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STUDY ON DEMOCRATIC CONTROL OF ARMED FORCES

**WHAT ACTS OR ISSUES ARE UNDER CONTROL
AND WHEN TO CONTROL?**

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1. Introduction

On 12 October 2006, the sub-commission for democratic institutions held a meeting in Venice designed to discuss the scope of the **study (study 389) on the constitutional issues involved in the need to ensure civilian command authority over the armed forces in their national and international operations. A preliminary report on the democratic oversight over armed forces** prepared by Mr. Carlos Montero (CDL-DEM(2006)001) was also made available on this occasion.

This follow up report, which is based on the results of the meeting held in Venice, considers **'what acts or issues are under control and when to control'**. The report was written at the request of the Venice Commission.

This report forms a secondary analysis, based on existing research and literature on practices in European countries, and mainly focusing on the control exercised by parliaments. The first two sections briefly outline the theoretical premises of **what and when to control**, while the subsequent sections go further in elaborating the five issues identified by the Sub-commission on Democratic Institutions as having a particular importance within the context of democratic oversight of armed forces.

2. What acts or issues are under control? The scope of control

Several types of issues should come under civilian control, even though the extent of control varies from one country to another and over time. The Sub-commission on Democratic Institutions decided to pay particular attention to the control of the following issues.¹

- Control of sending troops abroad, especially for participating in international peace missions;
- Conditions and modalities of requisitioning the army in domestic issues in times of emergency;
- The use of public funds with regard to the military budget and military expenditures;
- Political neutrality of armed forces; and,
- The appointment of top commanders.

Parliamentary oversight is considered to be the embodiment of democratic accountability of the security sector.² Parliament, in a democratic polity, is the central locus of accountability for any governmental decision-making, including on security issues, providing oversight and control of a state's defence activities.³ This report therefore primarily takes into account the role of parliament in the oversight of the security sector. A later report will deal specifically with the different organs tasked with the oversight of security related activities at the national and international level.⁴

¹ Meeting of the Sub-commission on Democratic Institutions, Venice, 12 October 2006, Synopsis, CDL-DEM(2006)004syn.

² Some authors have identified four reasons for entrusting parliaments with the oversight of the security sector in general, and these reasons are also applicable to armed forces: 1) Parliaments are a cornerstone of democracy in the prevention of autocratic rule; 2) the principle of 'no taxation without representation'; 3) they can create legal parameters for security issues; 4) they act as a bridge reaching out to the public. Born, H., Fluri, P. and Johnsson, A. (2003), *Parliamentary Oversight of the Security Sector. Principles, mechanisms and practices*, Geneva & Belgrade: Inter-Parliamentary Union & Geneva Centre for the Democratic Control of Armed Forces, pp. 6 ff.

³ Beutler, I. and Born, H., 'Between Legitimacy and Efficiency: A Comparative View on Democratic Accountability of Defence Activities in Democracies', in G. Caforio, *Social Sciences and the Military: An Interdisciplinary Overview*, London, Routledge, 2006.

⁴ In addition to parliaments, other organs, such as the Judiciary exercise *ex-post* control by, for example, examining the lawfulness of armed forces personnel behaviour, assessing constitutionality of laws and behaviour and imposing effective remedies if required. Other independent bodies, like the ombudsman and Audit offices

3. When to control? *Ex ante* versus *Ex Post* Accountability

Oversight may take several forms. The control can be either *ex ante*, *ex post* or both. *Ex ante* control is a form of proactive oversight. According to this type of oversight, issues are addressed before they become problematic. *Ex post* oversight is a form of reactive oversight as issues are only addressed after they have occurred. Therefore, *ex ante* and *ex post* oversight is often associated with police patrols and fire alarms respectively.⁵

Parliaments mainly exercise ***ex ante* control** by passing laws that define and regulate the security services and their powers, and by adopting the corresponding budgetary appropriations. The participation of the parliament in the creation of the national legal framework for security represents the proactive function of the Parliament, oriented towards future policies and activities of the executive. *Ex ante* control may encompass granting prior authorisation of, for example, sending troops abroad, or army intervention in an emergency or siege state when the police and other internal security forces are not available in sufficient numbers. *Ex ante* control is primarily the preserve of the executive. They are responsible for the day-to-day management of the armed forces (delegated to military leadership) as well as the policy and strategies for the armed forces. However, parliaments do also play a proactive role, in particular in enacting laws applicable to the armed forces as well as adopting the budget.

***Ex post* control** qualifies the legitimacy of a measure or act previously decided and implemented and, when necessary, imposes a remedy. *Ex-post* control is exercised by a range of institutions including the judiciary, ombudsman, audit offices and parliament.

The parliament exercises *ex post* policy control which takes the form of oral and written questions or interpellation to question a specific act of policy to government's members, budgetary scrutiny and finally accountability on the basis of reports from the Board of Auditors about the implementation of the budget. In cases where there is a suspicion that serious misconduct may have occurred, parliament has the authority to hold a formal inquiry.

In most Western parliaments there is a tendency to move beyond control *ex post facto* to participation in the governmental decision-making process even before the government has tabled a formal proposal.⁶ To this end, it is crucial that parliaments receive timely information on the government's intentions and decisions regarding security issues. The parliaments' case can not be a strong one if the government only briefs it after having reached a final decision. In such situations, the parliament is confronted with a *'fait accompli'* and has no alternative but to approve or reject the government's decision. As far as regular and long-term policy issues are concerned, parliament should have enough time to analyse and debate essential matters such as the defence budget, arms procurement decision-making or a defence review. One way of getting around the time pressures that routinely confront parliamentarians in carrying out their work is to develop a proactive strategy and to enhance the expertise of parliamentarians with regard to the security sector and to set a clear policy agenda.

exercise a reactive control, investigating claims of failures and abuses, ensuring proper use of public funds, and ensuring compliance with policies.

⁵ McCubins, M. and Schwartz, T. (1984), 'Congressional Oversight Overlooked: Police Patrols versus Fire Alarms', *American Journal of Political Science*, 28(1), pp .165-79.

⁶ Van Eekelen, W., Democratic Control of Armed Forces. The National and International Parliamentary Dimension, DCAF Occasional Paper no. 2, October 2002, available at <http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=18357&nav1=4>.

4. Sending troops abroad⁷

National participation in international peace missions is the modern version of the traditional “war or peace” situation, and therefore has become an important foreign policy and defence issue, which has not been neglected by parliaments. The degree and the instruments at the disposal of parliaments to direct and to guide the policy of the national government on this matter differ from the traditions and constitutional provisions. The main indicator of the relevance of a particular parliament regarding sending troops abroad is the power to formally approve national participation in an operation, before national personnel are deployed to the mission.

Using this indicator, the following table ranks parliaments according to three levels of involvement in sending military troops abroad: High, for parliaments who have the power of prior approval, medium, for parliaments who’s power of prior approval is limited by important exceptions, and low, for parliaments who do not have the power of prior approval.

Table 1: The level of parliamentary involvement in authorising national participation in international missions abroad before troops deployment, as defined by national legislation (see Annex A)

Level of Parliamentary involvement	Country
High – power of prior approval	Austria, Denmark, Finland, Germany, Finland, Ireland, Slovakia, Spain, Sweden.
Medium – important exceptions from prior approval	Bulgaria, Czech Republic, Hungary, Italy, Luxembourg, Netherlands, Romania.
Low – no prior approval	Belgium, France, Greece, Poland, Portugal, Slovenia, UK.

Source: DCAF survey 2007

Only a few parliaments possess the power of prior approval in all situations, regardless of the diverse nature of international missions. This is the case in Austria, Denmark, Finland, Ireland, Luxembourg, Slovakia and Sweden, where the legislation in place gives the national parliament the authority to approve participation in all international operations.

In analysing the national legislation in place in some of the European states several types of **exceptions** and situations that limit parliamentary involvement in authorising national participation in international missions can be identified. These exceptions and situations may potentially create a space for a democratic deficit. The three main types of such exceptions appear below:

- Some parliaments have the legal power to approve participation in military operations, while their approval for civilian operations is either unnecessary or remains unclear. In Germany for example, parliament has to give prior approval for military operations, but can only *post facto* oversee civilian operations. The Spanish parliament was routinely marginalized in decisions relating to authorized use of force, but, following the unpopular decision to participate in the war in Iraq and the terrorist attacks in Madrid that led to the change of government in the March 2004 elections, a new law was adopted⁸ to give parliament the power to prior approve military missions abroad.. Still,

⁷ Ku, C. and Jacobson, A. *Democratic Accountability and the Use of Force in International Law*, 2003. Hans Born and Heiner Hänggi, *The Use of Force under International Auspices: Strengthening Parliamentary Accountability*, 2005; Ingrid Beutler and H. Born, ‘Between Legitimacy and Efficiency: A Comparative View on Democratic Accountability of Defence Activities in Democracies’, in G. Caforio, *Social Sciences and the Military: An Interdisciplinary Overview*, London, Routledge, 2006.

⁸ Ley Organica no 5, 2005.

- the law makes no reference to civilian operations.
- In “new” European democracies like Bulgaria,⁹ the Czech Republic,¹⁰ Hungary¹¹ and Romania¹² the legislation defines important exceptions from prior parliamentary approval. The decision to participate in operations which are legitimised by a treaty or an international organisation of which the country is member, is considered to be an executive responsibility. Therefore these exceptions are covering all NATO and EU operations¹³.
 - In some countries the legislation allows for exceptions from parliamentary approval in the event of limited national participation in a mission. This applies for example in Denmark,¹⁴ Germany,¹⁵ and Ireland.¹⁶ Sometimes the decision to participate in an operation may only be taken by a parliamentary committee, if few personnel are deployed, or if the operation not considered to be very important. Examples of this being the Foreign Affairs Committee in Finland¹⁷ and the Defence Committee in Spain.¹⁸

At the other end of the spectrum lie Belgium, France, Greece, Poland, Portugal, Slovenia, and the United Kingdom, where parliamentary approval is not necessary for national participation in any missions abroad. The government may ask for prior parliamentary approval, however, it remains the prerogative of the executive to determine whether this request is appropriate. In some of the “old” European democracies, like France or United Kingdom,¹⁹ members of parliament are no longer at ease with the current state of deployment legislation or with its inconsistent interpretation. Therefore they try to compensate the lack of approval power by developing procedures for parliamentary information and consultation in the early stages of the decision-making process.²⁰

⁹ Law on deployments, December 2005, The Council of Ministers is authorised to send armed forces abroad, under obligations from a treaty of a political-military character, and also for humanitarian missions.

¹⁰ Constitution amendment Art 43. 1999, The Government decides on deployments when they concern the international contractual obligation of common defence and PSOs under the decision of the international organization of which the Czech Republic is a member.

¹¹ Constitution amended February 2006.

¹² Law on troops deployment 42/2004, The president takes the decision to send troops as part of operations deployed on the base of a treaty which Romania is party to.

¹³ A double legislative trend may be noted in the last years: mature democracies aim to increase the level of parliamentary oversight of international operations while young democracies have tended to lessen parliamentary authority in the matter. During their first years of democracy South East European countries established a high level of parliamentary control, because of the uncertainty over the future government's composition, policy, and, above all, to restrain the appetite of the executive for taking decisions without consulting people's representatives. This trend was reversed while the countries began the process of joining NATO and the EU, when all the mentioned parliaments adopted new legislation that decreased their level of involvement.

¹⁴ Observer missions are very small in number.

¹⁵ For missions of low intensity and importance a government request is circulated among the members of parliament and is considered to be approved unless one fraction or a minimum of five per cent of parliamentarians call for a formal procedure within a seven day period.

¹⁶ For less than 12 persons deployed.

¹⁷ For less than 10 persons deployed.

¹⁸ The importance of the mission remains to be appreciated by the Standing Bureau.

¹⁹ See the House of Lords Constitution Committee's report “Waging War: Parliament's role and responsibility”, and its follow up, published February 2007 <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/23602.htm>.

<http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/51/51.pdf>.

²⁰ Good examples in this direction are the committees for European affairs which, in several parliaments, hold a scrutiny reserve power or they are mandating the government for the negotiations at EU level. The case of Portugal is notable as the Chairman of the Defence Committee and another two MPs are members in the Superior Council for National Defence, which advises the Government on matters related with national defence and organization of the Armed Forces.

Even when the parliament is excluded from the decision-making process, it may seek to hold the government accountable through all the main methods of **ex post oversight** such as questions, interpellations, debates, hearings and inquiries.²¹ Additionally, parliamentarians often visit the troops deployed abroad. Despite using all these oversight instruments, the information national parliaments get about international missions can be considered to be insufficient for an effective involvement, and thus increases the potential for a democratic deficit. Parliaments are dependent on their national government to provide them with information about missions abroad. However, many other relevant actors, playing a significant role at intergovernmental level, are not very well known within national parliaments, and are impossible to be called to account.

The better informed parliaments appear to be those which possess the power of prior approval. The competent committee, most often the one for defence, develops awareness and accumulates knowledge on the matter. Debates about national participation in international operations usually involve the presence of MOD representatives and a detailed discussion of the mission's mandate, budget and duration. Occasionally, operational implications such as the rules of engagement, command and control, type of weapons and equipment to be used and risk assessment, are also subjects of discussion. However, the mission details represent only collateral information, used to consolidate MPs general view about the operation.

In many parliaments there is a lack of information about the general national financial contributions to international missions. Most parliaments' scrutiny of the funds for external operations is limited to the annual approval of these expenditures as part of the overall national defence budget. When participation in individual operations is considered by parliaments, an estimate of financial costs may be presented by the government, but the real cost of each mission is very difficult to calculate, given that all the costs involved for personnel, training and equipment spread over several budgetary chapters and appropriations, and over several years. In some countries the budget for international operations is made up from the budget of different ministries. In Finland for example, the budget of the Ministry of Foreign Affairs covers personnel costs, and the budget of the Ministry of Defence covers the material costs. In Spain, the funds initially forecasted for international operations in the MOD budget are supplemented from the Emergency Fund administered by the Ministry of the Economy throughout each year i.e. no parliamentary approval would be required when money is transferred from this Fund.²²

5. The control of the defence budget

Defence budgeting

Defence budgeting is the process of allocating financial resources for defence ministry equipment, infrastructure and programs. The defence budget and the national military expenditures are not always the same thing. The total annual cost of maintaining a defence establishment is, in almost all countries in the world, higher than the official data provided by governments as the defence budget.²³ For example military constructions, arms procurement, military pensions, received military aid, paramilitary forces, may all come under other chapters

²¹ Born, H and Hänggi, H., *The Use of Force under International Auspices: Strengthening Parliamentary Accountability*, 2005.

²² The difference from the amount initially allocated for international operations in MOD's budget and the final costs covered from the Emergency Fund is significant: more than 400 million Euros in 2005.

²³ In many African or Middle Eastern countries the military has sources of income outside the formal state budget. In Nigeria for example, under General Sani Abacha, a large part of the Petroleum fund went to the armed forces. This outside sources, and many times the army extra budgetary activities, gives the army a considerable liberty in spending and makes the budget virtually impossible to control. From UNDP Human Development Report 2002, p. 89.

and ministries than defence. Alternatively, there are times when official figure for the national defence budget also includes the civil defence.²⁴

National practices in budgeting differ significantly from state to state. However, one rule remains constant: *the executive proposes and the parliament disposes*.²⁵ The degree to which parliament is able to perform its role in this field is essentially dependant on the quality and comprehensiveness of the information it receives, and on its actual power to amend the budget. The budget proposal can consist of a document of a few pages in length containing general information about the overall sums of money allocated to different agencies, or it can span hundreds of pages of complex and very detailed information. The essential indicator of the impact of parliament in the budgeting process is the extent to which it influences the contents of the budget through the amendment process. In broad terms, there are three models for parliamentary involvement in defence budgeting.²⁶

- 1. Budget-making parliaments** have the capacity to amend or to reject the budget proposal as well as the capacity to formulate their own alternative budget proposal. The US Congress is the notorious example of a parliament which plays an important role in the development of the defence budget. The President's draft budget serves only as a proposal in the strictest sense and has no binding force. The Congress holds the Department of Defence firmly accountable, often to a level of detail described by some as excessive micro-management. Such powers require substantial supporting infrastructure in parliament in terms of staff, experts and money.
- 2. Budget-influencing parliaments** can amend or reject the budget, but lack the capacity to put forward their own proposals. Many parliaments in Europe fall into this category. When ministers fail to convince the legislature of the necessity for certain expenditures, cuts of relevant items can free up additional resources to address more urgent needs elsewhere. The German Bundestag, the Netherlands and the Danish parliaments initiate hundreds of budgetary amendments every year and consider the most intricate details of the budget.
- 3. Parliaments with little effect on budget formulation:** may only reduce existing items, but not include new ones nor increase the number of existing ones. Westminster type parliaments are representative of this model. Traditionally, they give their consent to the defence budget as a global figure, as proposed by the government. In some countries, any amendments to the budget, if successful, are considered as being the equivalent of a vote of no confidence in the executive, that might push the government to resign (Canada, the UK, Australia, India, New Zealand, South Africa, and Zambia). However, even if these Parliaments exert little influence over the budget formulation, they play a vibrant role in auditing defence expenditures, through hearings, inquiries and public reports aimed to inform public opinion. If parliament's recommendations and the conclusions of parliamentary debates are effectively taken into account during budget formulation, this might diminish the need for amendment activity.

²⁴ In Sweden for example, the defence budget includes allocations for economic defence (measures to protect oil reserves, food supplies, other important economical functions) and psychological defence (defence from hostile enemy propaganda). Information from the Stockholm International Peace Research Institute (SIPRI), www.sipri.org/contents/milap/milex/skoens.pdf/download.

²⁵ The principle of legislative authorization of all public spending and taxation is called the "rule of law" in public finance.

²⁶ Wehner, J. "Back from the Sidelines? Redefining the contribution of Legislatures to the Budget Cycle", World Bank Institute Working Papers 2004, p.5.

Table 2: Budgetary practice of parliaments

Approve the budget	Country
– with significant changes	Czech Republic, Denmark, Germany, Hungary, US.
– with minor changes	Austria, Finland, France, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Turkey.
– without changes	Canada, UK, Greece.

Source: The OECD Budgeting Database 2002 and DCAF survey 2006

Once the budget is adopted, Parliament may enforce its *ex post oversight and audit functions*. The accounts and annual reports of the security services are an important source in aiding parliaments to assess how money was spent in the previous budget year. The ministries that are key with regard to security - traditionally defence, interior, trade and industry and more recently communications and finance – regularly present the parliament with fully documented reports on how they spend the money allocated to them.

In the *ex post* oversight of the budget Parliaments are always assisted by an independent institution, a national audit office (sometimes called the Auditor General, National Audit Office, Budget Office or the Chamber of Account), that undertakes the detailed and professional financial audit of all government departments. The UK’s National Audit Office has gained notoriety for its efficiency and good relations with the parliament. Its detailed scrutiny of departmental spending produces some 50 reports a year which are destined for the parliament. The annual Major Projects Report provides details of the largest 25 defence procurement projects of the Ministry of Defence.²⁷ The MOD also provides parliament with an annual statement of the top 20 new defence works projects.

Ideally, the audit process should enable parliaments to evaluate the legality, the efficiency and effectiveness with which the departments in question have used their resources.

Procurement

Defence procurement is an important part of the overall defence budget,²⁸ representing the process by which national security authorities acquire the equipment and services that are necessary to fulfil their mission. Given that defence contracts represent large amounts of public money, they have a political nature, long term consequences for national industry and are prone to corruption,²⁹ they attract increasing levels of public attention.

Generally, parliamentary responsibility on this matter is two-fold:

- *a priori*: to ensure a clear legislative framework for the whole process, from tender procedures to off-set clauses;
- *post facto*: to monitor the transparency and the legality of the process through the use of traditional oversight instruments, and thus prevent parochial concerns from harming national interest. In many countries defence procurement, represents one of the main topics

²⁷ See http://www.nao.org.uk/publications/nao_reports/05-06/0506595_II.pdf.

²⁸ Procurement may represent a large part of defence expenditures: in 2003 NATO countries allocated an average 2% GDP to defence, of which 17% was allocated to procurement.

²⁹ Transparency International’s Global Bribe Payers Index rates the defence sector as one of the top three sectors for bribery and corruption, along with the oil sector and major infrastructure projects. The IMF report on corruption and military spending explains, “Procurement is an important channel through which corruption affects military expenditures.” Moreover, according to the same report “bribes account for as much as 15% of the total spending on weapons acquisition.” The U.S. Department of Commerce estimates that 50% of all bribes in global transactions are paid for defence contracts; numerous single source defence contracts have been awarded for operations in Iraq.

of defence Committees hearings and inquiries.

Parliamentary attempts to oversee defence procurement go much further in a few countries in which important contracts have to be submitted to the approval of the defence committees. In Germany and the Netherlands this is the case for contracts exceeding 25 million Euros, as well as in Poland for contracts above 28 million Euros. In other parliaments, even if the defence committee's approval is not mandatory, MoD has the obligation to inform the committee and give details about all contracts above a certain value (Hungary, Switzerland and United Kingdom). Sometimes, parliament or the defence committee can even be involved in specifying the need for equipment, in comparing and selecting a supplier or a product, in assessing offers for off set arrangements. (Check Republic, and the US).³⁰

6. Exceptional situations and the domestic role of the military³¹

A state of emergency derives from a declaration made in response to an extraordinary situation posing a fundamental threat to the country (i.e., natural disasters, civil unrest, an epidemic or economic crises). The declaration may suspend certain normal functions of government, or may authorise government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights. In some situations, martial law is also declared, allowing the military greater authority to act.³² The defence department acquires special powers through the declaration of a state of emergency, which allows the MOD to bypass most of the parliamentary procedures.³³ For this reason, mechanisms for preventing the abuse of emergency powers by national authorities should be provided for in legislation. This fundamental principle is reaffirmed in PACE recommendation 1713(2005), stating that 'exceptional measures in any field must be supervised by parliaments and must not seriously hamper the exercise of fundamental constitutional rights.'³⁴

While each country defines its own practices as to the circumstances that can give rise to a state of emergency³⁵ in a different way, the procedures to be followed, the limits on the emergency powers or the rights that can be suspended, international norms have developed that can provide useful guidance.

For example, the European Convention of Human Rights and Fundamental Freedoms (Article 15 ECHR) provides for derogations in times of emergency:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

³⁰ For more information see DCAF Backgrounder Parliaments' Role in Defence Procurement, at <http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25266&nav1=4>.

³¹ Finer, E., *The man on horseback : the role of the military in politics*, New York : F.A. Praeger, 1962.

³² DCAF Backgrounder, States of Emergency, October 2005.

³³ Van Eekelen, W., Democratic Control of Armed Forces. The National and International Parliamentary Dimension, DCAF Occasional Paper no. 2, October 2002, p.14.

³⁴ PACE recommendation 1713(2005), *Democratic oversight of the security sector in member states*, point Vb.

³⁵ E.g. Article 35(2), 87a(a) and 91 of the German Constitution: internal emergency, natural disasters or humanitarian catastrophes at home; or article 8 of the Spanish Constitution providing that armed forces have as their mission to defend Spain constitutional order, which is interpreted to mean, *inter alia*, that armed forces may act in cases of internal and external emergency. Nolte, G. (ed.), *European Military Law Systems*. Berlin: De Gruyter Recht, 2003, pp. 46-47.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Similar principles are established in the International Covenant on Civil and Political Rights (ICCPR), art. 4. The UN Special Rapporteur on Human Rights and States of Exception stipulates that states are to observe the following principles.³⁶

- temporality, which refers to the exceptional nature of the declaration of a state of emergency;
- exceptional threat: which requires the crisis to present a real, current or at least an imminent danger to the community;
- declaration, which refers to the need for the state of emergency to be announced publicly;
- communication, which refers to the obligation to notify other states and relevant treaty-monitoring bodies of the measures taken;
- proportionality, which refers to the need for the gravity of the crisis to be proportioned to the measures taken to counter it;
- legality: human rights and fundamental freedoms during a state of emergency must respect the limits provided for by the relevant instruments of international and national law; furthermore, a state of emergency does not imply a temporary suspension of the rule of law, nor does it authorise those in power to act in such a way that the principle of legality are disregarded, as they are bound to these principles at all times;
- intangibility, which concerns the fundamental rights from which there can be no derogation, even during times of emergency. These are the right to life; the prohibition of torture; the freedom from slavery; the freedom from *post facto* legislation and other judicial guarantees; the right to recognition before the law and the freedom of thought, conscience and religion.

While in some states there are no constitutional provisions on states of emergency (e.g. Denmark),³⁷ most states have legal mechanisms governing the declaration of a state of emergency and the implementation of derogations in their constitution. As concerns the prerogative to declare a state of emergency, the three most common approaches are the following:

- **The executive declares the state of emergency without parliamentary involvement.** The French Constitution, for example, authorizes the President to declare and maintain an emergency unilaterally.³⁸ On the other hand Poland, while

³⁶ Born, H. and Fluri, P. Parliamentary Oversight of the Security Sector, Handbook edited by DCAF and IPU, 2003, p. 101.

³⁷ Nolte G. (ed.), *European Military Law Systems*. Berlin: De Gruyter Recht, 2003, p. 46.

³⁸ Article 16 of the French Constitution authorizes the President of the Republic to exercise emergency powers “[w]hen the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and when the proper functioning of the constitutional public powers is interrupted.” The President not only decides whether a particular threat qualifies under the two conditions, but also how long the state of emergency endures. See B. Ackerman, The Emergency Constitution, *The Yale Law Journal*, Vol. 113(5), 2004, p. 1038.

not always requiring explicit legislative approval, creates a compensating structure involving strict time limits. At the recommendation of the Council of Ministers, the President can declare an emergency for a period no longer than ninety days. If he wants a one-time extension, he can obtain sixty more days with the express approval of a majority of the Sejm.³⁹

- **The executive declares the state of emergency but must have this ratified by parliament** before it can proceed with emergency measures, e.g. Germany⁴⁰ and Spain.⁴¹
- **Parliament itself declares the state of emergency** (e.g. Hungary, which requires a two-thirds majority before an emergency goes into effect.)⁴²

It is crucial that the parliament and judicial bodies exercise oversight over the government in order to avoid abuses. The first available control mechanism is to provide for parliamentary ratification of the decision of the executive to declare a state of emergency.⁴³ As a general rule, governments must provide a well-considered justification for both their decision to declare a state of emergency and the specific measures to address the situation. Most parliaments also have the power to review the state of emergency at regular intervals and to suspend it as necessary. Furthermore, the *post hoc* general accountability powers of parliament, i.e. the right to conduct inquiries and investigations on the execution of emergency powers, are extremely important for assessing government behaviour.

Next to the parliament, the judicial system plays a crucial role in the control of the executive's prerogatives during states of emergencies taking decisions on the legality of a declaration of a state of emergency as well as reviewing the legality of specific emergency measures. Moreover, the judicial system must continue to ensure the right to fair trial. It also must provide individuals with an effective means of recourse in the event that government officials violate their human rights. In order to guard against infringement of non-derogable rights, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be safeguarded through independence of the judiciary.

7. Appointment of top commanders

The Constitution and legal framework should define which state body appoints and promotes the top-commanders of the armed forces, in particular, the commander-in-chief and the commanders of the army, navy and air force. It must be underlined that some countries do not have a military commander-in-chief (e.g., Germany, Austria and Switzerland). In these countries, a so-called 'inspector-general' heads the armed forces.

The appointment of top commanders can be subject to the approval of the head of state (president or monarch), prime minister, minister of defence, the cabinet and parliament, or a combination of these actors. However, as the table in **Annex B** shows, the parliament is only rarely involved in this decision; only in few countries is the parliament required to approve the names proposed by the executive, examples of this being Estonia and Lithuania.

³⁹ Polish Constitution, art. 230(1). While the President does not require the affirmative approval of the Sejm during the first ninety-day period, this assembly can annul the emergency by an absolute majority vote in the presence of at least half the statutory deputies. *Id.* art. 231.

⁴⁰ In exceptional cases, in Germany the military can be called upon by the government of a regional state to render support to the police (constitution, art. 35.2).

⁴¹ Nolte, P. 42. Article 116 of the Spanish Constitution.

⁴² Hungarian Constitution, art. 19(4), Ackerman, B. The Emergency Constitution, p.1054.

⁴³ DCAF Backgrounder, States of Emergency, October 2005, available at www.dcaf.ch/publications.

Parliament should be given the power to express its consent to important appointments, in order to keep the executive accountable and to ensure that the rule of law is respected in the appointment's procedures. Furthermore, parliamentary involvement is crucial to ensure transparency.

8. Political Neutrality of Armed Forces Personnel⁴⁴

According to the concept of citizen in uniform, soldiers should, in principle, enjoy the same fundamental rights as every citizen, subject to certain limitations imposed by military duty. The main rights at stake here are the right to vote and stand for office (art 25 ICCPR), the right to demonstrate (art. 21 ICCPR and art.11 ECHR), and the freedom of expression (art. 19 ICCPR and 10 ECHR). The most frequently cited limitations on the political activities of members of the armed forces are indeed:

- the prohibitions on participation in political parties
- that military personnel are not eligible for elected political office
- prohibitions on taking part in public demonstrations while in uniform; and,
- restrictions on the right of freedom of expression.

Though the ECtHR has embraced the concept of citizen in uniform, it has tended to give states a wide 'margin of appreciation' in cases involving restrictions of human rights of armed forces personnel, as the exercise of unlimited human rights and fundamental freedoms by armed forces personnel may be considered to be detrimental to the need of discipline in the armed forces and its political neutrality and therefore incompatible with the military profession.⁴⁵ For this reason the political neutrality of soldiers is a controversial issue for all military systems. The above-mentioned interests are recognised as legitimate reasons for restrictions under international human rights law and practice (e.g. art. 19.3 ICCPR and art. 10.2 ECHR). Accordingly, in the *Engel* case, the ECtHR stated that "...the freedom of expression guaranteed by Article 10 applies to servicemen just as it does to other persons within the jurisdiction of the Contracting States. However, the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings".⁴⁶

The different approaches to political neutrality of soldiers result, for the most part, from specific historical experiences. In the case of *Rekvény vs. Hungary*, the ECtHR made it clear that different conceptions of political neutrality of soldiers are permissible under the ECHR.⁴⁷ The case deals with restrictions imposed in the Hungarian Constitution which prevented members of the armed forces, the police and security services from joining any political party and from engaging in any political activity. The ECtHR found there was no violation of Articles 10 or 11 of the ECHR, since the restrictions were intended to de-politicise the police and hence to contribute to the consolidation and maintenance of pluralistic democracy.

While the rules on political neutrality within the armed forces are fairly similar in CoE member states, the extent of the obligation to refrain from political activities outside the armed forces varies widely.

⁴⁴ Rowe, P., *The Impact of Human Rights Law on Armed Forces*, Cambridge University Press, 2006

⁴⁵ Leigh, I., 2005, *Human rights and fundamental freedoms of armed forces personnel: The European Court of Human Rights*, DCAF Working paper no. 165, p. 5. Available at <http://www.dcaf.ch/docs/WP165.pdf>. See *Engel v Netherlands* (1976):

⁵⁴. '... [T]he Convention applies in principle to members of the armed forces and not only to civilians. It specifies in Article 1 and 14 that "everyone within the jurisdiction" of the Contracting States is to enjoy "without discrimination" the rights set out in Section I...'

⁴⁶ *Engel v Netherlands* (1979-80) 1 EHRR 647, para. 100.

⁴⁷ *Rekneyi v Hungary* (2000) 30 EHRR 519.

Nolte & Krieger submit that three positions can be seen to operate within European countries as to what level of participation in the political process is allowed for members of the armed forces.⁴⁸ An overview of these three country categories can be found in the table below, where the information provided by Nolte & Krieger is enriched with data obtained by Hans Born and Ian Leigh, during their research for the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, published by DCAF and IPU in 2007.

Table 3: Overview of political neutrality of armed forces personnel (based on Annex C)

Level of restrictive policies	Country
High	BiH, Malta, Slovakia, Spain
Moderate	Azerbaijan, Belarus, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Ireland, Latvia, Lithuania, Poland, Portugal, Russia, Serbia, Slovenia, Switzerland, Ukraine, UK
Low	Austria, Belgium, Denmark, Germany, Luxembourg, Netherlands, Norway, Sweden

Source: Nolte & Krieger, Born & Leigh (2007)

Highly restrictive policies effectively ensure the invisibility of the armed forces so far as public debate is concerned. This approach aims to stress the differences between military and civilian personnel and seeks to ensure neutrality by in effect quarantining the armed forces and separating them from active political involvement. The background may stem from a desire to avoid repetition of military intervention of political life (as is the case of Spain). According to this approach, soldiers are denied the right to join a political party, to join a military union, or to participate in demonstrations (e.g., France, Poland and Spain).⁴⁹ While in Spain⁵⁰ and in Poland⁵¹ soldiers are required to refrain from any political activity both on and off duty, in France political neutrality is required only on duty. However, here too soldiers are forbidden from being members of a political party.⁵²

Moderately restrictive policies of political neutrality, on the other hand, seek to restrict the *mode* of participation in public life of members of the armed forces. The objective is to avoid members of the military or individuals who are publicly aligned with a political cause, being identified as servicemen or women. Hence, in Italy, Belgium and the United Kingdom restrictions exist on political activities *while in uniform*.⁵³ Limitations may be imposed (as in the UK) on serving soldiers holding office in political parties but not on membership *per se*. There may be duties where the authorities must be notified and/or grant permission before engaging in political activities. For example, in Croatia, the right to stand for election, the right to join a political party, the right to freedom of expression relating to military issues, all need minister's prior approval.⁵⁴ In Luxembourg members of the armed forces are permitted to stand for election but must leave the service if elected.

⁴⁸ Nolte, G. (ed.), *European Military Systems*, (Berlin 2003), pp. 78-81.

⁴⁹ Nolte, G. (ed.), *European Military Law Systems*, pp. 78-79.

⁵⁰ Royal ordinances for the armed forces, art. 182.

⁵¹ Polish Law on the legal status of soldiers, art. 68.

⁵² Art. 9(1) Statut Général des Militaires.

⁵³ Nolte, pp. 79-80.

⁵⁴ Human rights of armed forces personnel Born, H. and Leigh, I. 2007 OSCE DCAF Handbook -ODIHR-DCAF Project Questionnaire on Human rights and fundamental freedoms of armed forces personnel, response to question 54.

Least restrictive policies of political neutrality aim to encourage political participation by limiting restrictions on members of the armed forces provided the exercise of political rights does not interfere with military duty. The Netherlands follows this approach and even, under certain circumstances, permits demonstrations in military installations or the participation of soldiers in uniform in public meetings. The rationale of minimal restrictions serve to protect democratic values. The German *Staatsbürger in Uniform* approach, for example, aims to inculcate active promotion of democracy in the military by permitting the participation of individual members of the forces.

In conclusion, restrictions on the rights of service personnel that take into account the different layers of political office, differing degrees of political involvement and the military requirements of different places and occasions are more easily defended. Although the particular history or situation in a country may, exceptionally justify a more restrictive approach to ensure neutrality, less restrictive policies are to be preferred.⁵⁵

9. Recommendations

Based on this overview, the following recommendations can be made:

Sending troops abroad

- The reason parliaments are marginalized in the decision making process on sending troops is to allow for a rapid national decision, and, consequently, a rapid reaction to international crises. Nevertheless, other ways are to be found to make rapid reaction compatible with parliament participation. In Finland for example prior approval of parliament is necessary for the establishment of a stand by unit.⁵⁶ When a stand by unit is to be used in rapid reaction operations, the prior approval is given in emergency procedures by the Foreign Affairs Committee.
- Special “deployment committees” could be set up, composed by members of committees dealing with Defence, Foreign Affairs, Budget, Development, Home Affairs, European Affairs; such committees would grow an expertise in the complex and interdisciplinary matter of international crises, ensuring a continuous monitoring of such operations.
- Improvement of legislation is needed in many countries, to ensure parliament involvement in the decision making process for both military and civilian missions, and also, a coherent and fair system of status, retributions, compensations for the personnel who participated in operations abroad, employed by different national security agencies.

The control of the defence budget

- An essential prerequisite for strengthening the control of defence budgeting is to improve parliaments’ access to information. The need for confidentiality should not be used to justify a lack of public scrutiny. Freedom of information legislation and clear procedures for the access of parliamentarians to classified information, are powerful instruments that can compel the executive into an transparent and accountable behaviour.

⁵⁵ Edmonds, T., Forster, A. and Cottey, A., *The Armed Forces and Society in Postcommunist Europe: Legitimacy and Change*, WORKING PAPER 47/02, available at <http://www.one-europe.ac.uk/>. States should therefore continue opening up the space for the exercise of democratic rights by military personnel because if the armed services have to meet the demands of the strategic context by building militarily effective organisations, they also have to be responsive to a changing society, which the services defend and gives them legitimacy.

⁵⁶ Act on Military Crisis Management 211/2006, Section 3 – (3)

see <http://www.finlex.fi/en/laki/kaannokset/2006/en20060211.pdf>.

- A system of permanent committees (Budget, Defence, Public Accounts) where competences and tasks are differently concentrated on the different phases of the budget cycle is improving parliamentary capacity and specialization on this matter.
- A strong parliamentary influence on budgets is usually opposed because of concerns regarding the potential deterioration of fiscal discipline. If parliaments have too much power over the budget, they tend to spend more and tax less. To reconcile legislative activism with fiscal prudence, in many countries⁵⁷ spending is kept under control by having the parliament to vote on the overall spending levels before considering sectorial spending and specific appropriations.

Exceptional situations and the role of the military

- During states of emergency, the right to take proceedings before a court on questions relating to the lawfulness of emergency measures must be safeguarded through independence of the judiciary. The judicial system must continue to ensure the right to fair trial.

Appointments of top commanders

- To increase transparency of top appointments parliament should participate in the decision making, or at least, be consulted and informed. Nominees for top commanders positions should be questioned and evaluated in committees or in the plenary, and that they should get the vote of the majority of the parliament to become officially invested. In Romania for example, there is no need for a formal parliamentary approval for top appointments, but some of the former defence and interior ministers chose to show parliament their political willingness for a transparent human resources policy. Thus, officers considered for the ranks of general, military attaché, or the civilian attachés from the Ministry of the Interior, presented themselves in front of the defence committees, as an act of courtesy intended to create an opportunity for dialogue and mutual confidence.

Political neutrality of Armed Forces personnel

- Any restriction to the human rights of service personnel should always be proportionate to the objectives it is designed to achieve. Service personnel who believe that their rights have been violated should always have the right to have a court review the decision taken.

⁵⁷ Like Canada, Check Republic, France, Italy, Norway, Poland, Portugal, Spain, Sweden or US.

Annex A: Overview of national legislation on the authority to decide participation in missions abroad

	Country	The authority to decide participation in missions abroad, as provided in national legislation	Level of parliamentary oversight
1.	Austria	Law on deployments 1997 Prior approval given by the Main Committee of the Austrian Nationalrat (there is no competence for the Upper Chamber, the Bundesrat)- which also has competence on European affairs. It is composed of 32 MPs out of 183, proportional representation of political spectrum	HIGH
2.	Belgium	Not specified in constitution or laws. <i>Accountability and evaluation via political parties; governmental decisions taken by consensus</i>	LOW
3.	Bulgaria	Law on deployments, December 2005 Authority depends on the character of the mission, <ul style="list-style-type: none"> ➤ National Assembly shall decide on the dispatch and use of Bulgarian armed forces abroad for political-military purposes ➤ Council of Ministers is authorised to send armed forces abroad, under obligations from a membership of a treaty of a political-military character and also for humanitarian missions. ➤ In case of doubt or disagreement as to the 'character' of the proposed mission, the National Assembly should take the lead in determining the nature of the proposed mission. 	MEDIUM (was HIGH between 1991-2005)
4.	Cyprus	No information was available	
5.	Czech Republic	Constitutional amendment Article 43. 1999 <ul style="list-style-type: none"> ➤ Parliament approves the dispatch of armed forces abroad ➤ Exceptions: Government decides on deployments when they concern: <ul style="list-style-type: none"> ○ An international contractual obligation of common defence ○ PSOs under decision of international organization CR member of ○ Rescue operations following a natural disaster ➤ Government shall inform parliament without delay, and parliament may revoke such decision 	MEDIUM (was previously HIGH)
6.	Denmark	Constitution <ul style="list-style-type: none"> ➤ Prior approval ➤ Exceptions: observer missions which are very small in number 	HIGH
7.	Estonia		
8.	Finland	Crisis Management Law 211/2006 (previously Peacekeeping Act 1984, revised 2001) <ul style="list-style-type: none"> ➤ Triple-lock system: UN resolution, Decision agreed both by executive and legislative. Government submits proposals to the President only after consulting the parliament's Foreign Affairs Committee 	HIGH

		<ul style="list-style-type: none"> ➤ If an operation presents a particularly demanding military challenge or it is not based on a mandate of UNSC, the Government must consult the parliamentary plenary and provide it with a report on the matter. ➤ Parliamentary plenary must be consulted when establishing a <i>stand by</i> unit. For using stand by units in missions, the Foreign Affairs Committee must be consulted. ➤ If less than 10 persons are assigned to a mission, the government must provide a report to the Foreign Affairs Committee, before submitting its proposal to the president. 	
9.	France	not specified in constitution or laws	LOW
10	Germany	<p>Deployment Law 2004</p> <ul style="list-style-type: none"> ➤ Prior approval of parliament required. <p>Exceptions:</p> <ul style="list-style-type: none"> ○ humanitarian missions ○ For missions of low intensity and importance a government request is circulated among the members of parliament and it is considered to be approved unless, one faction or a minimum of five per cent of parliamentarians call for a formal procedure, within seven days,. <p>Parliament may demand troops withdrawal.</p>	HIGH
11	Greece	<p>Law 2292/1995, Art. 3</p> <ul style="list-style-type: none"> ➤ Council of Ministers decides on deployments under obligations of international agreements ➤ The Ministry of Defence informs the Committee on Defence and Foreign Affairs 	LOW
12	Hungary	<p>Constitution amended 2003</p> <ul style="list-style-type: none"> ➤ Prior approval of Parliament required <p><i>Art. 19: Within this sphere of authority, the Parliament shall</i></p> <p><i>(3). j). with the exceptions laid down in the Constitution, rule on the use of the armed forces both abroad and within the country, the deployment of foreign armed forces in Hungary or in other countries from the territory of Hungary, the participation of the armed forces in peacekeeping missions, humanitarian operations in foreign theatres, and the stationing of the armed forces abroad or of foreign armed forces in Hungary.</i></p> <p><i>(6) A majority of two-thirds of the votes of the Members of Parliament in attendance shall be required for the decision specified in point j) of Paragraph (3).</i></p> <ul style="list-style-type: none"> ➤ Exceptions: NATO deployments and ESDP missions (exempt from prior approval since February 2006) 	MEDIUM (was HIGH before)
13	Ireland	<p>Constitution, Defence Act (1954, 1960)</p> <ul style="list-style-type: none"> ➤ Triple-lock system: 3 conditions for any deployment: UN mandate, agreed by government, approved by parliament. ➤ exceptions from prior approval: <ul style="list-style-type: none"> ○ invasion of the country ○ deployments of fewer than 12 armed soldiers 	HIGH

14	Italy	<ul style="list-style-type: none"> ➤ Law 25/1997 - Prior approval for all decisions on defence and security matters prior to their implementation. ➤ Constitution - emergency clause, decrees can be made that must then be converted in Law within 60 days. Parliamentary debates usually take place after troops have been deployed. 	MEDIUM
15	Latvia	No information was available	
16	Lithuania	No information was available	
17	Luxembourg	<p>Law on PSOs 1992</p> <ul style="list-style-type: none"> ➤ Participation decided by government after consultation of competent parliamentary committees. 	MEDIUM
18	Malta	No information was available	
19	Netherlands	<p>Constitution amended 2000, Art. 100</p> <ul style="list-style-type: none"> ➤ Government shall inform Parliament in advance (on the basis of a letter) 	MEDIUM
20	Poland	<p>Statute on rules of deployment 1998</p> <ul style="list-style-type: none"> ➤ Parliament to be informed immediately once a deployment decision is made by government 	LOW
21	Portugal	<ul style="list-style-type: none"> ➤ Law on foreign deployments 46/2003. Government has to communicate to parliament its decisions ➤ Law of the Armed Forces and National Defence 29/1982, modified March 2007: The Chairman of the Defence Committee plus two other MPs are members of the Superior Council for National Defence, which is an advisory body of the Government that takes decision on sending troops abroad. 	LOW
22	Romania	<p>Law on troop deployments 42/2004</p> <ul style="list-style-type: none"> ➤ the President takes decision and informs Parliament within 5 days ➤ Prior approval of Parliament is required for missions which are not deployed on the basis of a treaty to which Romania is a party. 	MEDIUM
23	Slovakia	<p>Constitution, Art. 86</p> <ul style="list-style-type: none"> ➤ Prior parliamentary approval required for all deployments 	HIGH
24	Slovenia	<ul style="list-style-type: none"> ➤ Government takes decision and informs Parliament at a later date 	LOW
25	Spain	<p>Ley Organica 5/ 2005</p> <ul style="list-style-type: none"> ➤ Prior approval of parliament for missions not directly related to the defence of Spain or national interests. When rapid reaction needed, parliament consultation and approval will be done according to emergency procedures. ➤ In situations of "maximum urgency" and prior consultation is not possible, the government has to submit its decision to parliament as soon as possible, for ratification. 	HIGH (was LOW before)
26	Sweden	<p>"The Instrument of Government", Law on deployment</p> <ul style="list-style-type: none"> ➤ Prior approval of parliament ➤ Exceptions: <ul style="list-style-type: none"> ○ Up to 3000 troops for UN or OSCE peace keeping missions, Chapter VI (not peace enforcement, 	HIGH

		Chapter VII!). Parliamentary approval must still be sought by government. o Armed attack upon the country	
27	United Kingdom	Royal prerogative Government may ask for parliamentary approval, but it is its decision when to consider this request appropriate. (it did so in March 2003, for Iraq)	LOW

Sources:

Wolfgang Wagner "Parliamentary Control of Military Missions: Accounting for Pluralism" - DCAF Occasional Paper No. 12, August 2006 as well as additional research on internet, legislation and information provided by parliamentary staff.

Annex B: Overview of the constitutional rules of appointment of top commanders in selected CoE member states

COE Member States	overview of the constitutional rules on appointment of top commanders in Selected CoE members states (Who is the military commander in chief , which authorities are involved in the appointment of military top commanders)	
	Legislative oversight	Executive oversight
Albania		The President of the Republic is the General Commander of the Armed Forces, and he exercises this command through the Prime Minister and Minister of Defence (Art. 168-169)
Austria		Commander-in-Chief of the Federal Army is the Federal President (Art. 80 N°1)
Azerbaijan		-The President of the Azerbaijan Republic is the Supreme Commander-in-Chief of Military Forces of the Azerbaijan Republic (Art. 9 N°3)
Belgium		-The King may give military orders within the limits prescribed by law (Art. 114) -The King commands the armed forces, and determines the state of war and the cessation of hostilities (Art. 167(1.2))
Bulgaria		-The President is the Supreme Commander-in-Chief of the Armed Forces of the Republic of Bulgaria; -appoints and dismisses the higher command of the Armed Forces; proclaims general or partial mobilization on a motion from the Council of Ministers in accordance with the law; proclaims state of war (Art. 100)
Croatia	- organization of defense and command shall be regulated by the Constitution and law (Art. 7)	- The President is commander in chief of the armed forces - He appoints and relieves of duty military commanders
Czech Republic		- The President of the Republic is commander in chief of the armed forces Art.63 (1)c
Estonia	- The Commander and the Commander-in-Chief of the Defence Forces shall be appointed to and released from office by the Riigikogu, on the proposal of the President of the Republic (Art. 127)	- The supreme commander of national defence is the President of the Republic
Finland		- The President of the Republic is the commander-in-chief of the defence forces (Section 128) - The President makes decisions on military appointments and matters pertaining to the Office of the President of the Republic (S.58)

France	- Statutes shall determine the rules concerning the general organization of national defence (Art. 34)	- The President of the Republic shall make appointments to military posts (Art. 13) - The President shall be commander-in-chief of the armed forces. He shall preside over the higher national defence councils and committees (Art. 15)
Germany		- Power of command in respect of the Armed Forces is be vested in the Minister of Defence (Art. 65a))
Greece		- The President of the Republic is the commander in chief of the Nation's Armed Forces, the command of which shall be exercised by the Government, as specified by law (Art. 45)
Hungary		- The President of the Republic is the Commander in Chief of the Hungarian Armed Forces (Art. 29 (2)) - The President of the Republic shall appoint and promote Generals of the armed forces (Art. 30/A (1) i))
Ireland	- The exercise of the supreme command of the Defence Forces shall be regulated by law (Art. 13 N°5.1°)	- The supreme command of the Defence Forces is hereby vested in the President (Art. 13 N°4)
Italy		The President of the Republic is the commander of the armed forces and chairman of the supreme defense council constituted by law;(Art. 87 (9))
Latvia	- The Saeima shall determine the size of the armed forces of the State during peacetime (Art. 67)	- The President shall be the Commander-in-Chief of the armed forces of Latvia. During wartime, the President shall appoint a Supreme Commander (Art. 42)
Lithuania	- The Seimas shall give consent to the appointment and dismissal of Commander of the Armed Forces and the Head of the Security Service (Art. 84 N°14) - The Government, the Minister of National Defence, and the Commander of the Armed Forces shall be responsible to the Seimas for the administration and command of the armed forces of the State. (Art. 140)	- The President of the Republic shall appoint and dismiss, upon the assent of the Seimas, the Commander of the Armed Forces and the Head of the Security Service (Art. 84 N°14) - The President of the Republic shall be the Commander-in-Chief of the Armed Forces of the State (Art. 142)
Luxembourg	All matters connected with the armed forces are regulated by the law (Art. 96)	- The Grand Duke appoints to civil and military posts, in compliance with and subject to any exceptions made by the law (Art. 35.1)

Moldova		<ul style="list-style-type: none"> - The President of the Republic of Moldova is the Commander-in- Chief of the armed forces.
Netherlands		<ul style="list-style-type: none"> - The Government shall have supreme authority over the armed forces (Art. 92 N°2)
Norway		<ul style="list-style-type: none"> - The King is Commander-in-Chief of the land and naval forces of the Realm. These forces may not be increased or reduced without the consent of the Parliament [Storting] (Art. 25 (1)) - The King shall choose and appoint, after consultation with his Council of State, all military officials (Art. 21) - The King can dismiss commanders of regiments and other military formations (Art. 22)
Poland	<ul style="list-style-type: none"> - The authority of the President of the Republic, regarding his supreme command of the Armed Forces, shall be specified in detail by statute (Art. 134 (6)) 	<ul style="list-style-type: none"> - The President of the Republic shall be the Supreme Commander of the Armed Forces of the Republic of Poland. - he shall, in times of peace, exercise command over the Armed Forces through the Minister of National Defence - he shall appoint the Chief of the General Staff and commanders of branches of the Armed Forces - for a period of war, he shall appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister. He may dismiss the Commander-in-Chief of the Armed Forces in accordance with the same procedure (Art. 134)
Portugal		<ul style="list-style-type: none"> - The President of the Republic shall be ex officio Commander-in-Chief of the Armed Forces (Art. 120) - In relation to other bodies the President of the Republic shall be responsible for upon a proposal from the Government, appointing the Chief of the General Staff of the Armed Forces and, after consulting the Chief of the General Staff of the Armed Forces, the Deputy Chief of the General Staff of the Armed Forces if any, and the Chiefs of Staff of the three armed services (Art. 133 p)) - The President of the Republic shall be personally responsible for performing the functions of Commander-in-Chief of the Armed Forces (Art.134 a))
Romania	<ul style="list-style-type: none"> - The structure of the national defence system, the preparation of the population, economy and territory for defence, as well as the military shall be regulated by an organic law.(Art. 118 (2)) 	<ul style="list-style-type: none"> - The President of Romania shall be Commander-in-Chief of the Armed Forces and preside over the Supreme Council of National Defence

Russian Federation		<ul style="list-style-type: none"> - The President of the Russian Federation appoint and dismiss the supreme command of the Armed Forces of the Russian Federation (Art. 83 h), k)) - The President of the Russian Federation shall be the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation (Art. 87 N°1)
Serbia		The President of the Republic shall command the Armed Forces in peacetime and in war (Art. 83 N°5)
Slovakia		<ul style="list-style-type: none"> - The president acts as supreme commander of the Armed Forces Art.102 - If no president is elected, the supreme command of the armed forces is also transferred to the prime minister in this period (Art. 105 (l))
Slovenia		- The President of the Republic represents the Republic of Slovenia and is commander-in-chief of its defence forces (Art. 102)
Spain	<ul style="list-style-type: none"> - The basic structure of military organization shall be regulated by an Organic Act in accordance with the principles of the Constitution 	<ul style="list-style-type: none"> - It is incumbent upon the King, following authorization by the Cortes Generales, to declare war and to make peace (Section 63 (3)) - It is incumbent upon the King to exercise supreme command of the Armed Forces (Section 62 h))
Switzerland	Within the limits of federal law, the Cantons shall have the power to form cantonal troops, to appoint and to promote officers of such troops, and to furnish a part of their clothing and equipment (Art.60.2)	
Turkey		- The Chief of the General Staff is the commander of the Armed Forces, and, in time of war exercises the duties of Commander-in-Chief on behalf of the President of the Republic (Art. 117)
Ukraine	<ul style="list-style-type: none"> - the organisation and operational of procedure military formations is determined by law (Art. 17) - Verkhovna Rada also confirms the general structure and numerical strength, and defining the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military formations created in accordance with the laws of Ukraine, 	- The President of Ukraine is the Commander-in-Chief of the Armed Forces of Ukraine; appoints to office and dismisses from office the high command of the Armed Forces of Ukraine and other military formations; (Art. 106 N°17)

	and also the Ministry of Internal Affairs of Ukraine (Art. 85 N°22)	
United Kingdom		The Queen is commander-in-chief of all the Armed Forces of the Crown

Source: Hans Born and Ian Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, published by DCAF and IPU, 2007

Annex C: Overview of civil and political rights for armed forces personnel: selected examples

CoE Member States	Right to vote	Right to stand for elections	Right to join a political party	Right to freedom of association	The right to freedom of expression	Total
Austria	Yes	Yes	Yes	Yes	Yes	5
Azerbaijan	Yes	Yes	No	No	Yes	3
Belarus	Yes	yes	no	no	yes	3
Belgium	Yes	yes	yes	yes	yes	5
Bosnia and Herzegovina	Yes	no	no	no	No reply	1
Croatia	Yes	no	no	Yes	Yes	3
Czech Republic	Yes	yes	no	yes	yes	4
Denmark	Yes	yes	yes	yes	yes	5
Estonia	Yes	yes	no	yes	yes	4
Finland	Yes	yes	no	yes	yes	4
France	Yes	yes	no	yes	yes	4
Georgia	Yes	Yes	No	Yes	Yes	4
Germany	Yes	Yes	Yes	Yes	Yes	5
Ireland	Yes	no	no	yes	yes	3
Latvia	Yes	Yes	No	No	Yes	3
Lithuania	Yes	no	no	yes	yes	3
Luxembourg	Yes	yes	yes	yes	yes	5
Malta	Yes	no	no	no	no	1
Norway	Yes	yes	yes	yes	yes	5
Poland	Yes	yes	no	yes	yes	4
Portugal	Yes	no	yes	yes	yes	4
Russian Federation	Yes	yes	no	yes	yes	4
Serbia and Montenegro	Yes	no	no	yes	yes	3
Slovakia	Yes	no	no	no	yes	2
Slovenia	Yes	yes	no	yes	yes	4
Spain	Yes	no	no	no	no	1
Sweden	Yes	yes	yes	yes	yes	5
Switzerland	Yes	yes	yes	No reply	No reply	3
Ukraine	Yes	Yes	No	Yes	Yes	4
United Kingdom	Yes	No	Yes	No reply	Yes	3

Source: Hans Born and Ian Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, published by DCAF and IPU, 2007

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