

**Promoting Good Governance in the  
Security Sector: Principles and Challenges**

Mert Kayhan & Merijn Hartog, editors

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Promoting Good Governance in the Security Sector: Principles and Challenges  
Editors: Mert Kayhan and Merijn Hartog

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The Centre for European Security Studies (CESS) is an independent institute for research, consultancy, education and training, based in the Netherlands. Its aim is to promote transparent, accountable and effective governance of the security sector, broadly defined. It seeks to advance democracy and the rule of law, help governments and civil society face their security challenges, and further the civilized and lawful resolution of conflict.

***The Man behind the Greenwood Papers***

*Resting his fists on the lectern, he would fix his audience with a glare and pronounce: "REVEAL, EXPLAIN AND JUSTIFY." It was his golden rule of democratic governance. David Greenwood was born in England in 1937 and died in 2009 in Scotland. He first worked for the British Ministry of Defence, then went on to teach political economy at Aberdeen University, where he later became the director of the Centre for Defence Studies.*

*In 1997, David Greenwood joined the Centre for European Security Studies in the Netherlands as its Research Director. For 10 years, he was the principal researcher and teacher at CESS, and a friend and mentor to his colleagues. To borrow a phrase of his own, David Greenwood was a construction worker on the building site of democracy. This series of research reports, formerly called the Harmonie Papers, is affectionately dedicated to him.*

## Preface

This *Greenwood Paper* marks the end of a series of three programmes on civil-military relations in Turkey and the prospect of Turkish membership of the European Union (EU). In 2004 the Centre for European Security Studies (CESS) launched the first programme with the aim of contributing 'to an increased understanding in Turkey of the appropriate role of the armed forces in a democracy and thereby to help the country to come closer to complying with the political EU (Copenhagen) criteria for membership'. The first two programmes, which ran between 2004 and 2009, focused on the role of the military in the polity and society of Turkey and, needless to say, involved breathtaking meetings between Turkish participants, and between them and participants from EU member states. In light of the history of the Republic and the 'guardians' of its fundamentals, the subject was a very sensitive one. Indeed, the Task Force Report, published in 2005, invoked opposing, sometimes bitter, reactions, even though the Report merely tried to clarify the measures necessary for further alignment of Turkish civil-military relations to EU practices. Nonetheless, over time this sensitive issue increasingly became a subject for free and open discussion, no matter how fiercely the views differed.

The third three-year programme, called 'Promoting Good Governance in the Security Sector of Turkey', commenced in April 2010. In contrast to the previous focus on the military, this programme has emphasised the role of the civil authorities and aimed at the development of the civilian capacity for good governance. The existence of civil or political guidance as regards security and defence policy is often assumed as part of overall democratic control. In practice, however, the extent to which such guidance and civil leadership exists varies considerably. Some aspects of civilian oversight may be called 'paper tigers', lacking requirements such as transparency or informed documentation. One CESS study on civil direction clearly showed the differences in this respect in various member states of the EU. Our Turkish friends were right when they argued that there is no single EU model for civil-military relations, and that no single model can be imposed on Turkey.

The past three years have shown a significant broadening of the theme. The subjects under scrutiny have included parliamentary oversight, financial accountability, the rule of law and civilian direction of the security sector. All four themes are addressed by Turkish and Dutch authors, while four policy papers, written by trainees on our courses, have been selected for publication as well. We are thankful to them, as we are to the two editors, Mert Kayhan from the ARI Movement in Turkey and PhD Candidate at Royal Holloway, University of London and Merijn Hartog from CESS.

In general, on behalf of the Board of CESS, I would like to thank all our partners and contributors to the programmes in Turkey during the past nine years. Many will remember the tense moments during the meetings and, perhaps in particular, during the informal gatherings, but my guess is that most of them also recognise the fruitful result of discussions that were previously impossible, or hardly possible. The future of Turkish-EU relations will not depend solely or predominantly on civil-military relations in Turkey. Yet, they are part of the required 'alignment', and we hope we have furthered that objective, an attempt that includes this *Greenwood Paper* as a final tangible contribution.

Peter Volten  
Founder and Chairman of the Board of CESS

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## Introduction

*Mert Kayhan & Merijn Hartog\**

Between 2010 and 2013, the Centre for European Security Studies (CESS) in the Netherlands conducted a capacity-building programme on 'Promoting Good Governance in the Security Sector of Turkey', in close cooperation with local partners TOBB University of Economics and Technology in Ankara and the ARI Movement in Istanbul. The programme was financially supported by the Netherlands Ministry of Foreign Affairs. At our conferences and training courses in Turkey, we welcomed politicians, civil servants, representatives from non-governmental organisations (NGOs), journalists and many academics from various universities in Turkey and abroad. One of the features of the programme was a one-week study visit to the Netherlands, where a group of Turkish practitioners had an opportunity to share experiences and lessons learned with their Dutch counterparts. Since this programme is drawing to a close, the time has come to reflect on its outcomes. At the same time, we believe it is useful to place the programme's progress in the context of the political developments in Turkey in recent years.

The programme mentioned above evolved out of two earlier projects that CESS implemented in Turkey between 2004 and 2009. These previous ventures both aimed at understanding the salient position of the military in politics and society and suggested reforms to align Turkish civil-military relations with EU standards and practices. The third programme in Turkey aimed at enhancing civilian capacity for good governance in the security sector. The programme target group consisted of representatives from Parliament (deputies, but especially staffers and advisors) and the Court of Accounts, civil servants, academics and civil society representatives. The emphasis of our work in Turkey has thus followed political developments over the years, and has gradually moved from the military side of the civil-military equation to the civilian side.

An important feature of the CESS approach is the emphasis on transparency and accountability for all institutions involved. For the government, our maxim is that the executive should reveal, explain and justify: reveal its policies and the underlying reasons, explain them to parliament and to the people at large, and finally justify them in parliament and in open public debate.

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\* Mert Kayhan is Director of the ARI Movement in Turkey and a PhD candidate at Royal Holloway, University of London. Merijn Hartog is Programme Manager at CESS and responsible for the 'Promoting Good Governance in the Security Sector of Turkey' programme.

In civil-military relations, we advocate a balance of trust whereby the military accept the primacy of politics, but politicians in government take professional military advice seriously.

The aim of this book is to analyse the fundamentals of four major strands of good governance in the security sector: parliamentary oversight, financial accountability, the rule of law and civil direction. These themes determined the topics of the seminars, conferences and training courses that we organised during the last three years. Another aim of this book is to scrutinise recent developments in Turkey, using the four themes as a structure. By means of different case studies, all related to good governance in the security sector, four Turkish authors assess the many reforms that have taken place in Turkey in the recent past and the challenges that still lie ahead. We have also asked four authors from the Netherlands to consider the four themes from a Dutch perspective. Besides providing a Western European point of view on security sector governance, the Dutch authors introduce the themes from a theoretical perspective.

Moreover, we have included four policy papers on issues related to good governance in the security sector in this book. These texts were written by participants on our training courses. One of the tasks we assigned to our trainees during the workshops was to compose a paper on a practical policy issue. The purpose of this exercise was to help participants improve their skills in producing and presenting short, concise policy papers. Of the many papers that were delivered during the programme, we have selected the four most interesting and thought-provoking texts.

All of the papers in this book represent the authors' own perspectives and arguments on the above-mentioned complex issues. In view of the authors' diverse backgrounds and interests, some are longer than others, reflecting academic scrutiny and sensitivity; while others are shorter but sharper in nature, reflecting a more policy-oriented, activist approach. In a sense, the variety of the views expressed throughout the programme and the way they have been put forward are accurately represented in the book as well. This is not only desirable, but also unavoidable in a highly politicised context where reform and progress both take time and create discontent, if not at least discomfort.

### **Turbulent Transformations in Turkish Civil-military Relations**

It would be an understatement to declare that Turkey has experienced significant political transformations in recent years. When considering the security sector, the most evident changes irrefutably took place in the relationship between the civilian and military leadership. Prominent developments that signify this changing relationship are the ongoing *Ergenekon* and *Balyoz* cases, in which, respectively, around 300 people are being charged with membership of a clandestine terrorist organisation and in which hundreds

of military officers are under indictment for plotting a military coup in 2003. Both these cases and consequent conspiracy theories and coup allegations have hurt the army's standing. Its status as the most trusted institution in the country seems to have plummeted since 2002.<sup>1</sup>

It should be noted here, however, that Turkish society is deeply divided about the *Ergenekon-Balyoz* trials. As one of the rapporteurs at a conference we organised last year pointed out, one of the main reasons for this directly relates to a prevalent lack of faith in the impartiality of the Turkish justice system. The issue in this respect is not so much that the judiciary *is* not very impartial, but that part of the Turkish population *does not believe* the country possesses an impartial legal system. And without sound foundations of popular trust, the fundamentals of the rule of law will crumble. Another reason for concern is the expanding nature of the *Ergenekon* case in particular. After the arrest of senior military officers at the start of the case in 2007, the arrests became more widespread in the following years. Nowadays, not only is the military under indictment, but also journalists, academics, civil society representatives and government officials. Popular support for the case seems to be declining at the same pace as the indictments are expanding.

Another noticeable development that led to an acute reshuffle of civil-military relations was the collective and voluntary resignation of the military top brass in July 2011, in protest against the many arrests of senior military officers in the aforementioned cases. This seemed to be a last-resort move by an increasingly powerless and desperate military, intended to show the government that they could still shake up the political system by resigning voluntarily. However, Prime Minister Erdoğan's swift response in appointing a new army chief rendered this rash move by the military basically ineffective.

Next to these investigations, trials and resignations, a legislative reform process was instigated ten years ago, which was a significant step in asserting civilian control over the military and which also had a bearing on good governance in the security sector in general. These legislative reforms were first of all aimed at the composition, structure, roles and functions of the National Security Council (*Milli Güvenlik Kurulu*, MGK), which until the early 2000s was perceived as being the platform where the military wielded its power over politics. Since 2003, the MGK has again been a consultative body instead of a policy-making institution, which is basically what it had been after 1982. Furthermore, since 2004, the Secretary General of the MGK has been a civilian, instead of a military officer. One of the authors of this book, however, points out that the reforms were only aimed at the demilitarisation of the MGK, and not at democratising national security policy-making. According to this author, the reforms were nothing more than a transfer of power from the military to the executive authorities. Further to that, the whole policy-making process is still

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<sup>1</sup> Cagaptay 2011.

closed to Parliament, civil society and the public. There is very little debate in the media regarding these issues.

Another significant legislative development, which is generally supported in Turkey and which will also influence civil-military relations, is the ongoing constitution-making process. This new constitution will replace the one from 1982, which both awarded officers with a far-reaching mandate to control the political arena and at the same time restrained the power of civilian leaders. In itself, the drafting of a new constitution is a very positive development, and it will surely increase Turkey's prestige and strengthen its role as an actor in the international arena once it is in place.

On the other hand, the lack of transparency in this regard is a reason for concern. To generate sufficient public confidence and political legitimacy, it would have been better if the authorities had informed Turkish society throughout the drafting process. Following the initial meetings of the Parliamentary Commission that is drafting the constitution, transcripts of the proceedings were indeed released. However, no new transcripts have been published for more than a year now.<sup>2</sup> A lack of transparency by means of regular updates could be fertile ground for speculation in a society that has always been prone to conspiracy theories. In the end, the credibility of the Commission and the constitution it produces would be best served by an open drafting process.

Yet another legislative development that is dealt with in this book is parliamentary financial control of the defence sector in Turkey. Here it is useful to note that legislation is in place for Members of Parliament and the Court of Accounts to be able to assert their right to control defence and military spending. As recent deliberations on the defence budget in the Turkish Grand National Assembly (TGNA) again pointed out, however, they do not make sufficient use of that right. A pressing concern now is to increase the knowledge and expertise on defence and security matters within these institutions, because that is what is largely lacking. Especially among the administrative cadres, that is, staffers and advisors, there is a need for knowledge with regard to defence and security issues.

Further to this, a culture of accountability needs to be encouraged. This means having a government that proactively reports on its policy and spending, rather than only being accountable after the money has been spent. This applies particularly to large investments in infrastructure, communications and military equipment. Pursuing transparency and accountability requires having a critical parliament and civil society that boldly and proactively assert their right to know. Surely this is the most challenging and time-consuming task, one that basically necessitates a change in mentality among government officials.

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<sup>2</sup> Varol 2012.

Reducing the political influence of the army was an unambiguous move towards firm civilian control of the security sector, thereby aligning Turkey with practice in other NATO and EU countries. The Turkish Government seems to have achieved this goal, which deserves praise and encouragement. However, this is not the end of the story, for it does not automatically mean that control of the security sector in Turkey is becoming more democratic. This will require further changes. Our book aims to highlight the transformations that have been initiated in the framework of security sector governance, but at the same time assesses the challenges that lie ahead, without underestimating the fact that, as history has shown us, the success of any kind of political reform process with particular social outcomes is highly dependent upon the extent to which it is supported by the wider population.



## Part A - Parliamentary Oversight

### I. Parliamentary Oversight of Peace Support Operations

*Willem van Eekelen\**

#### **Introduction**

A successful parliamentary democracy depends on the transparency and accountability of the government and effective scrutiny by parliament. In principle, there should be as little difference as possible between defence and security on the one hand and the range of other government departments on the other. All should follow the cherished maxims, enunciated by the Centre for European Security Studies and its scholar David Greenwood, that governments should reveal, explain and justify their policies and actions: reveal them to the voters, explain them in public debate and justify them in parliament. That might cause difficulties in the field of defence, which in the final analysis deals with matters of life and death and where secrecy plays a larger role than in other domains, but even here, maximum transparency on policy is essential to maintain public confidence. Secrecy applies mainly to weapons characteristics and contingency plans. Defence is a matter of the long haul and requires the lasting support of the nation. Moreover, most of the presumed secrets that are relevant to public debate can be found in open sources somewhere in the world. A professional parliamentary staff should have no difficulty in disclosing them in a responsible manner.

Effective democratic oversight depends on the clearly defined authority of the president, prime minister, minister of defence, chief of the general staff and parliament. The law must be clear in times of peace and for emergency powers and transitions to military operations. Parliament should control the budget and play a defined role in deploying the armed forces. In NATO and EU countries, the minister of defence is a civilian, assisted by a ministry of defence which consists of both military and civilian officials and deals with the budget, intelligence, strategic planning, force structure and deployments, arms acquisition and military promotions. All such countries' parliaments possess a standing committee on defence, but how the executive is controlled varies considerably in practice. A common norm should be that the committee meets regularly, has the right to request information and to discuss it with the minister of defence personally, asks oral and written questions, examines the budget

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\* Dr Willem van Eekelen is former Minister of Defence of the Netherlands, former Secretary-General at the WEU and Board Member at CESS.

and the audits, and is entitled to conduct hearings. There are differences, however, in the degree to which parliaments deal with topical policy issues. Their role is widely acknowledged in budgetary matters (although detailed involvement in a line-by-line examination also varies) and legislation, but on policy questions practice varies between control *ex ante* and *ex post*. Some argue that parliament is better off scrutinising policy *ex post*, because of its deterrent effect: the government has to be more careful for fear of being censured, while parliamentary agreement in the preparatory phase would make it a partner of the government and diminish the scope of later criticism.<sup>1</sup>

In Belgium, Denmark, Germany, the Netherlands and Norway, the emphasis is on *ex ante* scrutiny, where parliament has two instruments at its disposal: a constitutional requirement or convention giving it a role in policy decisions relating to deployment abroad, and the power of the purse. In the United Kingdom this is minimal, hence the emphasis on *ex post* evaluation. In France, Italy and Spain, parliamentary involvement is even more minimal, both before a decision is formalised and in the evaluation process. In France, the power of the purse is exercised once every five years by the approval of the *loi du programme* for that period.<sup>2</sup>

An interesting question is whether having better information increases risk aversion among parliamentarians. Usually a large part of parliamentary debate concerns the degree of danger involved in the proposed operation. In a way, this might seem peculiar, because there would be no need for military intervention if there were no danger. The sentiment is understandable, however, particularly for parliamentarians who are no experts but represent their voters. Among European countries, only France, Spain and the United Kingdom have shown an outspoken willingness to take decisions involving clear risks of casualties and these countries apparently have a larger 'risk absorption' capacity. These countries are also rare examples of the executive being able to take deployment decisions single-handedly, subject only to *ex post* accountability.

Security and defence are part of foreign policy and need to be grounded in a strategic concept that defines interests, threats and risks; determines the international position of the country in general and in the alliances it belongs to in particular; and outlines globally the size and composition of the defence establishment. Such a concept needs to be reviewed periodically, because the international environment is subject to fundamental change, especially since the fall of the Berlin wall and the demise of the Soviet Union. Generally, the threat of massive aggression has been replaced not only by terrorism, the proliferation of weapons of mass destruction,

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<sup>1</sup> Houben 2005, 259-264.

<sup>2</sup> See DCAF 2003, which includes this author's Occasional Paper no. 2 of October 2002 on "The national and international parliamentary dimension", and tables on practice in NATO countries. See also DCAF 2008.

and failed states, but also by non-military threats such as organised crime, trafficking in drugs and human beings, and illegal immigration.

The upshot of these developments is an increasing merger of external and internal security, which has to be reflected in the ways governments organise themselves. Civil-military cooperation has become an essential dimension in an overarching concept of security, and also in the conduct of the military in expeditionary operations. In peace support operations (PSOs) we have to deal with the interconnected phases of prevention, conflict resolution if necessary by military means, stabilisation, reconstruction, and security sector reform, culminating in good governance.

This requires close coordination between the ministries of defence and foreign affairs, both in policy making and in the conduct of operations. In PSOs the objective is winning the hearts and minds of the population, difficult as this might be. In Afghanistan we heard much about the '3D' approach – defence, diplomacy and development – perhaps an appealing slogan, but not an adequate description of what our mission was supposed to achieve: not defence, but security, and not only diplomacy, but rather good governance. Therefore it would have been better to aim at an integrated approach combining a full arsenal of instruments.

Over the past twenty years, the role of the military has changed. During the cold war, not a shot was fired between NATO and the Warsaw Pact, and maintaining sufficient defence capabilities was a deterrent of war. Today, the military profession has become dangerous in situations of 'war among the people', with repeated absence from home, and the addition of many non-military skills. In PSOs the role of the soldier abroad might be compared with that of the police at home: he ensures security but acts only when necessary, the difference being that in most PSOs there is a need for protection (and sometimes hard fighting) against insurgents. One of the consequences has been the realisation that without a minimum of security, a development effort has little chance of success. For that reason, the military forces in the International Security Assistance Force (ISAF) in Afghanistan were grouped in Provincial Reconstruction Teams (PRTs), more successful in the north of the country than in the south. It also led to a greater appreciation of the role of the military, which suffered greater casualties than many governments had anticipated.

In terms of security sector reform, the experience in Afghanistan has contributed to a better and more constructive understanding of civil-military relations. The military accept the primacy of politics in deciding what the country would be prepared to do and at what cost. Politicians take military advice seriously in judging what is possible and the required capabilities. Ideally, we see a 'balance of trust' between the military and the politicians, in which the defence and security effort can count on democratic support.

One could argue that after two decades of security sector reform in Eastern Europe, we should prefer the term 'security sector governance', because the emphasis has moved to adaptation to shifting circumstances, and that the principles of reform are widely accepted by now, at least in NATO and EU circles. Indeed, much progress has been made, but parliaments are confronted with new dilemmas. In the first place, participation in PSOs is not automatic, but discretionary and subject to often varying considerations. In collective defence there was little debate, but in a peace support mission, questions relating to its purpose, chance of success, risks of casualties, duration, cost and participation by others, play a great role. In the past, for a parliamentarian, there were few votes in being spokesman for defence, but today, the public takes a much keener interest.

An unintended consequence of this new situation is the great variety of conditions applied to the availability of national contingents, making 'constraint management' a permanent headache for multinational force commanders. In addition we have seen considerable change in the skills and equipment needed for operations in the Balkans, Iraq and Afghanistan. Calls for 'network centric warfare' were overtaken by 'boots on the ground' and helicopters. Then drones and Special Forces were needed for surgical strikes. In the Libyan crisis, the participating states had to rely on US ground surveillance, target acquisition and mid-air refuelling; capabilities which surpassed the ability of a single nation and militated in favour of multinational units.

At a time of shrinking defence budgets, the need for international cooperation is greater than ever. Hardly any country is able to act militarily on its own. Today the emphasis is on smarter defence in NATO and on pooling and sharing in the EU. Both are aiming at doing better with limited funds. Obviously, there are possible synergies to be achieved by combining efforts, particularly in training, logistics and common research and acquisition. But pooling and sharing with whom? Preferably with countries that have the same equipment, share the same defence culture, and are geographically contiguous. Yet, both NATO and the EU need to maintain an overarching framework incorporating the contributions of all allies and partners.

Pooling and sharing and task specialisation imply interdependence, which requires a high probability that, in a crisis, the resources involved will be made available to the partners. That raises the sensitive issue of national sovereignty, so dear to parliaments. They will be reluctant to give up their say in defence and security, which they still regard as one of their main remaining prerogatives in a globalising world. That sentiment went even deeper in the days of conscription, but remains strong when confronted with the prospect of sending one's soldiers into harm's way. Conversely, if countries cannot count on the availability of the shared resources, there is little sense in building them. A clear example was the withdrawal of German personnel from the Airborne Warning and Control System (AWACS) flights during the Libyan crisis. In that

case, other crews were available, but in other cases the common effort might be completely paralysed.

Is there a solution to the 'sovereignty' dilemma? Probably not fully, but an effort should be made to arrive at a sort of pre-delegation arrangement between both governments and their parliaments, that is, a catalogue of the contingencies and scenarios where the units and assets will be made available rapidly and without waiting for parliamentary consent. We have seen many examples of the need for quick action to prevent a crisis from escalating and causing large-scale human suffering. The EU's operation Artemis in the Congo was effective, with 1,700 troops able to intervene rapidly before the UN could muster a peacekeeping force three months later. Similarly, France and the United Kingdom acted quickly, but without much consultation with others, in the Libyan crisis, and prevented the rebellion in the Benghazi area from crumbling.

The problem of sovereignty also plays a role in the debate on interference in the internal affairs of a country that is violating human rights. The debate on humanitarian intervention – or better: intervention for humanitarian purposes – was given a stimulus by the atrocities in Rwanda in 1994 and the ethnic cleansing in Kosovo in 1999. UN Secretary General Kofi Annan, supported by a report from Gareth Evans and Mohamed Sahnoun, pushed the notion of 'Responsibility to Protect' to turn the debate away from intervention and towards the responsibility of the state to protect its own population. Kofi Annan's important report 'In Larger Freedom: Towards Development, Security and Human Rights for All' was the subject of a UN summit in September 2005, where it was not fully endorsed, but where absolute notions of sovereignty were dismantled nevertheless:

[...] we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with the relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>3</sup>

The notion of 'Responsibility to Protect' found its way into several UN Security Council (UNSC) resolutions, most notably during the Libyan crisis in Resolution 1971.

### **The Dutch Framework for Authorising Military Deployment**

The Netherlands has been a frequent contributor to PSOs of all kinds. It was the fifth country to send a battalion (of volunteers) and a ship to the Korean War, and participated in the United Nations Interim Force in Lebanon (UNIFIL), the

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<sup>3</sup> UNGA Resolution 60/1 of 24 October 2005, para.s 138-9.

United Nations Protection Force (UNPROFOR) and Stabilisation Force (SFOR) in Bosnia, the Kosovo Force (KFOR), the Multinational Force in Iraq after the defeat of Saddam Hussein, *Enduring Freedom* and ISAF in Afghanistan, *Ocean Shield* and *Atalanta* off the coast of Somalia, and made many smaller contributions to UN peacekeeping. Parliament was consulted and, until the end of the 20<sup>th</sup> century, supported the government without great difficulty. That became more difficult in 1995, when peacekeeping in Bosnia turned out to be impossible because the parties to the conflict did not want peace and international action had to resort to peace enforcement.

The Netherlands Government formulated a list of conditions for participation in intervention for humanitarian purposes in a note to Parliament<sup>4</sup> after having organised three international seminars on the subject. They included:

- serious and massive violation of human rights;
- reliable and objective proof from different sources of these violations or the threat thereof;
- the government of the state concerned cannot or will not take adequate measures, or is itself responsible for the violations;
- an urgent need to intervene;
- use of force is the ultimate means to redress the situation;
- the primary purpose of the intervention is to stop the violations;
- evidence that the intervention is supported by those it intends to protect;
- the position of neighbouring countries has been taken into account;
- there is a reasonable chance of success at an acceptable cost;
- the intervention is unlikely to lead to even greater problems.

In implementing the intervention, its purpose should be made public at the outset; the use of force should be limited to what is necessary and proportional to the objective; the *ius in bello* should be observed; the consequences to the political system of the country should be limited to the objective; and there should be full reporting to the UNSC.

The Netherlands matched these conditions with a 'review framework' based on Article 100 of the Constitution and containing a non-exhaustive checklist of aspects relating to parliamentary involvement in the national decision on the despatch of forces for a PSO. A letter to Parliament proposing such a deployment should provide an analysis covering the following points, when appropriate:

- an assessment of the political context of the conflict;
- the political attitudes of the parties to the conflict;
- the issues at stake in the conflict and the motives of the parties;

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<sup>4</sup> Minister van Buitenlandse Zaken 2001.

- the character of the conflict (intra- or inter-state) and the risks of spillover;
- (previous) negotiations, international efforts and mediation;
- whether an agreement was in force, and if so, the extent to which it was respected;
- a political risk analysis of the situation and future developments;
- the role of the military operation in the political process; and
- the humanitarian, political and economic situation, including subjects like refugees, reconstruction, rule of law, disarmament, and elections.

A less extensive but basically similar approach was made by the British Prime Minister Tony Blair in 1997:<sup>5</sup>

First, are we sure of our case? ... Second, have we exhausted all diplomatic options? ... Third, are there military operations we can sensibly and prudently undertake? Fourth, are we prepared for the long term? ... And finally, do we have national interests involved?

The European security strategy developed by High Representative Solana in 2003 put the emphasis on effective multilateralism with the Charter of the United Nations as the main framework. This meant that in principle, the use of force in PSOs should take place only with a mandate from the UNSC. No clear answer was given for what should be done if the UNSC were unable to deal with a crisis because of the veto of one or more of its permanent members. That was the situation in Kosovo when Russia opposed a UN resolution, but NATO felt obliged to act to stop ethnic cleansing and a massive exodus of the population.

The Dutch Parliament devoted much time to debating these issues. Due to pressure from Parliament, the Government agreed to an independent inquiry into the *Srebrenica* disaster, in which Dutch peacekeepers had been pushed out by General Mladic and thousands of Bosnians murdered. Its report in 1999 – four years after the event – led to the resignation of the Kok Cabinet, albeit shortly before elections were due to be held. In the Iraq case, an inquiry under a former president of the Supreme Court was held into the Government's attitude regarding its support for the aims of the US-led operation against Saddam Hussein, while refraining from participating militarily. In 2009 (six years after the crisis), the inquiry's critical report led to the resignation of the fourth Balkenende Cabinet, largely because of the (somewhat exaggerated) conclusion that Parliament had not been fully informed, which is a deadly sin in Dutch politics. In any case, nobody could say that the Dutch do not take international affairs seriously. Albeit in an extremely *ex post* manner.

Scepticism in the Netherlands about the policies of President Bush in Iraq and Afghanistan resulted in a delicate relationship between a Government

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<sup>5</sup> O'Hanlon 1997, 5.

wanting to show solidarity in NATO operations and a hesitant Parliament. A second extension of the Uruzgan taskforce became impossible. The loss of 24 military personnel was an element in the debate, but the lack of progress in stabilising the situation was more important, plus the fact that commitments like Afghanistan had to be of limited duration. The effort became difficult to sustain and equipment was wearing out more rapidly than foreseen. The 3D method, although not used exclusively by the Dutch, received praise, as did their conduct in defeating a Taliban offensive in the battle of Chora in Uruzgan in June 2007, making them more battle-hardened than many other units.

### **The Sequence of Deployment to Afghanistan**

Nobody in Europe had expected military involvement in a country as distant and unknown as Afghanistan. Not on 11 September 2001, when Al Qaeda struck the twin towers in New York and the Pentagon in a surprising attack on United States economic power and military might. The international response was largely sympathetic. *Nous sommes tous des Américains*, wrote Le Monde, but Washington did little to capitalise on the wave of support. NATO invoked Article V on common defence against an external threat, and AWACS aircraft participated in surveying American airspace, but the United States gave a cool response to offers of assistance. When the Taliban refused to extradite Osama bin Laden with the excuse of oriental hospitality, the United States mounted a quick campaign, together with the militias of the Afghan Northern Alliance, to defeat the Taliban. They succeeded in three weeks, but failed to capture Osama bin Laden, who escaped from Tora Bora to Pakistan and was killed there only in 2011. The military campaign continued under the codename Operation Enduring Freedom (OEF), but more had to be done to pacify and modernise one of the most backward countries in Central Asia. Over the years, countries from all parts of the world participated actively, except – peculiarly enough – the countries bordering on Afghanistan.

On 16 April 2004, the Dutch Government informed Parliament that the NATO Council had adopted a revised operational plan for the gradual deployment of the ISAF for Afghanistan, which over time would include the OEF. A year later, on 3 June 2005, the Government wrote that it had decided to contribute to the stabilisation of Afghanistan and the fight against international terrorism. It added that NATO intended to deploy ISAF to the six southern provinces of Afghanistan. Two weeks later, the Government wrote that it was examining the possibility of making a contribution in Southern Afghanistan, together with the United Kingdom and Canada and possibly others, subsequent to a request from the Secretary General of NATO.

In conformity with Article 100 of the Constitution, on 22 December 2005, the Government announced that the Netherlands would participate with a task force in Uruzgan for a period of two years, starting in June 2006, together with

an Australian unit. The Netherlands would also participate in Regional Command South in Kandahar, and would command this headquarters between November 2006 and May 2007. On 30 November 2007, Parliament was informed of the decision to continue the participation in ISAF for another two years with new partners: France, Slovakia, the Czech Republic and Singapore. In the meantime, the Dutch share of the taskforce had grown from some 1,000 to 1,900 personnel. The security situation was worse than expected and logistics in a province without tarred roads were a constant headache. Parliamentary anxiety about the safety of personnel sleeping in tents had led to the construction of reinforced containers.

Early in 2010, the coalition Government could not agree on a second extension and collapsed over the issue. On 21 April, a group of parliamentarians from six parties agreed to a motion asking the (caretaking) Government to examine the dispatch of a police training mission. The Ministers of Foreign Affairs and Defence sketched the possibilities for joining one of the various ongoing programmes, but left the decision to the next Government. In an 'Article 100 letter', the new Government announced its decision to send an integrated police training mission of 500 personnel under the 3D formula to the German PRT in Kunduz Province, Germany being the 'lead nation' for the European Union Policy Mission in Afghanistan (EUPOL) in that area. The issue was controversial and led to a parliamentary hearing of some 30 specialists from different countries. A few days later, the leftwing opposition introduced a motion to cancel the mission, but it was defeated in a vote of 100 votes out of a total of 150. The mission was saved, but its supporters continued to quarrel over the duration of the basic training programme, security, human rights and the related issue of literacy. A special demand was that the policemen would not engage in fighting missions. In mid-August 2011, the mission started its training activities.

## **Conclusion**

The experience of the past two decades has shown that in mounting an operation, one should first define the desired outcome and the efforts needed to achieve it. To whom are we opposed and can we deal with the present leaders? Can we show that our outcome is preferable to that of our opponent?<sup>6</sup> And above all, can we forge an integrated approach, combining all instruments at our disposal? This would require much better coordination and cooperation between all international organisations involved than is currently the case. Parliamentarians should focus less on incidents and more on assessing the impact of policies in the longer term. Are we making progress, and if not, why not?

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<sup>6</sup> Smith 2005.

Finally, parliamentarians would do well to participate in international parliamentary assemblies, like the NATO Parliamentary Assembly and the Organisation for Security and Co-operation in Europe (OSCE) Assembly. This would widen their understanding of the issues and the positions of the other participants. Similarly, with the full incorporation of the Western European Union (WEU) into the EU, national parliamentarians involved in defence and security will henceforth meet twice a year, together with a delegation of the European Parliament in the capital of the EU presidency.

## II. The Role of the Turkish Parliament in Sending Troops Abroad

*Mustafa Uluçakar\**

### Introduction

Most countries consider parliament to be the supreme authority responsible for democratic control of the military. In addition, in most democracies, the decision-making process consists of a series of procedures whereby the governing body takes the decision to send military troops abroad only with the approval of parliament. In this context, parliament is responsible for controlling civilian-military relations as a whole and overseeing the decision-making process to authorise military operations abroad, in particular on behalf of its citizens.

Disputes between developed countries are increasingly being resolved through non-military means. When their armies instead step in to solve issues between less developed countries, many challenges in civil-military relations that had been deemed resolved begin to emerge. Such peace support operations reveal that mission formats differ substantially from those in conventional theatres. The military engaged in a less-developed country encounters an environment in which perceptions of democracy and democratic order are different, and where different cultural, social and psychological interactions are dominant. Moreover, the military is required to engage in missions that entail having civil expertise in these environments, even indirectly, such as establishing a functional democratic system and state/national order.

### Theoretical Framework

The Spanish Minister of Defence appointed after the death of General Franco in 1982, who made an important contribution to the democratisation of the Spanish military, said that studies carried out on civil-military relations suffered from a lack of theory. According to Burchill's 2001 study, quoted by Serra, 'theories define not only our style of expression but also our ethical and practical horizons'.<sup>1</sup> It is clear that theoretical works help us to understand the rationale underlying facts and evaluate the results obtained in academic studies, particularly in the field of political science. Furthermore, theories do not only explain and/or predict, but they also indicate types of possibilities for solutions and for further development. Thus, it is thought to be beneficial to construct a

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\* Col. (ret.) Mustafa Uluçakar is a PhD Candidate at the Hacettepe University in Turkey.

<sup>1</sup> Burchill 2001, 2.

theoretical framework to assist us both with understanding this topic of study and to think about the different possible solutions.

Serra has observed that 'the academic circles in the United States started to discuss seriously the area of civil-military relations thanks to a clash between Clinton and the military in the 1990s'.<sup>2</sup> In relation to this observation, Serra stated 'I doubt Huntington would rewrite today what he had written as a foreword of his work *The Soldier and the State*.' With regard to military missions abroad, it is evident that the theoretical debates carried out in the United States in the 1990s had an eventual impact on practice in this area. Thus, to make the responsibility and powers of parliaments in relation to these tasks more comprehensible, it will be beneficial to review the theoretical debates that took place between the governing body and the US military leadership in the 1990s.

These debates were constituted with a view to differentiating the engagement levels, as well as the institutional features of the military changing over time. One of the most important issues revealed in these debates is that there can be solidarity between the military and parts of the legislature to resist other deputies and the government, which may be opposed to their plans, due to the nature of the military industrial complex. In this, the military can be identified as a collective pressure group.

Dauber thinks that 'the doctrine suggesting gradual force usage as in Vietnam is now being converted into the short-term use of force that can be concluded with less casualty in the 1990s, namely into a doctrine where technical standards are the dominant factor'.<sup>3</sup> According to Dauber, 'during the planning and decision-making of a military operation, this approach rendering the technical standards dominant allow the military to preside over the debates by exerting a monopoly of expertise on these issues'.<sup>4</sup>

This type of operation raises questions relating to how the lack of civil expertise among the military might be tackled in order to control and supervise the elements<sup>5</sup> considered integral parts of the decision-making process of the civil authority relating to national security. Hence, Serra states that 'my increasing awareness about the political realities in different countries has allowed me to see the ignorance of the civil body that is responsible for reformation in those countries on military issues'.<sup>6</sup> Feaver points out that military personnel may take their place in some part of the decision-making process by proxy and by making proposals to assess and eliminate the threat; however, the

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<sup>2</sup> Serra 2011, 9.

<sup>3</sup> Dauber 1998, 438.

<sup>4</sup> Ibid., 438.

<sup>5</sup> The National Security Decision-Making Process contains various phases such as defence and force planning, hardware modernisation, planning, budgeting and implementation systems, defence procurement, military doctrines, intelligence collection, assessment, and psychological warfare.

<sup>6</sup> Serra 2011, 7.

final decision must remain with the civilian authority.<sup>7</sup> Nevertheless, Feaver's 'way-out' proposal is not capable of adequately explaining how parliaments and governments that lack expertise on many technical issues can provide oversight on a military that constantly develops new methods counteracting such processes.

Another area put forth at the engagement level is the military operational method whereby the military conducts missions similar to police operations. Janowitz identified this practice in the 1960s. According to Janowitz, 'when a consistent international relationship form is sought rather than victory and when the military is forced to employ a minimum use of power and consistent defensive stances, then the military institution is converted into a police organization'.<sup>8</sup> The experiences with Afghanistan and Iraq have shown that United States troops are obliged to perform tasks in accordance with Janowitz's 'police organization' method.

Avant's findings agree with those of Serra, suggesting that support from parts of the legislature gave the military a reason to reject the governing body's decision in the 1990s.<sup>9</sup> Based upon this finding, Avant considers that a civil consensus 'between the governing body and the legislature' will be the most effective tool in solving the problem.

### **Common Practices Regarding the Oversight Function of Parliaments**

Although parliamentary functions for controlling the armed forces in a democratic manner and to provide oversight of relevant foreign missions can vary from country to country, generally, the approval, recommendation and warning functions are the same.

It is necessary for parliaments to establish a method for fulfilling the functions relating to oversight and supervision. This entails setting up special commissions and committees. Through these commissions and committees, it is anticipated that parliaments will have the power to monitor the whole national security policy and defence planning process. These committees and commissions work in areas such as foreign affairs, planning and budget, industry, commerce, science and technology, defence industry support/governance, and so forth.

In the control system chain, the governing body and the judiciary also play important roles in addition to and/or apart from that of parliament. In many democratic systems, the head of state or president is also the chief commander of the armed forces. These roles and functions are perceived and constituted by different methods (symbolic, solid, less/more active forms). The positioning of

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<sup>7</sup> Feaver 1992, 149.

<sup>8</sup> Janowitz 1971, 418.

<sup>9</sup> Avant 1997, 90.

national security councils within the governing body in some countries, as well as the related mandates and responsibilities, vary widely.

The principal duties of parliaments related to sending troops abroad are to approve the troop deployment prior to or after the deployment; in other words, to approve the decision of the political authority regarding the use of force. During this process, parliament is expected to take into account the operational details of a decision, such as the framework of the mission, unit composition, amounts of personnel armaments and equipment, the terms of reference, rules of engagement, and so forth.

Using different implementations methods that vary from country to country, parliaments can do the following:

- Approve the budget for the mission.
- Demand additional information channels to assuage concerns regarding the decision of the political authority to send troops abroad.
- Demand that governing body inform parliament by utilising the intelligence services, other national institutions and/or international organisations, institutions and partners.
- Use, for information purposes, methods such as questioning, censure, urgent sessions, statements, official investigations and visiting troops abroad.
- In the case of opposition to a decision by the governing body, a vote of no confidence may take place.

The decision process related to the deployment of troops abroad can proceed as relatively closed sessions and in a technical format where military and civilian expertises are utilised jointly. Nonetheless, in terms of the democratic requirement to be accountable to citizens, the system must be sufficient to be able to monitor and provide oversight for these processes in almost every aspect.

A number of considerations may be mentioned in terms of the delicacy and importance of the political decision-making process regarding troop deployment abroad. First and foremost: the deployment of troops to another state's area of sovereignty, for whatever reason, does not only substantially affect the relations with that country alone, but usually also those with other countries in the region. Second, military missions to be conducted abroad require the use of significant resources. These missions do not only constitute a heavy financial burden in terms of resources such as armaments, vehicles, equipment, munitions, allowances, maintenance, supply and depreciation costs, but they also require the deployment of a significant number of human resources to a region where major risks are involved. In other words, sending troops abroad is something that should go beyond the process of strategic level decision-making and execution conducted only within the institutional structure of the state. And third, the decision to send troops abroad has a significant

effect on individual citizens. These decisions are closely associated with social perceptions, established ethical values and cultural settings.

In parallel with these considerations, devising the decision-making processes related to sending troops abroad in a manner to be monitored on behalf of citizens by organs such as non-governmental organisations (NGOs), non-political organisations (NPOs), media bodies and universities monitoring these processes, gains more importance. When taking a decision to send troops abroad, especially with regard to international relations and financial aspects, the elementary factors differ from country to country. For example, in some countries, constitutional, legal, ethical, traditional and cultural aspects may be more prevalent.

Furthermore, the military may show institutionalised reflexes to influence the planning and execution stages of mission types that involve serious risks for the troops. The new and different political design emerging with the change in the operational area for troops also affects the in-house aspect of civil-military relations as a whole. In this respect, whether or not the engagements of the military stay within the traditional cultural framework, forming the perception of the citizens of the states to which the military is assigned and within the assent criteria composed within this framework, emerges as a new area of discussion.

More specifically, the differentiation of the identity of the superior command in this framework can also be judged either in terms of international relations or in terms of country-specific values. Besides, the requirements, nature, costs and implementation methods of peace support missions and the international problems arising as a result of this implementation may create an environment where the institutional trust felt both for the state and for the military may be questioned.

In relation to decisions on deploying troops abroad, parliaments need to consider the conditions in which the troops will be deployed and the extent to which these will be acceptable to the public. Parliaments are also expected to use their power to expressly discuss the details of the decision, such as the following:

- Is the mission compliant with the constitution and the international and national legal framework?
- To what extent is the permission of the host country influential? What is the allocated budget and how will the budget be spent?
- Are the operational details of the deployment clear and unequivocal and which of parliament's approval criteria were decisive?
- How will the review of the military operations be made?

It is a common expectation that a parliament will discuss the decision and the policies of the governing body related to the deployment of troops openly and in

detail, question the executive and the members of the military under oath (if necessary) and investigate suspicious cases.

Furthermore, it is necessary to have answers to the following questions in order to understand the differences in the oversight and supervision functions related to the missions to be conducted abroad, in terms of responsibility and authorisation levels:

- Are there possibilities for communication between members of parliament and the relevant bodies conducting the operation?
- Are there means allocated to parliamentary committees for visiting troops abroad, and for sharing the observations and information obtained during such visits with the parliamentarians and the public?
- Is parliament granted direct oversight power of the peace support mission before and after sending the troops abroad, without endangering the safety of the operation?
- Since the process in parliament will take a long time, are there conditions where the oversight power of parliament is suspended and/or exceptions are applied?

In relation to the possible duties and responsibilities regarding military deployment abroad, there are particular areas where parliaments may contradict the powers of the relevant governing body responsible for implementing the operation. Issues such as confidentiality, operational security, international procedures and methods, as well as national norms and cultural settings that differ from country to country, affect these discussions. To this extent, the question of whether the multinational chain of command of deployed armed forces allows oversight is emerging as the main issue for discussion. Another debated issue is whether the mandate of parliament is applicable to the intelligence support of the operation to be conducted.

### **Legal Framework and Current Practices of the Turkish Grand National Assembly Relating to Military Deployment Abroad**

In the past, several Turkish governments have applied to the Turkish Grand National Assembly (TGNA) for military deployment abroad; this has happened more than 30 times since 1950. All the applications were accepted, except one.<sup>10</sup> However, the decision by the Democrat Party for military deployment in Korea in 1950 was taken without the consent of the TGNA. After this, the decision process related to military deployment abroad was arranged as a

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<sup>10</sup> It was requested by the Council of Ministers in 2003. The Government applied to Parliament for permission to send troops to Northern Iraq and the use of Turkish airspace by air units belonging to foreign armed forces in accordance with the principles and rules to be determined by the Turkish authorities for a likely military operation. Permission for a period of six months was granted.

separate article in the Constitution of 1961. Since then, the provision specifying that the mandate for permission would remain with the TGNA has been converted into a constitutional provision. This arrangement was maintained in the Constitution of 1982, but a second paragraph was added to the article, bestowing the President with a mandate to use the armed forces in cases of imminent emergency.

The provision related to the military deployment of the Turkish Armed Forces (*Türk Silahlı Kuvvetleri*, TSK) is stated in Article 92 paragraph F of the section related to legislation of the chapter concerning the basic organs of the Republic of the Constitution of 1982.<sup>11</sup> The format of this arrangement in the Constitution reflected to TGNA's Rules of Procedure as Article 130 entitled 'Sending or Acceptance of Use of Armed Forces' specified in the section entitled 'Declaration of War and Decisions Concerning the Armed Forces'.

Furthermore, according to Article 117 of the Constitution, the Council of Ministers is responsible to Parliament for the protection of National Security and for preparing the Armed Forces for national defence.<sup>12</sup> Moreover, the assignment of this power to the TGNA is clearly stated in Article 16 of the 'Law for Mobilisation and State of War', dated 1983 and numbered 2941. It is also pointed out that the expression 'for a certain period' in Article 130 of the TGNA's Rules of Procedure implies that the power of decision for determining the period is given to the TGNA. The decision power related to other issues, especially to the use of force (where, how much, how, and so forth), is left to the discretion of the Council of Ministers.<sup>13</sup>

The results of the examination carried out by the Constitutional Court, in response to an appeal by the Social Democratic People's Party, in relation to TGNA decisions no. 107 and 108,<sup>14</sup> show that when the TGNA gives the Council of Ministers permission to use military force, this is not construed as an absolute takeover of power, and the TGNA's right to monitor the developments resulting from this decision continues to be valid. It is explicitly understood that the TGNA can change or revoke this permission whenever necessary. However, according to Özbudun, 'since the decision for sending armed forces abroad are political due to its nature and based upon preference and discretion, this should

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<sup>11</sup> The mandate to permit the declaration of war in cases of emergency was accepted as legitimate under international law, and military deployment of the Turkish Armed Forces abroad or deployment of foreign armed forces in Turkey, with the exception of conditions required by international treaties or international protocols, remains with the TGNA. In case the country is under attack when the TGNA is on vacation or during the interim period, and when an immediate decision must be made, the President may decide to deploy the Turkish Armed Forces.

<sup>12</sup> Bakırcı 2000, 473.

<sup>13</sup> Kanadoğlu 2003, 416.

<sup>14</sup> In 1990, as a result of Iraq's invasion of Kuwait, TGNA decisions 107 and 108 permitted the Government to take measures to protect Turkish interests.

also be discussed, as such decisions are excluded from judicial review by the Constitutional Court'.<sup>15</sup>

The debates on the powers of the Government and the Parliament seemed to be drawing to a close with the Constitutional arrangement in 1961. However, the expression 'the conditions accepted under international law as legitimate required to be taken into consideration by TGNA while giving permission to the Council of Ministers for sending and deployment of troops' still requires debate. Particularly during the discussions surrounding the memorandum of 1 March 2003, issues of 'how the legitimate conditions were to be determined' and 'what these conditions were' led to a number of questions. The issue of 'who would decide the conditions' not mentioned explicitly in Article 92 of the Constitution lay right at the heart of the debate. Furthermore, remarks were also made indicating that 'the conditions for conformity to international law' did not apply with regard to Article 92, and that the TGNA's decision would be adequate. Another, related issue that has caused a debate is that no separation is made between the 'decision to declare war' and 'decision to undertake military deployment abroad and deploy foreign troops in the country'. These and similar debates will continue to occupy the agenda when a UN Security Council Decision cannot be taken and/or is delayed. Thus, the expectation is that these issues will be mentioned in the new Constitution.<sup>16</sup>

In fact, the Constitution and the TGNA's Rules of Procedure do not focus in exclusive detail on sending troops abroad. However, this does not mean that the use of the TSK for operations abroad is not open to parliamentary oversight. Parliament can request information from the Government about the military and technical details of the decision and can basically use the parliamentary committees to decide on the details related to the military operation to be carried out abroad. For example, in the decision of Parliament dated 2006, regarding sending troops to Lebanon, it is stated that 'the arrangements related to the military and technical aspects of our contribution shall be made by the relevant institutions in the framework of the duty and powers to be given by the Government'. The same decision reads, 'the limit, scope and number of the military troops shall be specified by the Government'. However as indicated previously, we have seen that the Government provided sufficient information to get the approval by means of either committee meetings or parliamentary sessions. Additionally, the minutes of the assembly and the debates monitored through public platforms show that the approval processes related to sending troops abroad are discussed in detail. The approval phases of the decisions related to sending troops to Korea, extending the mission Hammer Force, the Cyprus operation of 1974, cross-border operations to Northern Iraq, the bill dated 1 March 2003 and the approval

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<sup>15</sup> Özbudun 2003, 218.

<sup>16</sup> Erhan 2011.

stages of the decisions concerning Libya and Syria are explicit examples of such types of discussion.

The issue of auditing the TSK by the Court of Accounts was discussed extensively until recently, and was finalised with the last constitutional change and the Court of Accounts Law no. 6085. All the constitutional/legal exceptions and exemptions related to auditing the TSK by the Court of Accounts were thus eliminated. Therefore, auditing of the TSK's financial matters can be carried out via the Court of Accounts.

Since timing is very important in defence issues, in some country models, parliament gets involved in the process later on. In practice, in Turkey, we have seen that approval processes are run prior to the said mission, though there is no arrangement similar to Article 100 of the Constitution of Netherlands.<sup>17</sup>

Turkish parliamentary committees are free to visit the assigned troops abroad and to inform the public of their observations during these visits, unless the security of the military operation concerned and of the parliamentary committee are at risk. Moreover, Parliament has the mandate to use its direct oversight power vis-à-vis the troops through institutions such as the Court of Accounts.

The application of parliamentary oversight abroad is at the discretion of the authorities conducting the operation. Thus parliamentary oversight is applicable to situations that do not endanger operational security and must have the permission of the commanding authorities. There is no visible obstruction to communication between Members of Parliament and the governmental organs conducting the peace support operation.

### **Assessment**

In the eyes of the public, Parliament is the most important tool for legitimising a governmental decision to deploy troops. Thus, it is important to open parliamentary processes up to the public during the debates on the issue. However, national security is regarded as very important in Turkey. In this view, state security and national defence planning are the most important issues within the Turkish society. When these sacred attributes are combined with a lack of expertise on defence planning, the whole defence field and the technical nature of the foreign missions to be conducted remain classified for non-military personnel.

Despite all these arrangements, it is difficult to claim that Parliament is adequately exercising its responsibilities relating to missions abroad. It is commonly believed that Parliament is not active enough in performing its

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<sup>17</sup> The Dutch Parliament has the right to request all information from the Government at the start of the process and the Government must cooperate with Parliament throughout the process.

oversight duty to supervise the activities of the Government on the question of defence. Furthermore, there is still a common prejudice that neither Parliament, nor the governing bodies, nor the Judiciary, is authorised to supervise the soldiers.

Akyeşilmen examined Parliament's power to exert its democratic powers to oversee the military and wrote an article published in an almanac entitled *The Security Sector and Democratic Oversight 2006-2008*, which was published by the Turkish Economic and Social Studies Foundation (TESEV).<sup>18</sup> In her work, Akyeşilmen quoted statements by Government and opposition party members regarding the defence budget in the parliamentary minutes. According to Akyeşilmen, Vecdi Gönül, the former Minister of Defence, stated in a speech made on 11 December 2007 that 'we are happy to see everybody putting special emphasis on the defence budget and we all know that because of Turkey's geopolitical location the TSK should be armed sufficiently enough so it has the ability to deter all risks and challenges'. Mustafa Özyürek, former member of one of the opposition parties, 'thanked the ruling party for their special emphasis on the defence budget' and stressed the 'importance of the Turkish Armed Forces'.<sup>19</sup>

Akyeşilmen contends that Members of Parliament and Government officials, including the Minister of Defence, cannot perform their duties and functions in full in the oversight process 'due to a lack of transparency and non-existence of expert civilians on the subjects concerning defence planning'. So, according to Akyeşilmen, 'this renders the monitoring of this process by citizens nearly impossible when even the Members of the Parliament have no clue what the content of the discussion is about'.<sup>20</sup>

## Conclusion

In Narlı's view, 'behaviour and institutional variables influence each other considerably'. According to Narlı, the institutional changes and arrangements in Turkish civil-military relations that are emerging due to compliance requirements with the EU are changing the point of view of both citizens and the military. Narlı claims that the keyword in this change is 'transparency'. Again, according to Narlı, through the guidance of the International Monetary Fund and the EU, as well as socialisation processes, the civil-military area has only become partially transparent, and the level of transparency achieved at this stage is not adequate.<sup>21</sup>

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<sup>18</sup> Akyeşilmen 2008.

<sup>19</sup> Akyeşilmen 2008, 16.

<sup>20</sup> Ibid., 16.

<sup>21</sup> Faltas and Jansen quoting Narlı 2006, 18.

Pondering the reasons for this, Narlı concludes that the perceptive relations between citizens and soldiers are not affected by such changes.<sup>22</sup> In Narlı's words, 'what keeps Turkish civil-military relations under EU standards is a lack of knowledge of the civilian authority regarding defence and the traditional understanding labelling the soldiers as the sole authority on these issues'.<sup>23</sup>

Various examples, including Turkish ones, indicate that the power of transparent constitutional, legal, structural and institutional arrangements is indisputable in making the civil-military relationship more democratic. However, on the other hand, the power and influence of creating a collective political culture pattern that can absorb democracy is at least equally, and maybe even more, important.

Moreover, civil consensus between the governing body and the legislative body, which was considered by Avant to be the most effective tool to solve the problem, has seemingly been attained in Turkey. However, considering the debates over democracy, it is observed that some opposition members and some citizens, the numbers of which should not be underestimated, have serious doubts about both the democratic legitimacy and the extent of the facility granted to Parliament.

Linz has stated that 'democratic legitimacy is dependent on the belief that no other regime can achieve better for collective purposes, at any point of time in a specific country'.<sup>24</sup> Either opposition members or citizens themselves can legitimise government policies to the extent that they are in compliance with their perceptions of democracy. According to Linz, 'the soldiers are also ready to adopt the changes brought by such authority including the basic principles considered unchangeable when they see the political authority as a legitimate institution in the democratic sense.'

The research entitled 'Democracy and Perception in Turkey' conducted by the public survey company MetroPOLL in 2011, about democracy and perception in Turkey, indicates that concerns regarding democracy are shared by the opposition as well as by the majority of citizens.<sup>25</sup> In this respect, an additional set of changes is required for citizens to accept that the political regime is democratic and that Parliament's discretion with regard to the Government and the military is effective. It will be very important to achieve

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<sup>22</sup> Narlı 2004, 174.

<sup>23</sup> Narlı 2004, 184.

<sup>24</sup> Linz and Stepan 1978, 18.

<sup>25</sup> The question, 'what is your perception of democracy in Turkey?' was asked in the survey, with a rating between 10 and 0. Rating 10 is for full democracy and 0 resembles an authoritarian regime (in other words, where democracy does not exist). The average rating was 5. Based on the results obtained, the survey company determined that citizens in Turkey perceive the political regime in Turkey to be a 'perfect cross' between an authoritarian and a democratic regime, and different democratic indexes support these findings.

these changes with a civilised approach that goes beyond the civil control framework.

## Part B - Financial Accountability

### III. The Parliamentary Budget Process in the Netherlands: Focus on Defence

*Simon van Driel\**

#### **Parliamentary Democracy and its Consequences**

The Netherlands became a kingdom in 1815.<sup>1</sup> This followed 19 years of French rule and over two centuries of being a decentralised republic, the Republic of the United Netherlands. The Republic consisted of seven more or less self-ruling provinces kept together by a *stadtholder*. Holland was the most important province.

In 1815, the Netherlands decided to become a kingdom ruled by a King (the son of the last *stadtholder*), a Parliament consisting of two Chambers, and a Constitution. But, as was usual at the beginning of the 19<sup>th</sup> Century in Continental Europe, the King made the decisions. The Chambers were more advisors than decision-makers, and sometimes not even that.

This situation lasted for more than 30 years. In 1848 there were uprisings all over Europe. The Dutch King, fearing for his position, agreed on a fundamental change to the Constitution. A central point was the introduction of political ministerial responsibility, implying that ministers would be responsible for the policies and budgets of their departments. That also implied that Parliament could carry a motion of disapproval over ministerial policy. The complication was that, with the King's approval, the Minister could ignore the motion. The Minister was appointed by the King, and the rule was that as long as he had the King's trust, he (in those days, a woman could not be appointed as Minister) could stay.

Then, in 1868, Parliament rejected the budget of the Ministry of Foreign Affairs. The Cabinet resigned, but the King did not permit this, and he dismissed the Second Chamber (the House of Representatives). Elections were held and an almost identical Chamber returned, something that was seen as a defeat for the King. The new Chamber rejected the budget again and the Cabinet stepped down. The King considered again holding new elections, but even his supporters in Parliament disagreed with this course. So the resignation was final, and the parliamentary system in the Netherlands was born. That was the start of the democratic system we have today: the Minister, not the King, is

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\* Simon van Driel is a former Senator in the Netherlands and former Rapporteur of the Committee on Economics and Security at the NATO Parliamentary Assembly.

<sup>1</sup> In 1813 the Netherlands regained its freedom, in 1814 reunification with the Southern Netherlands was decided and in 1815 the Kingdom came into being.

responsible. The Minister can only function with the support of the majority in Parliament. If the Cabinet clashes with Parliament, Parliament can be dismissed only *once*. The people can decide in a general election whether they support the Cabinet or the parliamentary majority, and in the latter case, they can choose a new majority. This is how the parliamentary system works in the Netherlands.

To function properly, the Cabinet needs to be supported by the majority of the Parliament. If the Cabinet loses that majority, the only thing it can do is to send Parliament home and organise new elections. This is particularly important in a parliamentary democracy such as the Netherlands. For the last 150 years, we have had coalitions in which the biggest party has never had more than 30 per cent of the votes. The coalitions consist of two, three, or sometimes four parties, and it is very important that such a coalition has the support of the people.

What we can learn from our past is that a parliament does not gain power 'out of the blue'. My thesis is that a parliament wins its authority. In history, there comes a time when a parliament makes a stand and refuses to follow a totalitarian government, a military regime or the king who rules the country. It makes a stand by rejecting a budget or by refusing to pass a law, or similar. There is a moment of historical proportions when parliament shows who represents the people of that country and who is really in charge.

### **The Defence Budget Cycle**

Everywhere in the world, perhaps with exception of the Far East, this is a time of budget cuts; also, or maybe especially, in defence budgets. This makes taking a look at the defence budget cycle even more relevant.

In the Netherlands, the process starts in its own particular way. Elections are held every four years (that is, if a coalition holds; otherwise, there can be an election after the coalition government has stepped down). After the results are finalised, the process to form a government starts. With no party winning over 30 per cent of the votes, it takes at least two parties to form a coalition. For all kinds of reasons (mistrust, the need to inform the people what will happen), the parties forming a Cabinet write a programme for the coming years. In this programme, every party tries to include as many of its own political ideas as possible. After long negotiations, a common programme is agreed upon, and, even more important, a financial framework with the budget spending and budget cuts that will prevail during the coming four years. The Netherlands Bureau for Economic Policy Analysis (CPB), an independent institute that straddles public policy and academic economics, supports the negotiations. This bureau makes calculations and projects what the programme will mean for the budget, people's incomes, and the growth of the national

income. It calculates the national accounts and the spending limits for the coming years.

The common programme gives direction to the members of the Cabinet, including the Minister of Defence. The parties that form the coalition are consulted, and later agree on the Ministry of Defence's policies for the coming years. The budget process then commences with the budget framework. Of course, during those four years, changes can occur: for instance, extra cuts during a recession or extra spending when the ministry is given additional tasks. We should note out here that until some years ago, the three branches of the Army in the Ministry of Defence – the Land force, the Air force and the Navy – had their own deputy Minister, second in command to the Minister. Allocation of the budget was more difficult than nowadays, as there was much competition among the three branches, and shifting a budget from the Navy to the Air force caused a lot of unrest and envy. Seven cabinets ago, the coalition decided to appoint just one deputy Minister for the three branches of the Army.

The starting point is thus the financial framework and the coalition agreement. Within this framework, the Netherlands' current international obligations and missions take priority. These are obligations with running costs and are the first to be taken into account when deciding on the financial framework. From then on, it is relatively easy. The coalition programme determines policy and there is a framework for the budget for the coming four years. The coalition programme identifies priorities and cuts. This means that policy-making is relatively straightforward in the first two years. However, the longer the Government rules, the less important the priorities become. There are always new international developments and there are always new weapons on the market, which are cheaper, more useful and of better quality. And it is possible that new budget cuts become necessary.

For the first two years, the Minister of Defence presents the budget with its priorities to the Council of Ministers. There is usually little comment, because, after all, this is what was agreed upon in the coalition programme. The coalition has a majority in Parliament and budgets generally tend to be passed and approved with only minor changes at most. After some years, however, as mentioned earlier, there may be extra demands or budget cuts may become necessary, and then the real political process starts again. Usually this is prompted by forced budget cuts that make new choices necessary or new ideas about how to spend money for Defence.

In this context, the Advisory Council of International Affairs (AIV) plays an important role. This council advises the Government and the Parliament about international affairs. Its advice is usually taken very seriously and it is very influential. If the AIV recommends that extra budget should be allocated to a certain area, this advice is usually followed, and within the financial framework the Government will start looking for extra funds. If the economy is healthy, there might be some extra money available and the general budget rule can be

ignored. This main budget rule indicates that every Minister has to compensate for extra spending within his or her own budget. The allocation of extra money is therefore an exception that can, for example, occur if a very important international mission has to be accomplished. Most of the time, however, the financial framework requires budget cuts elsewhere in the defence budget. When there are exceptions, all the parties of the ruling coalition should agree to them. Given that all Government ministers have their own priorities, if there is extra money available, it is a fierce battle to get some.

Alongside the advice given by the AIV, the Ministry of Foreign Affairs also has priorities with respect to the international situation, obligations and missions. In addition, the military staff exercises its advisory role on spending money on personnel and hardware, and the staff naturally advise the best material money can buy.

In this situation, the Minister of Defence goes to Parliament with his budget and with the proposals that have been agreed on in the coalition programme (which in practice means for the first two years or so). After that, or maybe sooner, depending on international developments, he will bring forward new proposals due to international developments; for example, tackling piracy off the coast of Somalia may require new spending and new cuts. The Minister of Defence needs to come to an agreement with the Minister of Foreign Affairs in bilateral deliberations, and then the Minister of Finance should determine that the new costs are within the limits that were agreed upon. The Minister of Defence takes his proposals to the Cabinet, where he is supported by the Prime Minister (otherwise, these proposals would not be on the Cabinet's agenda). With this support and thanks to the deliberations, the proposals will pass the Cabinet easily and find their way to the Council of State.

In the Netherlands, the Council of State advises on every law. It looks at the internal consistency of the law and its technical aspects. The question of whether a law is in line with the Constitution and other laws, international treaties and obligations is also an important part of its advice. As the situation outlined in the paragraphs above concerns a budget law, the Council of State will only propose some general considerations. With these considerations, the budget is sent to Parliament, and then a public debate starts.

First, the Defence Committee of the Second Chamber of Parliament discusses the budget. In the weeks beforehand, various experts and authorities express their opinions on television and in the newspapers, trying to influence the debate. In the Defence Committee, spokesmen from the different parties raise questions. The first round is for written questions, often followed by a second round. After the Minister of Defence has answered those questions, there is a debate in Parliament. Various other aspects of the budget are addressed, such as the role played by women in the Army, and where certain items are bought and whether Dutch industry is involved. It is interesting to note that in the Dutch Parliament, like in most parliaments, not only do military

aspects or aspects concerning the international security situation come up for discussion, but also policies on industry, gender and various other national issues.

After the budget has been adopted by the Second Chamber, it finds its way to the First Chamber (the Senate). General issues tend to be debated there: the Dutch position in NATO, or the Dutch missions in the Balkans, in Afghanistan or off the coast of Somalia. The Senate can only pass or reject the budget, and rejection is very rare. After these discussions and after passing the budget in the Senate, the Minister of Defence signs the budget, stating his responsibility for it, and then the Queen, as Head of State, also places her signature on it.

### **The Limited Role of the Military**

Does the military play any role in this process? Strictly speaking, it does not, but there are different ways in which the military tries to influence the budget. In practice, then, the military does have some leverage. During the last 60 years, the most outspoken way of influencing the process took place in 1974, when severe budget cuts were announced to the government programme of that time. That year, fighter jets flew at a very low altitude over the parliamentary buildings. The generals responsible for this action were sacked the same week, and this was the last time the military tried to exercise its influence so directly.

Of course, the military tries to exert 'softer' forms of pressure. First, by trying to persuade allies and the arms industry to emphasise the necessity of having a sufficient defence budget. All the arguments one could imagine are used: patriotism, international obligations, defence actions, defence of international trade, economic reasons, and so forth. Most of the arguments refer to the Dutch tradition of trade and interest in global peace for ethical and economic reasons. Second, there are always officers who try to influence the public debate, at conferences and seminars, on television, and in newspapers. They are entitled to do so, having the same rights as every other citizen. Then, of course, during the budgetary process, they try to influence parliamentarians and all others who are involved in the discussion. In practice, their options are limited and their success rate is not very high. Looking at the defence budget since the fall of the Berlin Wall in 1989, the scale of the budget cuts in this period indicates that the military only has limited leverage.

### **The Court of Audit**

Ever since the 16<sup>th</sup> Century, the Netherlands Court of Audit has acted as an independent High Council of State. It is a central government body, created to ensure that the democratic system works properly. The Court investigates

whether central Government revenue and expenditure are received and spent correctly and whether central Government policy is implemented as intended.

The Court is independent, which means that it can decide what to audit. It sees the Cabinet and the Parliament as its customers. Both can request that projects, budgets and so forth are audited. The Court sees it as its job to provide Parliament with useful and relevant information, so that it can indicate whether a minister's policy is effective. The Court does not express political opinions; rather, it expresses an opinion on Government policy that has already been adopted. Thus it will never state that a particular law is wrong, but it can say that a law is not working as intended. In this way, the Court of Audit is an influential institute.

### **The JSF case**

The Joint Strike Fighter (JSF) programme is a good example of how the budget process works in practice. The JSF programme started in the 1990s with the objective of developing and building an affordable stealth plane for the US and its allies. The plane had to replace the F16 or comparable planes such as the F111, the Harrier (B variant), and the F18. Some of these aeroplanes were built in the 1960s or 1970s.

On the one hand, there should be large-scale production; figures of 2,000-2,500 aeroplanes were cited on the grounds of keeping the programme affordable. On the other hand, it was necessary to take into account the specific and sometimes different demands of the United States Air Force, the United States Navy and Marine Corps, and the British Royal Navy. Later on, other potential buyers brought their own specific demands. The JSF positioned itself as a fifth-generation aeroplane intended for a high spectrum of violence. To keep the plane affordable and to save money, three different types were integrated in one plane.

The costs for development were estimated at 24 billion dollars in 2001. The costs were covered by the United States and partner countries: at level 1, the country paid 10 per cent; at level 2, 5 per cent; and at level 3, at least 1 per cent. It was also possible to be a Security Cooperation Participant, with just an observer role. Several years ago, in 2006, it was stated that the costs of development had already doubled and there was no certainty that they would not increase again. Now it is certain that the costs will continue to rise, particularly due to software problems. Nobody knows how much the extra costs will amount to.

The JSF reflects the way defence budgets are discussed. First we have to consider the international obligations. The Netherlands cooperates closely with NATO allies, especially the United States, the United Kingdom and Belgium, and sometimes Scandinavian countries on marine affairs. Given that the Netherlands wants to cooperate with the United States, it makes sense to

use the same plane as the Americans. Communication is easier, so considered from the angle of international cooperation and NATO membership, an American aeroplane is a logical choice. The AIV also came to this conclusion. It furthermore established that compared with its competitors, the JSF is sophisticated and designed for the future. The Air Force is lobbying vigorously for the project on television, in newspapers, and so forth. It sees the JSF as the best aeroplane for the future and for the tasks that lie ahead.

When considering national politics, a discussion has arisen about fundamental questions: what kind of army do we really want? What kind of war do we foresee, if any? What kind of conflicts might we become involved in in the next 20 to 40 years? Looking back, since the end of the Cold War, the Netherlands has played a role in peacekeeping and peace-enforcing in local conflicts: in the Balkans, Africa, and Afghanistan. As a result, people are questioning the necessity of an aeroplane like the JSF.

With the conflicts that the Netherlands is involved in now, one can doubt whether such an aeroplane would be useful. In other words, and to put it plainly: where is the enemy that would justify such a plane? On the other hand, the JSF will fly until at least 2040. Who can foresee what conflicts the Netherlands might become involved in in the coming decades? There are certainly no supermarkets where you could buy one if you needed one.

Then there is the question of employment. The Dutch aircraft industry is involved in the development of the JSF, and 1.3 billion dollars has already been invested in trying to get the plane in the air. Many hundreds of people are working on parts of the JSF. So Dutch industry would benefit a great deal if the JSF were to be a success. It is an innovative aeroplane, and not only is the employment of many hundreds of people at stake, but also innovations in the aircraft industry that the Netherlands hopes to transfer to other (civilian) aeroplanes.

All of these elements – international politics, our view of the world and the role we want to play in it and the position of our aircraft industry – are at stake. But the real discussion, the most probing part, is the discussion about the budget. Can we afford to buy an aeroplane that is still not fully developed (including the software)? Can we afford this plane, the cost of which will not be known until the development stage is completed, which will not be before 2014 or even 2016?

Opposition parties claim that the costs will run up to 15 billion euros over a 30-year period. The competing manufacturers, meanwhile, want to sell their aeroplanes for a fixed price of nearly 5 billion dollars plus 5 billion dollars for a maintenance contract for a certain number of years. So the Government is currently postponing the decision and trying not to alienate the Americans.

The debate has been lingering on for more than a decade. This is partly because the Americans postponed the delivery of the plan and do not want to set a fixed price. It is also because of a fundamental question: who will want to

buy something if they do not know what it will cost? And finally, the JSF case is lingering on because various governmental coalitions over the past decade did not want to buy due to pressure from the population. At a time of economic recession, people are not fond of spending money on military equipment. So the Dutch Government decided to buy two test aeroplanes to remain involved and help the Americans with testing, and under pressure, it lowered the number of aeroplanes on order from 87 to 56. When discussions on the JSF started, the Ministry of Defence had intended to buy 125...

During all these discussions over the last 15 years, the Court of Account played its role. From the start, parliamentarians wanted to know whether the JSF would be a financially good buy. So the Court of Account went into the financial details of the JSF and helped parliamentarians to estimate what the final price would be. Recently, the Court of Account again tried to estimate the price and whether this would be fair, using the newest data available, including all technical specifications and the latest software developed. But these are still estimates. Due to the discussion about employment and innovation, another institute is trying to establish what the consequences of not buying the plane might be in terms of loss of employment and innovation. At the moment of writing, the discussion is ongoing. So no one knows whether the Netherlands will buy these aeroplanes or not. Most probably, having fixed the total cost we want to spend, we will buy fewer than the 56 currently promised by the Ministry of Defence. A lot of people would not be surprised if the amount were around 50, unless a new coalition decides not to buy any new aeroplanes at all. Then the Netherlands would have an Army without an Air Force in the foreseeable future.

### **Conclusions**

Buying or not buying the JSF reflects the political process that determines military spending in the Netherlands. Given the lack of public enthusiasm, it is a tricky and winding road to continue with purchasing new planes. The Government went through the same process with the Starfighter in the 1970s. The Minister of Defence, in those days a member of the Social Democratic Party, encountered so much opposition from his own party that he stated publicly: 'parties don't buy planes, governments do', and he simply overruled the party.

Now we see the same process at work. There is a lot of opposition coming from most political parties and the population at large, and there are serious doubts about the cost, the technical details and whether the purchase is necessary at all. But in the end, it will be the international connections that the Netherlands retains with the Americans, and the international obligations we have, that will tip the scale. The F16 has to be replaced, even if it takes five or more years, and since we have already dismissed part of our Land Forces, it

does not make sense to abolish the Air Force as well. In the end, international obligations, the value of employment and innovation and the importance of being an ally will settle the matter.



## IV. Parliamentary Oversight of Defence-related Expenditures: The Turkish Case<sup>1</sup>

*Nil Şatana*

### Introduction

In late December 2004, shortly after the EU agreed to start membership negotiations with Turkey, an unprecedented trial opened a new era in Turkish civil-military relations. For the first time in its history, the Turkish military agreed to the prosecution of one of its highest-ranking commanders, Retired Admiral İlhami Erdil, on corruption charges.<sup>2</sup> Admiral Erdil was sentenced to more than two years in prison and stripped of his rank. Concerns surfaced about how the trial would affect the military's image; the media coverage of this incident was vast, and to the amazement of academics and journalists, the Chief of the General Staff Hilmi Özkök fully supported Erdil's prosecution by the military court.

Since 2004, several accusations of corruption have been directed against military officers and, at times, against the military itself.<sup>3</sup> At the trials of the 1980 coup leaders, including the retired generals Kenan Evren and Tahsin Şahinkaya – whom *Time* magazine once described as one of the wealthiest generals in the world, following accusations that he had received bribes from the American Lockheed firm to buy weapons – not only was the massive personal wealth of these generals uncovered, but they were also harshly criticised for using their rank for personal gain.<sup>4</sup> Consequently, a relatively lively public debate emerged on the economic sources of the Turkish military's political power. Nevertheless, only a limited number of academic studies have tackled the issue of parliamentary oversight of defence-related expenditures.<sup>5</sup> While Turkish civil-military relations have changed considerably in the past decade,<sup>6</sup> the economic sources of the Turkish military's political power are still largely intact, and the legal and practical aspects of parliamentary control are in need of strengthening.

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<sup>1</sup> Dr. Nil Şatana is Associate Professor at the International Relations Department of Bilkent University in Turkey. Parts of this study were funded by a Centre for European Security Studies (CESS) grant awarded in 2009. I am grateful to several people who have commented on this research over the years: Ersel Aydınli, Aylin Guney, Sami Faltas, Metin Heper, Ali Karaosmanoglu and Zeki Sarigil. I am also grateful to the following graduate students at Bilkent University for their assistance with the research: Gonca Biltekin, Toygar Halistoprak and Burak Bilgehan Özpek.

<sup>2</sup> Collins 2004.

<sup>3</sup> See e.g. <http://www.ntvmsnbc.com/id/25355769/>.

<sup>4</sup> "F-16 dosyası 30 yıl sonra yeniden açılıyor" 2010; "Varlıklı Çıktılar!" 2012.

<sup>5</sup> See e.g. Akça 2010a; Beriş 2012.

<sup>6</sup> For a detailed discussion of this transformation, see Şatana 2008.

Civilian control of the Turkish military is beset by major transparency and accountability problems. The difficulty of obtaining defence-related budget data, such as the military's weapons procurement expenditures or research and development spending, or its share of discretionary funds, reveals the lack of transparency and accountability of the Turkish military.<sup>7</sup> Without transparency and accountability in the economic domain, it is unlikely that democratic consolidation will be achieved in Turkey.

Consequently, this chapter first critically examines the complexity of the Turkish defence budget, namely in relation to the expenditures and assets of the defence sector in general and the Turkish Armed Forces (TSK) in particular. Second, I examine the existing legal framework and assess practical attempts to curb the Turkish military's economic autonomy, in the form of mechanisms such as the parliamentary Plan and Budget Committee and the National Defence Committee, as well as the Court of Accounts (*Sayıştay*). Finally, I conclude by considering the implications of the current situation and discussing the measures that are needed to further normalise civil-military relations in Turkey through limiting the military's hold on the national defence budget.

### **Understanding the Complexity of the Turkish Defence Budget**

Funding of the defence sector in Turkey is quite complex due to the way the military structured the sector after the interventions of 1960, 1971 and 1980, so as to have firm control over the defence budget.<sup>8</sup> As a result, although most defence expenditures are financed by the national budget, an autonomous defence fund (the Defence Industry Support Fund, *Savunma Sanayi Destekleme Fonu*, SSDF) and foundation (The Turkish Armed Forces Foundation, *Türk Silahlı Kuvvetlerini Güçlendirme Vakfı*, TSKGV) contribute to the assets of the Turkish military. The political economy of Turkish civil-military relations is further complicated by the activities of a hybrid organisation, the Armed Forces Pension Fund (*Ordu Yardımlaşma Kurumu*, OYAK). Established by the military in 1961, mainly to support officers with low salaries, this pension fund has become one Turkey's foremost holding companies.<sup>9</sup> OYAK has a unique and privileged legal and economic status, while the SSDF and TSKGV funds remain immune from any civilian audits.

Some of the challenges in Turkish civil-military relations thus stem from the unique and distinctive characteristics of the assets of the military and its affiliated organisations, and the difficulty of keeping these structures under

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<sup>7</sup> Yentürk 2011, 3.

<sup>8</sup> The military has created the image that all issues related to security are beyond the comprehension of civilians, whom they generally perceive as being incompetent and populist in security matters. See Kemal 1984, 14.

<sup>9</sup> According to Lale Kemal, OYAK is the third biggest firm in Turkey with 20,000 employees. See Kemal 2008.

civilian control and, more importantly, accountable and transparent. The following sections will examine the issues facing defence budget-making in Turkey, focusing on the nature of the problems that curtail civilians' ability to control the economic power of the military.

### ***Defence expenditures and transparency***

National security in Turkey is provided by three constituent bodies: the Ministry of National Defence, the General Commandership of Gendarmerie and the Coast Guard. In terms of the cost of personnel and these institutions' goods and service acquisition, the Ministry of National Defence receives the lion's share of the defence budget, followed by the Gendarmerie and the Coast Guard, respectively.

The defence budget increased from \$10 billion (1.36 per cent of GDP) in 2010 to 10.3 billion (1.35 per cent of GDP) in 2011.<sup>10</sup> Between 1998 and 2008, the share of defence expenditures in the budget tended to decline, but it still remained high compared to other budget items.<sup>11</sup> This is quite important, since the budget items relating to the Gendarmerie and the Coast Guard are not accessible<sup>12</sup> and the numbers may be higher than anticipated. In fact, the defence budget has increased steadily in the last few years, and further increase is planned.<sup>13</sup>

According to reports by the Ministry of National Defence, 99 per cent of its spending in Turkey is related to three main items: personnel expenditures, social security payments, and acquisition of goods and services<sup>14</sup> However, assessment of the amounts reported for each item is problematic, due to the limited nature of the data.<sup>15</sup> For example, the lack of transparency surrounding how many draftees the armed forces need becomes an issue every time the Government wants to bring in extra funds by offering paid military service (*bedelli askerlik*). Despite being the second largest military in NATO (after the United States) and having 510,600 active and 378,700 reserve troops in 2012,<sup>16</sup> the TSK has often opposed the initiation of paid military service on the grounds that it does not have sufficient troops to fulfil its duties. So far, the inadequate amount of data available to the public on this issue has limited any attempt to question the TSK's objections.

Moreover, data on the TSKGV's expenditures are not accessible, while

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<sup>10</sup> Using figures from IISS 2012, 162.

<sup>11</sup> Şenesen 2009.

<sup>12</sup> A review of several sources, such as the *Almanac Turkey*, official websites and other printed sources, reveals that the data are not transparent.

<sup>13</sup> See Kemal 2011.

<sup>14</sup> List of spending items is available at the official Ministry of National Defence web page, see <http://www.msb.gov.tr/IBF/phpscr/IBFGoruntulemeMenu.php>.

<sup>15</sup> Ibid.

<sup>16</sup> See IISS 2012, 162.

SSDF data are available but not comprehensive. While these two entities bring funds in, the Undersecretariat for Defence Industries (*Savunma Sanayi Müsteşarlığı*, SSM) spends considerable amounts from these structures; indeed, the major goal of establishing the TSKGV and the SSDF was to mitigate Turkey's dependence on importing defence-related goods and enable it to build up its own defence industry.<sup>17</sup> Thus, parliamentary control of not only the national budget but also these extra-budgetary funds is needed to attain an acceptable degree of transparency and accountability in defence-related issues.

Finally, it is almost impossible to determine how much is spent annually in the ongoing fight against the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan*, PKK). Ostensibly, this conflict has cost Turkey more than \$300 billion in the last 25 years.<sup>18</sup> Moreover, the majority of the TSK's counter-terrorism measures against the PKK utilise discretionary funds (*örtülü ödenek*), which are impossible to trace due their secretive nature.

In sum, defence sector expenditures are budgeted from national, extra-budgetary and discretionary funds. While it is easier to make sense of what comes out of national funds and the SSDF, it is less so for the extra-budgetary funds and almost impossible for the TSKGV and pensions of retired officers.<sup>19</sup> Accordingly, there is a great need for more transparency and accountability in all defence expenditures in order to achieve a more democratic system.

### ***Defence assets and transparency***

The defence budget in Turkey is financed by four main constituents that can be classified as budgetary and extra-budgetary sources. Eighty-four per cent of military expenditures are funded by the national budget.<sup>20</sup> The SSDF allocates funds for 15 per cent of the total military expenditure, while the TSKGV covers 1 per cent of overall military expenditure. The procurement of arms is financed in particular by foreign debt and credit.<sup>21</sup> Moreover, the capital and the interest expenses relating to this procurement are refunded by the Ministry of Finance budget. However, information on the magnitude and cost of foreign debt and credit is limited.<sup>22</sup>

In the early 1980s, a modernisation programme was launched to strengthen the national defence industry.<sup>23</sup> The programme expenses were covered by the SSDF under the control of the Defence Industry Development and Support Administration. The latter was established in 1985 by Law no. 3238,

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<sup>17</sup> Altay 2011, 300.

<sup>18</sup> Akça 2010a, 20-21.

<sup>19</sup> Yentürk 2011.

<sup>20</sup> Şenesen 2002.

<sup>21</sup> Ibid.

<sup>22</sup> Yentürk 2011, 31.

<sup>23</sup> See the official Undersecretariat for the Defence Industry web page, <http://www.ssm.gov.tr/anasayfa/savunmaSanayimiz/Sayfalar/tarihce2.aspx>.

and renamed as the Undersecretariat for Defence Industries in 1991, under the Ministry of Defence. The SSDF has maintained a distinctive structure in terms of its budget and audit in that although it falls under the Ministry of National Defence, its income and expense accounts have a unique character. There is no direct funding relationship between the national budget and the SSDF. Moreover, the SSDF's expenditures are funded by various sources, such as the national lottery and indirect transfers. Although SSDF data are available, the Court of Accounts has never had any auditing authority over the SSDF's accounts. Instead, a commission composed of representatives from the Prime Ministry, the Ministry of National Defence, the Ministry of Customs and the Ministry of Finance audits the SSDF's accounts;<sup>24</sup> however, this process has been far from transparent.

The TSKGV was founded in 1987 by Law no. 3388, 'to work towards increasing the fighting strength of the Turkish Armed Forces by developing the national armaments industry of Turkey, establishing new branches of the armaments industry, and purchasing weapons, vehicles and equipment'.<sup>25</sup> The TSKGV is an amalgam of the Turkish Land Forces Foundation, the Turkish Naval Forces Foundation and the Turkish Air Forces Foundation. These organisations' real estate, stocks and shares, cash, assets and liabilities were devolved to the TSKGV upon its foundation. While only a limited number of studies have been carried out on the Foundation,<sup>26</sup> the TSKGV's finances have long been a topic of concern, on the grounds that Article 3 of the law provides that donations and grants given to the foundation are exempt from all kinds of taxes and other legal dues. Furthermore, the assets of the TSKGV are not accessible via the foundation's website, prompting columnists to often question how military foundations are financed and audited.<sup>27</sup>

The TSKGV currently holds shares in many defence corporations in Turkey. Consequently, albeit indirectly, the Turkish military has considerable influence on the defence industry. Although grants given to the foundation are exempt from all kinds of taxes and other legal dues, subsidiaries of the TSKGV are subject to audit by the Ministry of Finance. Such auditing is again limited to the military's actual cooperation with the auditors, if and when it takes place.

Finally, most studies on Turkish civil-military relations tend to neglect the financial contribution of the Scientific and Technological Research Council of Turkey (*Türkiye Bilimsel ve Teknolojik Araştırma Kurumu*, TÜBİTAK) to the defence budget. TÜBİTAK is accountable to the Prime Ministry and provides a

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<sup>24</sup> Regulations on the Undersecretariat for the Defence Industry are available at the official web page. See <http://www.ssm.gov.tr/anasayfa/kurumsal/Sayfalar/mevzuat.aspx>.

<sup>25</sup> See [http://www.tskgv.org.tr/index.php?option=com\\_content&task=view&id=16&Itemid=91](http://www.tskgv.org.tr/index.php?option=com_content&task=view&id=16&Itemid=91).

<sup>26</sup> *Defence Turkey* magazine, published at [www.defence-turkey.com](http://www.defence-turkey.com), is an important source of information about the issue. However, the necessary information on defence spending/assets is not available at this address, either.

<sup>27</sup> Kemal 2010; Altan 2010.

considerable amount of funding for the Ministry of National Defence's research and development projects. However, the transparency of the decision-making process regarding these projects is questionable. First, our knowledge of the amount of funding allocated for research in universities is limited.<sup>28</sup> Second, as a result of a decision made by the Science and Technology High Council in 2005, through an additional regulation approved by the Ministry of National Defence, research and development projects that are funded by TÜBİTAK are exempt from audit by the Court of Accounts.<sup>29</sup>

### **Parliamentary Auditing Mechanisms in the Defence Sector**

The auditing of the defence budget is one of the most problematic aspects of civil-military relations in Turkey. Clearly, defence-related assets and expenditures are not under systematic and stringent democratic control. Parliamentary committees (the National Defence Committee and the Plan and Budget Committee) and *Sayıştay*, the two mechanisms available to civilians, have not been efficiently utilised so far, due to the military's monopoly over data on the defence sector and legal and practical shortcomings. In the following section, I assess the extent to which these two forms of parliamentary control have been adequately employed by civilians. Since this chapter focuses exclusively on parliamentary control, other civilian control mechanisms, such as via the executive or the judiciary, lie outside the scope of this study. I include *Sayıştay* under parliamentary control since specific laws that will be discussed below make the Court responsible for auditing the defence sector for Parliament.

### ***The National Defence Committee and the Plan and Budget Committee***

The Turkish Grand National Assembly (TGNA) has several specialised committees that oversee issues such as health, justice, agriculture, education and defence, on the grounds that not all issues can be deliberated in General Assembly meetings. The Plan and Budget Committee is the major parliamentary body responsible for examining military expenditures and enforcing restrictions on the defence budget.<sup>30</sup> The committee members can question any budgetary item and suggest changes after seeking advice from military or civilian experts in the defence sector.

Of the 17 current committees, the National Defence Committee is one of the most important, since the draft defence budget law and other defence-related issues are examined during its regular sessions. Similar to the process in the Plan and Budget Committee, any of the 24 Committee members may question the relevance of any budgetary item and request detailed information

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<sup>28</sup> Yentürk 2011, 29.

<sup>29</sup> See the official Ministry of National Defence web page, <http://www.msb.gov.tr/anasayfa/html/SONEKLENENLER/ESASLAR.pdf>

<sup>30</sup> Yıldız 2008, 15.

on how funds are spent. In other words, the Defence Committee is the organ that is responsible for ensuring the accountability of defence institutions to Parliament and the public. Consequently, Parliament can request changes to defence budget items (along with items unrelated to defence) via the Plan and Budget Committee. According to Hamit Beriř, Article 117 of the Constitution rules that the TSK is accountable to the TGNA.<sup>31</sup> Thus, Parliament is not only responsible for controlling the budget-making process, but is also entitled to inspect the efficiency of its spending. This constitutional power vested in Parliament is exercised indirectly through the National Defence and the Plan and Budget Committees.

In practice, the defence budget is prepared by the Government and sent to the National Defence Committee for assessment, before being sent to the General Assembly and passed as law. With no constitutional power vested in it, the Committee hardly ever analyses the budget in detail; in fact, it is not unusual for most of the agenda to be monopolised by unrelated issues, and for the budget to remain unquestioned and unchanged by the end of the meeting.<sup>32</sup> For example, the December 2011 Defence Committee was undermined by personal quarrels between the opposition and government deputies on the patriot missile system to be established in Turkey, which overshadowed any examination of budget items.<sup>33</sup> Moreover, in the first Plan and Budget Committee's first meeting of 2012, opposition deputies protested against the police force's use of pepper spray by spraying government deputies with deodorant.<sup>34</sup>

Mismanagement and lack of expertise are major problems undermining parliamentary oversight of military expenditures through specialised committees. The Plan and Budget Committee endures an extreme workload under the pressure of not only defence-related laws, but also other budgetary issues. On the other hand, while the National Defence Committee's workload is more reasonable, this latter committee lacks the other's power. Furthermore, even if both of these Committees were to work full-time on oversight of the defence budget, it is questionable whether the Committee members would have the necessary expertise on defence matters to assess the efficiency or transparency of the budget. Neither do they make an effort to acquire such expertise from outside Parliament, a tendency that may be exacerbated by the lack of transparency surrounding the defence budget. The former Minister of National Defence Vecdi Gönül has at times criticised the lack of proactive efforts by deputies to audit the defence budget.<sup>35</sup> Consequently, Committee meetings are rather symbolic and do not result in effective parliamentary control

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<sup>31</sup> Beriř 2012, 32.

<sup>32</sup> Akca, 2010b, 21.

<sup>33</sup> "Turkish Parliament drops the ball on oversight of defense budget" 2011.

<sup>34</sup> "CHP'liler Komisyon'a biber gazı sıktı" 2012.

<sup>35</sup> Akca 2010b, 22.

of defence-related expenditures.

### **Sayıştay**

The major constitutional judiciary organ that is designed to audit the defence budget is the *Sayıştay*, which operates under Article 160 of the Constitution. The Law on the Court of Accounts, brought into force in 1967, defines the duties and responsibilities of *Sayıştay*.<sup>36</sup> The institute is 'responsible for auditing on behalf of the Grand National Assembly (Parliament) the revenues, expenditures and property of government offices operated under the general and annexed budgets'.<sup>37</sup>

*Sayıştay* has a distinct setup, since it not only examines the performance and legality of defence-related expenditures, hence actively assisting the TGNA with control of the defence expenditures, but it also brings problematic practices to court. In other words, it holds judicial power. As a result, *Sayıştay* is a key institution for controlling military expenditures, but it has not been adequately utilised to date.

One reason for the ineffectiveness of the Court stems from the laws that have not clearly defined the Court's jurisdiction. Another reason is that it has been hard to transfer the power the Court retains on paper to practice, due to military resistance and politicians' tendency to submit to the military's will. In fact, the auditing power of *Sayıştay*, vested in the 1961 Constitution, was restricted after the 1971 memorandum, when the Turkish military's assets and expenditures were excluded from *Sayıştay*'s audits on the grounds of confidentiality and the secretive nature of national security practices. The 1982 Constitution, drafted after the 1980 coup, did not fare any better in terms of parliamentary control of military assets and expenditures. The situation got worse in 1985 when military contracts were exempted from civilian authorisation and audits, as the SSDF was also removed from the scope of the *Sayıştay*'s jurisdiction under Law no. 3238 on the SSM.<sup>38</sup> Instead, an internal commission including representatives from the Prime Ministry, the Ministry of National Defence, the Ministry of Customs and the Ministry of Finance was set up to audit the activities of the SSM.<sup>39</sup>

After decades of unaccountability of defence expenditures, the laws passed for EU harmonisation after Turkey's official candidacy in 1999 included significant improvements in civil-military relations. One improvement was the addition of an article to Law no. 832 on *Sayıştay* in 2003, which provided for the audit of military assets through a regulation, and the amendment of Article 160

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<sup>36</sup> Karakaş 2009, 176-177.

<sup>37</sup> More information on the Law on the Court of Accounts is available at the official Court of Accounts web page: [www.sayistay.gov.tr](http://www.sayistay.gov.tr).

<sup>38</sup> Altay 2011, 300.

<sup>39</sup> See the official Undersecretariat for Defence Industries web page, <http://www.ssm.gov.tr/anasayfa/kurumsal/Sayfalar/mevzuat.aspx>.

of the Constitution in 2004 to enable the auditing of military assets. Nevertheless, these attempts were not realised in practice, as the necessary regulation was never put in force and the military resisted *Sayıştay*'s attempts to carry out audits in military locations.

The problem of auditing military spending made the headlines in the early days of 2010 in the context of the Ergenekon trials. The public prosecutor of the Ergenekon investigation tried a number of high-ranking commanders and officers for plotting coup attempts. During the investigation, the personal spending of the retired brigadier general Levent Ersöz, one of the culprits on trial, was scrutinised. Levent Ersöz is accused of drawing the equivalent of 3 million euros from the discretionary fund (*örtülü ödenek*) of the General Commandership of the Gendarmerie in order to buy surveillance equipment.<sup>40</sup>

In response to these developments, the Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) decided to enhance the legal mechanisms for controlling military spending. AKP deputy Nurettin Canikli announced that his party would amend the law on the Court of Accounts and argued that the AKP was determined to enhance the transparency of the defence budget and expenditures.<sup>41</sup> After the mounting criticisms directed at the Government and the military from the public and the EU Progress Reports,<sup>42</sup> Law no. 6085 on *Sayıştay* was passed in 3 December 2010. Together with Law no. 5018 on Public Management and Control, this law gave *Sayıştay* significant powers for externally auditing (*ex post*) defence assets and expenditures. Law no. 6085 also 'paves the way for audits of extra-budgetary resources earmarked for the defence sector, including the Defence Industry Support Fund'.<sup>43</sup>

*Sayıştay* auditors have openly argued that this new law (no. 6085) can be interpreted to include the audits of the SSDF, the TSKGV and the OYAK under the *Sayıştay* jurisdiction.<sup>44</sup> More importantly, Law no. 6085 allows the Court to audit public institutions, including the armed forces, not only for performance, but also for regularity, meaning the *Sayıştay* can audit the fiscal reports and tables of the military as well as checking whether military assets conform to procurement contracts and records.<sup>45</sup> More importantly, the secrecy clause is now defunct and the reports of the *Sayıştay* audits can be announced to the public. In fact, the media has been overly enthusiastic about the *Sayıştay*'s auditing of military dining facilities (*orduevi*) and canteens, since those were never under any kind of control in the past. According to *Zaman*, *Sayıştay* 'has begun audits of military-run firms'. Another daily reported on 8

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<sup>40</sup> "Ergenekon'da Harcamaya İmha" 2010.

<sup>41</sup> "Askeri Silah ve Muhimmata Sivil Denetim Geliyor" 2010.

<sup>42</sup> Cemal 2010.

<sup>43</sup> European Commission 2011.

<sup>44</sup> Altay 2011, 301.

<sup>45</sup> Ibid.

August 2011 that ‘a committee from *Sayıştay* recently contacted the TSK to inform them about an inspection and launched an auditing process.’<sup>46</sup>

While these developments were highly praised by the EU and journalists in Turkey, an amendment to the Law on *Sayıştay* through a new regulation was passed in June 2012, causing *Sayıştay* to publish a protest on its official website.<sup>47</sup> With the law, *Sayıştay* once again lost its ability to properly audit military assets and expenditures, and with the introduction of a secrecy clause, the Turkish public was once again deprived of the right to obtain information on military assets and expenditures.<sup>48</sup> This move was harshly and duly criticised by major civil-military relations experts and in the European Commission’s *2012 Progress Report on Turkey*.<sup>49</sup>

## **Conclusion**

Contrary to the conventional wisdom, the magnitude of the military budget is not a deal-breaker in the democratisation of civil-military relations in Turkey. The main problem stems from the absence of systematic parliamentary control of the defence budget. Although *Sayıştay* is responsible for auditing public institutions, as provided by the Constitution, for decades, additional laws and regulations have kept military spending beyond *Sayıştay*’s reach. There is still little sporadic or systematic civilian control over the Defence Industry Support Fund, the Turkish Armed Forces Foundation, the OYAK and discretionary funds. In 2012, shortly after a new law (no. 6085) was introduced in 2010 to improve parliamentary control of the defence budget, an amendment limited the jurisdiction of *Sayıştay* and reintroduced the secrecy clause that limits the public’s right to know how taxes are spent in the defence sector and by the military. Effective auditing will require the recent limitations on the law to be lifted. However, with the majority of Parliament consisting of AKP deputies, this seems unlikely to happen in the near future. The Republican People’s Party (*Cumhuriyet Halk Partisi*, CHP) has criticised the AKP Government for its lack of will to control the defence sector; however, the same CHP deputies have contributed little in the National Defence Committee or the Plan and Budget Committee to question the decisions of the Ministry of National Defence. It is of utmost importance that the opposition encourages these specialised committees to take an interest in defence issues.

After all, every elected representative of the Turkish Parliament has a legal right to be informed about the activities of the Ministry of National Defence

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<sup>46</sup> “Court of Accounts begins auditing military, a first in Turkish history” 2011.

<sup>47</sup> For the full text explaining how the amendment once again curbs the TCA’s auditing abilities, see <http://www.sayder.org.tr/sayistay-kanununda-degisiklik-teklifi-hakkinda-kamuoyu-aciklamasi-1587h.htm> (accessed 20 November 2012).

<sup>48</sup> “Harcamalar denetim dışı” 2012.

<sup>49</sup> European Commission 2012.

and the General Staff. Thus, the minister can be subjected to questioning by members of the Parliament regarding personnel and arms procurement. However, there is an information asymmetry between the defence elite and politicians, which means that the latter do not have sufficient expertise on defence issues. Consequently, this lack of information and expertise prevents the politicians from exercising efficient oversight over military expenditures.<sup>50</sup> Overall, a lack of transparency, accountability and information asymmetry between the civilian and military elite has generated a black hole that impedes civilian control over the economic practices of the TSK. While this asymmetry is a problem, it would be easier to solve; the General Secretariat of the National Security Council has a number of civilian bureaucrats who have expertise in the defence sector and who are under-utilised by the National Security Council. Academics who have studied the defence sector for decades are also being under-utilised due to the secrecy clause and the military's general distrust of civilians.

Contrary to the military's aspirations, a truly civilian constitution is crucial for maintaining civilian control of the defence budget. The issue thus needs to be tackled by reviewing all related laws; even better, by ensuring that parliamentary control of the defence budget is based on democratic norms in the new Constitution that is currently being drafted by a parliamentary committee. As the *2012 Progress Report* also highlights, the new constitution should ensure mechanisms for the deputies to review the reports published by *Sayıştay* and take the necessary action.<sup>51</sup> Only then will the military realise that its actions have consequences and that civilians are not as incompetent as once presumed.

In conclusion, this chapter has shown that the political economy of the Turkish Armed Forces is quite complex and that although several improvements have been made, more civilian effort is needed to enhance not only parliamentary, but also overall democratic control on economic matters with regard to Turkish civil-military relations.

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<sup>50</sup> Karakaş 2009, 176-177.

<sup>51</sup> European Commission 2012.



## Part C - The Rule of Law

### V. The Rule of Law and the Security Sector

*Bauke Snoep\**

#### Introduction

In most democracies, the concepts of a plural party political system, transparency and accountability, separation of powers by the principles of *trias politica* and, last but not least, the rule of law, are usually well understood and accepted. Yet, there are differences between the various democratic systems in the world, not only because of different nations' histories, cultures, legal systems, levels of political maturity, and so forth, but also because the perceptions and expectations of their citizens are different. During the many training courses CESS has delivered in Eastern Europe, the Balkans, Southern Caucasus and Central Asia, our trainees have almost always expressed (even slightly) different views on the performance of democracy. In our role-play exercises it has repeatedly proved that from the trainees' perspective, general theory and real practice are two separate issues. This is quite understandable, as there is no blueprint for democracy; only a generally accepted framework where the top left-hand corner is as good or as bad as the one on the bottom right.

#### Democracy and the Rule of Law

Generally speaking, one can say that democracy is a type of governance where the people have the ultimate power, but where they have authorised (usually by elections) a Parliament, Executive and Judiciary (duly separated in accordance with the principle of *trias politica*) to exercise this power; where transparency and accountability are common standards; and where the rule of law applies to everyone. What exactly is the rule of law, however, and are we all speaking about the same thing? The Council of Europe's (CoE's) Commission for Democracy through Law (the so-called Venice Commission) regrets the absence of an internationally accepted common understanding, but in 2011 it came to an interesting conclusion about the various international considerations regarding what the rule of law should stand for:<sup>1</sup>

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\* Bauke Snoep is former President of EUROMIL, former Chairman of the Trade Union for Military Personnel in the Netherlands (AFMP) and Associate of CESS.

<sup>1</sup> Council of Europe 2011.

- Legality, including a transparent, accountable and democratic process for enacting law
- Legal certainty
- Prohibition of arbitrariness
- Access to justice before independent and impartial courts, including judicial review of administrative acts
- Respect for human rights
- Non-discrimination and equality before the law.

During the CESS training courses I summarise this, in a way that is perhaps non-scholarly but very practical and easy for the trainees to remember, as follows: the rule of law makes the State abide by the law, ensures equality before the law, supplies law and order, provides efficient and impartial justice and upholds human rights. This does not cover all the specific legal elements, but certainly covers the most important ones for them to remember.

The combination of a plural party political system, the democratic principles of transparency and accountability, and the correct implementation of the *trias politica* and of the rule of law does not only protect and guarantee citizens' rights, but it also prevents the State abusing its tremendous powers. For the State alone provides services, allocates resources, makes and applies laws and ultimately has a monopoly of force. In this complete system of checks and balances, the State is also bound by the law, and State officials are not only accountable to their superiors and their political masters, but also for the lawfulness of their personal actions in front of the Courts.

### **The Security Sector**

The monopoly of force brings us to the security sector, which has classically consisted of those organisations within society that are responsible for protecting the State and its citizens (police forces, armed forces, and so forth) and the bodies responsible for the management and oversight of the various security forces (ministries and parliament). In contemporary accounts, however, we tend to speak about the 'security family' that has many more players, such as defence forces, police forces, gendarmerie or paramilitary forces, informal security forces, intelligence services, customs enforcement, civil oversight bodies, financial management bodies, the judicial and correctional system and, last but certainly not least, civil and political society organisations. All these players form part and parcel of the democratic system at large, including the rule of law in particular.

### **Human Rights**

At this point, the role that the State has to play with respect to human rights should be emphasised. The State is not only bound by a national Constitution

and subordinate legislation, but also by international treaties guaranteeing human rights and fundamental freedoms (or civil liberties), such as:

- from the United Nations (UN): the so-called Bill of Human Rights;
- from the European Union (EU): the Charter of Fundamental Rights;
- from the CoE: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter (ESC).

All these international treaties allow States to impose lawful restrictions on *inter alia* governmental civil servants and members of the police and armed forces. With regard to the first text (the UN Declaration on Human Rights), this is unsurprising when we recall that the bill was written in the direct aftermath of World War II and in the heat of the Berlin crisis of 1948. Subsequent treaties were obliged to follow the original UN text as no one wanted to re-open laborious discussions on a finally universally accepted text. Many governments, however, take a many-levelled approach here: they (usually constitutionally) guarantee the human rights and fundamental freedoms of all their citizens whilst in subordinate legislation, some of these rights and freedoms are not restricted but actually completely excluded for certain citizens. Allow me to illustrate this with three examples:

*Example 1:* Almost half of the CoE Member States with armed forces still exclude their military personnel from the right of association with the aim of protecting their social interests. This right however, may only be restricted when 'necessary in a democratic society in the interest of national security.'<sup>2</sup> How excluding military personnel from the right of association can be in the interest of national security eludes me completely.

*Example 2:* When ratifying the ECHR, many States have made reservations to Article 5 (right to liberty and security) and Article 6 (right to a fair trial) for military personnel, thereby allowing military courts to exist. One wonders whether the military judiciary (where superiors accuse, defend and judge subordinates) in these countries always can and will respect the principles of ECHR Articles 5 and 6. One also wonders whether in these countries, keeping such a tenacious grip on military courts allows the military to keep its actions from the public gaze.

*Example 3:* In many European countries, police officers and military personnel have no passive voting rights and membership of political parties is often forbidden. It is argued that this is necessary to prevent the politicisation of the police and armed forces and that it guarantees these institutions' neutrality. In general, no other players in the field of the *trias politica* have had such severe restrictions placed on them, and apparently there is no danger of them

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<sup>2</sup> Council of Europe, ECHR, Article 11.

becoming politicised or losing their neutrality in such a way that would endanger the *trias politica*.

These examples clearly show that people in the security sector are still being treated differently from other parts of society. Someone from antiquity might agree with this, but as early as 1637, the French philosopher and mathematician René Descartes (1596-1650) had written his famous words '*Je pense, donc je suis* [I think, therefore I am].'<sup>3</sup> In my view, this incorporates all mankind without any exception for sex, race, position, or whatever. After the Second World War, centuries-old perceptions on human rights and fundamental freedoms were finally given a more universally accepted dimension *inter alia* in the CoE's ECHR. Societies were organised in a more democratic way and citizens were (and still are) encouraged to participate. In the meantime, we have reached the year 2013, and I detest the on-going differentiation, if not discrimination, between society and the security sector. Security sector personnel are grown human beings; they are entitled to have their own opinions and to be treated accordingly. Yet, almost like second-class citizens, too many people from the security sector are unfortunately still being partly excluded from the society in which they not only work and live, but also have to protect and defend, if needs be with their lives. Given this, what is the situation in the Netherlands?

#### **The Situation in the Netherlands: Historical Development<sup>4</sup>**

In the second half of the 19<sup>th</sup> century, working conditions in the Dutch armed forces were extremely poor. Salaries were pitiful and pensions and medical care were scarce, if they existed at all. Rheumatism and tuberculosis were common. The lower ranks and their families were condemned to a life of poverty. For that reason, some associations were established with the aim of providing charity for colleagues in despair. Nothing much, however, was done to prevent poverty or to improve working and living conditions.

As a result of the industrial revolution, the first real trade union movement in the civil sector was set up in 1894: the *Algemene Nederlandse Diamantbewerker's Bond* (General Dutch Diamond Workers' Union), founded by Henri Polak and Jan van Zutphen. A group of determined non-commissioned officers (NCOs) from the army followed suit, and in 1898 the first trade union for army NCOs was established: *Ons Belang* ('our interest'), probably the oldest

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<sup>3</sup> Descartes 1987, Chapter 4.

<sup>4</sup> In this case study I mainly focus on the developments for military personnel. For this, I frequently consulted the book "*Noch noodig, noch gewenscht*" (English: Neither necessary, nor wanted), written by my esteemed colleague Jan Heckers (deceased 2011) and edited (ISBN 90-5166-553-0) by the *Algemene Federatie Militair Personeel* (General Federation for Military Personnel or AFMP, the legal successor to *Ons Belang*) in 1998, on the occasion of celebrating 100 years of trade unionism for military personnel.

trade union for military personnel in the world. It is quite remarkable that in those days, Dutch legislation did not forbid military personnel to form such an association. Not that everyone agreed with it; in 1904 the then Dutch Minister of War stated that 'the association is neither necessary, nor wanted'. But other associations followed, for instance for the military police, for naval personnel, for officers, and so forth. These associations were more like representative associations than trade unions, and it could be argued that they chose to take a softer approach. Whatever the differences between the various associations, the determination to improve working and living conditions could not be countered.

The first police representative association (the predecessor of the modern Dutch Police Union, the *Nederlandse Politie Bond*) was founded in 1897, and others followed in 1914 and 1915. At this point it is also noteworthy that civil servants hesitantly followed the example that the police and military associations had set, and finally established their own trade unions or representative associations in 1919. One could indeed say the security sector in those days was way ahead of its time.

In 1919, a consultation platform for civil servants was set up, and this was finally formalised in the Civil Servants Act in 1929. Military personnel had a consultation platform from 1922, but had to wait for the Military Servants Act for this to be finally formalised in 1931. There was a Committee A for officers associations and a Committee B for the lower ranks. The form of consultation, however, was restricted to advice. If the advice was negative, the Government could easily ignore it and continue with its course of action; a far from satisfactory situation. In early 1933, the Government decided to curtail salaries for military personnel by 14 per cent (after two previous cuts of 5 per cent each). This caused a lot of disturbance and discontent, and a mutiny broke out on the Ironclad Hr. Ms. *De Zeven Provinciën* (The Seven Provinces) in the Dutch Indies on 4 February 1933. Whilst the vast majority of the Dutch crew was ashore celebrating at a party, some native shipmates hijacked the ship, left the roads of Oleh-Leh (Aceh, Northwest Sumatra) and steamed up to Surabaya to protest against the salary cuts. On the early morning of 10 February 1933, a Dutch naval aircraft bombed the ship (mistakenly midships) with a 50 pounder. The consequences were serious (23 casualties, 20 wounded) and the mutiny was over.<sup>5</sup>

In the Dutch Parliament, Minister Laurentius Nicolaas Deckers (then of Defence) defended the Navy's operation, but the public was upset about what it saw as this unnecessarily rough performance, particularly when an investigation proved that the bomb had been aimed in front of the bow but had mistakenly hit the ship midships. There was great empathy with the victims and their relatives

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<sup>5</sup> See website of the MoD of the Netherlands at: [http://www.defensie.nl/nimh/geschiedenis/tjdbalk/1914-1945/aanvang\\_van\\_de\\_muiterij\\_op\\_hrms\\_de\\_zeven\\_provincin\\_\(4\\_februari\\_1933\)](http://www.defensie.nl/nimh/geschiedenis/tjdbalk/1914-1945/aanvang_van_de_muiterij_op_hrms_de_zeven_provincin_(4_februari_1933)) [last accessed 1 December 2012].

and fierce indignation about the Government's performance. But the Government, under heavy pressure from the Navy leadership, argued that the social democratic movement in the Netherlands was behind the public outcry, and blamed military associations in the Netherlands for this mutiny on the other side of the world. As a consequence, Navy personnel were barred from social-democratic organisations and from reading the social-democratic newspaper *Het Vrije Volk* ('the free people'; this last veto was lifted in the late 1950s). The Government also issued a *Regulation on the Principles of Activities by Representative Associations for Military Personnel below the Officers' Ranks*. Note that officers' associations were excluded from this Regulation that *inter alia* comprised the following:

- meetings were only allowed to be held in the presence of an officer who had to report to the Garrison Commander the next day;
- only active serving military personnel were allowed to become members;
- the unions/associations were forbidden from having paid board members/administrators;
- political discussions were forbidden;
- singing the union/association song was forbidden;
- connections with commercial institutions were forbidden;
- the unions/associations had to renew their admission to the consultation system.

These harsh measures severely curtailed the activities of the unions/associations of the lower ranks severely (almost to the point of destroying them), raising the question of why the Government's response focused on personnel who had had nothing to do with a mutiny some 9,000 miles away.

The answer is quite simple: the military authorities had always perceived the existence of unions or associations for the lower military ranks as a nuisance and bad for discipline, and believed that they were becoming too influential and economically too independent. The latter applied particularly to *Ons Belang*, which in those days had its own housing foundation, various insurance companies, a bank, a printing works, a welfare fund, and so forth, and had become an important institution in its own right. During a public criminal session of the High Military Court on 14 July 1933, it was argued that 'It is absolutely forbidden for soldiers to have political discussions. The soldier as such should not have political convictions'. Also in July 1933, *Militair Rechterlijk Tijdschrift* ('military judicial magazine') advocated to exclude military personnel from the right to vote and to forbid military unions/associations. The majority of the military leadership argued that blind obedience was the soul of military life and that it was counterproductive to have groups of military personnel that aimed at improving their working and living conditions. With the mutiny, they

saw their chance to break the unions and/or associations, to divide and rule them, and they were successful: in 1937 there were 11 associations, most for small, targeted groups, and the consultation system only met twice in 1938. The detested Regulation of 1933 was for the most part withdrawn in 1949, and completely in 1967.

After the dark times of the Second World War, a change became noticeable. The Consultation scheme was resumed in February 1948 and Minister Alexander Fiévez (then of War) stated that the Government considered the Consultation scheme to be of great value and 'highly appreciated the input and advice from all the participants in the Consultations'. In September 1948 *Ons Belang* celebrated its 50<sup>th</sup> anniversary, producing a special edition of its weekly magazine in which the then ex-Minister Fiévez wrote: '[...] my conviction, which has become mature through experience, is that an association such as *Ons Belang* is absolutely indispensable'. Compared with the period immediately after 1933, this was quite a change, although the unions for military personnel now continued to call themselves associations. These associations now sought closer co-operation, which finally led to mergers in the early 1980s.

The changes of the late 1960s, a period when students all over the world held protests and demonstrated for more say on various issues, also affected the world of the military. Following suit, the associations – especially those for conscripts – aimed for better working conditions, compensation for weekend duties, compensation for overtime, and so forth. In 1974 the entire consultation scheme was altered: from then on, there was one Committee for Civil Servants (including teachers, police personnel and so forth) and one Committee for Soldiers only: *Centraal Georganiseerd Overleg Militairen* (CGOM, the central organised consultation for soldiers). The Committees A for officers and B for the lower ranks were dissolved. A so-called duplicate decision ruled that decisions applicable to all public servants (including the military) would be taken in principle in the Committee for Civil Servants and the details worked out in CGOM, and that decisions relating only to military personnel would be dealt with by CGOM alone. In the second half of the 1970s, a system of local consultation was introduced, whereby unit commanders could discuss the wellbeing of their personnel. The Dutch Law on Participation Councils had existed since 1950 and the first European Community Directive on Participation Councils had been issued in 1968, but military personnel had always been excluded. A very modest start was made with the introduction of a small amount of compensation for overtime and weekend duties.

Also immediately after World War II, the office of the Inspector General<sup>6</sup> (in an advisory function to the Minister of War) was created; first for the Army; in 1946, also for the Navy; and from 1953, also for the Air Force. The first

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<sup>6</sup> See website of the MoD of the Netherlands at: <http://www.defensie.nl/igk> [last accessed on 1 December 2012].

Inspector General was His Royal Highness (HRH) Prince Bernhard (husband of the later Queen Juliana), who *inter alia* advocated modern leadership and better career opportunities for the NCOs. In 1970, the three functions were integrated into one Inspector General for all parts of the Armed Forces. In 1976, HRH Prince Bernhard was relieved of his post, and since then it has been fulfilled by a three-star active serving general or admiral. Since 1991, the Inspector General has also been the Inspector General of Veterans, and present tasks are to:

- advise the Minister of Defence on all issues related to Defence;
- visit one-third of the armed forces each year and write four-monthly reports on the findings;
- write an annual report including results and recommendations;
- intermediate in conflict situations between military personnel and their superiors where the trade unions find themselves in a deadlock. In other words, the post functions as a kind of Ombudsman for armed forces personnel;
- keep in touch with veterans' organisations and recommend changes/improvements in veterans policy if needs be.

Notwithstanding the possibility of using the Ombudsman function of the Inspector General, military personnel are also allowed to approach the National Ombudsman (created in 1982), but only when they have already complained to a governmental institution without a result.

It might thus be argued that the relations between the State and its public servants slowly became normal industrial relations. Yet, in 1983, the Government decided to curtail all of its employees' salaries by 3.5 per cent. Fierce protest rallies, demonstrations and even strikes made the Government retreat slightly: the cut was reduced to 3 per cent. In October 1984 an Advice and Arbitration Committee (AAC) was set up, known as the Albeda Committee after its first chairman, retired Minister for Social Affairs Wil Albeda. Its main objective was achieving a fairer consultation scheme for public servants. This was prompted by the employee side in particular, as their influence on the outcome of the working conditions consultations was much smaller than in the private sector. This had to do with the position of the Government, which was not only an employer, but also represented the general interest and was often bound by Parliament's power of the purse. This undermined the Government's role as an employer and meant that the parties at the Consultation table were not equal. In the first years of its existence the AAC issued various recommendations, many of them appealing to the Government to better exercise its responsibilities as an employer.

In the mid-1980s, a thorough comparison was made between the terms of employment for civil servants at the Ministry of Defence (MoD) and military personnel: the so-called *Pakketvergelijking* ('package comparison'). This resulted from the ongoing discussion about differences in working conditions

between civil and military personnel. Based on that survey, it was *inter alia* decided that military personnel should in future pay for their medical care, but in return they would get a better compensation scheme (comparable to that of the mid-1970s) for overtime, irregular hours, weekend duties, exercises, and so forth. In addition, a method was developed to analyse functions (with knowledge, responsibilities and leadership as the special weighing factors) and then putting a rank to a function. Many military leaders were opposed to this approach, as they thought it would undermine the hierarchy, but when the results were introduced in 1990, it turned out much better than expected. In the second half of the 1980s, the structure of local participation councils within Defence was improved and brought more into line with the then repeatedly-changing Law on Participation Councils and the current European Community Directive on Participation Councils.

At the end of the 1980s, the then Minister for Home Affairs, Mrs Ien Dales, who was also responsible for the Consultations with public servants, decided that the Government also had to act as an employer and that situations in which the Government could unilaterally decide to curtail salaries, such as had occurred in 1983, had to be prevented. This led to the granting of negotiating rights on primary working conditions (that is, salaries, pensions and aspects of social security) to public servants' organisations, including military organisations. This represented a huge step forward, and when in 1990 the armed forces were to be reduced by 30 per cent, the military associations managed to obtain the right to negotiate a Social Charter.

In 1993, there was another change in the Consultation scheme: the Committee for Civil Servants and the Committee for Military Servants were dissolved and eight new sector Committees were formed, including one for all civil and military servants working in the Defence sector, while the negotiation rights remained intact. At the same time, the Government also lifted the reservations it had made for military personnel when ratifying the ESC in 1980. The now (from an industrial point of view) obtained legal right to strike, however, was replaced by mediation for military personnel only in the Advice and Arbitration Committee. This formal right to strike is not to be confused with the penal provisions of the Military Criminal Code with respect to disobedience, unlawful absence, conspiracy, mutiny, and so forth. In other words: while a strike may be lawful on the one hand, it may be severely punished on the other. Moreover, Dutch society will never accept its armed forces going on strike, and doing so, after all, will have a boomerang-effect on both the armed forces and the unions.

### **The Situation in the Netherlands: Conclusion**

Considering the period between 1898 and the 21<sup>st</sup> century, it cannot be denied that the military trade unions fought a long and hard battle to achieve their

current position. However, the rule of law has always been applicable: the legitimacy of the armed forces is regulated in the Constitution and the rights and duties of military personnel are described in short in the Military Servants Act. These rights and duties are worked out in more detail in the General Military Servants Regulation (*Algemeen Militair Ambtenaren Reglement*, AMAR, to be agreed on in the Consultation scheme) and the details are also worked out in more specific regulations, often for each part of the armed forces.

The development of the rule of law over the years also had an impact on the political rights of military personnel. The first military man in Parliament was Warrant Officer Wilhelmus Wijk, at the time also President of *Ons Belang*, from 1918 to 1922. He established the Alliance for Democratization of the Armed Forces (*Verbond tot Democratisering van de Weermacht*, VDW), and got 7,000 votes at the 1918 elections. Because of the then applicable system of dividing rest-votes, this resulted, surprisingly, in one seat in Parliament. The VDW was a small, neutral political party that aimed exclusively at the improvement of working conditions for military personnel and was dissolved when Wijk was not re-elected in 1922.<sup>7</sup>

Until 1971, a high-ranking member of the military could easily become Minister of Defence. At that time however, the incompatibility principle was introduced, and when Governmental personnel were elected to Parliament or Government, they were given extraordinary leave. After their political careers they could easily return to their previous jobs. In the 1990s it was decided that this was unfair to others seeking election, and since then one has had to quit one's governmental job before accepting a political or executive post in either Parliament or Government.

As for the legality of exercising political rights, Article 12a of the Military Servants Act reads in a free translation: 'The military servant is to refrain from publicising his thoughts and/or exercising the right of association if the functioning of his position or the public office in general would not be assured within reason. The first paragraph is not applicable to membership of a political party inscribed in the electoral register or a trade union'. This gives Dutch military personnel every right to participate in trade unions and political life, and many of them indeed do so. However, there is a gentlemen's agreement that they do not do so in uniform, especially in political life. After all, it is not the military person that wishes to be involved, but the citizen, hence the absence of the uniform.

This development of civil-military relations over the years undoubtedly also had an influence on the way in which industrial relations for military personnel developed. Notwithstanding the views of eminent scientists such as Samuel Huntington and Morris Janowitz, one can define at least three eras: ±

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<sup>7</sup> See website of Leiden University, Parliamentary Documentation Centre at: <http://www.parlementairdocumentatiecentrum.nl/id/vg09lld6j3zp> [last accessed on 1 December 2012].

1860-1945, mass warfare with management of violence; ± 1945-1990, the Cold War with deterrence and non-use of force; and finally, from the early 1990s, peace support operations marked by extensive humanitarian intervention. If we compare these time-frames with the development of industrial relations in the Dutch security sector, there certainly seem to be similarities.

In 1998 the AFMP celebrated 100 years of trade unionism for military personnel. As the then chairman of that union, I presented the first copy of the book *Noch noodig, noch gewenscht* ('Neither necessary, nor wanted,' ironically quoting the 1904 Minister of War's views on *Ons Belang*, the predecessor of the AFMP) to then Prime Minister, Wim Kok, during a special celebration with more than 500 guests. He replied that 'nowadays trade unions for military personnel are very necessary and absolutely wanted'. In the early 21<sup>st</sup> century a high-ranking Dutch officer even declared that 'if trade unions for the military did not exist today they should be invented tomorrow'. All these expressions are tokens of a normalisation in relations.

During operations or exercises, many of our rights are temporarily restricted or even excluded. In normal circumstances, however, a member of the military is considered a 'citizen in uniform' with the same basic human rights and fundamental freedoms as their civilian neighbour. Of course there are the occasional tensions with the MoD and/or the leadership of the armed forces. But generally speaking, and leaving no room for complacency, the situation in the Netherlands for military personnel and in the security sector at large is satisfactory, even though there is always potential for improvement.

At this point let me make it absolutely clear that the primacy of politics is not an issue and that the chain of command is highly respected. However, terms of employment, working conditions and the general lines of career possibilities are subjects for either negotiation or consultation. Subjects such as operations, discipline, the hierarchy, the budget, and so forth, are out of bounds for the unions of military personnel, are even after more than 114 years – as they should be. In other words, there is absolutely no danger of the unions assuming power; on the contrary. But military personnel of course are entitled to their human rights and fundamental freedoms, within the law.

### **Recommendation**

Unfortunately, this satisfactory situation is not replicated in many other countries. For more than 30 years the Parliamentary Assembly of the Council of Europe (PACE) has frequently investigated and written reports about police personnel, prison personnel, military personnel (including conscripts), and so forth. While, for instance, in the early 1970s only ten European countries allowed their military personnel the right of association, one can now say that things have improved to 100 per cent. However, this is still not more than half of the Council of Europe Member States with armed forces, and most of the

'newcomers' are from Eastern Europe. The latest PACE report from April 2006 on military personnel and its Recommendation<sup>8</sup> took the Committee of Ministers (CM) almost four years to agree on a common reaction to the member States<sup>9</sup> that was largely in line with the Assembly's views on the issue. One of CM's recommendations in February 2010 was to: 'examine within the Committee of Ministers the implementation of this recommendation two years after its adoption'. After that, there was a long silence, until the CM's Steering Committee for Human Rights (CDDH) finally instructed<sup>10</sup> its Secretariat in July 2012:

1. to elaborate a questionnaire on the implementation of Recommendation CM/Rec(2010)4 of the Committee of Ministers to Member States on human rights of members of the armed forces and to transmit it to Member States. Other relevant stakeholders may also be invited to provide comments;
2. to submit to the Committee of Ministers the results of the examination of the implementation of Recommendation CM/Rec(2010)4 by 30 June 2013 at the latest.

Since PACE's Recommendation from 2006 one would almost start to believe that CM's policy, and that of the Member States who they after all represent, is that procrastination is the thief of time.

Almost all people working in the security sector, except those with police or military status, can freely enjoy nearly all their human rights and fundamental freedoms. The known exclusions for both military and police personnel are passive voting rights and membership of political parties. However, military personnel are too often deprived of additional fundamental, civil or workers' rights, such as the fundamental right of association. Taking into account the tremendous shift in civil-military relations, I would argue that is high time for governments to accept that human rights and fundamental freedoms do not stop at the barrack gates, and to take the 2010 Ministerial Recommendation as an opportunity to review their – often outdated – regulations on the members of the armed forces and to bring them up to date.<sup>11</sup> One should also bear in mind that the better police officers and military personnel can exercise and enjoy human rights and fundamental freedoms at home, the better defenders of these rights and freedoms of other people they will be when on mission abroad.

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<sup>8</sup> Council of Europe, PACE Document 10861 and PACE Recommendation 1742, 11 April 2006.

<sup>9</sup> Council of Europe, CM Recommendation CM/Rec (2010)4, 24 February 2010.

<sup>10</sup> Council of Europe, CDDH Document (GR-H(2012)CB8), 4 July 2012.

<sup>11</sup> This call on governments is a repetition of Council of Europe, PACE Document 9532 of 2 September 2002 (Opinion by the Social, Health and Family Affairs Committee to Council of Europe, PACE's Recommendation 1572, 3 September 2002).

## VI. Ruling Behind the Law: Judicial and Administrative Autonomies of the Turkish Military

Mert Kayhan\*

### Introduction

*'We made the appropriate choice at that time. We would stage a revolution if it were today. The revolution is a historic event. Historic events cannot be judged. The judiciary, which takes its judicial authority from the 1982 Constitution, does not have the authority to charge and try us. (...) Staging a revolution [coup] is not a crime according to our laws. We did not attempt a revolution, we staged one. Everybody should know that staging a revolution and attempting to stage one are not the same. (...) There were people from the left and from the right at the courts. We told them not to execute only leftists. We hanged one from the right, one from the left. In this way, we wanted to prove we were not taking sides.'*<sup>1</sup>

As a country that aspires to become a member of the EU, Turkey offers a paradoxically anachronistic picture in terms of the strong degree of politico-cultural and socio-economic involvement enjoyed by its armed forces. It has been repeatedly argued in various circles that Turkey needs to implement a series of military-related reforms in order to align its civil-military relations in accordance with western democratic standards. Thus, Turkey introduced several reform packages in the first half of the 2000s, aimed at strengthening democratic civilian control of the military and limiting its power in politics within the framework of the EU accession process. However, since these reforms generally concentrated on institutional arrangements, such as re-designing the role and composition of the National Security Council (MGK) as a consultative body with a civilian majority and a civilian secretary-general, the military establishment continued to exercise influence through a series of informal channels.

On 27 April 2007, Turkey's generals staged the so-called 'e-coup'. The online memorandum posted on the General Staff's official website noted that 'if

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\* Mert Kayhan is Director at the ARI Movement in Turkey and PhD Candidate at the Royal Holloway College of the University of London. The author wishes to thank Prof. Chris Rumford, Dr. Hasan Turunç, and Dr. Ali Bayramoğlu for their encouragement and useful comments during the research that led to this paper.

<sup>1</sup> Retired General Kenan Evren, the Chief of General Staff during the military intervention of 12 September 1980 and 7th President of the Republic of Turkey, testifying to the Ankara 12<sup>th</sup> High Criminal Court via teleconference. See "Coup chief thumb noses [sic] at charges, defies court" 2012.

necessary, the Turkish Armed Forces will not hesitate to make their position and stance abundantly clear as the absolute defenders of secularism.'

Most western commentators were stunned to see a country on the path to EU membership come to the brink of a military coup. On the other hand, for those who have studied Turkey's economic, social, and political history insightfully enough, the fifth military intervention in the Republic of Turkey was a response to a series of developments that took off with the decision of the Justice and Development Party (AKP) to nominate Foreign Minister Abdullah Gül to the highly prestigious post of President. This was nothing but a continuation of events that reflect the authoritarian-modernist mentality of the establishment elites, mixed with the patriarchal traditionalism that dominates the minds of the general population in Turkey.

In this respect, 'liberating Turkish Cypriots from Greece's domination (1974)', 'preventing the country from falling into the hands of the Islamists', and 'stopping internal conflicts twice by the conventional way of a coup (1960, 1980), once by a memorandum (1971), then once by what has been referred to as the postmodern coup (1997), and finally by an e-memorandum (2007)' consolidated the paternalistic figure of the state, and of the military as the main representative of the establishment.

This protagonist role of protecting the secular and modern personality of the Republic, as well as maintaining the unity of the country, chiefly stems from the fact that Kemalism, the founding ideology of the modern Turkish state, which aimed at the creation of a politically non-Islamic, secular, westward-looking Turkey, has positioned the military to be the vector of these positivist and progressive ideals. In contemplation of this position, the military has introduced several social, economic and political processes and structures, insofar as compulsory military service as a secondary socialisation process has been sanctified by the Turkish population at large as a pre-requisite for the achievement of true 'manhood'.

Additionally, it should be recalled that, as specified above, the current imbalanced status of civil-military relations is a result of historical and cumulative developments. Following each military intervention (in 1960, 1971, 1980, and 1997), the military has designed, consolidated, and enhanced mechanisms to benefit from having unprecedented economic, financial and political autonomy within the Turkish polity. This exceptional status has given rise to an autonomous and hyper-centralised military structure. It can be suggested that the current autonomous status provides the Turkish military with four interrelated functionalities: (1) it sets out the conditions to protect it from outside (civilian) interference, while (2) equipping it with abilities that guarantee its significance as an actor in political, economic, and social spheres; (3) generates unmatched benefits to military officers, which also (4) produces and reinforces collective identity and cohesion among them.

In order to decipher the impact of this autonomous and hyper-centralised military structure, not only on the asymmetrical nature of civil-military relations in Turkey, but also on various other relations, this article will embark upon a deconstruction of the historical and political context that has brought the military to be the primary actor in the Turkish polity. In particular, the main focus of this section will be the administrative and judicial autonomy of the Turkish Armed Forces (TSK), since the political and economic spheres have been studied eloquently in the other chapters of this book.

### **Theoretical Background: The Concept of Military Autonomy**

In his often-quoted article entitled 'Military Autonomy and Emerging Democracies in South America', David Pion-Berlin refers to autonomy as 'an institution's decision-making authority', and to military autonomy as 'the relative independence with which the armed forces behave'.<sup>2</sup> He then makes a useful distinction regarding the sites upon which the military seeks to exert authority, by distinguishing institutional autonomy, 'the military's professional independence and exclusivity',<sup>3</sup> from political autonomy, which he defines as 'the military's aversion towards or even defiance of civilian control'.<sup>4</sup>

In his seminal formulation of military professionalism and its relation to the political activity of the military establishment, Huntington argued that due to the requirements of modern warfare, it would not be possible for the military to remain competent in many other fields than those that directly relate to its primary function of external defence. As a result of this specialisation, 'the vocation of officership absorbs all their energies and furnishes them with all their occupational satisfactions. Officership, in short, is an exclusive role, incompatible with any other significant social or political roles'.<sup>5</sup> In other words, the required functional specialisation for external defence means that 'it became impossible to be an expert in the management of violence for external defense and at the same time to be skilled in either politics or statecraft or the use of force for the maintenance of internal order. The functions of the officer became distinct from those of the politician and policeman'.<sup>6</sup> In this regard, as '[t]he one prime essential for any system of civilian control is the minimizing of military power', this would be achieved through 'professionalizing the military',<sup>7</sup> and 'confining it to a restricted sphere and rendering it politically sterile and neutral on all issues outside that sphere'.<sup>8</sup>

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<sup>2</sup> Pion-Berlin 1992, 84.

<sup>3</sup> Ibid., 84.

<sup>4</sup> Ibid., 85.

<sup>5</sup> Huntington 1964, 32.

<sup>6</sup> Ibid., 32.

<sup>7</sup> Ibid., 84.

<sup>8</sup> Huntington 1956, 381.

While this may have been true in the context in which it was produced, the United States, and in most of Western Europe, many other cases, including Turkey, offer no confirmation of Huntington's assertion that there is a routine identity between corporate autonomy and political subordination. On the contrary, in these cases,<sup>9</sup> corporate autonomy and submission to civilian authority are inversely related to one another. To the extent that the armed forces of these countries accumulate powers and decision-making authorities, they become less willing to give up their interests and resist the transfer of control to civilian initiatives.

On the other hand, while these 'military institutions that consider involvement in – or control over – domestic politics and the business of government to be a central part of their legitimate function', defined as 'political armies'<sup>10</sup> by sharing 'a common core of characteristics and orientations',<sup>11</sup> there are also significant differences that 'can be found not only in the internal make-up of the military institutions but also in the variations in actual military political intervention or direct rule'.<sup>12</sup> After all, '[m]ilitary rule does not depend only on the intrinsic nature of a political army but also on its relationship with civilian actors, the broader institutional context of military rule within the state, the public domain, civil society and various kinds of social contradictions and struggles'.<sup>13</sup> In this respect, to comprehend the military's longitudinal political and social role in Turkey and to identify how its enhanced administrative and judicial autonomies have caused dualities that are problematic to the functioning of an advanced democracy, the basic parameters of this situation need to be analysed. In the end, these autonomies are not only the embodiment of the feeling of superiority of the officers towards the rest of the society, but also provide fertile ground for its maintenance. Thus, the following sections will examine the TSK's socio-economic and political roles within the Turkish polity from a historical perspective.

### **From the Ottoman Empire to the Turkish Republic: The role of the TSK**

It is generally argued that the military has been the most significant factor behind the evolution of the political, social and economic structure of the Ottoman state apparatus. Lybyer emphasises that '[t]he Ottoman government

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<sup>9</sup> It is remarkable that so far, only a few studies have focused on the specific ways in which military institutions become intertwined with the rest of the state apparatus, the economy, and society. Almost all of the major studies to date on the Turkish Armed Forces have been concerned with processes related to the institutional intrusion of the armed forces into local politics. The same holds true for the study of Latin American militaries, as boldly expressed in pioneering studies.

<sup>10</sup> In Koonings and Kruijt's account, in addition to Latin American countries, Indonesia, Algeria, Nigeria, Ethiopia, Eritrea, Burma, and Turkey are among the countries with historical experience of political armies.

<sup>11</sup> Koonings and Kruijt 2002, 1.

<sup>12</sup> *Ibid.*, 2.

<sup>13</sup> *Ibid.*, 2.

had been an army before it was anything else. [...] In fact, army and government were one. War was the external purpose, government the internal purpose, of one institution, composed of one body of men'.<sup>14</sup> This follows not only from the fact that the sultan was expected to manifest military prowess and physical courage, among other royal attributes, but the whole Ottoman ruling class was called the 'military' (*askerî*). According to Mumcu, we need to ask why the word 'military' encompassed all public services in the Ottoman; it can be claimed that it appeared as a reflection of the establishment of the state on military purposes and concerns.<sup>15</sup>

In due time, the Ottoman state evolved into an empire owing to its military strength and success. Salaried infantry corps under the direct control of the sultan – *the Janissaries* – came to physically represent Ottoman power and gradually developed parochial interests as they became aware of their corporate strength. In a dramatic turn of events, when the Empire ceased to expand and the relative superiority of the Ottomans vis-à-vis European powers faded as a consequence of conjunctural developments, this traditional elite corps started to symbolise the corrupt and collapsing Ottoman structure. In an attempt to restore imperial authority and keep up with the 'challengers', a reform movement was initiated at the end of the 18<sup>th</sup> century, leading to the establishment of a new, European-style army alongside the *Janissaries* and then, in 1826, the complete destruction of this traditional Ottoman corps.

It would not be misleading to suggest that the New Order proclaimed by Sultan Selim III (1789-1807), which consisted of a programme of westernisation in order to create a new army, triggered a chain of irreversible events that led to the political modernisation of the country. It was the exposure of the members of this military bureaucracy to western political ideas and ideals that guided the introduction of the country's first constitution and establishment of the Parliament in 1876. The enshrinement of constitutional and representative principles came in 1908 with what is known as the Young Turk Revolution, a threatened rebellion which provided fertile ground for Mustafa Kemal to appear a decade later as the leader of the independence movement, supported by the remaining officers from the Ottoman forces defeated during World War I, and transform the Empire into a nation-state. To put it in Rustow's words, 'for nearly two hundred years, the soldier has been Turkey's foremost modernizer',<sup>16</sup> and the military was right at the heart of the transition from the Ottoman Empire to the Republic of Turkey.

As the key protagonist in this transitional period and the founder of the Republic, the TSK took on the role of guardian of the Turkish nation, which created a self-perception on the part of the military as the protector of the state

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<sup>14</sup> Lybyer 1913, 90-91.

<sup>15</sup> Mumcu 1963, 55-57; Mumcu and Üçok 1982, 198-199.

<sup>16</sup> Rustow 1964, 352.

on behalf of the people. In essence, the military regarded itself as the essential core, the fundamental nucleus of the newly born nation and state.

The military played a key role during the Ottoman period. Following the collapse of the Empire, the TSK assumed the role of guardian of the Turkish nation, which has given it a privileged status since the foundation of the Republic. During the transition period from the Empire to the Republic (when the TSK led the War of Independence) and the early years of the newly founded state, the military structure achieved what we can refer to as hyper-centralisation.

### **The Centralisation of the Military Administration during the Republican Era**

The state of 'centralisation' describes a military structure and chain of command where power and authority is concentrated, rather than diffused. In other words, by attaching and holding responsible every element and level of the military command mechanism to a single person or position, the military organisation has achieved a hyper-centralised outlook. This is manifested in the status and role of the Chief of General Staff. While such a structure may be extremely functional and necessary at times of total war, since it implies effective control and decision-making, it is, however, against the practice of graded responsibility or graded hierarchy, which is the generally accepted civilian democratic norm in security/defence policies in NATO member countries. For instance, in the US, the Secretary of Defense has authority, direction and control over all issues concerning the Department of Defense, and is in the administrative and operational chain of command for all of the armed forces; that is, the Army, Navy, Air Force, and Marine Corps.<sup>17</sup> While the Chairman of the Joint Chiefs of Staff serves as the military advisor to the Secretary, s/he is not in the chain of command. Similarly, in the case of France, within the Ministry of Defence there is a joint forces organisation that coordinates defence operations.<sup>18</sup> The example of the Netherlands is equally representative of the practice of graded responsibility, where the Chief of Defence is responsible for the implementation of operations at home and abroad, the Central Staff in the Ministry is in charge of making policy, and internal material policy, from procurement and major maintenance to disposal, is established by the Defence Material Organisation.<sup>19</sup>

Unlike the above-noted practice in other NATO countries, in the case of Turkey, the Office of the Chief of General Staff is:

not a coordination unit that symbolically gathers all command powers [...] but a 'center of power' representing an extremely vertical organization that, like a magnet, gathers around it all units, from the

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<sup>17</sup> Title 10, the US Code.

<sup>18</sup> [www.defense.gouv.fr/english/portail-defense/ministry/organisation/organisation2](http://www.defense.gouv.fr/english/portail-defense/ministry/organisation/organisation2)

<sup>19</sup> [www.defensie.nl/english/organisation/ministry\\_of\\_defense/](http://www.defensie.nl/english/organisation/ministry_of_defense/)

military justice system to the force commands. All other political powers of the army, including powers related to the military organization, the chain of command, national defense, and military policy, are therefore gathered under one authority and, more importantly, its ambiguous jurisdiction is established by a single authority. This situation protects and increases the political power of the army by creating a military system that does not allow any interference in it but that is ready to intervene in other spheres.<sup>20</sup>

The state of hyper-centralisation has been achieved gradually, as a series of events – similar to how the state of autonomy has been achieved, as elaborated below – have built upon each other. In the progression to achieving a hyper-centralised structure, three specific arrangements deserve particular attention, since they can be identified as the driving engines of this process. The first of them corresponds to the issuing of a regulation by the *Erkan-ı Harbiye-i Umumiye Vekaleti* (the equivalent of the Ministry of General Staff) on 5 August 1923, to re-organise the administrative structure of the armed forces. Replacing Western, Eastern, and Southern front commanders with army inspectors, the regulation also limited the authority and duties of the inspectors to the drafting of detection and suggestion reports on the state of the specific army in consideration to be submitted to the main headquarters. According to this arrangement, although army inspectors were positioned at the top of the military hierarchy, just below the Minister (until March 1924), they did not have any commanding authority or a military base. Even the schedule and content of the inspections were left to the discretion of the Chief to whom they were directly attached. As a result of this, a very rigid and individual command relationship was established between the Chief and the corps and division commanders, leaving out the principles of military responsibility-sharing and graded hierarchy. In terms of decreasing the number of intermediary echelons and concentrating the command chain in the hands of a few, the establishment of the inspectorship system, which lasted until 1938, should be considered the first institutional step towards a hyper-centralised structure.

With the second arrangement, the *Erkan-ı Harbiye-i Umumiye Vekaleti* was abolished as a ministry and re-established as the *Erkan-ı Harbiye-i Umumiye Riyaseti* (the Chairmanship of General Staff). Law no. 429<sup>21</sup> was dated 3 March 1924, and Articles 8 to 12 of this 14-article law were on the establishment of the Chairmanship as an independent body and clarification of its status, authority, and responsibilities. The relevant articles proceeded as follows:

- The Ministry of General Staff is abolished. (Article 8)

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<sup>20</sup> Bayramoğlu 2004, 66, quoted in Akay 2010, 106-107.

<sup>21</sup> *Şer'îye ve Evkaf ve Erkan-ı Harbiye-i Umumiye Vekaletlerinin ilgasına ilişkin kanun* (Law on the abolishment of the Ministries of Religious and Charity Affairs and General Staff).

- The Chairmanship of the General Staff is the highest military office and is responsible for administrating and commanding the armed forces on behalf of the President. The Chairmanship is independent. (Article 9)
- The Chairman of the General Staff is proposed by the Prime Minister and appointed by the President. (Article 10)
- The Chairman of the General Staff communicates to all ministries regarding the issues of which he is in charge. (Article 11)
- The Ministry of National Defence is accountable to Parliament for the military budget. (Article 12)

It is important to note that the Law does not mention any administrative responsibility mechanism for the TSK. The Military Chairman/Chief is appointed by the President and, as it was mentioned above, uses the President's authority on his behalf; and in this respect, it could be argued that the Chief is implicitly responsible to the President. According to the 1924 Constitution, the President is not responsible to any other state body, except in the case of treason against the state, in which he is answerable to Parliament.<sup>22</sup> Thus, the new Law states that the Chief of the Armed Forces is implicitly accountable to the President, but since the Turkish President is responsible to no one, via Law no. 429, the military consequently achieved the status of an institution that is not responsible to any other institution within the Turkish state structure.

In addition, the vague description of issues under the authority of the Chairmanship in the Law, and the equipment of the Chairman/Chief, who is the supreme commander of the chain of command with the right to communicate with any ministry without any intermediary agency on these issues, not only caused a military omnipresence in the Turkish polity, but also reinforced the perception of the military's supra-political position.

Building upon the aforementioned two arrangements, the third arrangement in the line of consolidating the decision-making authority of the military within the state structure was the establishment of the *Âli Şûra-i Askeriye* (Supreme Military Council) on 26 February 1925 by Law no. 636.<sup>23</sup> The law not only equipped the Council with the authority to issue resolutions on the 'political, administrative, financial, civilian, and military aspects of defence related matters', but also, by loosely defining its functions, once again left a wide range of issues under the strict control of the military administration.<sup>24</sup> The ample scope of its functions can be gathered around the following points:

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<sup>22</sup> Article 41, 1924 Constitution.

<sup>23</sup> *Şûra-i Askerinin Teşkilat ve Vezâifi Hakkında Kanun* (Law on the Establishment and Functions of the Supreme Military Council), Law no. 636, Official Gazette no. 98, 29 April 1925.

<sup>24</sup> Bayramoğlu 2004, 71.

- The preparation and implementation of the strategic plans and military doctrine of the armed forces;
- The administration of the armed forces, the command and training of the military units, and the appointment and promotion of military personnel;
- National defence and armament strategy;
- The preparation of the national defence budget;
- The adjudication of the legal provisions regarding those matters.<sup>25</sup>

Chaired by the President, only a few members of this 16-seat council were civilians with ministerial positions; nevertheless, this has never had an impact on the military character and decision-making of the Council. It could even be argued that the Council had a 'normalising' effect in terms of the imbalance in civil-military relations, since the determination of the agenda and the management of the Council was left to the military side.

When considered altogether, it can be observed that the process of centralisation of the inner military structure also corresponds to a process whereby the relationship between authority and responsibility has become reversed. As detailed in the articles of Law no. 429 that established the *Erkan-ı Harbiye-i Umumiye Riyaseti*, while planning and decision-making authority with regards to military matters were left in the hands of the military itself, it was the civilian authorities who carried responsibility for these. From the military perspective, it is understandable why central control is essential, especially in times of war, since the Army, the Navy and the Air Force are expected to take action in a coordinated way. However, as considered by Robert S. McNamara, the influential US Secretary of Defense of the Cold War period, there are three kinds of centralisation: centralisation of responsibility, centralisation of function, and centralisation of authority.<sup>26</sup> In the case of the Turkish military structure and civil-military relations, while the military administration has achieved the latter two, the first one, regarding responsibility, was delegated to civilians. In other words, the civilian administration holds all responsibility for the military authority, as a display of voluntary obedience. As will be demonstrated below, it is this imbalance between authority and responsibility that led the military cadres to obtain further benefits in terms of its hyper-centralised and autonomous place within the state structure, by various interventions in the polity.

During the following years in the Turkish Republic, the military intervened four times in politics using traditional methods. In two instances, namely the 1960 and 1980 coups, military governments were formed before new constitutions were introduced as markers of the transition to civilian government; in two others, the 1971 memorandum and the 1997 post-modern

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<sup>25</sup> Ibid., 71

<sup>26</sup> Horwitz 1963, 21.

coup, the military settled for constitutional amendments and changes of government. These constitutional developments deserve particular attention, as they contain important information in terms of the legal and administrative autonomies of the TSK. Nevertheless, after each carefully crafted intervention, the TSK successfully opened up space for itself to increase its dominance over civilian politics, while enhancing its autonomous status through legal and administrative arrangements. Additionally, the opening up of new spheres in which the TSK has become a major player has not only increased the number of areas in which officers have an interest, such as their increased interest in the country's economic circumstances now that an exclusive pension fund has been introduced, but has also produced new instruments and resources that shed further light on their perceptions and attitudes. In view of this, the following sections will evaluate the judicial and administrative autonomy of the TSK.

### **Judicial and Administrative Autonomy**

The military judiciary was introduced in the Turkish legal system with the 1961 Constitution, which was promulgated after the first ever military coup in Turkey in 1960. The first section of Article 138 notes that '[m]ilitary trials are conducted by military and disciplinary courts', and then indicates that '[t]hese courts are entitled to try the military offenses of military personnel and those offenses committed against military personnel or in military areas, or offences connected with military service and duties.' Such a broad mission statement clearly constitutes a breach of the principle of the right to one's legal/natural judge.<sup>27</sup> Additionally and more strikingly, in the second section of the same article, the military judiciary equips itself with the authority to try civilians; and this is the reason why criticism is mostly concentrated on this article, as it is seen as the hotbed of the military judiciary. Suffice it to repeat here that this is also contrary to the above-mentioned principle of a legal/natural judge.

On the other hand, in Article 141, the designation of the Military Court of Cassation (*Askeri Yargıtay*) as 'a court of the last instance to review decisions and verdicts rendered by military courts' points to a duality created in the judiciary system. As detailed in Article 139, the Court of Cassation also serves the same function with regards to the 'decisions and verdicts rendered by courts of law'. In this respect, the creation of both military courts and a higher military court of cassation is not only against the principle of unitary jurisdiction and illustrates the first steps in the creation of an autonomous space within the judiciary system, but also makes it legitimate, although only on theoretical grounds, for any other professional group to request a specialised court.

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<sup>27</sup> This is detailed in Article 32 (Article 37 in 1982 Constitution), where ordinary channels of justice are described.

The 1961 Constitution is also important in terms of the administrative structure it produced. First of all, it created the MGK in Article 111, consisting of 'the Ministers as provided by law, the Chief of the General Staff, and representatives of the armed forces', and identified its function as 'to communicate the requisite fundamental recommendations to the Council of Ministers with the purpose of assisting in the making of decisions related to national security and coordination.' Although at this stage, its authority was limited to recommendations, the existence of such a platform opened up the possibility of the military's influence over political decisions; and, as will be explained below, further developments in the coming years transformed its structure and authority in such a way that it became the physical representation of the unprecedented weight of the military presence in the political system. And secondly, by holding the Chief of General Staff 'responsible to the Prime Minister in the exercise of his duties and powers' in Article 110, as opposed to the practice in democratic regimes, where the responsibility is to the Minister of Defence – which had also been the case in Turkey since 1949 – the status of the Chief of General Staff was upgraded. In the end, these changes brought about a military structure equipped with a constitutionally-backed channel to exert influence over politics, while establishing a lower level of civilian control over it; and this is completely consistent with the hierarchical layout upon which civil-military relations are established.

The constitutional amendments introduced after the 1971 memorandum not only expanded the military judicial autonomy at the expense of the civilian judicial authority, but also provided the military with an additional structural mechanism that would protect it from civilian intervention and control. As previously mentioned, the second section of Article 138 in the 1961 Constitution authorised military courts to try 'non-military persons only for military offences prescribed by special laws.' Law no. 1488, which amended several articles<sup>28</sup> of the 1961 Constitution, enlarged the scope of the authority of the military judiciary by empowering military courts to try non-military persons 'in cases concerning military offences as prescribed by a special law, *and those offences committed against the military during the performance of their duties as specified by law, or in military areas designated by law*' (emphasis mine). Parallel amendments were also made in Law no. 353 on the Establishment of Military Codes and Tribunal Procedure<sup>29</sup> to harmonise the Law with regards to the constitutional amendments. The amended Article 11 referred to an

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<sup>28</sup> Law no. 1488 (Official Gazette no. 13964, 22.09.1971) amended articles 11, 15, 19, 22, 26, 29, 30, 32, 38, 46, 60, 61, 64, 89, 110, 111, 114, 119, 120, 121, 124, 127, 134, 137-141, 143-145, 147, 149, 151, and 152 of the 1961 Constitution.

<sup>29</sup> Law no. 353 (Official Gazette no. 11541, 26 October 1963) was amended by Law no. 1596 (Official Gazette no. 14222, 21 June 1972). The articles amended were 6, 8, 10, 11, 34, 36, 40, 52, 70, 72, 74, 75, 80, 118, 131, 136, 143, 146, 153, 160, 177, 217, and 218.

extensive list of offences set out in the Military Penal Code,<sup>30</sup> which, if breached, would lead to the prosecution of non-military persons in military courts. This clearly reflects the militarisation of civilian judicial space and is representative of the hierarchical superiority of the military authority vis-à-vis ordinary civilians.

Furthermore, with the amendment of Article 140, a Military Administrative Court (AYİM) was established to exercise 'juridical control of administrative acts and deeds concerning military personnel.' This refers to the creation of a military administrative judicial system alongside the general/public administrative judicial system. In other words, it has now become the duty of military men to supervise administrative decisions taken by fellow servicemen. As emphasised by Ümit Kardaş, a retired military judge, the institutionalisation of a high administrative court cannot be grounded in any legal logic or principle.<sup>31</sup> However, the outcome is remarkable in terms of illustrating the increasing administrative autonomy of the TSK.

The 1971 amendments also served to signal the growing extent of military influence over the political system. By upgrading the function of the MGK from *communicating* to the Council of Ministers to *recommending*, and by clarifying that those representatives of the armed forces mentioned as members of the Council would, from this point on, be the Force Commanders, Law no. 1488 is indicative of the desire of the military to reinforce its status in politics. The military administrative autonomy and the military influence on politics would become more apparent and less acceptable in terms of democratic principles in the 1982 Constitution.

Similar to the 1961 Constitution, the 1982 Constitution was also the product of a post-military takeover period. A committee of legal experts selected by the military junta was held responsible for drafting a new constitution, and there is no doubt that the concerns expressed by military officials were taken into consideration. To put it differently, it was the second time the military had drastically touched upon the lives of all the citizens of Turkey by re-designing the system along the lines of its self-defined norms, principles, perceptions, and attitudes. Moreover, unlike in 1961, where the authority to elect the president was left to Parliament after the transition to civilian government, in 1982, the approval of the transition to civilian government, the constitution, *and* the election of General Kenan Evren, the Chief of the General Staff and the commander of the military takeover as President, were tied together in the referendum, whose ratification was almost guaranteed. Ratified by a 91.37 % majority, the 1982 Constitution entered into force on 9 November 1982.

In the 1982 Constitution, the development on the status and the functions of the AYİM require particular attention. While the amended 1961 Constitution referred to the AYİM in Article 140, where the functions and duties

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<sup>30</sup> Offences set out in articles 55-59, 63, 64, 81, 93, 94, 100-102 and paragraph B of 148.

<sup>31</sup> Kardaş 2004, 299.

of the Council of State were detailed as 'an administrative court of the first instance in matters not referred by law to other administrative courts, and an administrative court of the last instance in general', in 1982, the AYİM was referred to in a separate Article 157, with its own heading. This article empowered the AYİM to supervise decisions taken by civilian authorities, noting that AYİM is 'the court of first and last instance for the judicial supervision of disputes arising from administrative acts and actions involving military personnel or relating to military service, *even if such acts and actions have been carried out by civilian authorities*' (emphasis mine). As the paragraph further proceeds by noting that 'in disputes arising from the obligation to perform military service, there shall be no condition that the person concerned be a member of the military body', Article 157 evidently serves the dual purpose of strengthening the forbidden military internal domain, while expanding its judicial authority over civilians, by becoming the final arbitrator of disputes related to compulsory military service.

Another crucial development in the 1982 Constitution is in relation to the prominence of the MGK. Chiefly, it enhanced the MGK's powers, stipulating, for example, that the Cabinet must give priority to MGK recommendations. At the same time, the number and weight of senior commanders in the MGK increased at the expense of its civilian members, thus bringing an end to the civilian majority on the Council. Likewise, further securitisation of the state and politics was achieved via Law no. 2945 on the 'National Security Council and the General Secretariat of the National Security Council', through which the concept of national security acquired official status, providing grounds for transforming all issues dealt with by the MGK into state policies via MGK decisions. As the variety and substance of the issues taken into consideration in the MGK<sup>32</sup> show, the military has assumed a parallel role to the democratically elected government in terms of executive decision-making.

All in all, particularly with the establishment of the AYİM, we have witnessed the cumulative militarisation of the civilian judicial space and hierarchical superiority of the military authority over civilians, which manifested in a military administrative judicial arrangement, parallel to the general/public administrative judicial system.

## **Conclusion**

The role that the military played in the national struggle and the creation of the new state gave the military an honoured place in Kemalist society. As this article has shown, military interventions served to strengthen the military

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<sup>32</sup> These ranged from determining the curriculum in schools to regulating television stations' broadcasting hours, suggesting the formation of electoral alignments between political parties before the 27 March 1994 local election, and offering Arabic as an elective subject in secondary schools.

internal domain, while expanding its judicial authority; or, in other words, its decisive power over civilians. The TSK emerged as the final arbitrator of almost any disputes related to the military, while creating the necessary institutions, such as the MGK, which guaranteed a supreme position in relation to judicial and administrative affairs.

Although this role has declined gradually, following the reforms that were introduced during the EU accession process, it still exists. In particular, the latest EU Turkey Progress Report, published in 2012, emphasises that 'the duality between the civilian and military court systems continued'.<sup>33</sup> Despite claims to the contrary, Turkey's military continues to have a shadowy hold on political life. Democracy can be consolidated if military autonomy is further decreased.

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<sup>33</sup> European Commission 2012.

## **Part D - Civil Direction**

### **VII. Civilian Control of the Military**

*Kees Homan\**

#### **Introduction**

One of the oldest problems of human governance is that of the subordination of the military to political authority; in other words, how a society should control those who possess the ultimate power of coercion or physical force. Sun Tzu and Carl von Clausewitz argued long ago that military organisations are primarily the servants of the state.<sup>1</sup>

Civilian control of the military is the dominant concept nowadays, and there are many definitions of civilian control. A very concise definition by Samuel Huntington is: 'the proper subordination of a competent, professional military to the ends of policy as determined by civilian authority'.<sup>2</sup> In its fullest sense, civilian control means that all decisions regarding a country's defence – the organisation, deployment, and use of armed forces, the setting of military priorities and requirements and the allocation of the necessary resources – are taken by a civilian leadership. The armed forces must serve the societies they protect and military policies and capabilities must be consistent with political objectives and economic resources. Civilian control is a substantial element of an effective system of democratic control.

This chapter focuses first on traditional approaches to civilian control. This is followed by a case study on the way in which civilian control of the military has been organised in the Netherlands. Lastly, the focus turns to recent developments in general and a new, broader approach towards civilian control of the military will also be presented, which will provide ample food for thought.

#### **Traditional Approaches to Civilian Control**

Civil control is characterised by the primacy of politics, but also by the provision of military professionalism. It is of the utmost importance to strike a balance between those two elements. A few theories that assess this balance are described below.

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\* Maj.Gen. (ret.) Kees Homan is a Senior Research Associate at Clingendael – Netherlands Institute for International Relations.

<sup>1</sup> Tzu 1975, 28; Clausewitz 1976, 605-611.

<sup>2</sup> Huntington 1957, 72.

### **Samuel Huntington**

For Samuel Huntington, this balance is the core problem of civil-military relations, through which the degree of professionalism is defined. His monumental *The Soldier and the State* has had great and lasting influence.<sup>3</sup> In this work, Huntington argues for a politically neutral, professional military that is isolated from politics. He argues that national security is best served under conditions of 'objective civilian control'. According to Huntington, *objective civilian control* maximises military professionalism, making the military a tool of the state and guaranteeing its distinctive existence as a professional body. As a consequence, the political leadership should seek to maximise military professionalism. At the same time, the military leadership should not acquire political influence. Instead, they should respect the 'realm of political autonomy'.

Huntington's idea is that objective civilian control is preferable to subjective control, since the best guarantor for military subordination to political supremacy is a truly professional military. In Huntington's opinion, *subjective civilian control* maximises civilian power by both civilianising and politicising the military, by making it politically dependent and by denying the military a distinct professionalism that is clearly different from that of other organisations in society.

Subjective civilian control was dominant in communist states during the Cold War. Its main mechanisms were control by recruitment and selection, control by indoctrination, and control by organisation.<sup>4</sup> After the end of the Cold War, objective civilian control was introduced in these countries by means of the de-politicisation and de-partyisation of the armed forces, democratisation, and professionalisation.<sup>5</sup>

### **Morris Janowitz**

Another scholar, Morris Janowitz, has contended that Huntington's 'traditional' military professionalism is being replaced by 'pragmatic professionalism'. Although the military does not participate directly in politics, he argues, it is strongly linked to the political system and the state. Janowitz advocates a military as a 'constabulary force', which is integrated into civilian society, shares society's common values and maintains a broad political perspective. 'The military establishment becomes a constabulary force when it is continuously prepared to act, committed to the minimum use of force, and seeks viable international relations, rather than victory, because it has incorporated a protective military posture'.<sup>6</sup>

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<sup>3</sup> See footnote 2.

<sup>4</sup> Doorn 1969, 5.

<sup>5</sup> Danopoulos and Zirker 1999, 2-7; Danopoulos 1988.

<sup>6</sup> Janowitz 1960, 417-441.

### ***Michael Desch***

In his structural approach, Michael Desch argues that the particular combination of internal and external threats to a state determines the quality of civil control. Civilian control should be best in times of high external threat and low internal threat. The worst-case scenario occurs with a low external threat and high internal threat.

As the extensive literature on war and state formation studied by Desch makes clear, a serious external threat increases the strength and cohesiveness of the civilian institutions of state and society.<sup>7</sup> In a high-threat environment, civilians take a greater interest in military affairs and are therefore more attentive to their responsibility for civilian oversight. External threats thus unify the state and civil society, which in turn produces a desirable pattern of civil-military relations in which the military are subordinate to civilian authority.

Desch argues that the greatest danger to civilian control of the military ought to come after periods of high external threat have diminished, leaving the state with a large military force but no external mission. The reduced threat should lead to less unity within and among civilian and military organisations, increasing the potential for tension and conflict. In short, there are a number of reasons to expect that a widely recognised external threat will produce good civil-military relations, while its disappearance will undermine them.

Historical evidence supports this logic. The countries with the best records on civil control – such as the United States and the Soviet Union during the Cold War – have been states with militaries whose primary missions are to undertake external operations. But the countries with the worst patterns of civil-military relations have been states in the developing world that face few serious external threats, but many internal ones. Archetypal examples include the military dictatorships of the Southern Cone of Latin America.

### **Civilian Control of the Military in the Netherlands**

The Dutch parliamentary system is a system of democratic government in which Cabinet ministers derive their legitimacy from and are accountable to Parliament. This chapter will focus in particular on the role of Parliament in Dutch defence policy and public support for the armed forces.

#### ***Three main missions***

The Dutch Constitution describes three principal missions for the armed forces:

- defending national and allied territory, including the Caribbean parts of the Kingdom;
- promoting the international rule of law and stability;

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<sup>7</sup> Desch 1995, 166-185.

- supporting and assisting civilian authorities in maintaining law and order and providing disaster relief and humanitarian aid, on a national as well as an international scale.

Since the late 1970s, the Netherlands has aimed to make a significant contribution to international peacekeeping operations in the context of promoting the international rule of law and stability.<sup>8</sup> The idea of the promotion of the international rule of law is enshrined in the Dutch Constitution: Article 90 stipulates that 'The Government shall promote the development of the international rule of law'.

### ***Dutch Defence Policy***

Dutch Defence Policy is an integral part of national security policy. The Ministers of Defence and Foreign Affairs deal with all international aspects on a 'joint' basis. All letters to Parliament on security and defence issues are in principle co-signed by the two ministers. The Ministry of Defence is traditionally regarded as a 'technical' department and the Minister of Defence as the custodian of the defence budget and arbiter of procurement plans. From a policy point of view, the Minister of Defence has traditionally been considered a junior partner of the Minister of Foreign Affairs. Over the last two decades, this junior position has developed and the defence portfolio (once described as a 'headache' portfolio) has increased in political weight. Participation in international peace support operations, the development of a European Common Security and Defence Policy and increasing uncertainty in international politics may have made the position of the Minister of Defence more important.

### ***Parliament***

Overall responsibility for ensuring the armed forces act solely within the constitutional framework lies with Parliament. The Minister of Defence is politically accountable to Parliament and has to inform Parliament on any relevant development related to the armed forces. The defence committee provides an opportunity for detailed oversight. In public hearings, prior to forming an opinion, it invites various independent experts to inform Parliament on issues such as a new Defence White Paper, the political and military field conditions for participation in a peace support operation, and so forth. The Dutch intelligence services, one of which is military in nature, are also subject to legal restraints and parliamentary control.

The primacy of politics should be clear, but it should be accompanied by a division of labour and what might be called a 'balance of trust'. The military should accept political leadership and refrain from making political statements, but government and parliament should accept responsibility for the decisions

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<sup>8</sup> Bakker and Homan 2009, 247-260.

they take that deviate from military advice.<sup>9</sup> They should also refrain from micromanaging the implementation of mandates once they have been given to the military, and focus on *ex-post* accountability. However, practice sometimes differs from this last norm, as will be shown later on.

### ***Personnel***

Regarding personnel, the end of the Cold War and the disappearance of the 'Soviet threat' removed the primary rationale for the large standing Dutch armed forces and the conscription model. From the early 1990s onwards, the Dutch armed forces undertook a series of military reforms: the overall size of the armed forces was significantly reduced, the armed forces were re-oriented away from defence of national territory towards expeditionary operations (for both peacekeeping and combat roles, as the old distinction between peacekeeping and war fighting broke down in the new era of peace enforcement), and military conscription was abandoned in 1997.

The abandonment of conscription raised concerns about breaking the link between the armed forces and society, as embodied in the citizen-soldier concept. The most notable feature of the debate surrounding the abandonment of conscription in the Netherlands, however, was the broad civil consensus on the issue: both political leaders and the public supported the shift, which was implemented with virtually no opposition. In a similar way, there has been very little concern that the creation of a fully professional military might threaten civilian democratic control of the armed forces or create a military with too much autonomy or institutional power.

### ***Military law***

Military disciplinary rules are almost entirely based on civil law and do not infringe upon the civil rights of military personnel. These civil rights can only be limited during military operations in times of war or in peace support operations. The Inspector General for the armed forces serves as Ombudsman for all personnel.

Individual service members have the same rights as other citizens, which may only be limited by law and out of operational concerns. Personnel are allowed to organise themselves into unions and have recourse to legal means if they consider themselves to have been unfairly treated. Political neutrality is ensured through civilian control of the military.

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<sup>9</sup> When the author of this chapter went to the Naval Institute as a midshipman in 1962, during his induction he had to learn by heart the following statement by the famous Dutch Admiral De Ruyter: 'The civil authorities don't have to ask me, but just to order me; and if I were ordered to go to sea with one ship, I would go'. If one failed to reproduce this quotation correctly, one had to do 25 push-ups. In this way, the author became familiar with the concept of civilian control of the military in the Netherlands.

### ***Parliamentary involvement***

Parliamentary involvement in the national decision-making process for deploying the military abroad has substantially increased in the Netherlands over the last decades, as the following examples show. During the discussion on the deployment of army units to Bosnia Herzegovina in the United Nations Protection Force (UNPROFOR) in 1992, it was Parliament that emphasised the peace-keeping nature of the operation and insisted that the unit's armaments should be non-provocative. Hence, all heavy weapons (machine guns, mortars, and so forth) were removed from the Armoured Personnel Carriers. The composition of the force was kept light; hence no tanks were deployed either, in contrast to the approach taken by the Danes, who deployed tanks in the same mission. The serious consequence was that when the violence escalated and it became necessary to use force in excess of self-defence, the unit was severely handicapped when trying to defend itself, protect civilians and reach the given objectives to achieve its mission.

Having learned from this experience, the pendulum swung to the other side: force protection became the most important issue and Parliament took an extraordinary interest in the risk analyses provided before each mission. A good example of this is Parliament's concern prior to the deployment of a marine battalion in the framework of the United Nations Mission in Eritrea and Ethiopia (UNMEE) in 2001. An intensive debate took place in Parliament for weeks. The debate revolved around security guarantees in case of an unforeseen escalation of hostilities. Parliament wanted the deployment of Apache helicopters as additional protection for the marine battalion. The Chief of Defence Staff could see 'no military reasons' for deploying the Apaches or for taking additional precautionary measures. Likewise, the military adviser to the Secretary-General of the UN did not see the necessity of having the 'flying tanks' in the mission and did not allow the Apaches to be positioned in the UN area of operations. As a consequence, the Apaches had to be stationed in Djibouti. Parliament insisted and the Minister of Defence went along with Parliament's opinion. The Apaches were deployed to Djibouti at a cost of around 14 million euros, as soon became clear.

A current example is that of the civil police mission in Kunduz, Afghanistan. The Dutch Cabinet needed the support of the small Green Left party for a majority in Parliament. This party demanded that the duration of the training should be extended from six to eight weeks, that it should include topics such as human rights, corruption, and women's rights, that the police should not be involved in offensive operations, and so forth. Also in this case, the Minister of Defence went along with these demands.

An important question that arises is where executive responsibility begins and parliamentary involvement ends. It is a classic debate – war is too important to be left to generals – but a Parliament that concerns itself with such

a high degree of detail may be counterproductive, for all its hard-won level of involvement. It would seem that its most precious asset is its balanced involvement in the entire political chain of decision-making, before, during and after an operation. It is a matter of maintaining a balance. Too much involvement in decision-making may negatively affect Parliament's willingness to evaluate and review the actions and decisions *post hoc*, and may lead to a form of self-inflicted co-optation.

### ***Defence procurement***

The acquisition of defence equipment is another topic in which Parliament plays an important role. As a small country, the Netherlands spends considerable time on purchasing abroad and the accompanying opportunities for off-set in terms of co-production or other forms of compensation that could benefit its domestic industry.

The procurement reporting procedure taken from parliamentary practice in the Netherlands, where each stage is put on the agenda of the Defence Committee, is as follows. The first communication determines the operational requirement in general terms. The second is the translation of operational requirements into technical specifications, followed by an exploration of the market, the listing of possible suppliers, and a timetable for production and delivery to the armed forces. Third, a study of the information provided by interested providers; fourth, preparation of the acquisition on the basis of negotiated offers, possibly complemented by field trials; and fifth, signing a contract, sometimes preceded by a letter of intent. The Minister has to wait for a period of at least three weeks before signing a proposed contract that exceeds 100 million euros, to allow for a discussion and possible debate and vote to take place in the plenary session of Parliament. For projects costing between 25 and 100 million euros, the operational requirement is subject to approval by the Defence Committee, but further execution is mandated to the armaments directorate.

The most expensive defence programme in Dutch history will be the purchase of the successor to the F-16 fighter aircraft. Although the final decision will be made in 2015, the Government is already involved in the Development and Demonstration Programme of the Joint Strike Fighter (JSF), the F-35A. The Netherlands originally intended to buy 85 JSFs. The initial purchase will cost 5.5 billion dollars, while 30 years of service will cost 9.1 billion dollars; the lifetime cost of a unit will thus be about 215 million dollars. The Minister of Defence has already made clear that due to the rising costs only 56 JSFs will be bought.

However, there have been a lot of complaints relating to the delay, technical problems and the rising costs of the project. The former Minister of Defence Hans Hillen complained that he had great difficulty with the cost increase of 20 per cent on top of what the Netherlands had budgeted. Despite this, he bought two test aircrafts. However, as the Ministry of Defence has to

implement big reductions in its budget, it is very unlikely that the original number of 85 JSFs will be bought. The whole decision-making process is a good example of the Polder Model, the slow decision-making process in the Netherlands whereby all parties have to be heard.

### ***Public access***

Public support for the armed forces in the Netherlands is undoubtedly of great importance. The Dutch Government actively informs the public on matters related to the armed forces, using all possible means for this purpose, including websites (<http://www.defensie.nl/>), audio-visual materials, briefings and publications. Besides this active approach, there is ample opportunity for the press and the public to put forward questions related to the armed forces. They can also request an inspection of any non-classified defence document. In addition, media can embed with virtually all units deployed on any mission and are limited in their reporting only with respect to operational and personal security matters, to protect the troops, the mission and the journalists themselves. To stimulate this embedded journalism, the Netherlands Ministry of Defence regularly organises press trips to areas of operations where Dutch troops are deployed. The public access to information related to the armed forces is based on the Netherlands Act on Public Access to Government Information of 31 October 1991.

### ***Society and the armed forces***

It is worth reemphasising the changed security context in which public support for the maintenance and employment of the armed forces must be sustained. The Dutch armed forces are increasingly engaged in operations away from national territory, in places such as the Balkans, Afghanistan, and the Horn of Africa, in a broad range of contingencies ranging from enforcement to post-conflict stabilisation and reconstruction. Public support is as important as ever. Parliamentary debates and reports help to make defence more transparent and increase public awareness and understanding. They play an important role in building the public consensus that is essential for defence.

Three categories of public support can be distinguished, namely: (1) public support for the armed forces in general, that is, about the necessity and desirability of having armed forces; (2) public support for the various tasks of the armed forces, such as national defence and contributions to international peace and security; and (3) public support for participation in specific operations.

More than 70 per cent of the population considers the armed forces necessary and desirable. The public believes that the main tasks of the Dutch armed forces are defence of territory, crisis management and maintaining peace, humanitarian assistance and counterterrorism. The available research does not warrant the conclusion that there is significantly more or less support

for certain military tasks than for others. However, it should be noted that military expenditure is not particularly popular in the Netherlands, and it is relatively easy to cut government spending on the armed forces. Public opinion is more likely to accept cuts in spending on the armed forces than on, say, healthcare, education or domestic security.

It is an issue of concern that support for specific operations is volatile and can sometimes fall. In early 2006, prior to the decision on participation in the NATO International Security Assistance Force (ISAF) in Uruzgan the opponents of the operation outnumbered the supporters. This was also the case when the decision to extend participation for another two years was taken. In addition, the current Kunduz mission is not supported by a majority of the public. There is a risk that if a majority of public opinion were to frequently oppose a specific operation, it would have a negative impact on public support for the Dutch armed forces in general.

### **Recent Developments**

After the end of the Cold War, the security environment changed fundamentally. This had an impact on civil-military relations, as well on the military profession. The world of the soldier has become rather complex. Harald Müller has identified some transformations that are characteristic of the evolution of this environmental complexity.<sup>10</sup> He argues that the transformation from autocracy to democracy in some countries after the end of the Cold War could undermine a pillar of military existence, namely reliance on a tradition as a source of psychological strength and pride. Another transformation he mentions is that with the disappearance of the bipolar structure, the comfortable simplicity of enemy, mission, frontlines, targets, strategies and doctrines has also disappeared.

Müller is also critical of NATO. In his view, instead of giving soldiers a welcome orientation after the end of the Cold War, the Alliance created divisions, doubts, confusion and uneasiness. The member states hold different views on the new tasks for NATO. There is a risk that NATO will become a military toolkit for ad hoc coalitions, as the recent operations in Libya have shown.

A further transformation is the momentous shift in the military's social basis, including the multiculturalisation of the armed forces in immigration societies; the right of homosexuals to reveal their sexual orientation; and the admittance of women into service functions. As part of the ongoing democratic revolution, women have demanded and been granted increased opportunities in the military.

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<sup>10</sup> Müller 2012, 271-291.

The information age has effected considerable changes in conventional warfare. One fundamental innovation has been dubbed the 'Revolution in Military Affairs', the effect of which is that targets can be acquired with much higher reliability and attacked over long distances with increasing precision (for example, by using drones).<sup>11</sup> The transformation from conscript to all-volunteer armed forces can create greater distance between society and the military. This trend has already been underway for some time.

Missions also have been transformed. New missions entail 'wars of choice' to restore the international order in the name of international law, to end serious violations of human rights, to prevent or put an end to genocidal actions such as 'ethnic cleansing', or to effect regime change from autocracy to democracy. Most of these missions, even those allegedly for 'peacekeeping' purposes, involve high-risk environments for the soldiers who undertake them. These missions mostly inhabit a grey zone between war and peace; there is a lack of clarity about who the enemy is. Another still-increasing global trend is the contracting-out of the supply of military and security services. As the financial crisis leads to cuts in military budgets, military operations are becoming more dependent on private military and security companies.

The role of the mass media has become one of the most contentious areas of civil-military relations in a democracy. Advanced countries have become information societies, in which media play a major role in setting the military policy agenda and in helping to frame public evaluations of military operations. That the military does not control the presentation of the military to the public – a task accomplished largely through the media – is a major dimension of contemporary civil-military relations.

It is obvious that all these transformations pose important challenges for the military profession. While the traditional role of warrior is still the basic pillar of the military profession, nowadays other roles also have to be fulfilled. The role of diplomat is important in peace support operations, where military objectives are often achieved by talking instead of shooting, and by gaining the hearts and minds of the population. Manager is another role, meaning that in peacetime, the military has to manage scarce resources in the most efficient way. Lastly, the military also fulfils the role of citizen, being fully integrated in society (the citizen in uniform).

### **The Three Dimensions of Civil-Military Relations**

At the end of this chapter, it is interesting to introduce the new, broader, more advanced approach to civil-military relations that has been advocated by Florina Christiana Matei.<sup>12</sup> She argues that the challenge in the contemporary world is

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<sup>11</sup> Homan 2011.

<sup>12</sup> Matei 2013, 26-39.

not only to assert and maintain civilian control over the military, but also to develop effective militaries, police forces, and intelligence agencies that are able to implement a broad variety of roles and missions.

Matei distinguishes six major roles: wars, internal wars, terrorism, crime, humanitarian assistance, and peace operations. She rightly argues that we need a clear picture of the effectiveness and costs of security forces in order to understand the contemporary importance of the relationship between elected leaders and the security forces for democracy. That is, to understand what armed forces, police forces and intelligence agencies actually do in the twenty-first century, how well they do, and at what cost in terms of personnel and financial resources, requires that we undertake a comprehensive analysis of civil-military relations that encompasses the three dimensions of control, effectiveness, and efficiency.

Civilian control has traditionally been basic and fundamental, but it is irrelevant unless the instruments for achieving security can be used effectively to fulfil the military's roles and missions. Furthermore, both control and effectiveness must be affordable, or they will undermine other national priorities. Matei concludes that increasingly, populations are aware that their military must not only be controlled, but that it must also be able to implement the assigned task at a reasonable cost. While the theories of Huntington and Janowitz are still the starting point for any discussion, Matei's ideas represent an expansion of the traditional concept of civilian control and challenge experts in civilian-military relations to make civilian control more substantial and practical in the new security environment.



## VIII. The Role and Interaction of Civilians and Soldiers in the Making and Execution of Defence Policy. The Turkish Case: Transforming but not ‘Reforming’

*Haldun Solmaztürk\**

Although in recent years, there has been a departure from long-established practice, the formulation of ‘Turkish defence policy’ has traditionally – and legally – been the direct responsibility of the Turkish General Staff (TGS). This means that as far as defence policy is concerned, the military, which is completely separate from the Ministry of Defence (MoD), functions and acts like a second MoD.

The military has also – indirectly, but effectively – been responsible for the development of ‘national security policy’. This type of relationship is probably unique in the world and has its roots in the history and dominant political culture of the modern Turkish Republic. In other countries, national security policy tends to be the responsibility of the elected executive in some form or another. The uniqueness of the Turkish style is not due to the constitutional framework in which national security policy is formulated. In fact, the Turkish system has many aspects in common with others, including the name of the principle institution, the National Security Council (MGK). However, the Army’s role as almost the sole authority, the final arbiter in this area, is *sui generis*. The main aim of this article is not to explain this unusual situation, but to describe how it shapes the ways in which Turkish defence policy is formulated, implemented and readjusted as circumstances necessitate.

In recent years, the Turkish political system as a whole and the dominant role played by the Army in it has undergone a fundamental transformation. This did not happen overnight, but gradually gathered momentum. In particular, civil-military relations have shifted to a rather different legal and – equally important – psychological foundation than that on which they were based in the not too distant past. The social, political and international context has also profoundly changed.

On the other hand, in Turkey, two critical flaws have appeared in the whole process of democratisation, based on an apparent misperception that democratisation simply means ‘demilitarisation’. First, the vital dimensions of democracy, such as accountability, transparency, pluralism, participation and the separation of powers – and above all, the rule of law – have been ignored throughout. Also overlooked has been the concept of good governance; in other

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\* BgGen. (ret.) Haldun Solmaztürk is Political Scientist at the Turkish Centre for International Relations and Strategic Analysis (TÜRKSAM).

words, the 'technical' nature of the security and defence policy-making process. Eliminating the military's 'influence' in one form or another, and even ignoring the military's input, does not necessarily produce efficient and effective security policy-making.

This article first describes the system which was operative until these changes gradually started to take hold, and then summarises the political 'reform' process which transformed civil-military relations between 2001-2007, outlining how defence policy-making 'worked' after this transformation. This is followed, based on certain observations, by a critique of the still ongoing process of 'reform' in civil-military relations in Turkey and the resulting impact on the security and defence policy-making process. It concludes with a discussion of the shortfalls and potential traps ahead, and offers some ideas – as recommendations – for improving the management and direction of this historical and vitally important transformation for the country. Throughout, the formulation of defence policy is considered to take place within the overall framework of national security policy and the policy-making system.

### **Defence Policy-making in Turkey before the 2000s**

Until the mid-2000s, the making of defence policy in Turkey was mainly connected to and governed by national security policy and the way the latter was formulated. This, in turn, made the involvement of the TGS – as the primary actor – in both processes inevitable, thanks to its constitutional status, functions and roles.<sup>1</sup> Besides, the presence of the MGK as the main and the

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<sup>1</sup> The Constitution (as amended as of 7 May 2010, by Law no. 4709, Art. 32). *Art. 117* - [...] 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. The Chief of the General Staff shall be appointed by the President of the Republic following the proposal of the Council of Ministers; his duties and powers shall be regulated by law. The Chief of the General Staff shall be responsible to the Prime Minister in the exercise of his duties and powers. The functional relations and scope of jurisdiction of the Ministry of National Defence with regard to the Chief of the General Staff and the Commanders of the Armed Forces shall be regulated by law. *Art. 118* - The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, Deputy Prime Ministers, Ministers of Justice, National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and Air Forces and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic. [...] The National Security Council shall submit to the Council of Ministers the advisory decisions that are taken and its views on ensuring the necessary coordination with regard to the formulation, establishment, and implementation of the national security policy of the state. The Council of Ministers shall evaluate decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of society. The agenda of the National Security Council shall be drawn up by the President of the Republic taking into account the proposals of the Prime Minister and the Chief of the General Staff. [...] The organisation and duties of the General Secretariat of the National

ultimate constitutional authority within the Turkish political decision-making system – and the military’s over-representation in it – further reinforced the military’s ability to have a powerful ‘say’ in security and defence related decisions. Moreover, the critical positions reserved for active or retired<sup>2</sup> military personnel within the General Secretariat of the MGK made the military the only ‘political’ power with real control over national security and Turkish defence policy – effectively in any political decision.

Technically, the policy formulation cycle was initiated by the Secretariat, usually based on the current National Security Policy Document (*Milli Güvenlik Siyaseti Belgesi*) and the recent General Intelligence Estimate collectively produced by the TGS, the Ministry of Foreign Affairs (MFA) and the National Intelligence Agency (*Milli İstihbarat Teşkilatı*, MİT). The relevant parts of the NATO MC-161 series of intelligence documents were also taken into consideration. In addition to the ‘military’ (that is, the TGS and the land, naval, and air force commands, including the General Command of the Gendarmerie), each ministry and the MİT were requested to forward their views and the rationales for these. Both the document and the views related to it were handled as ‘secret’ and were strictly controlled.

Based on the views received, the Secretariat would develop the first draft and resend it to the same group of addressees for a second review and comments. Most of the time, there would be one or more meetings to discuss issues of major importance or those aspects on which there were major differences of opinion. With the exception of the MFA, other agencies seldom challenged the military’s views regarding national security policy options or courses of action. Potential conflicts between the views of the TGS and the Secretariat – which was considered part of the *in-house* business – were almost always avoided through the use of informal channels, personally involving top decision-makers such as the Deputy Chief of the General Staff and the Secretary General himself. The Office of the Prime Minister and the Parliament as a whole were simply absent from this entire process of ‘national’ policy formulation and, perhaps more remarkably, in its implementation.

At each stage, the agencies involved would compile their institutional views through a similar process of internal correspondence, coordination and/or meetings and forward them to the Secretariat, which would prepare the final draft. The final draft was normally briefed to the National Security Council and, once endorsed, was signed by the Prime Minister and became effective. It was

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Security Council shall be regulated by law. *The Constitution of the Republic of Turkey*. Law Number 2709, dated 7 November 1982. First adopted by the Founding Assembly (*Kurucu Meclis*) on 18 October 1982 for referendum, published in Official Gazette No 17844, on 20 October 1982. Following referendum, republished on 9 November 1982, Official Gazette No 17863. <http://www.byegm.gov.tr/content.aspx?s=tcotrot>. Accessed on 8 December 2012.

<sup>2</sup> This was mainly due to the job specifications of those posts rather than an arbitrary selection favouring retired military just because of their military background.

distributed to the military and civilian agencies that had primary responsibility for implementing it. For the Special Policy Papers – intended for special regions or special purposes – a similar process was followed; however, the agency office that had primary responsibility for the process could change, depending on the subject of the paper.

Although a similar process was employed for the formulation of defence policy, it was more or less an in-house exercise that tended to be restricted to the military agencies. Once approved by the Chief of the General Staff, the so-called National Military Strategy of Turkey (*Türkiye'nin Milli Askeri Stratejisi*, TÜMAS), that is, Turkey's defence policy, was presented to the Prime Minister, distributed and became effective. In any case, it was a closed process with little, if any, participation and pluralism, which excluded the Parliament – the National Defence Committee, the Foreign Affairs Committee and the General Assembly – completely.

Since the whole process was absolutely exclusionary in nature, no meaningful debate could take place in civil society or in the wider public in general.

### **Transformation of Civil-Military Relations**

The reform of the Turkish security sector was initiated as early as 2001, immediately after the adoption of the Accession Partnership for Turkey by the Council of the European Union in March of that year. These reforms were aimed at the composition, structure, roles and functions of the MGK and the legislative framework relating to the MGK and its General Secretariat. The reporting chain for the Chief of the Turkish General Staff – directly to the Prime Minister, as elucidated in the Constitution – and the General Staff's position as a stand-alone 'MoD' had always been contentious subjects in internal political debate. However, these issues had been avoided by successive governments.

The 'reform' of the MGK occurred in stages. The first changes, as a first step, came in 2001, when Article 118 of the Constitution – on the MGK – was amended. In May 2001, the Ecevit government forwarded a constitutional amendment package of 38 articles to the Speaker's Office as a draft law signed by all three leaders of the coalition parties (the leading Democratic Leftist Party (DSP), the Motherland Party (ANAP) and the Nationalist Action Party (MHP)). The general rationale<sup>3</sup> behind submitting this package read, 'newly emerging needs, expectations of the public, new political openings, EU membership process and related economic and political criteria'. The fact that the package had been prepared by an *ad hoc* Parliamentary Interparty Conciliation Committee was also clearly stated. Civil society also gave manifest support to

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<sup>3</sup> Draft law on Amending the Constitution, by Istanbul Deputy Bulent Ecevit and 290 other deputies. 6 May 2001. <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss737m.htm>. Accessed on 9 December 2012.

this initiative by the government. Nine civil society organisations and platforms, including the Turkish Industrialists and Businessmen Association (TÜSİAD; the most influential organisation) and the Union of Chambers and Commodity Exchanges of Turkey (TOBB; the largest such organisation) circulated a paid advertisement.<sup>4</sup> Published in major national dailies on 24 September 2001 – 20 days before the draft law came to the General Assembly – it openly supported a ‘Yes’ campaign.

The package was passed by Parliament in October 2001, only six months after the Accession Partnership. It introduced minor but symbolically important changes. These changes reflected the Government’s determination to pursue the EU accession goal, and also constituted a test of the Army’s potential reaction to further ‘reforms’. The amendments to Article 118 decreed that the number of civilian members was to be increased, as membership of the MGK was to be expanded to include the Deputy Prime Minister and the Minister of Justice. The ‘advisory’ nature of the MGK was underscored. From now on, the Council of Ministers would ‘evaluate’ the decisions of MGK, rather than ‘giving priority in consideration’. Besides, ‘the Cabinet heeds MGK decisions’ was altered to ‘takes into consideration’, basically treating MGK decisions as ‘advice’.

Later, in December 2001, the 57<sup>th</sup> Ecevit/coalition government prepared a bill<sup>5</sup> for amending Law no. 2945<sup>6</sup> in line with the constitutional changes in Article 118 that had already been passed by the Parliament. However, the bill never made it to the Plenary, and when the legislative term suddenly ended in the midst of an economic and political crisis in autumn 2002 and the country went into early general elections in November, it became null.<sup>7</sup>

Civil society, at that time, did not consider these changes to be satisfactory, but major changes would follow in 2003. The Turkish Economic and Social Studies Foundation (TESEV), for example, argued that these changes ‘did not represent a radical change in the status of the Council’. While referring to previous publications by TÜSİAD suggesting ‘ending the constitutional status of the National Security Council’,<sup>8</sup> TESEV nevertheless admitted that ‘in reality, current political conjuncture was not fit for more fundamental changes in the status of the Council’. This was because, it argued,

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<sup>4</sup> Sabah 2010.

<sup>5</sup> Government Bill on amending the Law on the National Security Council and the NSC General Secretariat; dated 28 December 2001, based on the Cabinet decision dated 27 December 2001.

<sup>6</sup> Law no. 2945, Law on the National Security Council and the General Secretariat for the National Security Council, adopted on 9 November 1983. Official Gazette, 11 November 1983, No. 18218.

<sup>7</sup> This was due to the Rules of Procedure of the TGNA, Art. 77: ‘Those government bills and draft laws, which are not finalized and not become law before the end of a legislative year, become null. [...]’

<sup>8</sup> Tanör 1997, 83-85; Tanör 1999, 100-109.

the 'Armed forces playing a more effective political role in Turkey, in comparison to other Western democracies, [had] too fundamental historical, sociological and political reasons to be changed by a simple amendment in laws or in the constitution'. It reiterated the need for 'a more restricted and concrete redefinition of the notion of national security'.<sup>9</sup>

Upon assuming office, the new, 58<sup>th</sup> Gül Government of the Justice and Development Party (AKP) resubmitted a number of government bills<sup>10</sup> that had become null, including two proposals on the MGK that had previously been prepared by the Ecevit coalition government. They were referred to the Committee on the Constitution on 19 December 2002 and debated on 9 January 2003. They were clearly given priority, supported unanimously and adopted by the Plenary on 15 January 2003, eventually reflecting the constitutional changes on Law no. 2945.<sup>11</sup>

In July 2003, the 59<sup>th</sup> AKP Government submitted a comprehensive 'democratisation' package of 37 articles to Parliament, the so-called *Seventh EU Harmonization Package*.<sup>12</sup> It was prepared as a government bill, amending various laws, including legislation related to the MGK and its General Secretariat, among others. The general rationale – in a clear reference to the Accession Partnership Document of 2003<sup>13</sup> – referred to the 'EU membership process', 'legal, political and economic reforms, undergone by all candidate countries', the 'National Programme [of Turkey]' of March 2001 and 'constitutional amendments of November 2001'. It was referred to the Parliamentary Justice Committee – as the primary committee – on 24 July 2003. It was then debated in the EU Harmonization Committee on 24 July, submitted to the Speaker's Office on the following day, then debated in the Justice

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<sup>9</sup> Özbudun 2002, 8

<sup>10</sup> Government letter to the Speaker's Office dated 11 December 2002, resubmitting some government bills which became null. 1/404: Government Bill, Adding Two Articles and One Temporary Article to the Law on the National Security Council and NSC Secretariat General, and Amending the Art. 36 of the State Personnel Law. 1/941: Government Bill, on Amending the Law on the National Security Council and NSC Secretariat General.

<sup>11</sup> See Law no. 4789, dated 15 January 2003, Official Gazette No 24997, 18 January 2003. Law on Amending the Law on National Security Council and the General Secretariat for the National Security Council, <http://www.izafet.com/hukuk/368633-mgk-yasasinda-degisiklik.html#ixzz1vPCgCEr1>. Accessed on 9 December 2012.

<sup>12</sup> The Government Bill for a 'democratisation' package of 37 articles amending various laws; dated 23 July 2003, based on the Cabinet decision dated 23 July 2003.

<sup>13</sup> Partnership Document of 2003 aimed to curb the vast operational tasks and authority of the NSC in line with its redefined constitutional role of a 'consultative' body. Official Journal of the European Union. L 145/40, 12 June 2003. Council decision of 19 May 2003 on [...] the Accession Partnership with Turkey. [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Apd/turkey\\_apd\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/turkey_apd_2003.pdf). Accessed on 9 December 2012.

Committee on 29 July, and adopted in the Plenary on 30 July 2003.<sup>14</sup> The whole process, for the full package, was completed in a single week.

This Seventh Package – Articles 9, 24-28 and 35 – introduced further and important changes to the structure, composition and responsibilities of the MGK, particularly its General Secretariat. As civilians were *permitted* to be appointed to the post of Secretary General, this position was no longer ‘reserved’ for a general or admiral from the Turkish Armed Forces. ‘If he/she was a member of the Turkish Armed Forces [only then] endorsement by the Chief of the General Staff would be sought’. With the new description of its responsibilities, now stated in two simple sentences – amending Article 13, Duties and Responsibilities – the Secretariat was stripped of its traditional role as an ‘executor’ and became what was essentially a secretarial unit, with no real job. In practice, the functions of the institution have been downgraded and restricted to ‘mobilisation inspections’ and ‘crisis management’ through the Disaster Relief and Emergency Response Department (AFAD). The authority to ‘supervise’ the execution, based on the MGK decisions, was transferred to the Deputy Prime Minister. In addition, the regular MGK meetings were to be scheduled to take place bi-monthly, instead of each month.

The Government used the amendments to Law no. 2945 and the Bylaw for the General Secretariat of the MGK as instruments to enact political decisions. In December 2003, the formerly ‘secret’ Bylaw for the Secretariat was abrogated and replaced by a new ‘unclassified’ one.<sup>15</sup> As the Secretariat had been fundamentally reorganised, several offices with critical tasks and responsibilities were closed. In August 2004, a civilian, an ambassador, was appointed Secretary General of the MGK for the first time. The overall manpower composition of the Secretariat also rapidly changed as the contracts of retired military personnel were not renewed and an influx of ‘civilians’ – mainly from the MFA – replaced them, occupying key positions. Even the style of ‘writing’ and jargon used in correspondence and communication was transformed from ‘military’ to ‘diplomatic’.<sup>16</sup>

Meanwhile, security sector reform, under the general heading of ‘civilianisation’, took an interesting turn, and in April 2003, the main functions of

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<sup>14</sup> See Law no. 4963, dated 30 July 2003. Official Gazette No 25192, 7 August 2003. Law Concerning the Amendment of Various Laws.

<sup>15</sup> Bylaw for the General Secretariat for the National Security Council. Cabinet Decision dated 29 December 2003, no. 2003/6688, based on the Law no. 2945, adopted on 9 November 1983. Official Gazette: 8 January 2004, no. 25340.

<http://www.mgk.gov.tr/Turkce/yonetmelik.html>. Accessed on 9 December 2012.

<sup>16</sup> Since then, as of December 2012, four ‘civilian’ secretary-generals have taken office, all but one with a diplomatic background. It can be argued that this was based on a conscious political choice to replace the military with the diplomatic corps, the only other state institution – apart from the army – which has been involved in formulation of the national security policy and with some capacity to maintain the effectiveness without serious disruption. The current incumbent is a former governor and a recent office holder within the Office of the Prime Minister.

the Societal Relations Department (*Toplumla İlişkiler Başkanlığı*) of the Secretariat were transferred to the Ministry of Interior. This department had been primarily responsible for the much debated and contentious 'information operations', but now the very same functions – which had been so severely criticised on the grounds of democratic rule – would continue to be carried out, only not by the 'army', but by the 'police'. Not only were the functions – psychological operations being prominent – maintained; beyond a simple transfer of one 'office', the department also expanded and enlarged its organisation throughout the country in the form of Societal Relations Bureaus in 81 governorships.

The reorganisation of the General Secretariat of the MGK was completed towards the end of 2006. All changes were initiated solely by the political authority, and the EU process had a major impact on the overall transformation in terms of compliance with the political criteria.

### **Defence Policy-making in Turkey after MGK 'Reform'**

As of mid-2006, the process of security sector reform, as far as the MGK and the Secretariat were concerned, seemed complete. However, a number of parallel developments were also taking place. In May 2006, the Security Affairs Department of the Prime Minister's Office was upgraded and completely reorganised as the Directorate General of Security Affairs. Its terms of reference<sup>17</sup> included authority for 'managing communication and coordination between the Office of the Prime Minister and other state institutions with responsibility for internal security, external security and counter- terrorism'.

The next step was the establishment of the Undersecretariat for Public Order and Security at the Ministry of Internal Affairs. The new Undersecretariat – which did not have 'operational' responsibility – came into being in 2010, tasked with carrying out functions similar to those previously performed by the MGK.<sup>18</sup> As this new bureaucratic animal also assumed responsibility for 'informing the public about its activities and conducting public relations', practically all functions had now been transferred to a civilian-dominated, centrally controlled organisation, and these functions had actually been

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<sup>17</sup> See Art. 12, Law no. 3056, Law Concerning the Organization of the Office of the Prime Minister, dated 10 October 1984, amended by Law no. 5508, dated 24 May 2006. <http://www.mevzuat.adalet.gov.tr/html/687.html>. Accessed on 15 November 2012.

<sup>18</sup> 'Develop counter-terrorism policies and strategies; support security institutions and other relevant bodies; coordinate between them; provide strategic information; track and analyse international developments in cooperation with the Ministry of Foreign Affairs and other relevant bodies; carry out or commission analyses and oversight'. See Law no. 5952, Law Concerning the Organization and Missions of the Undersecretariat for Public Order and Security, adopted on 17 February 2010. Official Gazette: 4 March 2010, no. 27511; Bylaw dated 25 March 2011. <http://www.mevzuat.adalet.gov.tr/html/30975.html>. Accessed on 15 November 2012.

expanded. However, in terms of transparency, public accountability, communication and public information, there had been very little, if any, change.<sup>19</sup> Finally, with the parallel and quite similar ‘de-militarisation’ process that also took place within the MİT, as of mid-2012, the security sector reform process seemed to have reached its politically optimal extent. This latest move – considered along with other accompanying political steps already taken – actually marked the completion of the ‘change of hands’ in the security bureaucracy.

These reforms notwithstanding, in terms of the formulation of national security and defence policy, little has changed since the beginning of the 2000s. The General Secretariat of the MGK, as before, is nominally responsible for the overall coordination and compilation of national security policy, with the same agencies involved. However, now the TGS – as the once-dominant actor – has reportedly been replaced by a small *ad hoc* group working for the Office of the Prime Minister as need arises. The National Security Policy Document is now a purely ‘political’ document, that is, it reflects priorities more in line with the political priorities of the Government and the governing party. Concerns related to domestic politics have also gained higher importance. Other than that, the whole process is still closed to Parliament, civil society and the public. There is very little debate, or even reporting, in the media regarding these issues. As for defence policy, it still remains within the sole purview of the TGS.

### **Conclusions and Recommendations**

With the failure to adopt a holistic approach, the interconnections between the various dimensions of the democratic ‘reform’ process in seemingly separate areas have been overlooked in Turkey. The reform process naturally advocated that the security sector was to be under civilian political control, understood as ‘executive’ control. However, democratisation also requires direct oversight (by Parliament), and indirect oversight (by civil society), through legal measures, transparency and accountability and openness to media. This naturally involves, among other things, the making of security and defence policies. In Turkey, so-called reform measures have led to neither of these democratic aims.

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<sup>19</sup> The Undersecretariat website includes response(s) to only one single ‘FAQ’ – its postal address. Its ‘press releases’ are all single-sentence denials of stories which appeared in the press, six in total in 2012. Its ‘public information’ activities, in 2010, included ‘briefings to delegations from Sudan and Pakistan, four briefings to Police Academy students and media analyses’. In 2011, there is nothing that can be considered ‘information’, other than a vague statement of ‘exchange of views’ with unspecified ‘individuals and think-tanks’. This brings into question the public aspect of its mission statement and gives the impression that business is conducted as usual.  
<http://www.kdgm.gov.tr/index.snet?wapp=B6570736-B892-48CF-8770-6A2352301560>. Accessed on 10 December 2012.

The whole 'reform' process was primarily aimed at eliminating the military's dominant role in the MGK and the MGK Secretariat. But the result was only to cripple this institution as the main national security policy-making body, without replacing it with or transferring its policy-making functions to another institution. Besides, while the TGS exerted influence on the formulation of national security policy through the MGK and its Secretariat, it also had sole authority and autonomy for the making of defence policy. Not only has this remained unchanged, but the intention to change it has not even been spelled out as a political aim yet. When this does happen, it will take more than a simple change in the state protocol list – such as moving the Chief of General Staff from the right to the left side of the Minister of Defence. It will require a complete integration of the General Staff with the Ministry and a clear delineation of authority and responsibilities. Then the latter, not the former, would assume full responsibility for the formulation of defence policy. More importantly, not only would this allow for a more efficient and effective formulation, implementation and review of policy in complete harmony with other aspects of national security policy, and in real cooperation with other ministries and state institutions, but above all, *only then*, could political supremacy actually be exercised.

The fact that neither has been realised by means of the reform process is puzzling and deserves an explanation, especially as it has happened despite the political opposition's unusually unconditional support and the military's less than enthusiastic but 'docile' attitude *vis-a-vis* the historic changes taking place. One possible explanation is the lack of political will, which is, at first instance, surprising. For example, the often-mentioned Article 35 of the Turkish Armed Forces' Internal Service Law, it has been argued, has to be changed as the most significant step towards keeping the Army within its natural area of jurisdiction. A political move, with great symbolic value in this sense – testing the sincerity of the Government's will for reform – came from the political opposition. A draft law to amend this article,<sup>20</sup> prepared by a main opposition Republican People's Party (CHP) deputy, was submitted to the Speaker's Office in September 2011. Another draft law to amend the very same article,<sup>21</sup> this time prepared by a deputy from another opposition party, the Peace and Democracy Party (BDP), was submitted to the Speaker's Office in October 2011. But, after more than a year, both are still waiting at the National Defence Committee for an action to be taken. And this is happening in a Parliament where both the parliamentary committees and the General Assembly are firmly controlled by the majority represented by the governing party.<sup>22</sup>

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<sup>20</sup> Draft Law by Deputy Muharrem İnce (CHP), 12 September 2011.

<http://www2.tbmm.gov.tr/d24/2/2-0064.pdf>. Accessed on 10 December 2012.

<sup>21</sup> Draft Law by Deputy Hasip Kaplan (BDP), 7 October 2011.

<http://www2.tbmm.gov.tr/d24/2/2-0108.pdf>. Accessed on 10 December 2012.

<sup>22</sup> Actually, TESEV's Security Sector Policy Report's one prominent observation in 2010, based on the 2008 National Programme was that, 'the pledges made in civil-military

Now that, at the end of 2012, most of the foreseen changes, particularly those related to the MGK, have already been implemented and the priority has shifted to other areas of reform, the attitude and the role of the European Union is also worth reviewing. By mid-2009, some fundamental changes, not only with respect to ‘understanding’ and ‘perception’, but also regarding the nature of civil-military relations in Turkey, had already taken place. Nevertheless, the European Commission’s *Turkey 2009 Progress Report*, which was published in October 2009, included a long list of criticisms.<sup>23</sup> Surprisingly, it even stated that ‘No change (had) been made [...] to the Law on the National Security Council’, despite the fact that radical changes had already taken place and been fully implemented. The *2010 Progress Report*, which was adopted in November 2010, immediately after the September 2010 constitutional referendum, adopted a rather cautious tone; but the *2011 Report*<sup>24</sup> appeared fully satisfied with the progress achieved, even though no further changes had taken place since 2006. However, less than five months after the delivery of the *2011 Report*, ‘optimism’ within the EU about civil-military relations in Turkey had evaporated and – as far as the military aspect of *security sector reform* was concerned – had been replaced by a rather deep ‘concern’. In March 2012, the Committee on Foreign Affairs of the European Parliament (EP),<sup>25</sup> while welcoming ‘the continued efforts to improve civilian oversight of the military’, emphasised ‘the need to ensure the continued secular integrity of the armed forces and their operational capability’. This was an unprecedented official statement by any European institute as far as the military of any country was concerned. The EP Resolution on 29 March 2012 adopted a slightly amended version of this motion and stressed ‘the need to ensure the continued operational capability of the [Turkish]

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relations [were] limited in scope’; moreover, the Programme did ‘not envision [*sic*] a fundamental shift in the structure of law enforcement units’, and it did not ‘promise a real change in the security model in Turkey’ which was ‘a sign of the lack of political will in this area’. Akay 2010, 30-31.

<sup>23</sup> ‘The armed forces have continued to exercise undue political influence via formal and informal mechanisms. Senior members of the armed forces have expressed on a large number of occasions their views on domestic and foreign policy issues going beyond their remit [...] On a number of occasions, the General Staff reacted publicly to politicians and media reports. [...] No change has been made to the Turkish Armed Forces Internal Service Law or to the Law on the National Security Council. [...] No progress has been made on strengthening legislative oversight of the military budget and expenditure. [...] Parliament has no mandate to develop security and defence policies. [...] The alleged involvement of military personnel in anti-government activities, disclosed by the investigation on Ergenekon, raises serious concerns.’ EC 2009, 10-11.

<sup>24</sup> ‘In October 2010, the National Security Council approved a revised National Security Policy. This document is not public. It was reportedly prepared mainly by the civilian authorities. [...] Overall, good progress has been made on consolidating the principle of civilian oversight of security forces. The Supreme Military Council of August 2011 was a step towards greater civilian oversight of the Armed Forces. Civilian oversight of military expenditure was tightened and a revised National Security Plan [*sic*] adopted.’ EC 2011, 14.

<sup>25</sup> European Parliament 2011, Article 10.

armed forces'.<sup>26</sup> However, there has been no discernable concern regarding the 'way' national security policy and defence policy was formulated, neither from the perspective of democratic oversight nor technical efficiency.

The hard fact is that the key issue – achieving an integrated MoD and General Staff – has never been properly discussed, and is still missing from the political agenda and related debate in Turkey. The Turkish security and defence policy-making system is transforming but not reforming. What is absent is the political will – as evidenced by the experience of the last ten years – to make the Turkish political decision-making system more effective *and* more democratic.<sup>27</sup> The potential risk awaiting Turkey is that a symbolic move is made to 'subordinate' the military 'to the political authority, but that the decision-making system is left as it has always been: inefficient, taking place in a 'black box' that is centrally controlled and closed to any input, military or otherwise.

There are simply too few civilians working in the making and execution of security and defence policy, and even fewer of them are well prepared for such work. However, this is not only about the lack of civilian capacity; it is about promoting 'good governance', that is, advancing the principles of transparency and accountability. Future efforts for real 'reform' should focus on three interconnected, equally daunting tasks: integrating the Turkish General Staff with the MoD, taking into consideration and making optimal use of best practice examples as adapted to specific needs of the country; reorganising the Turkish military from top to bottom, that is, at the strategic, operational and tactical levels, in line with the current and drastically changed requirements of the battlefield; and educating, training and preparing the military and civilians to work together, in areas related to security and defence policies, professionally and psychologically. The 'civilians', above all, consist of those in Parliament: MPs, advisors and staffers.

All those involved in policy formulation have to understand the need for collaboration amongst various government agencies, between uniformed and civilian officials, between the executive, civil society and the legislative, and the importance being generally open to media. These aims not only require firm commitment on the part of the Government, but also Parliament's willingness to take on responsibility for oversight. Above all, the Turkish military, as the traditional architect of security and defence policy, which has now completely

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<sup>26</sup> European Parliament 2011, 11.

<sup>27</sup> The question of 'why political will is absent' is valid and legitimate. However, this paper is not intended to answer this complex question – which would require a stand-alone study – but to point to this crucial and missing aspect of the democratic reform process in Turkey. Nevertheless, decision-making models and leadership styles that continue to dominate the Turkish political scene can be offered as one possible explanation. Political deinstitutionalisation has led to the downgrading of the whole decision-making system to one based on idiosyncratic and ideological considerations. All policy-making processes, for all practical purposes, have been limited to dynamics taking place in a closed and small circle of decision-makers and/or advisors.

left the political scene – albeit reluctantly – should actively and willingly lead the way toward good (better) governance in the security sector, particularly in designing a new defence policy-making system, this time as a mentor, if necessary. The question is, who or which institution is better prepared for this vital function than the military, with so many decades of practical experience, in and out of Turkey? The Turkish army has a moral responsibility and obligation to assume this role for the ‘civilianisation’ of the Turkish security and defence policy-making system. If anything, it has been clearly shown that the achievement of civilianisation is too important and too difficult to be left in the hands of civilians, particularly politicians, alone. It takes common effort, honest cooperation and unity of effort.

Finally, it is fair to say that both the Turkish military and the political elite have not been tested sufficiently in all these respects. Ironically, while real reforms are far from being complete, to make things worse, the Turkish Government has now firmly – and curiously – adopted the military’s traditionally sceptical attitude towards Europe and the EU. It has turned out to be reluctant to make further reforms and, as evidenced by the recent statements by the Chairman of the Parliamentary Committee on the Constitution and the Minister for European Union Affairs<sup>28</sup> on the EU Commission’s *Turkey 2012 Progress Report*, has become aggressive in the face of substantiated criticism.

It appears that third party involvement – an honest broker, in some sense – could help a lot. The fact that the Government is no longer forthcoming on the issue makes such involvement even more important, a prerequisite for sustaining the reform process. This third party would naturally be composed of third sector organisations (global civil society): think tanks and other international non-governmental organisations working with local partners and media within Turkey. Such an effort would ideally be supported by the international community, particularly the EU and respective member states, this time adopting a holistic approach to democratisation in Turkey rather than a selective and – evidently – counter-productive one. This time it would engage Parliament and the political opposition along with the Government. This does not necessarily mean that the third party would do the work that should and can only be done by Turks themselves, but it would act as a facilitator, by providing insights, sharing best examples, giving training, and encouraging open discussion toward sustainable solutions.

Global society has already done a lot to contribute to democratisation in Turkey, perhaps not always in the most suitable way, as perceived by some inside the country. But, as exemplified above, it is actually high time now, since the environment, despite some setbacks and overwhelming odds, is more open

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<sup>28</sup> For the statement by the Chairman of the Committee on the Constitution, Burhan Kuzu and the response by Head of the Delegation of the EU to Turkey Jean-Maurice Ripert, see “360 Derece” 2012. For the statement by Minister for EU Affairs Egemen Bagis, see “Ankara’nin Nabzi” 2012. Both accessed on 17 December 2012.

than ever for such a contribution, and is even demanding it; and as it is both desirable and certainly needed.

## Part E - Policy Papers

### IX. The State Secrets System and its Impact on Parliamentary Oversight in Turkey

*Kasım Erdem\**

#### **Abstract**

The deficiencies and obscurity of the existing legal framework in Turkey allow the executive to exclusively classify information and documents related to defence and security issues, and thus to block Parliament from having access to the information needed for effective parliamentary oversight. Therefore, there is a need for legal regulation of not only the objective and definition of state secrets, in terms of their scope and content, but also of the principles, conditions and limits governing Parliament's right, or that of its committees, to access state secrets. The new legislation should aim to find a balance between the confidentiality that is necessary for the security services to perform effectively and the accountability and transparency that are essential for the proper functioning of democracy.

#### **Legal Framework**

Current legislation contains a number of provisions concerning the definition of state secrets and penalties for their unauthorised disclosure. Unfortunately, the legislation does not clearly specify the process by which documents or information should be identified as secret and exempt from public access: by whom, how, when and for how long.

Article 26 of the Constitution states that freedom of expression should be restricted so as 'not to disclose information duly qualified as a state secret'. Moreover, under Article 76 of the Constitution, individuals who have been convicted of disclosing state secrets cannot be elected as parliamentarians. Article 48 of the Law on Civil Servants stipulates that being convicted of the disclosure of state secrets constitutes an impediment to being a public servant.

The Rules of Procedure (RoP) of the Turkish Grand National Assembly (TGNA) clearly excludes state secrets from the scope of parliamentary inquiry (Article 105). Moreover, Article 70 of the RoP states that the content of plenary debates held in camera should not be disclosed and should be treated as classified information.

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\* Kasım Erdem is a Legislative Expert at the Turkish Grand National Assembly.

What is a state secret? Like in many other countries, the concept is directly related to concepts such as national security, defence and the national interest. Generally speaking, information and documents are classified and exempt from public access when their disclosure may endanger national security or national interests. Below are some definitions of 'state secrets' according to different laws:

The Law on Criminal Procedure (2004) defines a state secret as *'information, the disclosure of which may impair the foreign affairs of the state, national defence and national security, and may prejudice the constitutional order and foreign affairs'* (Art. 47).

The Law on the Right to Information (2003) defines state secrets as *'information or documents that would clearly impair the foreign affairs of the state, national defence and national security on disclosure and that are classified as State Secrets in terms of their content'*, and excludes such information from the scope of the right to information (Art. 16).

Another definition of classified information is provided by Criminal Law (2004): *'the information required to be kept confidential due to its qualification in terms of the state's security or internal or foreign political interests'* (Art. 326/1). Pursuant to this Law, any person who discloses the above-mentioned information can be punished with five to ten years of imprisonment (Art. 329/1).

As we can see, existing legislation provides a general, rather obscure definition of the concept that lacks clear limits, and which does not contain any specific principles regarding the classification of information as secret. The legislation leaves the most important questions unanswered. By whom, when, how and for how long should information to be classified and remain inaccessible? These legislative shortcomings and the vagueness of these definitions allow the executive and public authorities to refuse to share information needed by Parliament by simply stating that its disclosure would harm 'national security, foreign and national interests or the constitutional order'. Assessment of the threat or danger posed by disclosure tends to be purely political and subjective.

An Ombudsman's Office has been established with the task of examining and holding inquiries into the various activities of public bodies. The office is affiliated to the TGNA, in accordance with Law no. 6328 of 14 June 2012. The Ombudsman is appointed by Parliament. Article 18 of the Law provides that the Office of the Ombudsman can request public authorities to provide any document that is needed for an inquiry. However, the authorised bodies have the power to refuse to share any classified information or documents with the Office, provided that they specify the grounds for doing so when required. The Chief Ombudsman is allowed to examine classified information, but it is not at his or her discretion to decide whether such information merits being classified. Besides, the said information cannot be

used for any reports prepared by the Office, due to the current legislation mentioned above, and cannot be disclosed to public.

During the last parliamentary term, the AKP Government presented the Bill on State Secrets to the TGNA. The committee debates on the Bill are complete, but the plenary debates have not yet been held. The general justification of the Bill states that:

Inadequate legislation relating to state secrets and confidentiality means that it is necessary to regulate the issue with a specific law. Moreover, the necessity of harmonising with EU legislation, maintaining a transparent, accountable and democratic government, achieving a compromise between the interests of the state and citizens, and ensuring the right to information, makes it inevitable that the concepts of state secrets and confidentiality should be clarified.

The Bill defines a 'state secret' as 'confidential information, documents and records that may impair the international relations of the state or the state's security upon disclosure to unauthorised persons' (Article 3/1). Like the current legislation mentioned above, this article is also undermined by an obscure definition and vague wording.

The Bill envisages a State Secret Assessment Board comprised of the Ministers of Justice, National Defence and Internal and Foreign Affairs, presided over by the Prime Minister. The TGNA, with its legislative and oversight functions, is totally excluded from the Board. The Board, which resembles a small cabinet, has exclusive power to decide on proposals from the Prime Ministry and other ministries to qualify information as state secret. The Board is also authorised to exclude the said information from being classified as secret. Furthermore, the Board is empowered to refuse to submit any classified information to the Courts, provided that it justifies its refusal. Consequently, the Government, through the Board, is granted the power to prohibit parliamentary access to information on the grounds that it has been classified. The main point of criticism is that the Bill disproportionately strengthens the executive, making it almost the sole decision-making actor on issues relating to state secrets through the State Secrets Assessment Board. It is striking that Parliament has no direct or indirect power and has not been granted an initiative in such problematic areas, and that no provision has been inserted into the Bill that would allow Parliament to access classified information, provided that the principle of confidentiality is observed.

### **Parliamentary Oversight: Current Problems**

One of the primary functions of the TGNA is to review and monitor the activities of the Government and public agencies. The Assembly carries out its oversight function in a variety of ways. Of these, the most frequently used method of

obtaining information are the 'parliamentary questions', by which deputies may simply request information from the Government.

The Assembly may also set up committees of inquiry to examine different aspects of a particular matter. These committees have the power to request the necessary information from ministries, public institutions, local government, and so forth. However, the committees do not have the formal power to gain access to any information (sometimes classified) when public organs refuse to share information. Finally, the RoP state that it is not possible to initiate or conduct a parliamentary inquiry on state secrets (Article 105/5).

The internal rules, together with the current legislation mentioned above, leave Parliament dependent upon the goodwill of the Government and other public organs to share information. It is clear that the effectiveness of parliamentary oversight depends on having accurate information, obtained in a timely manner. Due to the obscure and subjective nature of the wording of current legislation, the administration uses its discretionary power in the broadest sense and it is frequently the case that the information or documents requested by parliamentary standing committees or committees of inquiry are not supplied by the executive on the grounds of confidentiality or state secrets.

The problem and its impact on parliamentary oversight have been clearly stated in several reports by committees of inquiry. First, one of the committees of inquiry highlighted the fact that the concept of a 'state secret' allowed some public officials to engage in illegal activities, including human rights violations, and to sweep any disturbing facts related to illegal activities or human rights violations under the carpet.<sup>1</sup>

Another committee of inquiry emphasised that the concept, scope, contents, and limits of state secrets are not clearly regulated, meaning that during the committee's inquiry, public institutions (the National Intelligence Service, the General Staff and the ministries of Internal and Foreign Affairs) have refused to share requested information on the grounds that it is classified.<sup>2</sup> This committee clearly defined the problem:

Although there is not a clear limitation concerning state secrets, exclusion of state secrets from the scope of parliamentary inquiry will result in the considerably decreased effectiveness of political inquiry. When an inquiry on the activities of the Government is requested, the Government may block Parliament's initiative by stating that the issue is a state secret. In other words, with this provision in the RoP, the performance of a power assigned to Parliament is subject to the permission of the Government that is supposed to be supervised by Parliament. This is incompatible with the nature and goals of a political inquiry.<sup>3</sup>

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<sup>1</sup> Susurluk 1997, 316.

<sup>2</sup> Mumcu 1997, 5.

<sup>3</sup> Mumcu 1997, 162.

Despite the fact that the problems arising from legislation relating to 'state secrets' were pointed out expressly in the reports by committees of inquiry, the TGNA has not adopted systematic and comprehensive legislation relating to 'state secrets' and has not amended the RoP as recommended by the committee reports.

To summarise, current legislation relating to state secrets has created an area that lies completely outside the scope of parliamentary inquiry and constitutes a serious obstacle to effectively monitoring the activities of Turkey's security sector.

### **Recommendations**

As we have seen, the main problem is the legislation relating to classified information and its negative impact on parliamentary oversight. The formal capacity of Parliament to perform parliamentary oversight is limited by the factors outlined above. The lack of systematic and comprehensive legislation on classified information and the exclusion of state secrets from the scope of parliamentary inquiry are the main reasons for Parliament's limited capacity.

The problem could be addressed by adopting a new law on state secrets, as recommended by several reports by parliamentary committees of inquiry. The Committee of Inquiry on the Susurluk Incident (1997) recommended that, 'It is a necessity for the proper functioning of the rule of law to define the limits of the concept of a state secret and to allow Parliament access to state secrets'.<sup>4</sup> Recently, the Committee on Coups and Military Memorandums (2012) also recommended that the concept of a state secret should be legally regulated so as to remove the obscurity surrounding its definition, and that Parliament be strengthened in terms of its means of oversight.<sup>5</sup>

As explained above, the protection of state secrets forms an exception from freedom of expression as per Article 26 of the Constitution and freedom of information as per Article 16 of the Law on the Right to Information. Thus, when reforming legislation relating to state secrets, it is necessary to observe the principles of confidentiality and accountability, service requirements and freedom of information (at least of Parliament on behalf of the public). In view of this, what type of legislation is needed?

First, the concept of a state secret needs to be regulated by law: specifically, what type of information can be labelled as a 'state secret', by whom, who can get access to such information, and how? The law should

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<sup>4</sup> Susurluk 1997, 317.

<sup>5</sup> The Committee submitted its report to the Office of the Speaker on 30 November 2012. The report has not been printed, distributed and debated in the plenary, but the full text of the report has been published by several media sources. See "Darbe Komisyonundan 20 Öneri" 2012.

clearly define the concepts of 'defence', 'security' and 'the national interest' (similar to the Official Secrets Act in the United Kingdom). This would provide anyone with a reasonable explanation as to what information might have a damaging effect on national defence, security or the national interest. Naturally, the legislation should cover the principles, criteria, authority and procedures for classifying and disclosing state secrets, penalties for unauthorised disclosure, the rights of individuals or Parliament to access information, and, finally, right of appeal if access is denied.

Information and documents which might lead to the disclosure of a particular operation that has or is being undertaken, or is being proposed by the security services, or identification of a person who has been, is being or is supposed to take part in such an operation, can be sensitive and should not be disclosed to the public. However, authorised committees or selected deputies must have access to such information, provided that they observe the confidentiality of the issue.

Second, the legislation should limit the discretionary power of the executive by integrating parliamentary bodies into the process. Any authority that is responsible for dealing with state secrets should contain members of the Assembly or persons appointed by the Assembly, such as the Ombudsman.

Third, the main purpose of parliamentary oversight, particularly parliamentary questions and inquiry, is to draw public attention to the problematic activities of the executive. For this reason, Parliament (committees or selected deputies) should have access to state secrets in order to ensure the proper functioning of parliamentary oversight. The provisions of the RoP relating to the powers of committees of inquiry should be amended so as to force the executive to share any information or document requested by the parliamentary committees. It should be stipulated that persons and institutions are obliged to share all information with the parliamentary committees. Liability must be subject to sanction. In addition, the committees must be able to decide to share the information obtained with the public, regardless of whether it is classified, either through a qualified majority or unanimously.

Finally, the provisions of the RoP excluding state secrets from the scope of parliamentary inquiry have created an area that is protected from parliamentary inquiry. To exclude such a vague area from the scope of the parliamentary inquiry means for Parliament to relinquish its power to control the executive, something that it is duty-bound to do. Thus, it is necessary to repeal this provision of the RoP (Article 105/5) in order to ensure effective parliamentary oversight of the security sector.

## **X. Civil-Military Cooperation on Foreign Policy-Making: The Case of Turkey**

*Sezgin Mercan\**

### **Abstract**

Civil-military relations are often understood from a confrontational perspective in Turkey, something that is directly related to the security pillar of foreign policy. This paper suggests that a consultation mechanism should be developed to deal with the process of foreign policy decision-making. The security concept is highlighted as a way of linking the civil and military authorities when making foreign policy decisions. The consultation mechanism could be an instrument to exercise democratic oversight of the security pillar in foreign policy, in which the military is an effective actor.

### **Introduction**

Since 2002, within the context of rebuilding democratic institutions and reforming civil-military relations in Turkey, the Turkish Government has been trying to establish a Western pattern of civil-military relations with reduced political influence for the military. The institutional reform process of the 2000s, which led up to the start of Turkey's membership negotiations with the EU, introduced changes in the core areas of civilian control over the military, budgeting and planning methods.<sup>1</sup> However, this process of ensuring a clear division of authority between the Government and the armed forces, Government oversight of the General Staff and military commanders through civilian institutions, and the restoration of military prestige and trustworthiness, is marked by a conflictual paradigm. This paradigm is characterised by institutional cooperation between the Government and the armed forces. While this cooperation should address the security pillar of foreign policy-making, there has been a failure to distinguish between civil and military cooperation within the context of security policy. Governmental primacy in all areas of security policy, including the formation and implementation of national security policy, means that nowadays, the military is largely separate from civilian institutions. This lack of institutional cooperation has led the military to turn to non-institutional mechanisms, such as press conferences, briefings and cultural channels, to influence security policy. If efficient institutional cooperation can be

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\* Sezgin Mercan is a PhD Candidate at the Department of EU Studies at Dokuz Eylül University in Turkey.

<sup>1</sup> For the technical analysis framework see European Commission 2010, 10-12.

ensured between the civil and military authorities, the latter will be able to abstain from confronting the Government on security matters.

### **Turkish Foreign Policy-making: Background and Current Practice**

The mainstream approach to civil-military relations in Turkey is generally based on a dual and conflictual paradigm of power relations, which distinguishes the secular, patriotic, rational and modern soldier from the elected, inefficient, anti-secularist and interest-based politician. Analysts who are critical of the military's influence on politics in Turkey underline the conflict-ridden aspects of the relationship between the military and civilians.<sup>2</sup> They regard civil-military issues as 'power relations that involve constant confrontation and tension.'<sup>3</sup> Therefore, 'civil-military relations are power relations because they refer to a conflict about who will have the upper hand when it comes to contentious issues.'<sup>4</sup> The problem 'is not just the implementation of the democratic control of the armed forces, but the larger one of civilian empowerment, that is, enabling civilian governments to take control over not only the military universe but also the life of the country, the economy, political process, institutional make-up.'<sup>5</sup>

The historical and constitutional task of the Turkish Armed Forces is to protect the territorial and political existence of the state, along with its republican and secularist principles, against internal and external threats. Article 35 of the Turkish Armed Forces Internal Service Law states that the duty of the Turkish Armed Forces is to protect and preserve the Turkish homeland and the Turkish Republic, as defined in the Constitution.<sup>6</sup> Turkish foreign policy-making has traditionally revolved around a main systemic factor, namely the achievement of security. In addition to this, Turkish foreign policy has worked 'to expand the sphere of peace and prosperity in its region, generate stability and security, and help establish an order that paves the way for prosperity, human development and lasting stability'.<sup>7</sup> These tasks demand that the military play a primary role in domestic and international political issues, parallel to diplomatic ones.

In the 1990s in particular, the military began to act as an autonomous force in a number of policy fields with the support of the Government, in response to terror and security problems in Turkey. This revealed the inadequacy of collaboration between the military and civilian powers.<sup>8</sup> Although constitutionally, the supremacy of civilian power is absolute in Turkey, existing institutional decision-making mechanisms caused the military to use non-

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<sup>2</sup> Jenkins 2001, 15, 21; Karaosmanoğlu 2011, 254.

<sup>3</sup> Demirel 2004, 145.

<sup>4</sup> Ibid., 127.

<sup>5</sup> Cizre 2004, 113; Karaosmanoğlu, *ibid.*, 254.

<sup>6</sup> Jenkins 2007, 342, 343.

<sup>7</sup> Ministry of Foreign Affairs, no date.

<sup>8</sup> Turan 1997, 124.

institutional mechanisms in the 1990s. The military exercised particular influence on politics through the National Security Council (MGK), an advisory body to the Government.<sup>9</sup> The existence of the MGK as a military-dominated body with a significant degree of executive power in a number of areas (the economy, financial markets, banks, privatisation and foreign policy) created a political system with a dual executive: the civilian authority and the military authority.<sup>10</sup>

The current members of the MGK are the President (the chairman), the Prime Minister, the Deputy Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Foreign Affairs, Internal Affairs and Justice, and the Commanders of the Army, Navy, Air Force and Gendarmerie. As a governmental website puts it,

The MGK submits its advisory decisions about the formulation, determination and implementation of the national security policy of the State and its opinions about the maintenance of the necessary coordination, to the Council of Ministers. This council evaluates decisions of the MGK concerning the measures it deems necessary for the preservation of the existence and independence of the State, integrity of the country and peace and security of the society.<sup>11</sup>

Although the MGK has provided a partial mechanism for civilian and military leaders to cooperate on foreign policy matters and the formulation and implementation of national security policy, this does not mean that the MGK avoided being based on a dual executive in the 1990s and early 2000s. The MGK did not unite the military with functional and institutional civil mechanisms. Under normal conditions, these mechanisms are designed to facilitate military and civilian institutional cooperation. Furthermore, they allow for making professional and strategic security decisions with reference to institutional cooperation based on civil and military dialogue.

The lack of institutional cooperation on decision-making in security matters does not mean that the military refrains from voicing its opinion on related issues. The civilian authorities suggest that this exercise of voice, in the form of recommendations on defence and security matters, should be under the control of the civilian government.<sup>12</sup> It is thus clear that an institutional mechanism is needed to achieve such control and facilitate the division of labour between civilians and the military. The Chief of the General Staff has a direct relationship with the President and the Prime Minister through regular meetings and MGK meetings. Over the years, however, the MGK has become a key decision-maker in Turkey, and it has failed to achieve cooperation between civilians and the military. Because the MGK has functioned as a high-level

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<sup>9</sup> Ibid., 129, 130.

<sup>10</sup> Cizre Sakalhoğlu 1997, 158; Sarigil 2010, 470.

<sup>11</sup> Secretariat General of the National Security Council, no date.

<sup>12</sup> Karaosmanoğlu, *ibid.*, 254.

platform that includes civil and military leaders, it has turned into an arena of political competition for civil and military leaders and high-ranking bureaucrats. Foreign policy decision-making that involves multiple high-level autonomous actors has proved to be a policy challenge. Decision-making processes with multiple actors often fail to end in compromise agreements and well-structured policies.<sup>13</sup>

To avoid such failure, an integrated, low-level cooperation mechanism is needed that could supervise the two sides. A Joint Committee, which has an inter-institutional character, could be responsible for the formulation and conduct of security policies at a lower level. Such a low-level cooperation mechanism would give civilians an opportunity to enter a new area to influence security and military matters. Potentially, this could promote the principles of transparency and accountability, which are inherent in good administrative practices. In addition, low-level cooperation mechanisms could provide a platform for civilian control, democratic oversight and mutual confidence between civilians and the military in the security sector. The MGK has the potential to be a platform where civilian and military leaders cooperate. It does not have the potential to promote democratic oversight, however, due to its high-level character and the fact that it positions the military in a place where it can avoid having to share responsibility with civilians.

In any state that has norms, values and principles based on the rule of law, democracy and human rights, the civil authorities need the armed forces for the defence of the state and its territorial integrity. At the same time, the armed forces need the civil authorities for the recognition of their own legitimacy. At this point, it is important to acknowledge that the main issue is not to establish the primacy of the elected civilian government over the armed forces, but 'how to maintain a strong and effective military that poses no threat to the civilian elite.'<sup>14</sup> This challenge can be managed effectively by building a cooperative and functional relationship between civilian and military actors. As mentioned above, this does not necessitate cooperation at a high leadership level. Rather, it depends on the existence of low-level cooperation and related institutional mechanisms. In addition, control of the military depends on the degree to which the officer corps cooperates with the civilian government, and vice versa. Both function within the same state structure and are dependent upon one other.<sup>15</sup>

In response to approaches that regard the armed forces simply as an instrument of the civilian government, without considering the nature and capabilities of that instrument, we should stress the significance of dialogue between politicians and soldiers and the harmonisation of the two actors. The necessary principle is civil-military integration, founded on the notions of

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<sup>13</sup> Jenkins 2001, 52.

<sup>14</sup> Burk 2002, 15.

<sup>15</sup> Karaosmanoğlu, *ibid.*, 255.

equality in counsel and of the harmonisation of effects. This reformed system of civil-military relations would reintegrate the armed forces and the government within the state structure and render parliamentary control of both civilian and military agents of the executive more effective.<sup>16</sup> In the contemporary world, the political and military spheres are penetrating each other more than ever. The civil-military relationship should not be seen as conflict-ridden. Political and military leaders are expected to collaborate in reaching a constructive consensus, not only on defence and security policies, but also on how to manage their relationship within the state and society.<sup>17</sup>

### **Recommendations on Civil-Military Cooperation**

In Turkey, civilian governments have either tried to relegate the military to the sidelines or they have granted it too much autonomy. Consequently, military confidence in the competence of civilian governments has tended to be low. In the process, a delicate relationship has been established between civilian governments and the military, whereby politicians and officers have turned into adversaries, rather than allies.<sup>18</sup> This delicate relationship is based on the separation of civil and military institutions and the authority of civilians over the military to prevent military intervention. At this point, the 'theory of concordance'<sup>19</sup> should be considered as a reference for dialogue, accommodation and shared values or objectives between civilians and the military. Society, as another agent, should also be added to the civilian and military authorities. The main proposition of this theory is that if the military, civilian elites and society achieve concordance on related issues, then domestic military intervention becomes less likely. In addition, in contrast to prevailing approaches, which are based on the separation of civil and military institutions, concordance theory promotes cooperation and involvement among the military, political institutions and the society. It does not separate the civil and military spheres so as to prevent the latter exercising influence. If the military has established dialogue and cooperation with civilian elites and society, military intervention can be prevented.<sup>20</sup>

The active and enduring agreement between the military, political elites and society can explain why domestic military intervention has not occurred in the EU countries. In order to explain a country's civil-military relations, we need to look at cultural and institutional factors, focusing on the composition of the officer corps, political decision-making processes and recruitment methods.<sup>21</sup>

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<sup>16</sup> Strachan 2006, 67; Karaosmanoğlu, *ibid.*, 255, 256.

<sup>17</sup> Karaosmanoğlu, *ibid.*, 256.

<sup>18</sup> Heper 2005, 216.

<sup>19</sup> Schiff 1995, 12.

<sup>20</sup> *Ibid.*, 10-12.

<sup>21</sup> *Ibid.*, 22.

Politicians have not shown interest in the technicalities of security and defence policy in Turkey. However, it is a significant component of the active and enduring agreement between the military and political elites. Politicians have usually taken office without knowledge of military strategy and weapon procurement problems, meaning that the General Staff has played a determining advisory role. The improvement of their interest in and knowledge of security and defence matters means that they can play more efficient role in security policy.<sup>22</sup>

In the foreign and security policy-making process in Turkey, the civilian authorities are represented by the Ministry of Foreign Affairs and the Ministry of Defence, and the armed forces are represented by the General Staff. Institutionally, the Prime Minister, as the head of the Government, is the supreme decision-maker in foreign policy-making. As suggested above, however, a Joint Committee should be the primary institution responsible for the formulation and conduct of security policies, which could flow from other mechanisms, including lower-level cooperation between civilians and the military. This Joint Committee should be responsible for preparatory work on security issues and should be established in the Ministry of Foreign Affairs' Consultation Unit. It should consist of expert representatives from the Ministry of Foreign Affairs, the Ministry of Defence and the General Staff. This committee should be administered by ambassadors from Ministry of Foreign Affairs and low-rank civilian and military professionals from the Ministry of Defence and General Staff. The committee should occupy a distinguished position in the security pillar of the foreign policy decision-making system, in which it should function as a platform for dialogue, suggestions and guidance and to supervise the work of experts. The underlying competition and conflict between civilian and military institutions in Turkey needs to be removed. This would be achieved by combining political leaders' potential for strategic assessment on security matters with military leaders' potential for assessing these matters diplomatically, within the framework of a Joint Committee working programme.

The improvements suggested above and the Joint Committee working programme would involve information-sharing between political and military leaders and staff regarding military capabilities, plans, strategies, principals, coordination, costs and benefits. The Joint Committee would devise psychological operation plans, work on national security policy, and plan mobilisations and war preparations. Such a committee would potentially be able to counter the institutional weaknesses of the MGK, including its lack of oversight. One aspect of democratic or political oversight relates to the extent to which the military is involved in making foreign policy. The Joint Committee would be an instrument for democratic oversight on security matters in which the military would be an effective actor. Furthermore, the committee would

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<sup>22</sup> Karaosmanoğlu 2000, 215.

support parliamentary oversight on security matters, allowing politicians to intervene in the Joint Committee's practices. In this way, it would be possible to create an institutionalised cooperation and consultation mechanism involving the civilian and military authorities, whereby a strong and effective military would be maintained without any challenge to civilian authority.



## **XI. Analysing the Restructuring of the Turkish Security Sector in relation to Counter-Terrorism**

*Giray Sadık\**

### **Abstract**

There is a need for effective inter-institutional coordination and cooperation between the military, police and intelligence units on counter-terrorism issues in Turkey, just like in other countries. Cooperation plays a critical role in ensuring Turkey's security in the face of ever-changing global threats, regardless of the frequency of terrorist incidents. Only through proper coordination can a multi-faceted threat such as terrorism be effectively addressed. In this policy paper, the current status of inter-institutional cooperation on counter-terrorism in Turkey and the political and social impact of revised legal arrangements are analysed. To transform inter-institutional coordination into effective and sustainable cooperation, such coordination has to emerge via a democratic and participatory process, and multi-dimensional accountability mechanisms brought into force.

### **Introduction**

Inter-institutional cooperation on counter-terrorism is an issue that relates both to the security and the democratic structure of the state. In view of Turkey's recent history, it may be observed that neither counter-terrorism nor inter-institutional cooperation is a new issue. However, since the arrangements with regard to either issue have been unsettled and given the inadequacy of the existing counter-terrorism mechanisms, the issue of inter-institutional cooperation has maintained its importance and caused the debates to continue on various platforms. Democratisation and the oversight of counter-terrorism institutions constitute another important dimension of these debates.

In 2010, the debate gained new momentum when the Public Order and Security Undersecretariat was formed under the Ministry of Internal Affairs. The Undersecretariat was intended to ensure the coordination between the institutions involved in counter-terrorism. To understand this situation, we need to evaluate the recent developments in the light of legislation and expert opinions. I will start by briefly reviewing the history of coordination between Turkish security institutions. Then, I will assess recent practice with regard to the secure and democratic management of counter-terrorism. In the conclusion

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\* Dr Giray Sadık is Assistant Professor at the International Relations Department of Yıldırım University in Turkey.

to this chapter, I will suggest a number of policy recommendations for making inter-institutional coordination on counter-terrorism both effective and democratic.

### **Historical Development**

In Turkey today, the most important institution for determining security policy and coordination is the National Security Council (MGK). According to the law regulating the foundation and duties of the MGK:

National Security means to watch and protect the constitutional order, national existence, integrity and all interests in international platforms including political, social, cultural and economic as well as contractual jurisdiction against all kinds of internal and external threats. National Security Policy of the State means the policy encompassing all principles of internal, external and defensive actions within the conditions specified by the National Security Council in order to ensure national security and to attain national objectives.<sup>1</sup>

The MGK's method of outlining security policy for Turkey is closely related to the formation of the Council. The MGK is presided over by the President and is comprised of the Prime Minister, the Chief of General Staff, the Deputy Prime Minister, the Ministers of Justice, National Defence, Internal Affairs and Foreign Affairs, and the Commanders of Army, Navy, Air Force and Gendarmerie Forces (amended: 15/1/2003-4789/1 Art.). The Council is also important in terms of institutional coordination at the high levels of state, because it brings together all of the top civilian and military command personnel. Furthermore, the presence of commanders, ministers and directors among the Council's members, such as the Gendarmerie Forces Command and the Ministry of Internal Affairs tasked directly for counter-terrorism, reveals that the MGK is the supreme coordination centre for counter-terrorism. This situation is also expressed in the law regulating the duties of the MGK: the MGK makes recommendations related to specifying, determining and implementing the state's national security policy and provides opinions on ensuring the necessary coordination, submitting these to the Council of Ministers (amended: 7/8/2003-4963/24 Art.). Although in legal terms, the Council's decisions are only recommendations, considering the formation of the Council and recent practice, it can be observed that the Government has put the decisions of the MGK right at the heart of its security policy.

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<sup>1</sup> National Security Council and National Security Council General Secretariat Law, no. 2945. Accepted on 9 November 1983, published in Official Journal on 11 November 1983, no. 18218.  
Available from: <http://www.mgk.gov.tr/Turkce/kanun.html> [accessed 27 October 2010].

To effectively combat terrorism in the 1990s and for coordination purposes, [EMASYA] was signed between the Ministry of Internal Affairs and Turkish General Staff on July 17, 1997. The amendment made in the Provincial Administration Law required the arrangement for intervention of the military forces to the public unrest events where police forces are inadequate. The EMASYA Protocol, the abbreviated form of Security, Public Order and Support (*Emniyet, Asayiş, Yardımlaşma*), emerged due to this legal requirement. Its content was not fully disclosed officially.<sup>2</sup> The fact that EMASYA was signed with a confidential protocol has hindered the disclosure of many articles. This was pointed out at the time by Prof. Niyazi Öktem, an expert in administrative law, who noted that 'EMASYA is a protocol that was not fully disclosed to public. Such non-transparent arrangements should not be made in a normal democratic order'.<sup>3</sup> The protocol, which was criticised on the grounds that it threatened to undermine democratic surveillance and accountability in counter-terrorism, was abolished on 4 February 2010.<sup>4</sup> However, the abolition of the protocol did not eliminate the need for effective inter-institutional coordination and cooperation on Turkish counter-terrorism between the military, police and intelligence forces. The importance of this need is evident: Turkey's security needs to be ensured in view of the ever-changing global threat, regardless of the frequency of terrorist incidents.

### **Assessment of Recent Practice**

The need for effective inter-institutional coordination on counter-terrorism and to ensure this coordination within the framework of democratic principles recently led to the emergence of new legal arrangements. In view of this, we need to evaluate the extent to which the Public Order and Security Undersecretariat formed under the Ministry of Internal Affairs will satisfy Turkey's security-related and democratic priorities. According to the law regulating the foundation and duties of the Public Order and Security Undersecretariat, 'The Public Order and Security Undersecretariat was founded in affiliation with the Ministry of Internal Affairs to develop the policy and strategies related to counter-terrorism and to ensure coordination between the relevant institutions and organizations'.<sup>4</sup>

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<sup>2</sup> "What is EMASYA?," no date.

<sup>3</sup> "There Ain't Secret Arrangements," no date.

<sup>4</sup> Law regarding the Organisation and Duties of Public Order and Security Undersecretariat, law no. 5952. Accepted on 17 February 2010, published in Official Journal on 4 March 2010, no. 27511. Available from:  
Access address: <http://www.kamudan.com/Haber/kamu-duzeni-ve-guvenligi->

To ensure a sufficient level of coordination and cooperation in the area of counter-terrorism, the Undersecretariat has a number of units available, as indicated in Table 1.

<b>ORGANISATION OF THE UNDERSECRETARIAT OF PUBLIC ORDER AND SECURITY</b>				
<b>Undersecretary</b>	<b>Deputy Undersecretaries</b>	<b>Main Service Units</b>	<b>Consultation Units</b>	<b>Auxiliary Service Units</b>
Undersecretary	Deputy Undersecretary	Head of Department of Planning, Coordination and Social Support	Head of Department of Strategy Development	Head of Department of Human Resources and Support Services
	Deputy Undersecretary	Head of Department of Research and Development	Legal Consultancy Department	
		Communication Head of Department	Consultants of Undersecretariat	
		Head of Department of Foreign Relations		

*Table 1: Organisation of the Undersecretariat of Public Order and Security.<sup>5</sup>*

Its main role emerges within the framework of the 'Board of Coordination on Counter-Terrorism'. According to the relevant law, this Board was founded to ensure the necessary coordination on counter-terrorism between the security institutions and other relevant institutions, and to assess policy and practice in this area. The Board is presided over by the Minister of Internal Affairs and comprises the Deputy Chief of General Staff, the Undersecretary of the National Intelligence Organisation, the Undersecretary of the Ministry of Justice, the Undersecretary of the Ministry of Internal Affairs, the Undersecretary of the Ministry of Foreign Affairs, the Undersecretary of Public Order and Security, the

mustesarl%C4%B1g%C4%B1n%C4%B1n-teskilat-ve-gorevleri-hakk%C4%B1nda-kanun/158343 [accessed 22 October 2010].

<sup>5</sup> "Organisation of the Undersecretariat of Public Order and Security," no date.

Director General of the Police and the Commander of the Coast Guard. Whenever necessary, representatives of other relevant institutions and organisations may be invited.

The Board meets upon the invitation of the Minister of Internal Affairs. The agenda of the meeting is determined by the Minister of Internal Affairs, in consultation with the board members. The secretarial work of the board is undertaken by the Undersecretariat. The board focuses on establishing comprehensive coordination, as required by counter-terrorism. Apart from gathering together high-level government officials at the MGK to determine strategy, the Board of Coordination in Counter Terrorism provides facilities for more effective cooperation, such as sharing of intelligence directly with the relevant directors of institutions participating in counter-terrorism. The duties of the Undersecretariat with respect to counter-terrorism, as defined in the relevant law, are as follows:

1. To conduct activities for specifying policy and strategies, and to monitor the implementation of these policies and strategies.
2. To evaluate the strategic intelligence from the security institutions and intelligence units, and to share this with the relevant units.
3. To conduct the necessary research, analysis and evaluation activities.
4. To provide strategic information support to the security institutions and relevant organisations and to ensure proper coordination among them.
5. To inform the public and carry out public relations activities.
6. To monitor and assess the international developments in cooperation with the Ministry of Foreign Affairs and relevant institutions.

To conduct inspections and surveillance.

Almost all of the duties of the Undersecretariat in the area of counter-terrorism are focused on ensuring inter-institutional coordination and cooperation. It should be noted here that the cooperation is not only with respect to counter-terrorism. According to the law, the Undersecretariat has no operational duties related to the direct provision of security. The main duty of the Undersecretariat is to enable the sharing of information and experiences of the institutions that have operational units, such as the military and police forces and other institutions that have important counter-terrorism functions, and also developing comprehensive counter-terrorism strategies.

According to the relevant laws, the role of the Undersecretariat in inter-institutional cooperation is organised in the following ways. The Undersecretariat works in cooperation with ministries, institutions and organisations to perform the duties specified in the relevant laws. These ministries, institutions and organisations are to respond immediately to the Undersecretariat's requests for information and documents. In this regard, the relevant law grants power to the Undersecretariat to make requests from the relevant institutions in carrying out its duties. Furthermore, the Undersecretariat acts as a common contact and coordination point for intelligence-sharing, and

brings together institutions working on counter-terrorism. The Undersecretariat fulfils this function through the Intelligence Assessment Centre. According to the relevant law, this Centre is directly affiliated to the Undersecretary so as to be able to receive and assess the strategic intelligence from the relevant institutions; that is, so as to function as a base for the policies and strategies to be proposed, as well as counter-terrorism measures. The Centre assesses the strategic information and intelligence obtained by security institutions, intelligence units and the Ministry of Foreign Affairs within this framework. The intelligence needed to determine the strategy on counter-terrorism is provided to the Undersecretariat by the Turkish General Staff, the Ministry of Foreign Affairs, the Undersecretariat of the National Intelligence Organisation, the Gendarmerie Command, the General Directorate of Security and the Coast Guard Command. The analyses and assessments that are made in line with this information are shared with the relevant units.

The budget of the Undersecretariat is arranged in line with the relevant law. Accordingly, the Undersecretariat has a general budget subject to the Public Finance Management and Auditing Law no. 5018, dated 10 December 2003. An allowance is made for the budget of the Undersecretariat in relation to the work conducted in the extent of this law and is subject to confidentiality according to the provisions of Article 24 of Law no. 5018. A discretionary fund facility is allocated to the Undersecretariat. According to the relevant law of the Undersecretariat, the Council of Ministers shall execute the provisions of this law. In this respect, the Undersecretariat is under the auditing of the Ministry of Internal Affairs and is subject to auditing to the extent that the Ministry as a whole is subject to auditing.

### **Proposals and Conclusions**

The debates relating to the Draft of the Undersecretariat at the General Council of the Turkish Grand National Assembly, formed upon the recommendation of the Government, have drawn serious criticism from opposition parties. For instance, İsa Gök, the Republican People's Party (CHP) Member of Parliament for Mersin, pointed out that 'the Undersecretariat shall supervise or ensure supervision' was stated in the draft. However, he continues, 'which institute will hold it accountable? This is not clear in the draft. There is an ongoing effort to form something like a second MGK' and alleged strongly that the Undersecretariat had operational powers, despite claims to the contrary.

İsa Gök further accused the Government of 'creating a giant [and not knowing] where it will stop'.<sup>6</sup> Opposition parties saw the 'Public Security Undersecretariat' as 'the shadow government' of the executive. The use of the discretionary budget allocated to the Undersecretariat was questioned, and

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<sup>6</sup> "The Undersecretariat of Public Order and Security is Established," no date.

concerns were expressed that the Undersecretariat would perpetuate the dreadful atmosphere created by wiretapping.<sup>7</sup> Hasan Özdemir, Member of Parliament for Gaziantep from the Nationalist Action Party (MHP), criticised the use of funds from the discretionary budget by the Undersecretariat, which has no operational powers, and asked, 'Are the institutions related to the security not enough for coordination?' He added, 'Does the Government not trust the intelligence units?'<sup>8</sup> Criticism focused on the scope and allocation of the discretionary budget to the Undersecretariat. These problems led to questions about the Government's position and about democratic oversight of counter-terrorism coordination. In particular, the obscurity of the law has heightened concerns about the Undersecretariat. For instance, 'It is not clearly specified whether the Undersecretariat would perform wiretapping'. As this activity is described as 'collecting data, information and documents', the operational limits of the Undersecretariat remain not clearly defined.<sup>9</sup>

Considering all these criticisms, it can hardly be said that inter-institutional coordination in Turkey's approach to counter-terrorism has found a satisfactory solution with this new legal arrangement. A more democratic, more accountable inter-institutional coordination mechanism would allow for more effective and sustainable counter-terrorism efforts in the long run. Moreover, having officials who have been duly elected via democratic procedures manage such a mechanism ought to contribute to the democratisation of the cooperation between security institutions. However, it would also be necessary for these elected persons to establish mechanisms for being accountable to the Parliament (i.e. political accountability) and the judiciary (i.e. judicial accountability). In the absence of such mechanisms, it should not be overlooked that any non-supervised authority would be susceptible to corruption and abuse, even if elected by the public. In particular, coordination between state institutions on issues directly related to the security of the state and the nation, such as counter-terrorism, is critical in terms of improving both the security of the state and the cooperation of the public with the state. Only through proper coordination can a multi-dimensional threat such as terrorism be dealt with effectively. To transform inter-institutional coordination into effective and sustainable cooperation, such coordination has to emerge via a democratic and participatory process, and multi-dimensional accountability mechanisms brought into force.

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<sup>7</sup> Nail 2010.

<sup>8</sup> "The Undersecretariat of Public Order and Security is Established," no date.

<sup>9</sup> Nail 2010.



## XII. Universal Human Rights and the Republic of Turkey

*Levent Toprak\**

### **Abstract**

This paper concerns universal human rights and their observance and protection in the Turkish Republic. To this end, the history of human rights will be outlined and their universal understanding will be analysed. Finally, Turkey's contribution on human rights will be examined, and a number of recommendations will be made in the conclusion.

### **The History of Human Rights**

Human rights are a particular branch of international law and they apply equally to every person. They are unique because they are universal, inalienable and indivisible. They are not simply a religious doctrine or a cultural understanding; they are upheld in numerous international treaties and political agreements. According to these agreements, all of the diverse cultures of the world should understand human rights in the same way. Human rights and fundamental freedoms, as principles for their fulfilment, are global. Although people around the world live in many different environments and act according to their cultures and political and social structures, they have similar ideas regarding human life. Life, liberty, property, equality, freedom of expression and religious freedom, the ability to resist oppression, dignity, and so forth, are universal fundamental rights for every human being and therefore undisputed. Individual nation-states, subordinate to supranational guidelines, are responsible for observing and protecting human rights.<sup>1</sup>

Since the 19<sup>th</sup> century, a progressive extension of human rights has taken place in the social field, which is reflected in the right to work, education and social security. However, these first steps were not reinforced or enshrined in international treaties. Until 1945, the protection of human rights was the sole responsibility of nation states and their constitutional bases. In the wake of totalitarianism in Europe and the Second World War, the United Nations (UN) made the protection of universal human rights one of its main goals. On 10 December 1948, despite abstention by Communist countries, the Universal Declaration of Human Rights was adopted as an international, non-binding recommendation, with a catalogue of civil, political and social rights. On 16 December 1966 this Declaration was followed by two international covenants:

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\* Levent Toprak is BA Student at the Berlin Institute of Technology and former Intern at the Konrad Adenauer Stiftung in Ankara.

<sup>1</sup> See here and below, Duden Lexikon (1996), 2204 f.

one on Civil and Political Rights and one on Economic, Social and Cultural Rights. Together they form the so-called Bill of Human Rights. The contents of the Bill of Human Rights are reflected in the European Convention on Human Rights (ECHR) of 4 November 1950 (entered into force on 3 September 1953) and the European Social Charter of 18 October 1961 (or the revised version of 3 May 1996). Particularly the ECHR has a binding effect on State parties. The protective organs are the European Court of Human Rights (which hears individual and State complaints after domestic remedies have been exhausted), whose decisions are binding for the State parties, and the Committee of Ministers of the Council of Europe, to guarantee the execution of the Courts' decisions.<sup>2</sup>

Complaints against violations can be filed at the UN Human Rights Council. In addition, the International Labour Organisation (ILO), a specialised agency of the UN, has been commissioned to promote social justice and human and labour rights. The UN thus aims to guarantee the collective protection of human rights and international judicial control. Unfortunately, the UN Human Rights Council's decisions are merely recommendations.

### **Universal Human Rights in the Republic of Turkey**

Turkey ratified the ECHR in May 1953 without any reservations. While one might think that Turkey has been a profound respecter of human rights since then, the reality is quite different. Regarding faith and freedom of expression, press freedom, equality and other fundamental freedoms, there have been significant shortcomings. Also in matters of minority rights, Turkey has faced difficulties. One of the most famous examples of this is the Kurdish issue, which has taken the form of fighting with terrorist Kurdish rebels and military operations in the eastern regions. This has led to the regional disparity between East and West. The Kurdish minority has long been prohibited from practising its traditions. Religious communities, such as the Christians, Jews and Alevis, have also complained about not being respected at both the governmental and societal levels. These are just some of many examples of Turkey's violation of human rights and fundamental freedoms. Efforts by human rights activists to address or improve minority rights, freedom of press, speech and religion, equal rights, equal opportunities and many other basic freedoms, have failed for cultural and political reasons. One of the main problems has been the military's influence in politics. For years, the Turkish military saw itself as the guardian of the secular state and representative democracy in Turkey, and this is precisely why many failed to see the defects of Turkish democracy. Soldiers intervened in both political and civil affairs, and formed an authoritarian power structure that found its legitimacy in the cultural framework of society. To separate the military

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<sup>2</sup> ECHR, Article 46.

from civilian life was thus not only a political task, but also a sociological one, because the military was seen as an indivisible part of society. In other words, people's awareness needed to be changed.

### **The AKP Government**

Upon taking office in 2003, the Turkish Prime Minister Recep Tayyip Erdogan stated that one of the main goals of the new government was the gradual demilitarisation of state and civil institutions. With this, Erdogan aimed to clarify that military intervention could not offer an escape from unwanted political systems, but represented a derogation of human rights and democratic principles, and that by intervening, the military only strengthened its repressive and authoritarian role in civilian life and in politics. Erdogan's charismatic leadership and mentoring role towards a transforming society brought results that human rights activists had long aspired to. Modern Turkish citizens questioned the military's hierarchy and its position as the guardian of the people. They tried to understand the socio-economic background to the coups and the nature of the military mind. Institutionally and politically, this transformation was strengthened by important events. In 2010, coup attempts by the Turkish military and their weaknesses in the fight against Kurdish terrorism were challenged, leading to investigations<sup>3</sup> These investigations revealed long-standing plans for a military coup. As a consequence, several soldiers were put into custody. Parliament proposed new legislation to address the special status of soldiers in Turkish society. After the referendum of 12 September 2010, goals such as restricting the military legal system and establishing the supremacy of civil law over soldiers were achieved. The result was strict civilian control over the Turkish military.

These were not the only gains of the Turkish transformation, however. In terms of human rights and fundamental freedoms, a series of changes took place, in which minorities were recognised, inequalities were addressed, and the civilian legal system was improved. For example, on 23 February 2011, the Optional Protocol to the UN Convention on Torture and Cruel, Inhuman or Degrading Treatment or Punishment was adopted.<sup>4</sup> There has also been progress in the areas of equal opportunities and women's rights. On 24 November 2011, a law was passed to prevent and combat violence against women and domestic violence, and the treaty of the Council of Europe was adopted.

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<sup>3</sup> See here and below, SETA 2011, 28.

<sup>4</sup> SETA 2011, 54.

### **Legislative Progress**

The annual report of the SETA Foundation for Political, Economic and Social Research identifies the following points with regard to improvements in the area of human rights in 2011:<sup>5</sup>

- Civilian control of the security sector;
- Compliance with international human rights;
- Institutionalisation in the field of human rights: in the General Directorate of International Law and Foreign Affairs of the Ministry of Justice Department, the Ministry of Human Rights was established;
- Training of officers: since November 2011, an EU programme has been in place to train military judges and prosecutors on human rights;
- Prisons: the Prison Reform Programme 2011;
- Freedom of expression: topics long considered taboo are now freely debated, especially in the media (such as Ergenekon, İnönü, etc.);
- Freedom of religion: the doctrine of Alevism can be learned at schools now, and the worship of the Orthodox Christians can be practised in some politically closed churches;
- Freedom of association and assembly: efforts by the ILO to adapt the restrictive provisions of the existing legal framework for trade unions;
- Women's rights: rules to prevent and combat violence against women and domestic violence;
- Children's Rights: various projects for the education of children, child labour and gender inequality in primary schools;
- Disabled persons: the government improved the household budget to counter restrictions of employment and expectations for disabled people.

### **Progress in Practice**

In addition to the progress described in the SETA Foundation's annual report, other developments have taken place with regard to human rights. Despite these remarkable developments, Turkey is still criticised in relation to free speech and religious freedom, political violence, judicial proceedings, arrested journalists and academics, competence in holding inquiries, minorities, people with disabilities, press freedom and freedom of association and assembly and other issues. The process of democratisation is a difficult and slow one. The intention is there, for the most part, though the implementation is not always self-evident.

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<sup>5</sup> SETA 2011.

The extent to which an authoritarian and repressive military system is undergoing a lingering transformation into an authoritarian civilian system should be examined. The current government has been in power for almost ten years. In this decade, much has happened in the economic, political and social spheres. However, in these, the classic tools of an authoritarian system are still at work. While in some popular cases, such as demilitarisation and the creation of 'democratic openings', there appears to have been improvement, we often encounter dramatic cases that are almost indistinguishable from those under totalitarian systems. The press is largely controlled by the Government and far removed from any objectivity. The public expression of critical and objective opinions is still dangerous. According to the Istanbul media portal Bianet (2012), 100 journalists and 35 editors are currently in custody.<sup>6</sup>

According to the Istanbul-based journalist Necati Abay, spokesman for the Solidarity Platform of Imprisoned Journalists (*Tutuklu Gazetecilerle Dayanışma Platformu – TGDP*), there are currently between 4,000 and 6,000 investigations running against journalists.<sup>7</sup> Most of them are accused of supporting the terrorist organisation the PKK, or its allied organisations. The German Journalists' Union (DJU) has warned that people who make use of the right to freedom of expression are simultaneously being declared supporters of terrorist groups and may be fined.<sup>8</sup> The investigation into the secret organisation Ergenekon has been used for the same intentions. In the world ranking of press freedom compiled by Reporters Without Borders (RSF), Turkey has fallen from 148<sup>th</sup> to 179<sup>th</sup> place. The author Nadire Mater describes press freedom in Turkey as being very unpredictable: 'while the government promises reform and relaxation the one day, accusations follow the next day'. A gloomy atmosphere in Turkey prevails in terms of press freedom, says the author. The number of imprisoned journalists, students and politicians is a cry for help in this important region, to which the European Court of Human Rights should respond. Also, the number of police violations in Turkey has increased. One of many recent events in this regard took place on 29 March 2012, when the Turkish police fought with tear gas and water cannons against a large demonstration in Ankara aimed against the new education reforms.<sup>9</sup> The city centre resembled the scenes of the Arab spring.

Equally, in prisons, having a uniform is the best weapon because it denotes hierarchy and authority.<sup>10</sup> Human rights activists describe the situation in prisons as one of excessive use of force by police officers. The number of

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<sup>6</sup> See here and below, bianet.org 2012.

<sup>7</sup> See <http://www.suite101.de>.

<sup>8</sup> "Medienfreiheit Türkei" 2012.

<sup>9</sup> "Türkische Polizei stoppt Großdemonstration gegen Schulreform mit Gewalt" 2012.

<sup>10</sup> See here and below, "Die Uniform als schärfste Waffe" 2012.

violent incidents is increasing, says *Spiegel Online*.<sup>11</sup> About 5,000 complaints of ill-treatment have been filed at the Ministry of Justice since 2006. The processes usually end in acquittal. Kenneth Roth, executive director of the human rights organisation Human Rights Watch, says that there has been a 'significant increase' in the abuse of police power, and that cases of severe torture and incidents with fatal consequences are increasing. This development is grounded in the corresponding judicial change of 2007, which served to give the police greater discretion. Human Rights Watch has produced an 80-page report detailing allegations of torture and disappearance of evidence. At the same time, this is at odds with the improvements promised by an EU candidate country. The so-called 'zero tolerance' attitude on torture, as announced by Prime Minister Erdoğan, has not been realised. To conclude with respect to human rights in Turkey, we can look at the US State Department's *Annual Report on Human Rights*. The report on the Republic of Turkey describes the deficiencies in access to justice, government intervention in the freedom of expression and press freedom, and the insufficient protection of vulnerable groups and human rights activists in Turkey.<sup>12</sup> The European Court of Human Rights has also criticised lengthy pre-trial detention in Turkey. The duration of post-trial detention overstepped the limits and is not acceptable either.

### **Conclusion and Recommendations**

As has been argued in the reports by the United States State Department and the European Court of Human Rights, respect for democracy and human rights in Turkey remains inadequate. The Government has described its democratic aspirations, for which religious and emotional sacrifices have to be made. One should also consider the other side of the coin. To recognise demilitarisation is one step on the way to democratisation. However, the actual 'democratisation' of Turkey still has to take place.

Above all, the question arises as to how to continue with the very moderate process of democratisation with respect to human rights in Turkey at present. This is not going to be an easy task, because the members of the Government were given their undisputed position of power by the Turkish people, who are themselves ultimately responsible for this situation. A collective transformation of Turkish awareness with respect to human rights thus has to take place. First of all, human rights must be recognised by the people. At this point, one could ask the famous question: who are 'the Turkish people' anyway? I would like to refine this question in the light of the evolution of the people since Mustafa Kemal Atatürk founded Turkey. After all, since then, all inhabitants of

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<sup>11</sup> <http://www.spiegel.de/politik/ausland/polizeigewalt-in-der-tuerkei-die-uniform-als-schaerfste-waffe-a-594759.html>.

<sup>12</sup> See here and below, "US rights report criticizes Turkey's judiciary, media freedom" 2012.

Turkey have had an opportunity to familiarise themselves with the main theoretical features of freedom and democracy. So, it is not the theory that is lacking, but the fact that the theory has not yet been completely transferred into practice.

Turkey always presents and defends itself as a democratic country where freedom and democracy are written in capital letters. But now is the time to give people a proper education on these issues. People must be taught what integrity, acceptance and tolerance stand for. Additionally, they must learn to question decisions and to discuss differences and diversities. International and Turkish organisations can heighten awareness of human rights among people of any age. The raising of awareness and the internalisation of democracy can only be achieved through education. These training programmes and seminars should not be restricted to Ankara and Istanbul, but widely spread over the country. A people that is well educated in politics and that can observe and understand decision procedures can also respond to the self-awareness (if not arrogance) of the Government.

Government officials should not represent their own interests, but those of the people. It is important not to classify the society in terms of Kemalists and Conservatives and to exclude others (as is the case in present-day Turkey), but to approach every citizen as an integral part of the people. On the institutional level, Turkey needs an office of internationally well-respected organisations for human rights, where people can attend educational activities on these matters. An annex of the European Court of Human Rights would be ideal, but is probably not feasible. Either way, there should be an Ombudsman to whom citizens can go to get unbiased information on human rights. Finally, the various European Committees (of the EU and/or Council of Europe) should take harsher measures against violations of human rights.



## Part F - Conclusion

### XIII. Good Governance in the Security Sector: Too Much to Ask?

*Sami Faltas\**

In the last three years, CESS and its Turkish partners have organised seminars and workshops in Ankara and Istanbul on good governance in the security sector. At these meetings, Turkish, European and US experts discussed the challenge of managing the security sector in ways that are both effective and accountable. Some of them have contributed chapters to this book. In this final chapter, we will pick up some of their points and review them in the context of a broader discussion of good governance, what this means, and how it can be applied to the security sector.

According to the Oxford English Dictionary,<sup>1</sup> 'governance' means 'the action or manner of governing a state, organization.'<sup>2</sup> In the 1980s and 1990s, politicians, development agencies and scholars took a growing interest in the way government departments and private sector organisations are managed. Corporate governance falls outside the scope of this book, but the development industry's preoccupation with good governance is relevant to our discussions here.

#### **Good Governance in the Development Industry**

These days, scholars and practitioners in the field of development believe that poverty and underdevelopment are not mainly due to a lack of capital or education, poor infrastructure, insufficient access to technology, a skewed division of wealth or inequality in international trade. According to the current paradigm, these all contribute to underdevelopment, but the most fundamental problem is the poor performance of state institutions and services; that is, bad governance. There is wide agreement in the development industry that improving governance is the key to achieving the United Nations' Millennium Development Goals (MDGs). The United Nations Development Programme (UNDP) is the most prominent architect and advocate of this approach.

In 1997, UNDP's chief executive, James Gustavo Speth, wrote the preface to a seminal report called *Governance for Sustainable Development*.

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\* Dr Sami Faltas is Senior Lecturer at the International Relations Department of the University of Groningen in the Netherlands.

<sup>1</sup> Online edition, accessed on 16 January 2013.

<sup>2</sup> Unlike 'government', 'governance' can refer to management in the private sector.

He wrote: 'Wherever change is for the better, wherever the human condition is improving, people point to good governance as the key.'<sup>3</sup>

The report explained that so far, good governance had mostly been measured in terms of effectiveness and efficiency. While affirming that these were essential, the report focused its attention on societal characteristics. It defined good governance as follows:

Governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels ... Good governance is, amongst other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that the political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and most vulnerable are heard in decision-making over the allocation of development resources.<sup>4</sup>

In the 15 years that followed, UNDP and others elaborated the notion of good governance, increasingly replacing it with the term 'democratic governance.' Scholars may frown at the interchangeable use of these terms, but the fact is that practitioners and policymakers rarely distinguish between them. A 2010 report called *A Guide to UNDP Democratic Government Practice* asked:

What does it mean to promote 'good governance' for human development? There is no single or simple answer. But much discussion about the definition of good governance has centred on what makes institutions and rules more effective and efficient, in order to achieve equity, transparency, participation, responsiveness, accountability and the rule of law.<sup>5</sup>

This is a tall order, not only in Central Africa or the Sahel, but also in the Caribbean, the Middle East and South and Central Asia. Merilee S. Grindle of Harvard University describes the development industry's good governance agenda as unrealistically long and growing longer. The changes required to deliver good governance are staggering, but expectations are high nonetheless. Grindle recommends aiming for 'good enough governance.'<sup>6</sup> She points out that it is particularly problematic to require rapid progress towards good government from states that need massive amounts of foreign aid to fight poverty and underdevelopment. Almost inevitably, their state institutions are weak, ineffective, inefficient and of dubious integrity. Even if rulers wanted to push through such reforms quickly to clear the way for international assistance, they would fail.

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<sup>3</sup> UNDP 1997, 1.

<sup>4</sup> Ibid., 4.

<sup>5</sup> UNDP 2010, 15.

<sup>6</sup> Grindle 2004, 199.

## Security Sector Reform and Governance

Now let us consider the security sector. Here, the obstacles to governance reform are even greater. Military, intelligence and police forces are likely to resist efforts to make them more accountable and transparent more strongly and more successfully than civilian government agencies. Governments may flatly refuse to carry out such reforms for fear of losing the support of their security forces.

Yet the donor countries' doctrine for security sector reform (SSR), written by the Organisation for Economic Co-operation and Development (OECD) in collaboration with Western and Northern European governments and experts, is just as adamant as UNDP about the need for good governance. Their approach, codified in the 2007 *Handbook on Security System Reform*, was produced by the OECD's Development Assistance Committee (DAC), the body that co-ordinates the overseas development policies of all Western donor states.<sup>7</sup>

It is remarkable that the industrialised countries allowed – in fact invited – a development organisation to formulate a common donor policy for international security assistance. Of course, security experts were closely involved in the DAC Network on Conflict, Peace and Development Co-operation, which produced the SSR handbook. But the OECD DAC made no secret of the fact that this new doctrine for security assistance was a *development* approach. The predominant notions in current development policy were enshrined in the new policy for supporting reform of the security sector.<sup>8</sup> The EU policies<sup>9</sup> on SSR are very similar.

The OECD policy for supporting SSR is built on four guiding principles, which fall into two pairs. The first are effectiveness and accountability. SSR is supposed to improve the delivery of security and justice services in such a way that citizens are safer and feel safer. The Western SSR doctrine by no means plays down the importance of national security, maintaining law and order, or upholding the constitutional foundations of the state. But, in line with current Western thinking on development, it maintains that the ultimate test of the security and justice system is whether it provides for the safety of every woman, man and child. Human security is key in this area, just as human development is the shibboleth of the development community.

There are sound reasons for this heavy emphasis. In reality, national security forces are often a threat to the safety and the peace of mind of the people they are supposedly protecting. Indeed, people often fear the police and

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<sup>7</sup> OECD 2007.

<sup>8</sup> OECD DAC prefers the term 'security system', which encompasses all people and organisations involved in providing and overseeing security and justice services.

<sup>9</sup> There are three policy documents: one for the Council, one for the Commission and a third to harmonise the first two.

the military more than they fear criminals and terrorists. Therefore, there is a need to ensure that the security forces are using their power in the right way. Unless they are tightly controlled by the government, overseen by parliament, accountable to the courts and closely monitored by civil society and independent media, they are unlikely to provide human security. Human security can only be protected if the power of the security sector is balanced by full accountability. Thus the first two guiding principles of SSR are locked to each other in a dialectic relationship.

The next two are sustainability and local ownership. Ten years ago, the security community was completely unfamiliar with these two notions. Sustainability can mean various things. It often refers to the careful use of natural resources, but here we can simply take it to mean effectiveness today and tomorrow. In development co-operation, sustainability often serves as shorthand for the ability to keep going when foreign aid has come to an end. Of course, foreign aid means more than foreign money. It is equally important for the security system to be sustainable in terms of the continued availability of the right people in the required numbers, continued political support and the continued confidence of the public.

The requirement of local ownership means that SSR should be driven and led by relevant groups in the country concerned. In development jargon, these are called stakeholders. The OECD DAC *Handbook on SSR* argues that unless the programme to improve the security sector is based on domestic needs, priorities and ideas, and led by local people, it will not be appropriate, much less sustainable. If SSR is determined by the aims, concerns, ways of working and schedules of the donors, it may achieve some useful results, but it will correspond poorly to local needs and will most likely break down when foreign aid comes to an end.

This makes sense. Nevertheless, local ownership is rightfully considered the biggest challenge, if not the Achilles' heel of SSR. The first problem here is that the interests and goals of host country governments are not the same as donors'. The former usually want to use foreign aid to modernise their security forces, while the latter push for the security forces to be reduced in size, trained to respect human rights, overseen by a strong parliament and scrutinised by free media and society. Even if donor governments do want to make the recipient country's security forces stronger, their parliaments will often require them to demand improved transparency, accountability, the rule of law and the empowerment of vulnerable groups as a condition for foreign aid.

To be sure, there may be groups in the recipient country, not associated with the government, who agree with the demands of the donors. The wishes and concerns of these 'stakeholders' may lend legitimacy to the donors' efforts to push through SSR programmes that the national government is reluctant to accept. This is the second problem of local ownership. As the

OECD DAC readily admits, SSR is highly political. It enhances the power of oversight bodies, empowers marginalised groups and qualifies the power of the executive. No wonder that host country governments have mixed feelings about such efforts, which spring from a strategy devised in the North for use in the South.

This, then, is the third problem of local ownership. Here too, the OECD DAC is candid. It frankly presents its SSR doctrine as a donor strategy, arguing that industrialised countries cannot and should not prescribe how developing countries should organise their security systems. They can merely devise a common policy for helping developing countries to do this.

This is true and proper, as far as it goes. However, if the recipient countries are heavily dependent on foreign aid, they will have little choice but to comply with the conditions under which assistance is offered. And if the donors are all following the same strategy, in this case the OECD DAC doctrine for SSR assistance, then the recipients will be unable to play the donors off against each other. In such a situation, donor conditionality becomes a *diktat*, and local ownership a pretence. The OECD DAC concedes that local ownership often leaves much to be desired at the beginning of a programme, and encourages donors to make enhancement of local ownership one of the goals of SSR assistance programmes.<sup>10</sup>

Despite the many difficulties it faces and evokes, however, good governance is essential to the success of the security sector. Drawing on some of the preceding chapters, let us consider some of the challenges facing the security sector in Turkey. Turkey is, of course, no longer considered a developing country. It is reforming its security system, partly under the influence of the requirements of accession to the EU. It receives some foreign aid for such purposes. But, as I have argued elsewhere, its reforms are determined more by its government's policies and interests than by foreign requirements such as the Copenhagen Criteria and the *acquis communautaire*.<sup>11</sup> The donor strategy for SSR is not a foreign requirement, as Turkey is a founding member of the OECD.

In the remainder of this chapter, I will not be able to mention all the excellent contributions in this book. I have selected those that seem most directly relevant to my focus on good governance.

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<sup>10</sup> Edward Joseph argues that local ownership is overrated (Joseph 2007). Laurie Nathan firmly argues in favour of local ownership, but admits that it faces many problems, both in host and in donor countries. The former often lack the capacity or the political will to seriously reform the security sector, whereas in the latter, local ownership is often no more than a rhetorical device (Nathan 2008).

<sup>11</sup> Faltas 2012.

### **Political Accountability**

Van Eekelen (chapter I) stresses the need for 'the clearly defined authority of the president, prime minister, minister of defence, chief of the general staff and parliament'. This might seem self-evident, but it deserves to be emphasised. Effective governance starts with clear mandates and a coherent division of powers, founded on law.

According to our authors, in Turkey, there is a lack of clarity surrounding the roles of the TGS, the MGK, the Prime Minister's Office, the Ministry of the Interior, the Ministry of Foreign Affairs and the TGNA in the making of defence and security policy. In NATO countries, as well as EU member states, the Ministry of Defence is the principal organisation engaged in developing and implementing defence policy. In Turkey, as Solmaztürk explains in chapter VIII, this job falls to the TGS, which acts like a second ministry of defence. The TGS is, of course, a military organisation. This raises the question as to which civilian government authority provides political guidance to the TGS and is accountable to Parliament in matters of defence.

Clearly, the Minister of National Defence in Turkey does not perform this role. In 2011, there were reports that the Turkish Government intended to create an integrated MoD as the main locus of defence-policy-making, under the political leadership of the minister. Solmaztürk warmly recommends this; and indeed, many Turkish and foreign experts share this opinion. However, it has not happened so far.

While the MGK 'is nominally responsible for the overall co-ordination and compilation of national security policy,' writes Solmaztürk, the MGK is not in charge of the armed forces and not accountable to the TGNA. Prior to the reforms of 2003 and 2004, the MGK was dominated by the military and served to obtain the co-operation of other departments with the policies designed by the TGS. Its role and authority are now much reduced.

Increasingly, the Prime Ministry and, more particularly, its Directorate General for Security Affairs, are now co-ordinating national security policy, at least formally.<sup>12</sup> According to the Constitution, the chief of the TGS reports to the Prime Minister in times of peace. This means that normally, the Prime Minister is the political boss of the military. Despite his formidable qualities, however, the Turkish Prime Minister does not provide daily political guidance to the military. He lacks the time, the staff, the expertise and perhaps also the desire.

In 2012, General İlker Başbuğ was arrested and accused of being a member of a terrorist organisation and plotting against the government while he was Chief of the TGS. If these charges prove to be true, which I find hard to imagine, they would mean that Prime Minister Erdoğan is politically responsible

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<sup>12</sup> In times of war, he performs the duties of the Commander in Chief on behalf of the President of the Republic.

for these crimes, because they were committed by an official who reported directly to him. As far as I can tell, this point has hardly been raised in Turkey.

The conclusion must be that there is no government authority that provides detailed civil direction and political guidance to the military in Turkey.

### **Coherent Policy Guidance**

The lack of clarity about the political leadership of the Turkish defence establishment is not only an issue of accountability. It also affects the quality of policy formation and implementation. A few years ago, when I was teaching during a CESS programme in Ukraine, I asked the participants what Ukraine's policy on accession to the NATO was. They said the answer depended on whether you listen to the president or the prime minister. At the time, the two were bitter rivals. Of course, if a country has two contradictory official policies on an issue, it actually has none. Voters will not know what the government's goals are, nor will the officials at various government agencies. Depending on the political affiliations of their bosses, they will support one policy or the other, and end up working at cross purposes. The result is bad governance.

There is less confusion in Turkey. Everyone knows who Number One is; if Recep Tayyip Erdoğan makes a policy statement, it is usually safe to assume that that this is the policy the government will pursue. These days, we can also expect the military to fall into line. But the Prime Minister does not pronounce on all defence and security matters. One can only imagine the complicated process of consultation that preceded the recent government decision to ask NATO allies for help in defending Turkey's southern border against hostile aircraft and missiles.

Mercan (chapter X) points out that the Turkish military is nowadays largely separate from civilian institutions, and this lack of institutional co-operation leads the military to use informal mechanisms such as press conferences and briefings to make their views known. Better institutional co-operation would make such public statements (which may be regarded as improper meddling by the military in politics) and confrontations with the government unnecessary.

Mercan is not in favour of establishing the primacy of the elected government as a civilian power over the armed forces. This leaves open the question of the political accountability of the military. Instead, he advocates close collaboration between the two pillars of the defence and security establishment of the Republic. He points to the need for 'equality in council and harmonisation of effects,' and stresses the need for shared valued between civilians and soldiers.

Sadık (chapter XI) also calls for closer and better institutional co-operation in the development and execution of security policy, drawing his examples from the field of anti-terrorism. He stresses the need for such

mechanisms to be more democratic and more accountable. This, he asserts, will make counter-terrorism more effective and sustainable in the long run.

### **The Purse and the Sword**

In chapter III, Van Driel describes the incident that decided the democratic nature of the Dutch political system once and for all. It was not a civil war, a revolution or a new constitution. It was a struggle in 1868 between Parliament and the King, initially about the budget of the foreign ministry. The outcome was that the elected representatives of the people became the ultimate state authority, whose mightiest weapon is the power of the purse. The Dutch Government cannot spend a single euro without the specific approval of Parliament, laid down in a budget law. If the Dutch Parliament wants to express its dissatisfaction with a minister, it sometimes reduces the minister's budget by one euro. The financial effect is nil, but as a political signal, this measure is highly effective. If Parliament is not happy, the minister has a problem.

Parliament may be the highest authority in a democratic system, but it cannot match the power of the executive, which has more money, information, staff and media access, plus the advantage of being more united. In most areas, parliaments can only oversee the actions of the executive in broad outlines, ask questions and pass resolutions. Inquiries are more intrusive. Nothing matches budgetary control, however, as a parliamentary instrument for influencing government policy.

In chapter IV, Şatana discusses the control of defence-related expenditure in Turkey in some detail, drawing partly on unpublished research funded by the CESS. She flags the existence of defence-related funds that are not allocated by Parliament and not subject to parliamentary control. Parliament has much less influence over activities funded via such extra-budgetary revenues, hence democratic control is weaker. Şatana also laments the fact that the budget for some parts of the armed forces, specifically the Gendarmerie and the Coast Guard, is not available. This makes budgetary control impossible, unless Parliament decides to reject the defence budget as a whole.

Parliaments control government spending before the fact, by allocating funds or withholding them. They also control expenditure after the fact, by checking to see how government has used the money granted by parliament. For this purpose, there are specialised, independent audit organisations, which are among the least known, but most powerful, state bodies. *Sayıştay*, the Turkish Court of Accounts, has been struggling for years to acquire the right to audit all military spending, and for the access that will allow them to perform this duty. Both have proved difficult to obtain.

In late 2010, the powers of *Sayıştay* to audit military expenditure were significantly enlarged, paving the way for audits of extra-budgetary resources earmarked for the defence sector. However, one and a half years later, a law

was passed that turned back the clock, curtailing the auditing powers of the Court of Accounts and introducing a secrecy clause that limited the information available to the public on military assets and expenditures. It comes as no surprise that Şatana considers the auditing of defence expenditures one of the most problematic issues of civil-military relations in Turkey.

### **The Rule of Law**

In the section on SSR and governance, I mentioned the fact that while the armed officers of the state are supposed to protect the population, citizens sometimes see them as a threat. The law is the only protection that citizens have against abuse of power by security forces. If such abuse is prosecuted and punished by independent judicial authorities, this will serve as a deterrent. It will also signal to the population that the law is there for their protection and not merely for the rich and powerful. The fair, equitable and independent application of the law is one of the strongest pillars of good governance in the security sector.

Toprak (chapter XII) discusses the state of human rights in Turkey. He sees potential progress: conventions have been ratified, laws have been passed and improved, watchdogs have been established, and training programmes have been put in place. But when it comes to really pushing back the violation of human rights, the picture is much less encouraging. Complaints to the European Court of Human Rights abound. The freedom of the press seems to be going from bad to worse, and this is affecting the reporting of human rights violations. Pre-trial detention is widely criticised at home and abroad. Despite government promises, torture has not been eradicated.

Turkish officers, up to former chiefs of staff, are now among the victims of political meddling in the judiciary, long pre-trial detention and other violations of the rule of law. Snoep (chapter V) reminds us that soldiers are citizens, whose human rights and civil liberties deserve protection. Their rights are no less valid than those of civilians. Besides, soldiers are more likely to respect citizens' rights if their own rights are safeguarded and they receive the respect they are due.

### **The Triangle of Good Governance**

Good governance is not easy to achieve, and the security sector is perhaps one of the areas in which it is most elusive. But it is essential, most particularly in the domain of security, for all the reasons discussed above.

There are three sides to good governance: we can call them effectiveness, affordability/efficiency and legitimacy. They go together. If we were to try to separate them, we would no longer have good governance, just as a triangle without three sides would cease to be a triangle. If the security

sector is not effective – in other words, if it is not performing its purpose – it will begin to lose its legitimacy in the eyes of the people and their representatives. Without public support, it will receive fewer resources and less political backing. This will further undermine its performance.

The three sides go together, but each side needs special attention. In the last two decades, the Dutch military has become a more effective force, increasingly focusing on its new mission: the maintenance of international peace, security and the rule of law. It has gained public respect and support in the process. It has learned to use its resources more efficiently, too. However, the willingness to provide the armed forces with the resources they need, at a lower level of ambition, has not grown accordingly. Politicians have failed to explain to the voters why we cannot afford to go on cutting the defence budget. This side of the triangle needs more attention.

In Turkey, it seems to me that the defence establishment needs to work on legitimacy and effectiveness. Improved political accountability and transparency will inspire confidence amongst the citizens and Turkey's friends abroad. Improved coherence and collaboration will make Turkish defence policy more effective. Furthermore, both efforts will reinforce each other.

## Abbreviations

AAC	<i>Advies en Arbitrage Commissie</i> (Advice and Arbitration Committee, NL)
AFAD	Disaster Relief and Emergency Response Department
AFMP	<i>Algemene Federatie Militair Personeel</i> (General Federation for Military Personnel, NL)
AIV	<i>Adviesraad Internationale Vraagstukken</i> (Advisory Council of International Affairs, NL)
AKP	<i>Adalet ve Kalkınma Partisi</i> (Justice and Development Party)
AMAR	<i>Algemeen Militair Ambtenaren Reglement</i> (General Military Servants Regulation, NL)
ANAP	Motherland Party
AWACS	Airborne Warning and Control System
BDP	Peace and Democracy Party
CBP	<i>Het Centraal Planbureau</i> (Netherlands Bureau for Economic Policy)
CDDH	<i>Commission Des Droits de l'Homme</i>
CESS	Centre for European Security Studies
CGOM	<i>Centraal Georganiseerd Overleg Militairen</i> (Central Organised Consultation for Soldiers, NL)
CHP	Republican People's Party
CM	Committee of Ministers (Council of Europe)
CoE	Council of Europe
DAC	Development Assistance Committee (OECD)
DJU	German Journalists' Union
DP	Democrat Party
DSP	Democratic Leftist Party
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Convention on Human Rights
EMASYA	Security, Public Order and Solidarity (protocol)
EP	European Parliament
ESC	European Social Charter
EU	European Union
EUPOL	European Union Police Mission in Afghanistan
HRH	His Royal Highness
ISAF	International Security Assistance Force (Afghanistan)
JSF	Joint Strike Fighter
KFOR	Kosovo Force
MAW	<i>Militaire Ambtenaren Wet</i> (Military Servants Act, NL)

MDG	Millennium Development Goal
MGK	<i>Milli Güvenlik Kurulu</i> (National Security Council)
MFA	Ministry of Foreign Affairs
MHP	Nationalist Action Party
MIT	National Intelligence Agency
MoD	Ministry of Defence
NATO	North Atlantic Treaty Organisation
NCO	Non-commissioned officer
NGO	Non-governmental organisation
NPO	Non-political organisation
OEF	Operation Enduring Freedom
OSCE	Organisation for Security and Co-operation in Europe
OYAK	<i>Ordu Yardımlaşma Kurumu</i> (Armed Forces Pension Fund)
PACE	Parliamentary Assembly of the Council of Europe
PKK	Kurdistan Workers' Party
PRT	Provincial Reconstruction Team
PSO	Peace Support Operation
RoP	Rules of Procedure
RSF	<i>Reporters Sans Frontières</i> (Reporters Without Borders)
SFOR	Stabilisation Force (Bosnia)
SSDF	<i>Savunma Sanayi Destekleme Fonu</i> (Defence Industry Support Fund)
SSR	Security Sector Reform
TESEV	Turkish Economic and Social Studies Foundation
TGDP	<i>Tutuklu Gazetecilerle Dayanisma Platformu</i> (Solidarity Platform of Imprisoned Journalists)
TGNA	Turkish Grand National Assembly
TGS	Turkish General Staff
TOBB	Union of Chambers and Commodity Exchanges of Turkey
TSK	<i>Türk Silahlı Kuvvetleri</i> (Turkish Armed Forces)
TSKGV	<i>Türk Silahlı Kuvvetlerini Güçlendirme Vakfı</i> (Turkish Armed Forces Foundation)
TÜBİTAK	<i>Türkiye Bilimsel ve Teknolojik Araştırma Kurumu</i> (Scientific and Technological Research Council of Turkey)
TÜMAS	<i>Türkiye'nin Milli Askeri Stratejisi</i> (National Military Strategy of Turkey)
TÜSIAD	Turkish Industry and Business Association
UN	United Nations
UNDP	United Nations Development Programme
UNIFIL	United Nations Interim Force in Lebanon
UNMEE	United Nations Mission in Eritrea and Ethiopia
UNPROFOR	United Nations Protection Force (Bosnia Herzegovina)
UNSC	United Nations Security Council

VDW	<i>Verbond tot Democratisering van de Weermacht</i> (Alliance for Democratisation of the Armed Forces, NL)
WEU	Western European Union



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