

Defence and security: oversight is the continuation of democracy by other means

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Shrouded in secrecy and prone to corruption, the defence and security sectors are challenging areas for parliamentary oversight.



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Finding balance is perhaps the perennial task of parliamentarians (i.e. legislators). Balance for the common good. The task of finding balance is undermined where there is insufficient oversight. In some cases, oversight is best conducted by experts or groups of individuals outside of parliament who are accountable to parliament and report directly or indirectly to parliamentarians. This is true of both the defense and the security sectors; two sectors tasked with ultimately preserving peace and using force or invasive forms of surveillance as a last resort.

However, when it comes to determining who should provide oversight, a new balance must be found; a balance between citizen oversight versus professional oversight. Citizens do not suffer from problems of "agency" in the same way professionals do. However, professionals are often considered "experts" in their field. A balance between expertise and agency needs to be found. The position paper developed by GOPAC and the presentation to be given by Jean Pierre Chabot at the WFD 2015 explore these questions of balance, as they pertain to the role of parliamentarians as representatives and legislators.

The defence and security sectors are some of the most challenging areas for effective oversight for parliamentarians.

This is true in many countries, including established democracies. Parliamentarians must balance their responsibility to demand accountability from public institutions with the need for a degree of secrecy in the defence and security sectors. This balance can too easily be tipped heavily toward favouring secrecy in the face of perceived heightened security risks. Once raised, it is difficult to bring the cloak of secrecy back down.

Too much secrecy can allow corruption to run rife. Globally, the arms trade is worth [over \\$1.7 billion](#). Arms sales are technically complicated and can involve many additions through offsets such as establishing local manufacturing to produce arms parts. Corruption in these sectors can lead to nepotistic hiring and compromised or poor intelligence. These risks result in large amounts of wasted resources, security failures and risks to frontline security providers.

At its worst, corruption within the defence and security sectors can lead to human rights violations and suppression of liberties. This includes blocking and targeting corruption investigators.

Parliamentarians play an important role in mitigating these risks through oversight, legislation, and debate. Notably parliamentarians decide the appropriate balance between public accountability and secrecy for the defence and security sector and uphold the principle of a civilian administered military. They must scrutinize the proper use of public funds, and ensure the public and security providers are receiving the right protection at the right cost. Finally, parliamentarians must be responsible in passing legislation that ensures a proper balance between transparency and secrecy.

The urgency and heightened political nature involved in the defense and security sectors can push against scrutiny and transparency, and therefore GOPAC encourages parliamentarians to be vigilant and to make informed decisions on the appropriate balance between transparency and secrecy.

Just War tradition, military ethics, and the parliamentary oversight of ultimate decisions

The Just War tradition is the result of thousands of years of discussion about the moral issues associated with war. One of its components, *jus ad bellum*, is the most relevant to the oversight of defense and security forces, and it contains [six criteria](#) that must be met for it to be moral for a State to go to war. The moral authority of these six criteria can be undermined by economic and political incentives corrupting the intentions that led to defence and security engagements and deployment.

One criterion requires war to be publically declared by a proper authority. Hundreds of years ago this would have meant public declaration by the monarch; today, it is often the parliament that possesses this authority. This criterion limits the decision making authority of security forces and places them in a subordinate role to the parliament.

This limitation extends beyond the power to declare war and reflects the larger moral concept for which the Just War tradition is part: military ethics. A significant component of military ethics concerns civil-military relations, especially civilian control of defence and security forces. This control can be characterized as a principal/agent relationship with parliaments serving as the principal and defence and security forces as the agent.

As representatives of the State's citizens and as principals, parliamentarians are responsible for overseeing institutional-level financial and policy decisions made by security forces. Therefore, it is essential that the legislature/security force relationship be based on civilian control of security forces, and that they also specifically address accountability within this principal/ agent relationship. As principal, parliamentarians play a role in upholding the codes and standards associated with a proper legislature/security force relationship and maintaining a culture of accountability.

Oversight of defence procurement, public expenditure, and arms export controls

In its role as principal, parliaments maintain responsibility for administering effective oversight of defense

procurement, public expenditure, and arms export control. This ensures that security forces are properly and efficiently using public funding. Parliaments must also ensure that security forces fulfill their fiduciary duties to act in the interests of the State and in a manner defined by its constitution and policies. Doing so will prevent what is known as the principal/agent problem, which occurs when the agent begins to act in its own interest rather than the interest of the principal. A principal/agent problem occurs if corruption exists, such as when funds are used to support a policy counter to the State's official policy, unneeded equipment is procured, or arms are exported in a matter that undermines the State's interests.

For this reason, parliaments have the responsibility to establish the proper relationship with security forces and develop processes that oversee defence and security sector decisions. These processes allow parliament to ensure that these decisions are proper. These processes also clearly establish that the sector is accountable to the parliament for the equipment they procure, public funds they expend, and arms they export.

Oversight mechanisms: balancing accountability and secrecy

Parliamentary committees and budget reviews are essential tools for establishing and maintaining the balance between accountability and secrecy. Due to the sensitive nature of proceedings, committee business may need to be conducted in camera. However, members of such committees should be given equal access to expert advice and sufficient opportunity to call on expert witnesses. Regular scrutiny of the budgets for the defence and security sectors is a powerful tool for parliamentarians. They must decide on appropriate intervals for review, what information may be publicly reviewed, and what level of disaggregated data is required.

Parliamentarians must also follow guidelines to make their procedures rigorous and trustworthy to the public and security providers. The selection process for parliamentarians to join committees in camera must be made public, and standards should be set for reviewing candidates' public record, knowledge of defence and security issues, and potential conflicts of interest.

Finally, codes of conduct are required for parliamentarians' departure from public service in order to combat a 'revolving door' between government and the private sector involved in supplying and advising the defence and security sectors. Good practice advises a moratorium period before public officials and public servants can take on a private sector job in a field they were responsible for.

Recommendations for Parliamentarians

- Advocate for internal, independent and impartial resources within parliament that facilitate the role of parliamentarians in the review of defence and security sector issues;
- Establish a system for anonymous reporting that is apolitical and endowed with powers to investigate concerns expressed by legislators, the public, and defence and security personnel;
- Ensure the process for selecting parliamentarians for in camera committees is known to the public and the results of selection are on public record;
- Strengthen measures that prevent conflicts of interest, e.g. instituting rules for a moratorium period following involvement in defence and/or security committee related business;
- Make effective control of the international arms trade a high priority on the parliamentary agenda and establish a process for ongoing review, sanctions and restrictions;
- Encourage substantive public debate on the issues of parliamentary oversight and the deployment of defence and security personnel;
- Establish systems that institutionalize regular reporting and disclosure of disaggregated financial data to parliament

on defence and security sector spending; and,

- Ensure that professional military personnel swear an oath of allegiance that guarantees the protection of citizens and the rule of law and create safeguards in the use of paramilitary forces.

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