of executive power may lead to stagnation, or recreate the old status quo when the security services dominated decision-making. At that time parliaments had a smaller role to play in scrutinizing the executive’s policies. They had a limited understanding of the benefits of transparency and accountability. The causes of such limitations need to be further explored in order to make policy-making in transition states more participatory, and to strengthen oversight structures.

This publication also demonstrates that people’s understanding of parliament’s position in the CIS is still influenced by the role of the ‘Supreme Soviet’ under communism. It served as a rubber stamp without any power to exercise democratic oversight.

This book addresses the need to strengthen democratic oversight in the CIS and aims to deepen the understanding of the concepts, processes and mechanisms that facilitate truly democratic governance of the security sector. By creating ‘local ownership’ of security problems, citizens, their institutions and leaders can constructively interact to shape a transparent security sector that contributes to ongoing development.

Democratic oversight and parliamentary control over the security sector can be strengthened in three different ways.

- First, the legal powers of parliaments need to be strengthened. Statutory powers should give parliament the legal tools to enforce cooperation of the executive and to subordinate the security sector to civilian oversight.
- Second, the ability of parliaments to exercise their oversight powers can be supported by helping parliamentarians acquire expertise in the security sector.
- Third – the most difficult part – support should be provided to ensure that parliamentarians become an equal and critical partner of the executive authority.

The willingness of parliamentarians to hold the executive accountable is dependent on fostering a political culture where parliamentarians understand their role as a counterbalance to executive authority. Civil society and the media also need to increase their role in security sector oversight to complement the work of parliaments.

In sum, parliaments and civil society have an important role to play in overseeing the security sector. Parliaments have the power to exercise supervision, facilitate public debate, prevent future abuses, and hold those in the security sector responsible for violations of the law and human rights. Civil society plays the role of watchdog and offers civilian expertise on security issues. UNDP and DCAF will continue to promote parliamentary development, support emerging human and civil rights institutions, develop capacity for independent political analysis and reform – with a view to further democratizing security in transition states.
Resources
OSCE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY

OSCE/ Special Committee of the CSCE Forum for Security Co-operation
Organization for Security and Co-operation in Europe

Code of Conduct on Politico-Military Aspects of Security

Preamble

The participating States of the Conference on Security and Co-operation in Europe (CSCE),

Recognizing the need to enhance security co-operation, including through the further encouragement of norms of responsible and co-operative behaviour in the field of security,

Confirming that nothing in this Code diminishes the validity and applicability of the purposes and principles of the Charter of the United Nations or of other provisions of international law,

Reaffirming the undiminished validity of the guiding principles and common values of the Helsinki Final Act, the Charter of Paris and the Helsinki Document 1992, embodying responsibilities of States towards each other and of governments towards their people, as well as the validity of other CSCE commitments,

Have adopted the following Code of Conduct on politico-military aspects security:

I

1. The participating States emphasize that the full respect for all CSCE principles embodied in the Helsinki Final Act and the implementation in good faith of all commitments undertaken in the CSCE are of fundamental importance for stability and security, and consequently constitute a matter of direct and legitimate concern to all of them.

2. The participating States confirm the continuing validity of their comprehensive concept of security, as initiated in the Final Act, which relates the maintenance of peace to the respect for human rights and fundamental freedoms. It links economic and environmental co-operation with peaceful inter-State relations.

3. They remain convinced that security is indivisible and that the security of each of them is inseparably linked to the security of all others. They will not strengthen their security at the expense of the security of other States. They will pursue their own security interests in conformity with the common effort to strengthen security and stability in the CSCE area and beyond.

This document was adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994 (see FSC/Journal No. 94). Available at: http://www.osce.org/documents/sg/1994/12/702_en.pdf
4. Reaffirming their respect for each other’s sovereign equality and individuality as well as the rights inherent in and encompassed by its sovereignty, the participating States will base their mutual security relations upon a co-operative approach. They emphasize in this regard the key role of the CSCE. They will continue to develop complementary and mutually reinforcing institutions that include European and transatlantic organizations, multilateral and bilateral undertakings and various forms of regional and subregional co-operation. The participating States will co-operate in ensuring that all such security arrangements are in harmony with CSCE principles and commitments under this Code.

5. They are determined to act in solidarity if CSCE norms and commitments are violated and to facilitate concerted responses to security challenges that they may face as a result. They will consult promptly, in conformity with their CSCE responsibilities, with a participating State seeking assistance in realizing its individual or collective self-defence. They will consider jointly the nature of the threat and actions that may be required in defence of their common values.

II

6. The participating States will not support terrorist acts in any way and will take appropriate measures to prevent and combat terrorism in all its forms. They will co-operate fully in combating the threat of terrorist activities through implementation of international instruments and commitments they agree upon in this respect. They will, in particular, take steps to fulfil the requirements of international agreements by which they are bound to prosecute or extradite terrorists.

III

7. The participating States recall that the principles of the Helsinki Final Act are all of primary significance and, accordingly, that they will be equally and unreservedly applied, each of them being interpreted taking into account the others.

8. The participating States will not provide assistance to or support States that are in violation of their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Charter of the United Nations and with the Declaration on Principles Guiding Relations between Participating States contained in the Helsinki Final Act.

IV

9. The participating States reaffirm the inherent right, as recognized in the Charter of the United Nations, of individual and collective self-defence.

10. Each participating State, bearing in mind the legitimate security concerns of other States, is free to determine its security interests itself on the basis of sovereign equality and has the right freely to choose its own security arrangements, in ac-
cordance with international law and with commitments to CSCE principles and objectives.

11. The participating States each have the sovereign right to belong or not to belong to international organizations, and to be or not to be a party to bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality. Each has the right to change its status in this respect, subject to relevant agreements and procedures. Each will respect the rights of all others in this regard.

12. Each participating State will maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law.

13. 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.

14. A participating State may station its armed forces on the territory of another participating State in accordance with their freely negotiated agreement as well as in accordance with international law.

15. The participating States will implement in good faith each of their commitments in the field of arms control, disarmament and confidence- and security-building as an important element of their indivisible security.

16. With a view to enhancing security and stability in the CSCE area, the participating States reaffirm their commitment to pursue arms control, disarmament and confidence- and security-building measures.

17. The participating States commit themselves to co-operate, including through development of sound economic and environmental conditions, to counter tensions that may lead to conflict. The sources of such tensions include violations of human rights and fundamental freedoms and of other commitments in the human dimension; manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism also endanger peace and security.

18. The participating States stress the importance both of early identification of potential conflicts and of their joint efforts in the field of conflict prevention, crisis management and peaceful settlement of disputes.

19. In the event of armed conflict, they will seek to facilitate the effective cessation of hostilities and seek to create conditions favourable to the political solution of the
conflict. They will co-operate in support of humanitarian assistance to alleviate suffering among the civilian population, including facilitating the movement of personnel and resources dedicated to such tasks.

VII

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

21. Each participating State 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.

22. Each participating State will provide for its legislative approval of defence expenditures. Each participating State will, with due regard to national security requirements, exercise restraint in its military expenditures and provide for transparency and public access to information related to the armed forces.

23. Each participating State, while providing for the individual service member’s exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral.

24. Each participating State will provide and maintain measures to guard against accidental or unauthorized use of military means.

25. The participating States 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 CSCE to consider steps to be taken.

26. Each participating State will ensure that in accordance with its international commitments its paramilitary forces refrain from the acquisition of combat mission capabilities in excess of those for which they were established.

27. Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms.

28. The participating States will reflect in their laws or other relevant documents the rights and duties of armed forces personnel. They will consider introducing exemptions from or alternatives to military service.
29. The participating States will make widely available in their respective countries the international humanitarian law of war. They will reflect, in accordance with national practice, their commitments in this field in their military training programmes and regulations.

30. Each participating State will instruct its armed forces personnel in international humanitarian law, rules, conventions and commitments governing armed conflict and will ensure that such personnel are aware that they are individually accountable under national and international law for their actions.

31. The participating States will ensure that armed forces personnel vested with command authority exercise it in accordance with relevant national as well as international law and are made aware that they can be held individually accountable under those laws for the unlawful exercise of such authority and that orders contrary to national and international law must not be given. The responsibility of superiors does not exempt subordinates from any of their individual responsibilities.

32. Each participating State will ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in CSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service.

33. Each participating State will provide appropriate legal and administrative procedures to protect the rights of all its forces personnel.

VIII

34. Each participating State will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict, including as applicable the Hague Conventions of 1907 and 1954, the Geneva Conventions of 1949 and the 1977 Protocols Additional thereto, as well as the 1980 Convention on the Use of Certain Conventional Weapons.

35. Each participating State will ensure that its defence policy and doctrine are consistent with international law related to the use of armed forces, including in armed conflict, and the relevant commitments of this Code.

36. 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 the effective control of constitutionally established.

IX

38. Each participating State is responsible for implementation of this Code. If requested, a participating State will provide appropriate clarification regarding its implemen-
tation of the Code. Appropriate CSCE bodies, mechanisms and procedures will be used to assess, review and improve if necessary the implementation of this Code.

39. The provisions adopted in this Code of Conduct are politically binding. Accordingly, this Code is not eligible for registration under Article 102 of the Charter of the United Nations. This Code will come into effect on 1 January 1995.

40. Nothing in this Code alters the nature and content of the commitments undertaken in other CSCE documents.

41. The participating States will seek to ensure that their relevant internal documents and procedures or, where appropriate, legal instruments reflect the commitments made in this Code.

42. The text of the Code will be published in each participating State, which will disseminate it and make it known as widely as possible.
CoE PA RECOMMENDATION 1713 (2005)

Parliamentary Assembly of the Council of Europe
Parliamentary Assembly of the Council of Europe
Recommendation 1713 (2005)

Democratic Oversight of the Security Sector in Member States

1. The Parliamentary Assembly notes that in recent years, as a result of the rise in terrorism and crime, European societies have felt an increasing need for security.

2. The bodies and forces responsible for ensuring our security have a variety of roles and tasks. At domestic level, it is their job to preserve law and order, protect the security of the State, persons and property, safeguard democratic institutions and procedures and ensure the peaceful coexistence of different sections of the community.

3. At external level, in addition to its national defence commitments, the security sector must be co-ordinated through international bilateral or multilateral framework agreements. Security forces may be involved in concerted or joint action under collective defence arrangements and/or international peacekeeping missions intended to prevent or settle conflicts, or assist with post-conflict reconstruction.

4. Some of today's security threats, such as international organised crime, international terrorism and arms proliferation, increasingly affect both internal and external security and therefore require responses by the services of the security sector, preferably co-ordinated and overseen at European level. Each of these tasks must be reflected in the assignments and duties of the various components of a country's security system.

5. It is essential to strike the right balance between our concept of freedom and our need for security. This raises the question, however, of the extent to which guarantees of security in a society may entail restrictions on fundamental freedoms.

6. Government measures must be both lawful and legitimate. Consequently, some form of democratic supervision is required, the essence of which must be carried out by parliament. The judiciary, in turn, plays a crucial role because it can punish any misuse of exceptional measures in which there may be a risk of human rights violations. International organisations also play an increasing role in guiding policies and harmonising rules.

7. Democratic supervision makes use of a series of specific tools intended to ensure the political accountability and transparency of the security sector. These instruments include constitutional principles, legal rules and institutional and logistical provisions, as well as more general activities aimed at fostering good relations.
between the various parts of the security sector on the one hand, and the political powers (the executive, legislative and judiciary) and representatives of civil society (NGOs, the media, political parties, etc.) on the other.

8. The Council of Europe is concerned about certain practices that have been adopted, particularly in the fight against terrorism, such as the indefinite imprisonment of foreign nationals on no precise charge and without access to an independent tribunal, degrading treatment during interrogations, the interception of private communications without subsequently informing those concerned, extradition to countries likely to apply the death penalty or the use of torture, and detention and assaults on the grounds of political or religious activism, which are contrary to the European Convention on Human Rights (ETS No. 5) and the protocols thereto, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Decision of the Council of the European Union.

9. The need for security often leads governments to adopt exceptional measures. These must be truly exceptional as no state has the right to disregard the principle of the rule of law, even in extreme situations. At all events, there must be statutory guarantees preventing any misuse of exceptional measures.

10. The Parliamentary Assembly of the Council of Europe, conscious of the fact that the proper functioning of democracy and respect for human rights are the Council of Europe’s main concern, recommends that the Committee of Ministers prepare and adopt guidelines for governments setting out the political rules, standards and practical approaches required to apply the principle of democratic supervision of the security sector in member states, drawing on the following principles.

i. Intelligence services

a. The functioning of these services must be based on clear and appropriate legislation supervised by the courts.

b. Each parliament should have an appropriately functioning specialised committee. Supervision of the intelligence services’ “remits” and budgets is a minimum prerequisite.

c. Conditions for the use of exceptional measures by these services must be laid down by the law in precise limits of time.

d. Under no circumstances should the intelligence services be politicised as they must be able to report to policy makers in an objective, impartial and professional manner. Any restrictions imposed on the civil and political rights of security personnel must be prescribed by the law.
e. The Committee of Ministers of the Council of Europe is called upon to adopt a European code of intelligence ethics (in the same fashion as the European Code of Police Ethics, which was adopted by the Council of Europe).

f. The delicate balance between confidentiality and accountability can be managed to a certain extent through the principle of deferred transparency, that is, by de-classifying confidential material after a period of time prescribed by law.

g. Lastly, parliament must be kept regularly informed about changes which could affect the general intelligence policy.

ii. Police

a. In each state a specific legal framework for the functioning and supervision of a democratic police force must be set up. The credibility of the police will depend on its professionalism and the extent to which it operates in accordance with democratic rules and the utmost respect for human rights.

b. Given their different mandate and competences, it is important that legislation distinguishes between security and intelligence services on the one hand, and law enforcement agencies on the other.

c. The police must remain neutral and not be subject to any political influence. Transparency is also important if the public is to have confidence in the police and co-operate with them.

d. Police officers must be given training covering humanitarian principles, constitutional safeguards and standards deriving from codes of ethics laid down by international organisations such as the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE).

e. Legislation in this area must take account of developments in modern technologies and cybercrime and be updated regularly.

f. Police action against crime must show due regard for the principle of proportionality, particularly during public demonstrations where there is a significant risk of matters getting out of hand.

iii. Border management

a. As a result of the rise in crime and terrorism, this sector must be subject to heightened democratic supervision and enhanced international co-operation. Clear legislation is needed in this respect to prevent corruption, discrimination and excessive use of force.

b. The principle of the free movement of persons must not be subject to unwarranted restrictions. However, our borders must be protected from economic
crime, trafficking in human beings, drug trafficking and arms smuggling. Where state authorities consider that there is a threat to law and order and security and consequently apply the border protection clause, such measures should not be applied excessively or to groups or individuals whose presence is undesirable for ideological or political reasons only.

c. Border security must be provided by a centralised, hierarchical system with clearly defined rules. Training and working and living conditions for border guards must be organised in such a way as to protect them from the pressures of organised crime and corruption.

iv. Defence

a. National security is the armed forces’ main duty. This essential function must not be diluted by assigning the armed forces auxiliary tasks, save in exceptional circumstances.

b. The increasing importance attached to international co-operation and peacekeeping missions abroad must not be allowed to have an adverse effect on the role of parliament in the decision-making process. Democratic legitimacy must take precedence over confidentiality.

c. At European level, it is essential to avoid any step backwards in relation to the democratic achievements of the Western European Union Assembly by introducing a system of collective consultation between national parliaments on security and defence issues.

d. In this connection, national parliaments should continue to have an interparliamentary body to which the relevant European executive body would report and with which it would hold regular institutional discussions on all aspects of European security and defence.

e. Deployments of troops abroad should be in accordance with the United Nations Charter, international law and international humanitarian law. The conduct of the troops should be subject to the jurisdiction of the International Criminal Court in The Hague.

v. National security and democracy

a. In general, due regard must be had to the hierarchy of values in a democratic society when deciding on national security policies. It is essential that this sector, which traditionally lacks transparency, be overseen by democratic institutions and subject to democratic procedures.

b. Exceptional measures in any field must be supervised by parliaments and must not seriously hamper the exercise of fundamental constitutional rights.
c. Member states should ensure that there is a reasonable number of women in the various security sectors at all levels, including ministries of defence and national delegations in international security bodies.

d. Freedom of the press and the audiovisual media must be preserved in law and in practice, and restrictions imposed in cases of absolute necessity must not entail any infringement of the international principles of fundamental rights.

e. Private companies dealing with intelligence and security affairs should be regulated by law, and specific oversight systems should be put in place, preferably at European level. Such regulations should include provisions on parliamentary oversight, monitoring mechanisms, licensing provisions and means to establish minimal requirements for the functioning of those private companies.
UN CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

United Nations General Assembly
United Nations Code of Conduct for Law Enforcement Officials

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

Commentary:
(a) The term “law enforcement officials”, includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

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

Commentary:
(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

**Article 3**

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

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

**Article 4**

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

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.
**Article 5**

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: “[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments].”

(b) The Declaration defines torture as follows:

“... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”

(c) The term “cruel, inhuman or degrading treatment or punishment” has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

**Article 6**

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

Commentary:

(a) “Medical attention”, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.
(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

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

Commentary:
(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression “act of corruption” referred to above should be understood to encompass attempted corruption.

Article 8
Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.
Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term “appropriate authorities or organs vested with reviewing or remedial power” refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.
UN BASIC PRINCIPLES ON
THE USE OF FORCE AND
FIREARMS BY LAW
ENFORCEMENT OFFICIALS

Eighth UN Congress on the Prevention
of Crime and the Treatment of Offenders
United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Whereas the work of law enforcement officials\(^*\) is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,


\(^*\) In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

**General provisions**

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
   
   (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
   
   (b) Minimize damage and injury, and respect and preserve human life;
   
   (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
   
   (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

**Special provisions**

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.


**Policing unlawful assemblies**

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

**Policing persons in custody or detention**

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

**Qualifications, training and counselling**

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.
20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

**Reporting and review procedures**

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.
Parliamentary Mechanisms for Security Sector Oversight

1. General Powers of Parliament
   - To enact, initiate or to amend legislation on defence issues and institutions
   - To question the minister of defence
   - To summon military and other civil servants to committee meetings and to testify
   - Access to classified information
   - Involving civil society by organising public hearings on defence issues
   - Initiating a parliamentary independent inquiry in case of major scandals
   - To set up specialised parliamentary committee, supported by staff

2. Budget Control of Defence Issues
   - Parliament has the right to amend, approve and to allocate defence budget proposals
   - Parliamentarians have access to classified budget documents
   - Parliament controls the defence budget by line-items
   - Control of the defence expenditures via an independent audit budget office

   - Approval of sending troops abroad \textit{a priori}
   - Debate on the Mandate, rules of engagement and duration of the mission
   - Approval of the budget of the mission
   - The right to visit the troops on missions abroad

4. Powers Concerning Defence Procurement
   - Adoption of legislation on open and transparent procurement processes
   - Approval of major procurement contracts
   - Access to all relevant information on procurement decisions
   - Parliament involved in specifying needs for new equipment, selecting producer and in assessing offers for compensation and off-set
5. **Powers Concerning Security Policy and Planning Documents**
   - Debate on the adoption of the national security concept and defence concept
   - Debate on the adoption of the force structure and planning as well as military strategy

6. **Powers Concerning Military Personnel**
   - Adoption of laws on the status, duties and rights of military personnel as well as on military service and conscientious objectors
   - Parliament approves the defence human resources management plan
   - Parliament approves the maximum number of personnel employed by the MoD and the military
   - Legislating a military ombudsperson who monitors human rights situation and who is appointed by and reports to parliament
   - Parliament gives consent to high-ranking military appointments
ASSESSMENT TOOL

United Nations Development Programme/ Geneva Centre for the Democratic Control of Armed Forces
Questionnaire for Parliamentarians on Security Sector Oversight

Introduction

This questionnaire is intended to help map the status of security sector governance in a given country. It is important to point out that the questions are not related to the security sector itself, but are limited to cover issues of parliamentary oversight of agencies providing public security. The data collected will be used as a baseline for conference discussions and will subsequently be made available in a conference publication (in both English and Russian). The publication will also include comparative analysis to map out regional challenges and opportunities.

Instructions for Completing the Questionnaire:

- Respondents remain anonymous but are requested to indicate their country.
- If the requested information is not available, please state that it is not available rather than providing no answer. Similarly, if the respondent does not know the answer to a question, please simply state “I don’t know”.
- Respondents are asked to add any additional information that may be useful.

Definitions*

Security Sector:
Includes all state services and agencies that have the legitimate authority to use force, to order force or to threaten to use force. Normally the security sector agencies include the military, paramilitary units (like military police), police, border guard and other law-enforcement services and the intelligence services. This questionnaire, however, does not cover issues related to intelligence services.

Security Sector Governance (SSG):
A concept in which the security sector is not only under the direct control of and accountable to democratically-elected and legitimate civilian governments and within which each segment is assigned legislatively-specified roles, but also in which the instruments of the entire security sector are people-centred, equitable, accountable, transparent, subject to the rule of law, open to legal recourse, and capable of engendering both expert and public participation and consultation in planning and decision-

* All definitions are derived from materials in the ‘Glossary’ of DCAF Document No. 4. Available at: http://www.dcaf.ch/_docs/dcaf_doc4.pdf
making via efficient public sector management, the assimilation of relevant international norms, and the involvement of civil society and media in security issues.

Thus, security sector governance is an inclusive concept, legitimised by participatory processes embodied in the rule of law, undertaking of anti-corruption efforts, bureaucratic accountability, effective use of resources, and the promotion of the active involvement civil society, the judiciary and the private sector to counteract vested interests often generated by the unique activities and responsibilities of the security sector. (Such as, for example, efforts to disclose as little information as possible about the work of an agency.)

Undoubtedly, the specific character of security sector agencies calls for certain limitations to transparency and civil oversight when it comes to, for example, operational planning and investigative activities. Determining legal frameworks, setting budget roofs, preventing and confronting misconduct and corruption are all legitimate and necessary methods of civil oversight that have an important place in a democratic society.

Security Sector Reform (SSR):

The reform of the Military (Army, Navy, Air Force), Intelligence, Border Guard, Paramilitary institutions in order to create systematic accountability and transparency on the premise of increased, substantive and systematic democratic control.

Questionnaire

Please indicate your country:

1) Legislative and Policy Framework

1) What legislation on security sector issues has been passed been implemented since independence?
   Please specify:
   a) laws
   b) presidential decrees

2) Has the legislation been applied systematically?

3) Are there any contradictory elements or gaps in the legislation?

4) Is the full text of security sector relevant laws publicly available and in what format(s)?
a) Are the formats comprehensive?
b) What measures are taken to publicise the content of the laws?

5) When new legislation is being written, what form does the public consultation process take, if any?
   a) What form does the legislative process for these laws typically take (standard procedures, closed sessions)?
   b) Is it common for parliament to approve laws as drafted by the executive or can substantive changes be made as a consequence of parliamentary debate?

6) What national and international precedents are used when compiling laws?

7) What types of legal instruments are usually used for security sector laws?
   a) Act of parliament
   b) Presidential decree/ executive order
   c) Other (please specify)

8) Does the legal framework foresee parliamentary access to classified information?
   a) What are the provisions to secure confidentiality of classified information?
   b) In practice, can parliament review classified information?

9) What international and regional agreements in the defence and security spheres has your government signed?
   a) Who negotiates or decides about other regional and international obligations?
   b) Are you satisfied with their implementation?
   c) Are the agreements publicly available, and translated into local language?

10) Are policy documents that are exchanged with NATO and other international defence and security organisations and/or partner countries (agreements on collective security etc.) publicly accessible in the local languages?

11) Does your country have a national security policy? Is it publicly available?
   a) What role did parliament play in formulating/approving it?
   b) What does it say about civilian oversight?

2) The Role of Institutions

1) What role does the Parliament play in the following and what are the reporting (or other) requirements?:

DEMOCRATISING SECURITY IN TRANSITION STATES

a) Ensuring financial oversight of the armed forces, police, border guards and intelligence?
   i) Prior to parliament’s approval of the security sector budget, what level of financial information is submitted?
   ii) Does parliament discuss the budget provisions?
   iii) Is the budget detailed or is parliament expected to approve an aggregate budget without much detail?

b) Appointing security services ‘cadres’?

c) Formulating and approving national security policy documents

d) Overseeing and monitoring security sector procurement

e) Creating laws that can be used by the independent judiciary to prosecute infringements

f) Could the Parliament’s role be improved? If so, how?

2) What is the statutory role of the Parliamentary Defence Committee in overseeing the security sector?

a) What powers and capacity (including staffing structure, level of technical expertise, budget) does it have to affect policy and practice?

b) Can you specify concrete capacity constraints?

3) What role does the President play in

a) Ensuring financial oversight of the armed forces, police, border guards and intelligence

b) Cadre appointment

c) National policy documents

d) Procurement

e) Judicial oversight

f) Complementing the role of Parliament and the Parliamentary Defence Committee?

4) If not to Parliament or the President, to whom are the relevant parts of the security sector accountable to in your country? Please specify by institution (military, intelligence service, customs and border guards, civilian police, penitentiary staff).

5) Are there parts of the security sector to which parliament and the public have no information or access and which are unaccountable?
6) Baseline: On a scale from 1 to 10 (1 being the lowest and 10 the highest):
   a) How would you rate the effectiveness of your parliament’s oversight in the security sector?
   b) How would you rate the need for technical assistance on strengthened parliamentary security sector oversight in your country?
7) What is the role of the current Defence Ministry and the Chiefs of Staffs? What powers do they have to affect policy and practice?
8) What is the judiciary’s role in overseeing the security sector?
   a) Can/ Do the judiciary prosecute offences committed by security sector personnel?
   b) What independent powers does it have to affect policy and practice?
9) How is transparency and accountability within the defence and security sphere safeguarded? What mechanisms exist (e.g. audits, ombudspersons) to affect transparency?
10) As a process, which institution(s) make the most important decisions about procurement issues for the security sector? Is the process transparent and accountable?

3) Empowerment and Capacity Building

1) Are there specialised parliamentary staff on defence and law enforcement matters? How are these staffers trained? How are their competencies regulated?
2) Do parliamentarians interact with civil society groups active in the areas of security sector oversight/ human rights?
   a) What is the process?
   b) Are there established procedures for information exchange?
   c) Do you regularly convene consultation meetings with civil society groups/ civilian experts such as academics?
3) To what extent do civilians, civil society groups and the media assist with the oversight of the security sector?
   a) Are there NGOs dealing with soldiers’ rights?
   b) Are there NGOs dealing with oversight issues?
   c) Are there media experts dealing with security issues?
4) Are armed forces and other uniformed services trained in human, political and civil rights law to ensure that rights of citizens are not violated by the armed forces and other uniformed services?

a) What are the disciplinary measures to prosecute human rights violations by armed forces and other uniformed services?

4) Imposition of Legislation on Emergency Situations

1) Is there, in your country, a law adopted by the Parliament regulating the imposition of legislation on emergency situations?

2) Is there a certain time limit after which the imposition of legislation on emergency situations has to be renewed?

3) According to the procedures for imposing legislation on emergency situations, is there a role to be played by the Parliament?

a) If so, which?

b) The Parliament has to confirm a presidential decree imposing legislation on Emergency situations?

c) The Parliament has to confirm the renewal of the imposition of legislation on emergency law?

d) Other role?

4) Can the Parliament be dissolved under legislation on emergency situations?

5) Is there a law forbidding elections under legislation on emergency situations?

6) Has the Parliament used any of its powers as outlined above since the beginning of the 1990’s?

5) Other Issues

1) Is the opposition represented in your parliament? Do they sit on relevant defence and security committees?

2) Can the military and/or representatives of the security services be elected as parliamentarians?

6) Current Agenda

1) Has the parliament recently endorsed an increase/decrease of the security sector budget? Have any significant increases been made to a particular part of the security sector?
2) Are plans underway to reform the security sector? If yes, what are the main components of envisaged reform? What role does parliament play in this process?

3) Are plans underway to develop/revise a national security policy? Is parliament expected to participate in this process? How?
CASE STUDIES

Dr. Hans Born
CASE STUDY 1

Voting on Albadonia’s New Defence Budget: Parliament’s Role in Defence Budgeting

Introduction

The aim of this case study is to elucidate on various aspects of the role of parliaments in defence budgeting. Approval and control of the budget is one of the most important ways parliament can influence government policy. It increases the transparency of public spending and the accountability of government officials.

The scenario described below is fictional, yet it draws on facts and existing situations. The scenario seeks to enable the exchange of views and good practices, as well as identifying the optimal solutions possible within parliamentary powers to deal with defence budgeting.

Scenario

Albadonia is a fictional country situated in the Eastern hemisphere. Following the end of the Cold War, greater regional cooperation, and an overall change in the international security environment has led to a need to reform and downsize the existing structures of the defence sector. These changes are necessary to make the sector more affordable, modern, and more capable of carrying out new tasks, which include participation in overseas Peace Support Operations and assistance to civilian authorities in the event of natural or man-made disasters. The existing tasks consist of territorial and collective defence. Like many other European countries Albadonia is seeking to make the necessary changes in infrastructure, equipment, personnel and administration of its defence sector.

A joint analysis carried out by Albadonia and its PfP partners showed that Albadonia’s military is not functioning efficiently. The yearly defence budget of $2 billion represents 5% of the national GDP.

In drafting the Budget Proposal for 2006, the Government is trying to decrease its defence expenditure while improving its country’s defence capability. Considering that 5% of GDP is much more than the country can afford, the Government is trying to convince Parliament to downsize the costs of the military by 50%.

The Government announced its intentions to the media, ensuring that citizens are informed of its intentions.
Problem 1: Improving Defence: Investing in New Capabilities

The new strategy of the Defence Ministry is to shift from a conscript-based territorial defence army to a small professional army capable of operating in terms of interoperability with its allies. However, adapting the country’s forces to this strategic objective is contingent on the resources available.

20 ships in the navy are sold to Bhutan for capital, which amounts to a profit of $500 million. The money earned is spent on the procurement of new equipment for the Special Forces, which is the only division within the military receiving a budget increase. The new equipment is purchased from ABCD Solutions Inc. in neighbouring Manustan. Rumour goes that the head of the procurement office of the Defence Ministry was bribed by the respective firm because a better deal (i.e. cheaper equipment of the same quality) could have been reached if the equipment had been bought from October Industries in Unia. The Defence Minister refused to disclose the details of the contract to the Parliamentary Defence Committee, maintaining that it concerned classified information, ‘a matter of national security’.

The government also decided that the Army should modernise its capabilities by purchasing 200 used but efficient tanks from the US. The consequence of this decision is that a military factory in Ubiscu, which has been producing tanks for 45 years, will be closed down.

Problem 2: Spending Less: Social Consequences of Downsizing

In Albadonia, even finding the resources to pay for military personnel are at times very difficult.

In 2005, “Personnel” consumed approximately 80% of the defence budget. The Government proposes to reduce this percentage to 60% in two years time. The consequence will be a significant downsizing of the country’s 300,000 professional soldiers, as well as the closure of a number of bases, units, and storage sites.

Specifically, the downsizing of the costs of the military means that 200,000 soldiers will lose their jobs in the next 36 months. Many of the soldiers to be laid off are aged 50-60 years old, whose chances to get a new job are very limited, if not impossible, given the dire economic situation in the country. Ten military bases located in the poorest areas of the country will also be closed. In these areas the unemployment rate is already 20%.

Contradicting Arguments

To protest against the Government’s plans, demonstrations took place in the four largest towns of Albadonia. The Officers’ Association also organized a large demonstration in front of the Parliament, as it disagrees with the proposed downsizing of the military.
The Association wants the politicians to answer the following questions:

• Why is such a huge and rapid downsizing necessary? The Association claims that the country’s territorial defence will be in danger because of the proposed budget cuts.

• How will society/government house the former soldiers?

• Are there any pensions and compensations for the former soldiers?

• Since the soldiers’ chances to find new jobs are limited, why not use the money to retrain them, instead of purchasing the American tanks and reinforcing the Special Forces?

The Council of Ubiscu has also sent a petition to the Parliament, expressing its opposition to the decision to close the tank factory. It maintains that:

• Closing down the factory will generate massive unemployment in the area – 20,000 more people will become unemployed in the following year.

• The task factory is a symbol of Albadonia’s identity and a matter of national pride.

• The government must help the factory find new markets and invest in existing capabilities.

• If there is no way back, the people from Ubiscu demand financial compensation and government efforts to bring investments to the town.

When the Minister of Defence, the Chief of Staff and other high-ranking officials from the Defence Ministry present the new defence budget to the Parliamentary Defence Committee, they claim that the new capabilities are necessary to fulfil Albadonia’s commitments in the Individual Partnership Programme in the PfP Framework and necessary to ensure inter-operability with its allies and partners.

An official from the Ministry of Finance also supports the changes undertaken by the government. He considers:

• The tank factory in Ubiscu a black hole in the national budget. For the last 10 years, it has survived mostly on state subsidies, gradually losing its former markets and unable to produce arms to high technological standards.

• To upgrade its capabilities would be more expensive than building new ones.

• In the long term, closing the factory will generate income for other state enterprises which are viable.

All the changes in the structure of Albadonia’s armed forces and defence spending are contained in the Budget Law proposal. The Defence Committee has to approve the Budget Law and present its report to the Budget Committee. The main issues the committee will vote on are the following:

• Reducing the defence budget from 5% of GDP to 2.5% of GDP.
• Reducing the percentage of personnel costs in the defence budget from 80% to 60%.
• Downsizing the military from 300,000 to 100,000 soldiers over the next three years.
• Closing the tank factory in Ubiscu.
• Selling 20 ships for $500 million.
• Using the $500 million to purchase 200 US tanks and new equipment for the Special Forces.

Discussion Questions

PART I Albadonia

1. Based on the information in the case study, would you agree or disagree with these proposals if you were a member of Albadonia’s Parliament? Please support your answer.

2. What kind of supplementary (detailed) information would you ask the government to be able to provide in order for you to vote on the Government’s budget proposal? Do you find it acceptable that the Defence Minister refuses to disclose the specifics of the contract of the purchase of new equipment for the Special Forces from ABCD Solutions Inc.?

PART II Defence Budgeting in Your Country in Relation to the Case Study

3. How is the parliament in your country involved in defence budgeting? Does your parliament have the power to approve or reject the Budget Law? Can you change the budget, that is, to reallocate budget funds from one programme to another?

4. Do you have access to classified information related to defence budgeting and procurement?

5. Do you have enough knowledge and understanding of the budgetary process and documents? Does your parliament have the capacity and human resources necessary to manage all the financial information that the military is able to generate about itself?

PART III Strengthening the Role of Parliament in the Defence Budgeting Process

6. In your opinion, what specific problems does your country have in defence budgeting?

7. Do you think it is desirable to strengthen the parliament’s role in defence budgeting in your country? Which roles should be strengthened?
CASE STUDY 2

Promoting Decent Treatment and Human Rights of Conscripts: The Role of Parliament

Introduction

Parliaments are the principal representative institution of a state. They are responsible for representing the interests of all sectors of society, articulating these interests into relevant policies, and ensuring that these policies are implemented efficiently.

Parliaments have an essential role to play in promoting and protecting human rights. The existence within parliaments of bodies with an explicit and permanent mandate to address human rights questions is an effective means of ensuring that these issues permeate all parliamentary activity on a continuing basis. Moreover, by contributing to the maintenance of human security throughout society, the parliament can play a vital role in maintaining the stability of the state through effective security sector governance.

States with limited means often use conscripts as the core human resource for key components of the security sector. Yet at the same time conscripts in such states are often maltreated, leading to instability within the military and a wider lack of societal confidence in the military and other state institutions. In time, state institutions not only become despised, but also ineffective instruments.

The scenario described below is fictional, yet it draws on facts and existing situations. The scenario seeks to enable the exchange of views and to identify the optimal solutions possible within parliamentary powers to deal with abuses of human rights towards military conscripts.

Conscript Abuse in the Country of ‘Sinon’

In Sinon, annually thousands of military conscripts are grossly abused at the hands of senior conscripts throughout their first year of service. Dozens of conscripts die every year, and serious – and often permanent – damage is inflicted upon the physical and mental health of many others. Hundreds of conscripts attempt to or commit suicide each year, and many run away from their units. In Sinon, for decades, a system of abuse has existed whereby there is an informal hierarchy of conscripts, based on the length of their service, and a corresponding set of rights and duties for each group within the hierarchy. Essentially, newcomers have no rights under the system – they must earn them over time. At the beginning of their service, conscripts are ‘not eligible’ to eat, wash, relax, sleep, be sick, or even keep track of time. Any restrictions
placed on these activities are considered permissible. If a first-year conscript refuses to oblige or fails in his task, under this informal system a second-year conscript is free to administer whatever punishment he deems appropriate, and punishment is frequently violent. Personal belongings are also not for first-year conscripts. Thus, the second-year conscripts confiscate their belongings, money, and salaries, forcing first-year conscripts to frequently beg for money from relatives or on the street.

Understanding why such human rights abuses occur is central to understanding how to deal with the problem. In Sinon, civil society organisations have documented that such a system of abuse is fuelled by an endless cycle of vengeance. Throughout their first year, new recruits live under the constant threat of violence for failing to comply with the above-mentioned restrictions and second year conscripts’ arbitrary demands, which range from polishing their boots to buying food and alcohol. First year recruits spend much of their time complying with these demands, as any failure to do so routinely results in violent beatings or other physical punishment, usually carried out after officers have left the base. After suffering horrific abuses in their first year of service, second-year conscripts avenge themselves by inflicting the same outrages on the next generation of recruits, and so on.

The vast majority of army officers either choose to ignore evidence of the abuses or to encourage them because they see such abuse as an effective means of maintaining discipline in their ranks. In many units, the existing prevention mechanisms in the Sinon armed forces have been reduced to empty formalities.

The fact that such abuse is rampant in some army units and practically absent in others suggests that these abuses are preventable if officers exercise leadership to stop them.

Despite years of public awareness about hazing and its consequences, the government has failed to take the appropriate steps to combat it. Instead of taking a clear, public stance against the abuses, government officials have largely ignored the issue in numerous speeches about military reform. This occurs despite the fact that the mistreatment of conscripts has contributed to the notoriety of the army. Now more than ever, young men use all possible means to evade the draft by legal or illegal means. The government has yet to adopt a clear and comprehensive strategy to deal with the abuses and establish a meaningful accountability process.

Below is the story of Alex F., one of Sinon’s unfortunate conscripts.

The Story of Alex F.

*Alex F. comes from a poor farming family, who at the age of eighteen was drafted into Sinon's armed forces. In November 2003 he was assigned to the railway troops. He therefore left his native province for Nga in the province of Persovigrad, where he spent his first*
two months in basic training. At the end of basic training, Alex F. took the military oath and became a fully-fledged soldier.

After taking the oath, Alex F. was integrated into a regular railway troops company and participated in the day-to-day work of the base, with little training and endless assignments. There, Alex F. soon realized that the rules he had studied during basic training were a far-off utopia. In practice, he found that an entirely different set of rules dominated his life – rules that, though informal and unwritten, set up an elaborate parallel order and hierarchy. In this order, the exemplary behaviour, mutual respect, and careful oversight by superiors required by the Military Code of Conduct did not apply. On the contrary, these informal rules allowed second-year conscripts to treat new recruits like slaves whom they could order around with utter arbitrariness, punish in whatever way they saw fit for invented infractions, or abuse for no particular reason at all. As a first-year conscript, Alex F. found himself at the bottom of this informal hierarchy.

Alex F. experienced severe abuse in his first weeks of service, with severe beatings to his kidneys and beatings on his head with an iron bed post wrapped in a towel. He was also repeatedly beaten on the back and head until he collapsed in unconsciousness. He was later forced to perform push-ups until the early morning after more beatings; he was denied food and drinks. These incidents early in his military service set the tone for Alex F.’s time in the armed forces.

Nights were infinitely worse than during the day. When the officers had gone home, the second-year conscripts had complete free reign over the barracks. The second-year conscripts regularly deprived the first-year conscripts of sleep and made them sew collars onto their uniforms or wash their clothes. Alex F. said: ‘There were many of them [second-year conscripts], so they’d wake five people up at night, and you would sew for them. If you sewed badly, you paid for it. [Once,] I sewed, and they beat me badly with a mop, then took me to the bathroom … and beat three of us with the handle of a shovel’. The second-year conscripts also used the nights to punish those who had broken the rules or failed to comply with their orders during the day.

The daily grind of harassment; humiliation; coerced servility, with its excessively arbitrary orders; gratuitous abuse; and excessive punishments gradually wore Alex F. down. One incident put him over the edge. He told a non-governmental organisation:

I received a letter from home informing me that my mother was seriously ill. Sergeants and officers … open our letters. Sometimes, someone sends money and they immediately take it away. When my letter came, they read that my mother was ill and said “Well, what are you going to do to yourself now?…Your mommy got sick. Maybe she’ll die.” … They sat down and started to laugh about the letter before they gave it to me.

Two days later, Alex F. went to the sickbay. Second-year conscripts joined him there and continued to harass and humiliate him. He made a request for short-term leave – to visit his mother in the hospital – but was denied. He then decided to attempt suicide.
At night, when they had gone to bed, I wanted to insert air into my veins and took a syringe… A guy from my draft had gone to the bathroom and came into the kitchen to drink some water. He noticed the syringe in my hands. He took it from me and said: ‘Are you crazy or something? Don’t do that. You’re going to kill yourself because of someone else! You should run away’.

And so, after about two and a half months of service, Alex F. ran away. He realised that he might face prosecution for unauthorised departure from his unit and could vividly imagine the treatment he would face if a military patrol captured him and returned him to his unit. Yet, his desperation was so great that he took the risk.

In May 2004 he arrives in Matercity where he enters a church and is directed to a non-governmental organization (NGO) that protects the rights of military conscripts in the city. There, he fills out a form with basic details about himself and his military service, wrote a statement about the treatment he had faced, and filled out a questionnaire about torture. The NGO staff then discussed his situation with him and subsequently set in motion an effort to get Alex F. discharged from the military on medical grounds.

During the next few days, Alex F. underwent several medical examinations. While Alex F. had no significant physical problems, a former military psychiatrist, who now cooperates with the respective NGO, found that he had a personality disorder. At the request of the NGO, military officials at Alex F.’s unit referred him to a military hospital for observation in the psychiatric ward. After three weeks of observation, doctors at the hospital ruled that Alex F. was not fit for military service for psychiatric reasons, and ordered him to be discharged from military service. It was unclear whether Alex F. was drafted with the disorder or acquired it during his military service.

Toward the end of his stay at the military hospital, one of the second-year conscripts who had abused him came to the hospital and tried to take him back to the unit. He threatened Alex F. with violent revenge for running away and for giving an interview to a journalist about the abuses he had endured during his service. Alex F. managed to escape and made his way back to the office of the NGO.

Upon discharge, Alex F. learned that his ordeal in the armed forces would complicate his life for years to come: On his military identity card, officials indicated that he was discharged for psychiatric reasons. As many employers demand to see a prospective employee’s military identity card, he expected this to considerably complicate his search for work. He told the NGO that his former employer, with whom he maintained good relations, would not take him back with such an indication.

Alex F., decided to approach Sinon’s Military Prosecutor in a search for justice and compensation for the abuses he has suffered. The Military Prosecutor, a good friend of the Commander of the railway troops company of which Alex was a member, meets with Alex’s unit commander and the second-year conscripts who had committed the abuses. After the meeting, they maintained that there were no grounds for concern. Rather, they appealed to
what they clearly saw as their ‘right’ to humiliate and abuse first-year conscripts. According to them, Alex F. had broken the ‘rule of silence’ by complaining about his treatment, including to the press. They called it an act of ‘betrayal’. Such a reaction is typical of the officers’ corps and the government of Sinon who have continually failed to act, despite the publication of a number of reports by NGOs working in the country. The abuse (hazing) is clearly in violation of Sinon’s military code of conduct, yet no steps have been taken to stop them. One year later, Alex’s case is still in its preliminary stages with an investigation pending, and no prosecutions, charges, or suspensions from duty have been made.

Alex F. decides to write an open letter to the Chairman of the Human Rights Committee and National Security Committee, demanding attention to his case, justice for the abuses inflicted, and the prevention of further abuses against future generations of conscripts. The two chairmen hold a joint committee meeting to discuss what to do with his case. Feeling the media and public pressure, the chairmen decide to place Alex F.’s case on the agenda of today’s Committee meeting.

Discussion
You, as a parliamentarian, are called to discuss how to deal with such serious allegations of abuse against your own people, in particular military conscripts.

As a member of the Joint Human Rights and National Security Meeting you will specifically discuss the case of Alex F., the victim of human rights abuses while serving in Sinon’s army.

Part I: The Case of Alex F.: Abuse of Conscripts in Sinon
1. How would you assess the case of Alex F.? Do you see it as a serious case of mistreatment?
2. As a member of parliament of Sinon, how would you address this case in particular and the abuse of conscripts in general?

Part II: Human Rights & Mistreatments of Conscripts
3. The human rights of military conscripts may be restricted due to their special mission. What are, in your opinion, justified restrictions in the human rights of conscripts?
4. Do you think that conscripts are systematically mistreated by their peers or superiors in your country? Or are there only incidents, but no systematic pattern of mistreatment?
5. Does your country have institutions, mechanisms, and/or procedures in place for promoting the proper treatment of conscripts? Are you satisfied with how these institutions, mechanisms and/or procedures work in your country? Can you bring forward some of these as a best practice?

6. How does your parliament ensure the implementation of international human rights standards?

**Part III: Strengthening the Role of Parliament in Protecting Human Rights of Conscripts**

7. How do human rights fit into the structure of parliament?

8. Do you see problems or obstacles for parliament to exercise effective oversight over the human rights situation of conscripts in your country?

9. Is it desirable that parliament plays a stronger role in protecting the proper treatment of conscripts? How could parliament better promote the protection and proper treatment of conscripts?

**CASE STUDY 3**

**Law Enforcement Officials and the Use of Force against Protesters in the City of Suzuki: The Role of Parliament in Protecting the Human Rights of Citizens**

**Introduction**

Parliaments are the principal representative institution of a State. They are responsible for representing the interests of all sectors of society, articulating these interests into relevant policies, and ensuring that these policies are implemented efficiently.

Parliaments have an essential role to play in promoting and protecting human rights. The existence within parliaments of bodies with an explicit and permanent mandate to address human rights questions is an effective means of ensuring that these issues permeate all parliamentary activity on a continuing basis.

The scenario described below is fictional, yet it draws on facts and existing situations. The scenario seeks to enable the exchange of views and to identify the optimal solutions possible within parliamentary powers to deal with abuses of human rights by law enforcement officials. The term ‘law enforcement officials’ includes all officers of the law, whether appointed or elected, who exercise police powers, especially the
powers of arrest and detention. The term should be given the widest possible interpretation and includes military, police, and internal security forces as well as other security services and immigration agencies where they exercise such powers.

“Riot control” and Excessive Use of Force by Law Enforcement Officials in Sinon

Early in the morning on Tuesday 25 October 2005, hundreds of citizens of Suzuki, the capital of Sinon, protested peacefully against repression and torture of opposition leaders. As the day progressed, the demonstration amassed to a major demonstration of thousands of people, gradually becoming a general anti-government protest against the government’s failure to improve law and order and combat the price hike of essentials and utility services.

Police first blocked the protesters. At one point, police brutally clashed with protesters, reportedly beating people in the crowd and grabbing Mr. Extra Yamaha, chair of the Human Rights Movement of Sinon. Demonstrators marched to the local police station and demanded that police release Mr. Yamaha; they were alleged to have begun throwing stones. Without giving the protesters sufficient time to disband, the police opened fire, killing 90 people.

Later that same day, according to witnesses, large military trucks loaded with soldiers cruised the streets and internal security troops backed by armoured vehicles surrounded the heavily fortified police headquarters. Earlier, masked soldiers had loaded scores of bodies of those killed onto four trucks and a bus after blocking friends and relatives from collecting them, witnesses said. An AP reporter said she saw at least 40 bodies. All had been shot, and at least one had his skull smashed. She said there were large pools of blood and hundreds of spent cartridges on the streets.

Late afternoon, the police used tear gas to disperse the protesters, and as the crowd became more restive, the police baton charged the protesters. The police action sparked off a riot, with protesters stabbing four police officers and setting ablaze some government buildings. Armed pro-government militants also joined the police in the attacks, which rapidly escalated.

According to one witness:
‘Gradually the crowd got angrier and angrier ... [The protest] just took a life of its own’.

By evening, the government had declared a state of emergency, with BMW State Radio announcing that the government had forbidden citizens to assemble in big groups; after 18:00, citizens were not allowed on the street without special permission; and people were banned from demonstrating or expressing views critical of the government; finally, various newspapers were shut down for an indefinite period of time. The government officially announced to international media that the protesters were terrorists.
In the course of the protest, hundreds of protesters were arrested. A group of foreign journalists who were detained early in the protest were told to leave the city immediately. Allegations have been made that those arrested have been subject to particularly brutal acts of torture and other cruel, inhuman, or degrading treatment or punishment committed by law enforcement personnel, particularly in police stations and prisons where the protesters were held. The most common techniques have been beatings, often with blunt iron weapons, and asphyxiation with gas masks. Those held are in overcrowded conditions, isolated for long periods of time, often denied food and drink, and restrained by methods of torture. Rapes by police officers and guards have been reported as common. The detained are being treated as animals, yet, no investigation has been made of such serious human rights allegations.

Concern has been expressed by various opposition members in parliament about the use of violence against citizens of Sinon. Political differences are not being resolved in a civilized manner and the Government has failed to create a congenial democratic environment. Worries have been expressed about the unprecedented breakdown of law and order, and the Government’s inability to protect all segments of the population. Calls have been made to the Government to immediately cease all attacks targeting opposition leaders exercising their rights of protest against its policies, and to respect international human rights norms, laws, and the Constitution. As the demonstration was wide-spread and had supporters in nearly all quarters and layers of Sinon society, even members of the government party in parliament requested for an emergency meeting in parliament. Two days after 25 October, this emergency meeting took place and parliament convened in a special session in order to assess the situation and to ask the government to clarify the situation. Most observers expect an (over)heated debate between government, opposition parties, and government parties.

Discussion

You, as a parliamentarian, are participating in the special session of parliament to discuss how to deal with such serious allegations of abuse against your own people by law enforcement officials.

Part I: Riot Control and Human Rights Abuses in the City of Suzuki

1. How do you assess the situation? At which points did law enforcement officials make mistakes?

2. Article 3 of the UN Code of Conduct for Law Enforcement Officials reads as follows: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of duty”. Do you think that the law enforce-
ment officials described in the case study acted in accordance with this provision of the UN Code of Conduct? Was the level of force used by the law enforcement officials justified?

3. Who should be blamed and held accountable for the disaster? The minister? The head of police in Suzuki? The head of the internal security forces? Or individual law enforcement officials?

4. How should the parliament of Sinon react to the situation and to specific allegations of human rights abuses?

Part II: Parliamentary Mechanisms Dealing with Human Rights in Different Countries

5. What parliamentary mechanisms would be used in your country should a similar scenario as described above occur?

6. Who would be held accountable, and before which institution?

Part III: Strengthening the Role of Parliament in Case of Human Rights Violations by Law Enforcement Officials

7. Do you think it is desirable that parliament plays a substantial role in protecting the human rights of citizens vis-à-vis activities of law enforcement officials? Or do you think that this is not a case for parliament but for the government and the judiciary only?

8. How should human right abuses by law enforcement officials be dealt with by parliament? Which tools can parliament use?
GUIDELINES FOR FACILITATORS

Dr. Hans Born
GUIDELINES FOR CASE STUDY 1

Voting on Albadonia’s New Defence Budget: Parliaments Role in Defence Budgeting

These guidelines are intended to support the discussion about the case study. They provide possible answers, further questions, and directions for discussion for each question.

Preliminary Remarks

• Please underline the high importance of the case study.
• Make sure that it is understood that although the case study is realistic, any resemblance to existing countries, institutions, or persons is purely co-incidental.
• It is advisable to give the participants about 15 minutes reading time for the case study, followed by, if need be, a brief Q&A session to clarify aspects of the case.

Discussion Questions

PART I Albadonia

1. Based on the information provided in the case study, would you agree or disagree with the Government’s proposals if you were member of the Albadonian Parliament? Please support your answer.
   • How do you think the country’s scarce resources should be allocated to the different sectors?
   • How important are the needs of the military compared to other sectors in a transition country?
   • Does Albadonia really have a capability gap to cover, or is the decision to buy US tanks taken in favour of the donor’s defence sector?
   • A social plan is lacking for reintegrating redundant military personnel into society.

2. What kind of supplementary (detailed) information would you ask the government to be able to provide in order for you to vote on the Government’s budget proposal? Do you find it acceptable that the Defence Minister refuses to disclose the specifics of the contract of the purchase of new equipment for the Special Forces from ABCD Solutions Inc.?
   • Most governments are required by law to give parliaments all the information asked for. The problem is that parliamentarians rely only on the information
given to them. They do not have access to independent expertise, nor do they have enough time and staff to control and to analyze that information.

- Transparency International’s Bribe Payers Index 2002 ranks the arms industry in the top three most corruption-prone industries worldwide (the other two are oil and public works and construction).

- What sets the arms industry apart is the extent of secrecy, which breeds corruption. Legitimate needs for secrecy such as national security, are necessary, but they often help to cover up inappropriate aspects of the defence contracts.

- Corruption in military procurement leads not only to inefficient buying of the wrong product, but also to far greater spending than is really justified by the threats. In this way, corruption in military procurement actively diverts resources from investments to develop the country and challenge poverty.

3. What to do as parliamentarian?

- Make sure your country has two clear and coherent laws: Law on the protection of classified information and Law on free access to public information.

- the institutions who classify information must be discouraged to over-classify information.

PART II Defence Budgeting in Your Country in Relation to the Case Study

4. How is the parliament in your country involved in defence budgeting? Does your parliament have the power to approve or reject the Budget Law? Can you change the budget, that is, to reallocate budget funds from one programme to another?

There are different stages of the budgetary allocation and oversight process where your parliament can get involved:

- defining the defence and security needs of a country – when parliament approves the National Security Strategy, the White Paper for Defence, the structure and size of the armed forces, the national crises management system etc.

- determining how much of the budget to allocate to defence – when parliament approves or endorses the government decision to allocate a certain percentage of GDP to defence.

- determining how to allocate money between competing demands within the security sector – when you debate and amend the budget proposal in parliamentary committees.

- approving defence allocations – through the final vote of the parliament for the Budget Law.

- overseeing and evaluating the use of funds – through different oversight mechanisms: questions and interpellations to the minister, hearings, inquiries etc.
5. Do you have access to classified information related to defence budgeting and procurement?

- Do you, as a MP, need a security clearance to have access to classified information? Are there clear vetting procedures for MPs in your country, or is clearance given on the basis of your parliamentarian mandate? Are you satisfied with the vetting and clearing process for MPs?

6. Do you have enough knowledge and understanding of the budgetary process and documents? Does your parliament have the capacity and the human resources necessary to manage all the financial information that the military is able to generate about itself?

- Parliamentary staff and resources are essential to provide you with professional advice and independent expertise (e.g., do you know that the US Senate Committee for Armed Services has a staff of 50 and a budget of 5.8 million Euros in 2002?).

PART III Strengthening the Role of Parliament in Budgeting

7. In your opinion, what specific problems does your country have in defence budgeting?

- a system characterized by too much planning was replaced by one with insufficient planning.

- the old system accorded high priority to defence spending but in the context of central planning and irrational pricing, with no budgetary transparency and accountability.

- Possible recommendation: Allocate a fixed percentage of GDP to defence, for a number of years. It would ensure a steady revenue and it would make planning easier.

- Possible recommendation: the out-sourcing of non-military services management (logistics, health care, pensions, housing, military recreation etc.), so that the military will be in charge in those arenas which are strictly military in nature and be able to concentrate on what it does best.

8. Do you think it is desirable to strengthen the parliament’s role in defence budgeting in your country? Which roles can (should?) be strengthened?

- In a democracy, the armed forces are not part of the government but are part of the “governed”.

- Do you consider it essential that civilian authorities, not the military, set and control defence budgets?
GUIDELINES FOR CASE STUDY 2

Promoting Decent Treatment and Human Rights of Conscripts: The Role of Parliament

These guidelines are intended to support the discussion about the case study. They provide possible answers, further questions, and directions for discussion for each question.

Preliminary Remarks

• Please underline the high importance of the case study.
• Make sure that it is understood that although the case study is realistic, any resemblance to existing countries, institutions, or persons is purely coincidental;
• It is advisable to give the participants about 15 minutes reading time for the case study, followed by, if need be, a brief Q&A session to clarify aspects of the case.

Part I: The Case of Alex F.: Abuse of Conscripts in Sinon

1. How would you assess the case of Alex F.? Do you see it as a serious case of mis-treatment?
   • Alex’s status of military recruit does not justify the placement of unlimited restrictions on his rights.
   • The European Court of Human Rights held (e.g. Engel and others v. the Netherlands case, 1976) that while certain restrictions on the rights of military servicemen may be necessary to ensure the proper functioning of the army, these may not serve to altogether negate their basic rights. Initiation practices can therefore violate a number of basic human rights norms, including the prohibition against torture, inhuman, and degrading treatment (Art. 3 of the European Convention on Human Rights) and the right to property (Art. 1 of Protocol 1 ECHR). They can also violate the right to the highest attainable level of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights).

2. As a member of the parliament of Sinon, how would you address this case in particular and the misuse of conscripts in general?
   • Call on the Government’s Responsibility to Investigate incidents of torture, inhuman, or degrading treatment or punishment that come to their attention under the European Convention on Human Rights and the Convention against Torture.
Alternately, parliament can set up its own investigation. Relevant to parliamentary investigations are: the mandate, access to information and locations, powers to hear officials and other parties involved under oath, the status of the recommendation, the quality of the staff of the inquiry.

Ensure that Alex has his case heard. The (European Convention requires that states establish “an effective remedy before a national authority” if it is determined that there is an ‘arguable claim’ (Art. 1 of Protocol 1 to the European Convention on Human Rights).

The Convention against Torture obliges states parties to initiate a prompt and impartial investigation of torture complaints whenever circumstances give “reasonable ground to believe that an act of torture has been committed.” (Art 12 ECHR) The same applies to incidents of cruel, inhuman, or degrading treatment or punishment.

Summon the Minister of Defence and those responsible for questioning.

Suggest the defence Ombudsperson to investigate the case and to address issues of abusive treatment of conscripts.

Part II: Human Rights and the Mistreatment of Conscripts

3. The human rights of military conscripts may be restricted due to their special mission. What are in your opinion justified restrictions on the human rights of conscripts?

Under international human rights law, military recruits are an exceptional group. The special mission of the armed forces may justify restrictions on their rights that far exceed those that may be placed on almost any other group, e.g. ordering a prisoner to crawl through the mud for several hours would almost certainly constitute degrading treatment. Such an order from a military commander to conscripts during field training would be a legitimate part of a soldier’s preparation for battlefield conditions, as would temporary deprivation of food or sleep. Analogously, acts of initiation that would constitute degrading or inhuman treatment with respect to prisoners or other categories of persons may not reach that threshold when they occur in the armed forces, provided that they contribute to the specific mission of the armed forces.

Torture, inhumane, and degrading treatment have occurred; rights to personal property and the highest attainable level of health have been violated.

HRW report: ‘All forms of physical assault, whether as punishment or otherwise, fall within the scope of the prohibition of torture, inhuman, or degrading treatment or punishment. In contrast, many other forms of treatment associ-
ated with initiation practices do not in and of themselves qualify as degrading or inhuman treatment or punishment, but HRW believes that their excessive or protracted nature, or their combination with the constant threat of violence, may push them over the threshold. This is the case in the following situations:

- Deprivation of food or sleep as part of an initiation does not necessarily constitute degrading treatment, but depriving a recruit a significant part of his food or sleep over an extended period of time would be degrading or inhuman.

- Severe forms of physical exercise as punishment in the context of initiation practices are not in and of themselves degrading or inhuman, but forced physical exercise to the point of physical collapse under the threat of violence would constitute degrading treatment or punishment.

- Making new recruits perform chores as part of an initiation does not in and of itself constitute degrading treatment, but forcing a recruit to live in servitude for extended periods of time, under threat of violence, reaches this threshold.

4. Do you think that in your country conscripts are mistreated by peers or by superiors in a systematic way? Or are there only incidents, but no systematic pattern of mistreatment?

- Media reports, International NGOs.

- Have there been any cases brought before parliament?

- Do you know of any cases of conscript abuse brought before the courts?

5. Does your country have institutions, mechanisms and/or procedures in place for promoting the proper treatment of conscripts? Are you satisfied with how these institutions, mechanisms and/or procedures work in your country? (Can you bring forward some of these as a best practice?)

6. Parliament has 3 main functions, does your parliament exercise these functions?

- **Legislate**: to set the legal framework for human rights at the national level, ratify international treaties, and ensure that norms set forth in those treaties are translated into national law and implemented.

- **Oversee government activity**: to keep the policies and actions of the executive under constant scrutiny to ensure that the government, the administration, and other state bodies comply with human rights obligations;

- **Allocate financial resources**: Parliaments approve the budget and thus set national policy priorities. They must ensure that sufficient funds are provided for human rights implementation and that these funds are used accordingly to deal with human rights issues.
• Members of parliament are also opinion leaders and can do much to create a human rights culture in their countries.

7. What role is there for a parliamentary Human Rights Committee in this scenario? What actions should it take?

8. What role should the ombuds institution, including the military ombudsperson, play in this scenario? How can they best interact with parliament on these issues?

9. How does your parliament ensure the implementation of international human rights standards?
   • National legislation and standards There are various ways of incorporating human rights protection standards into national law. The constitutions of some countries provide that duly ratified treaties – or a certain category of treaties or specified treaties – automatically form part of national law. In other cases, new or revised legislation is required.

Part III: Strengthening the Role of Parliament in Protecting the Human Rights of Military Conscripts

10. How do human rights fit into the structure of parliament?
   • Encourage participants to bring forward best practices of parliamentary oversight of human rights of conscripts in your country
   • Is human rights seen as a cross-cutting issue that should be taken into account by every parliamentary committee, including the defence and national security committee?
   • Human rights are generally dealt with by standing committees. Ad hoc, select, study or inquiry committees may be set up to examine particular human rights problems or issues at a given time. If more than one committee, the activities of these committees should be coordinated to ensure that conscript protection issues are taken into account in all of the parliament’s work.
   • A conscript protection committee, representing all political parties, which can generate regular parliamentary debate on the question
   • An informal group on the conscript protection issues which closely monitors action by the government and liaises with civil society

11. Does your parliament have a special parliamentary human rights committee (dealing exclusively with human rights)?
   • At present, only few parliaments have standing committees dealing exclusively with human rights. This is the case for, among other countries, Austria,
Azerbaijan, Belgium, Cambodia, Canada, Chad, Cyprus, Lebanon, Lithuania, Macedonia, Nigeria, Philippines, Togo, Turkey, Yemen and all countries in Latin America.

12. Does an ombudsperson exist who possesses the authority to investigate human rights violations within the military and who is appointed by and reports to parliament?
   - Ombudsperson: may monitor abuses on military bases hereby protecting newly recruited Sinon soldiers from abusive hazing rituals at the hands of senior soldiers.
   - Often, ombudsmen report and are responsible to parliament. They can thus be an important parliamentary tool to ensure compliance with human rights.
   - Special ombudsperson for the rights of military servicemen, authorized to:
     a) access military bases without prior notification;
     b) move freely inside military bases without restrictions;
     c) speak to any serviceman in private;
     d) have access to any documents relevant to the mandate, both at military bases, at the relevant ministries and other government agencies, and at military procuracy;
     e) receive mail from any serviceman without intervention of the military censor;
     f) receive information from nongovernmental, professional, and other organizations.

13. Do you suggest any other tools, procedures or mechanisms for parliament to address human rights?
   - Use parliamentary procedure and mechanisms to oversee government action and ensure that they meet their conscript protection commitments and that conscript protection issues are mainstreamed in all parliamentary and governmental activities, and that responsibilities and mandates of government departments are clearly defined in order to ensure proper coordination and avoid gaps in government implementation.
   - Apart from the committees, which are part of Parliament’s formal structure, informal groups and caucuses exist in almost all parliaments around the world where MPs discuss and work on issues of particular interest to them, including human rights. Likewise, in some countries, political groups in parliaments have created spokespersons for matters relating to human rights. This has occurred in the Lower Chamber of the Austrian Parliament, for example.
   - Ensure that Parliament adopts national legislation that corresponds to the international legal instruments to which your State is party.
• Ensure that existing legislation is reviewed – by the competent services of Government, a special parliamentary committee or other official body.

• Where necessary, make use of parliamentary procedure to ensure that the Government sends draft legislation, or amendments to existing legislation, to Parliament.

• Do not hesitate to enter into contact, consult, and cooperate with civil society groups working on conscript protection issues when developing national legislation, so as to have access to comprehensive data and experience.

• Make sure that national legislation is accompanied by the corresponding rules and administrative measures to ensure adequate implementation.

• Make sure that implementing costs of the new legislation are taken into account in the national budget.

• Exchange best practices with neighbouring and other countries.

14. Do you see problems or obstacles for parliament to exercise effective oversight over the human rights situation of conscripts in your country?

• Lack of transparency and information, corruption, fear, denial, and party discipline.

15. Is it desirable that parliament plays a stronger role in protecting the proper treatment of conscripts? How could parliament better promote the protection and proper treatment of conscripts?

• Yes, each year thousands of abuses and hundreds of deaths occur in some countries.

• By ensuring the consistency of national legislation with international human rights standards.

• Ratification of international legal instruments on human rights

• If your State is not yet a party to the various international human rights legal instruments, or if your State has not signed or ratified some of them, you can:
  o Find out whether ratification/ accession is under consideration;
  o Put an oral or written question to your government to determine why ratification or accession has not been achieved;
  o Consider using your right to introduce a private member’s bill on the matter;
  o Encourage a parliamentary debate on the question;
  o Mobilize public opinion.

• Reservations or declarations of understanding
If your Government intends to ratify, or has ratified with reservation(s) or declaration(s) of understanding that limit the legal instruments’ scope, you can:

- Determine or review the validity of the suggested reservation(s);
- Encourage a parliamentary debate on the subject of the reservations;
- Mobilise public opinion to encourage the Government to ratify or accede without any reservation(s) or declarations(s) of understanding.

- *Establish a Parliamentary Human Rights Committee*
- *Prevention*: training of current and future officers on initiation practices, strengthening enforcement of existing prevention mechanisms, and examining best and worst practices.
- *Enforcement of Existing Prevention Mechanisms*: requiring officers to monitor regularly the health of soldiers and surprise inspections to complement routine checks. Any finding that officers failed to implement rigorously prevention mechanisms should lead to punishment.
- *Learning from Best Practices*
- *Independent Monitoring*: this requires reliable information about the prevalence of abuse. Investigations by independent, outside monitors, including by a *special ombudsperson* for the rights of military servicemen.
- *Structural Reform*: discipline often lies with second-year conscripts, who themselves have been abused.

**GUIDELINES FOR CASE STUDY 3**

Law Enforcement Officials and the Use of Force against Protests in the City of Suzuki: The Role of Parliament in Protecting the Human Rights of Citizens

These guidelines are intended to support the discussion about the case study. They provide possible answers, further questions, and directions for discussion for each question.

**Preliminary Remarks**

- Please underline the high importance of the case study.
- Make sure that it is understood that although the case study is realistic, any resemblance to existing countries, institutions, or persons is purely co-incidental;
It is advisable to give the participants about 15 minutes reading time for the case study, followed by, if need be, a brief Q&A session to clarify aspects of the case.

**Part I: Riot Control and Human Rights Abuses in the City of Suzuki**

1. How do you assess the situation? At which points did law enforcement officials make mistakes?
   - Refer to the basic human rights which any person is entitled to enjoy according to the UN Universal Declaration of Human Rights (UDHR), e.g.
     - Everyone has the right to life, liberty, and security of person (Article 3);
     - No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (Article 5);
     - All are equal before the law and are entitled without any discrimination to equal protection by the law (Article 7);
     - No one shall be subjected to arbitrary arrest and detention (Article 9);
     - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence (Article 11(1));
     - Everyone has the right to freedom of opinion and expression (Article 19);
     - Everyone has the right to freedom of peaceful assembly and association, and no one may be compelled to belong to an association (Article 20)

2. Discuss to what extent human rights can be limited in a democratic society (proportionality principle) for reasons of national security.

3. Refer to the *UN Basic Principles on the Use of Force and Firearms*:
   - In dispersing UNLAWFUL but NON-VIOLENT assemblies law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict the use of force to the minimum extent necessary (BP 13);
   - In dispersing VIOLENT assemblies law enforcement officials may use firearms only when less dangerous means are not practicable; AND ONLY to the minimum extent necessary; AND ONLY under the conditions stipulated in BP 9 (BP 14).
   - Only the conditions mentioned in BP 9, (i.e. an imminent threat of death or serious injury), warrant the use of firearms. The additional risks posed by a violent assembly—large crowds, confusion and disorganization—make it questionable whether the use of firearms is at all practicable in such situations, in view of the potential consequences for persons who are present but not
involved. Basic Principle 14 does not allow indiscriminate firing into a violent crowd as an acceptable tactic for dispersing that crowd.

- Everyone is allowed to participate in peaceful assemblies, whether political or non-political, subject only to very limited restrictions imposed in conformity with the law, which are necessary in a democratic society to protect such interests as public order and public health. The police must not interfere with lawful and peaceful assemblies, otherwise than for the protection of persons participating in such an assembly or others.¹

- **Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others:** The use of firearms is an extreme measure which must be strictly regulated, because of the risk of death or serious injury involved. Must only use firearms: (1) In self-defence or in defence of others against the imminent threat of death or serious injury; (2) To prevent the perpetration of a particularly serious crime involving grave threat to life; (3) To arrest a person presenting such a danger and resisting the police officer’s authority, or to prevent his or her escape.

4. Refer to the UN Code of Conduct for Law Enforcement Officials.

- **Conduct of Operations:** Law enforcement officials are expected to respect and protect human dignity and to maintain and uphold the human rights of all persons (Code of Conduct for Law Enforcement Officials, Art. 2). This objective can be achieved only if law enforcement practice meets the inherent requirements of this provision.

- 4 basic principles that underlie correct law enforcement practice: *legality; necessity; proportionality; and ethics.*

- **State of Emergency** declared by government: arguably all legal restrictions are legal. Certain human rights are non-derogable under any circumstances. The ECHR and the ICCPR identify these rights as follows: the right to life; prohibition of torture; freedom from slavery; freedom from post facto legislation and other judicial guarantees; the right to recognition before the law; freedom of thought, conscience and religion.

5. Article 3 of the U.N. Code of Conduct for Law Enforcement Officials reads as follows: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of duty”. Do you think that the law enforcement officials in the city of Suzuki acted in accordance with this provision of the UN Code of Conduct? Was the level of force used by the law enforcement officials justified?

¹ Source, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 9, 12, 13, and 14).
• Police officers, in carrying out their duty, should apply non-violent means as far as possible before resorting to the use of force. They may use force only if other means remain ineffective or without any promise of achieving the necessary result.

• Whenever the lawful use of force is unavoidable, police officers must exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; minimize damage and injury, and respect and preserve human life; ensure that all possible assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; where injury or death is caused by the use of force by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out.\(^2\)

• **Fundamental Rights and Freedoms**: including the right of peaceful assembly (ICCPR, Article 21) and the right to freedom of association (ICCPR, Article 22.1). The exercise of those rights is not without limits. Restrictions can be imposed on it, provided that: they are lawful; and necessary: for respect of the rights or reputation of others; or for the protection of national security or of public order, or of public health or morals. (ICCPR, Articles 19.3, 21 and 22.2). Note: In addition to the above, the element of “public safety” can be a lawful reason for restricting the right to freedom of peaceful assembly and the right to freedom of association. (See ICCPR, Articles 21 and 22.2.)

6. Who can be blamed and be held accountable for the disaster? The minister? The head of police in Suzuki? The head of the internal security forces? Or individual law enforcement officials?

• All may be responsible.

• Law enforcement officials must be held accountable for their individual acts, including those that are unlawful and/ or arbitrary.

• Neither exceptional circumstances nor orders by superiors may be invoked by individual law enforcement officials as a justification for unlawful behaviour.

• The issue of correct, lawful and ethical behaviour of law enforcement officials has direct implications for officials with command, management and/ or supervisory responsibilities.

\(^2\) Sources include, UN Code of Conduct for Law Enforcement Officials (Article 3), UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 4, 5, 6 and 9).
• (Suspected) unlawful and/or unethical behaviour by law enforcement officials requires prompt, thorough and impartial investigation; (suspected) unlawful and/or unethical behaviour, although attributable to individual law enforcement officials, reflects negatively on the entire law enforcement organization and is potentially damaging to it.

7. How should the parliament of Sinon react to the situation and to specific allegations of human rights abuses?

• Call on the Government’s responsibility to investigate incidents of torture, inhuman, or degrading treatment or punishment that come to their attention under the European Convention on Human Rights and the Convention against Torture.

• Alternatively, parliament can set up its own investigation. Relevant to parliamentary investigations are: the mandate, access to information and locations, powers to hear officials and other parties involved under oath, the status of the recommendation, and the quality of the staff of the inquiry.

• Ensure that all individuals arrested have their case heard, individual complaints procedures under e.g. the ICCPR and CAT (Convention against Torture) regimes. CAT obliges states parties to initiate a prompt and impartial investigation of torture complaints whenever circumstances give “reasonable ground to believe that an act of torture has been committed” (Article 12 ECHR).

• Summon the Minister responsible, Chief of Police, and others responsible for questioning. Law Enforcement Organizations: most are of a civilian nature and are under the authority of the Ministry of the Interior or the Ministry of Justice. Only a minority are attached to the Ministry of Defence and (para)military in nature.

• Suggest the defence Ombudsperson investigate the case and address the issues of abusive treatment by law enforcement officials.

• Parliament not only has the function to take care that justice is achieved, but also that a process of reconciliation is put into motion. In this respect, it can be helpful to organise a roundtable or hearing in parliament which brings together the different parties to the conflict.

Part II: Parliamentary Mechanisms Dealing with Human Rights in Different Countries

8. What parliamentary mechanisms would be used in your country should a similar scenario as described above occur?
• Ask for good practices, procedures, and mechanisms as applied by parliament in similar situations in their country, e.g. investigations, complaints procedures mechanism and legal remedies.

9. Parliament has 3 main functions. Does your parliament exercise these functions?

• 1. *Legislate*: legal framework for human rights at the national level. Ratify international treaties and ensure that norms set forth in those treaties are translated into national law and implemented.

• 2. *Oversee government activity*: so keep the policies and actions of the executive under constant scrutiny. Can therefore ensure that the government, the administration and other state bodies comply with human rights obligations.

• 3. *Allocate financial resources*: Parliaments approve the budget and thus set national policy priorities. They must ensure that sufficient funds are provided for human rights implementation and that these funds are used accordingly to deal with human rights issues.

• Members of parliament are also *opinion leaders* and can do much to create a human rights culture in their countries.

10. What role is there for a parliamentary Human Rights Committee in this scenario? What actions should it take?

• *Suggest institutional reform* to end law enforcement officials’ *impunity*. Propose that an independent body be set up to monitor investigations into torture allegations carried out by the procuracy; in cases of inadequate investigation, this body could have powers of intervention.

• *Judiciary*: protector of rights of detainees and defendants, monitoring the way that judges deal with torture-related issues would both encourage proper implementation of torture prevention measures in the courts and provide valuable insights into where problems exist.

• *Suspension of Law Enforcement Officers*. As soon as there is credible evidence that a police or other law enforcement officer has tortured, or ill-treated a detainee, that officer should be suspended from active duty, regardless of whether any particular stage has been reached in the criminal prosecution of the officer.

11. What role should the ombuds institution, including the military ombudsperson, play in this scenario? How can they best interact with parliament on these issues?

12. Who would be held accountable and before whom?
• Distinguish different type of accountability: legal, political, public, and administrative accountability.

• Law enforcement organizations are legally accountable to the government and to the community as a whole.

• The State can be held accountable for law enforcement practices that violate the principles of legality, necessity, and proportionality.

• Law enforcement organizations and individual law enforcement officials can be held accountable for their actions under national laws; officials must be held accountable at the individual level through their internal hierarchy. Superior officials must offer guidance and support and rigorous action against illegal acts.

• Law enforcement performance is prone to complaints from members of society, therefore they must be equipped to investigate any such complaint promptly, thoroughly and impartially. In certain countries the investigation of complaints about law enforcement performance is entrusted to an independent civilian review board.

• The right to file a complaint with a review board or with a particular law enforcement organization in no way affects an individual's right to have his/her complaint examined by an independent court or tribunal in criminal or civil proceedings, or by both.

**Part III: Strengthening the Role of Parliament in Case Human Rights Violations by Law Enforcement Officials**

13. Do you think it is desirable that parliament plays a substantial role in protecting the human rights of citizens vis-à-vis activities of law enforcement officials? Or do you think this is not a case for parliament but for government and the judiciary only?

• Riots and escalated demonstrations take place when people feel that they cannot express their grievances and complaints via the political system. This may happen if they feel that the political system and institutions fail to represent them. If such demonstrations continue, they may lead to regime change. Parliaments can and should function as a political institution that can absorb societal changes. Moreover, protests should be accounted for in the political system, not outside of it.

• *Parliament has obligations created by international human rights treaties* to adapt (or enact) legislation at the national level to ensure compliance with the requirements of a given treaty and States Parties to refrain from practices that
are in contravention of treaty provisions: *law enforcement practice is a matter of State responsibility.*

- Obligation re: *education and training*, to keep law enforcement procedures under constant review and to ensure their compliance with international human rights law. States must take rigorous steps to *prevent and oppose violations of human rights* committed by law enforcement officials. *State responsibility* is the ultimate stage of accountability for law enforcement practices.

14. How should human right abuses by law enforcement officials be dealt with by parliament? Which tools can be used by parliament?

- Human rights abuses can have a political, legal, and technical side.
  - Political: explaining and solving human rights abuses politically (and hold political authorities accountable)
  - Legal: Ensuring consistency of *national legislation* with international human rights standards.
  - Technical: Parliament should monitor whether law enforcement officials are trained to deal with democratic protests, mass demonstrations, and riots. It should ensure that law enforcement officials are familiarized with riot control guidelines and that they have proper equipment at their disposal.

- *Ratification of international legal instruments* on human rights; If your State is not yet a party to the various international human rights legal instruments, or if your State has not *signed or ratified* some of them, you can:
  - Find out whether ratification/accession is under consideration;
  - Put an oral or written question to your government to determine why ratification or accession has not been achieved;
  - Consider using your right to introduce a private member’s bill on the matter;
  - Encourage a parliamentary debate on the question;
  - Mobilize public opinion.

- Establish a *Parliamentary Human Rights Committee*
- Establish an *Ombuds Institution*

- *Prevention*: training of current and future officers on human rights, strengthening enforcement of existing prevention mechanisms, and examining best and worst practices.