

PILDAT

**International Conference
Civil-Military Relations**

October 21-22, 2008
Hotel Avari, Lahore, Pakistan

**Establishing Civil-Democratic
Governance of the
Defence Sector –
Experiences of Transitional
Countries**



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Preface

Establishing Civil-Democratic Governance of the Defence Sector –Experiences of Transitional Countries is a paper presented by **Mr. Roland Friedrich**, Adviser and Head of Project 'Palestinian Territories' Operations Division Africa and Middle East, Geneva Centre for the Democratic Control of Armed Forces (DCAF), at the **PILDAT International Conference on Civil-Military Relations**: October 21-22, 2008, Lahore, Pakistan.

PILDAT International Conference on Civil-Military Relations was held from October 21-22, 2008, at Lahore, Pakistan. The objective of the Conference was to showcase international and regional experiences and best practices in improving civil-military relations. Experts on civil-military relations from India, Turkey, Indonesia & Europe were part of the conference to present case studies and best practices on how to maintain and manage civil-military relations within an established constitutional and legal framework and move towards democratic consolidation. Pakistani Experts and academics, representatives of political parties and a large number of young professionals and students also participated in the two-day conference to discuss and brainstorm issues affecting civil-military relations in Pakistan and to reiterate the parameters of exclusive domains, as well as the overlapping and shared areas, of the civil and the military in Pakistan as a way forward for the country.

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Profile of the Author

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Roland Friedrich is Adviser and Head of the Project 'Palestinian Territories' at the Geneva Centre for the Democratic Control of Armed Forces (DCAF). He heads the DCAF Ramallah Office which assists the Palestinians with reforming their security sector. Prior to joining DCAF in 2005, Roland Friedrich worked with the Middle East Conflict Management Programme at the IISS (International Institute for Strategic Studies) in London. He has also worked with the Institute of Political Science at Bonn University in Germany and the German Parliament, the Bundestag. Roland Friedrich holds an MA (Hon.) in Political Science, International Law and Spanish Literature and Linguistics from Bonn University and an MSc (Distinction) in Middle East Politics from the School of Oriental and African Studies (SOAS) in London. Roland Friedrich has written extensively on Palestinian security sector governance and reform. In addition to this, his research interests include the Arab-Israeli conflict, the international and domestic politics of Syria and Lebanon, the politics of Islamic and national identity, theories of international politics, and concepts and frameworks of security sector governance and reform.

Introduction

The goal of civil-democratic control of the defence sector is to ensure that armed forces and their requirements occupy an appropriate place in the nation's priority without absorbing undue proportion of resources or exerting undue political influence. In other words: Defence should be organised and managed in a militarily effective and professional fashion with guaranteed political control and popular support. Democracies have chosen different ways of how to embed themselves with armed forces and how to manage them in accordance with these principles.

In democracies, achieving proper civil-democratic control over armed forces has historically been a lengthy and intricate process. No society has achieved perfection in this. Transitional countries face even more daunting challenges. Transition – whether from authoritarian rule to democracy or reconciliation and reconstruction after internal conflict – poses great challenges to decision-makers, state institutions and the citizens themselves. Political will, popular support and technical capacities are required to successfully initiate and maintain the course of transition. Experience has shown that there is no one-fits all approach for moving defence and security sector governance in a more democratic direction.

This paper will look at defence reform in different transitional contexts in order to identify lessons learned. The Western Balkans, Turkey and Chile face different challenges in building accountable and effective defence institutions. The paper will show that defence reform is dependent on the political context and that, with defence reform being an eminently political process, political will and local ownership are key for the success of reform.

Defence reform is part and parcel of broader security sector reform (SSR) processes. Security sector reform means the transformation of security sector institutions and mechanisms so that they play an effective, legitimate and democratically accountable role in providing external and internal security for both the citizens and the state. The aim is to effectively and efficiently provide of security within a framework of democratic governance. In this sense, the civil-democratic oversight of armed forces no longer means exclusive control by constitutionally elected bodies over a unified military, but a multi-level and multi-actor

concept of governing the defence sector. It includes state management and oversight bodies – Ministries, Offices of President and Prime Minister, Parliament, the judicial system – and non-state actors: civil society organisations, think-tanks, and the community of informed citizens themselves.

Defence Reform in the Western Balkans

The Western Balkans commonly includes Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia. These states are diverse in their history and political legacies, but face similar political, economic and social challenges. Two important factors shape defence reform in the Western Balkans. Firstly, the bitter lessons learnt in the aftermath of the use of military force by the government of Yugoslavia in the 1990s against separatist movements of the federal republics and by ethnic groups against each other. This led to conflicting popular attitudes, involving pride and shame, towards the role and place of armed forces in society. The emerging states, with the exception of Albania, built their armies from the ashes of the federal army.

A second factor was the commitment of the Western Balkan governments to European and Euro-Atlantic integration. In 2003, EU and NATO agreed to support a concerted approach towards the Western Balkans that includes defence reform as a key component. At the same time, the Western Balkan states developed their own approach to European and Euro-Atlantic integration. In order to illustrate challenges to defence reform in the region, this paper will look at the cases of Albania and Bosnia-Herzegovina.

Albania

Albania has made significant process towards civil-democratic defence governance over the last decade. Albania is a parliamentary republic and has developed a legal framework that provides for a balanced distribution of authority in defence governance and democratic control over the armed forces. The prime mover for defence reform in Albania was the strong commitment by its political leaders towards Euro-Atlantic integration. Its small size and the fact that Albania has largely escaped the ethnic tensions

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faced by the its neighbours have been conducive to successful structural reforms.

The Albanian Constitution of 1998 gives parliament the authority to approve the laws for the organization and functioning of its institutions, including the armed forces. The President of the Republic is the Commander-in-Chief of the armed forces, has executive control over the use of the armed forces in times of war or emergency, and is advised by a National Security Council. In times of peace, the Prime Minister and the Minister of Defence lead the armed forces. Cabinet, Prime Minister and Minister of Defense have the task of formulating and implementing defence policies.

Parliament stands at the top of the constitutional hierarchy and must approve defence legislation, policies and budgets. It also decides on the use of Albanian armed forces in the country or abroad, as well as on the total number of personnel and the mission of the army. In terms of oversight, the parliament controls the executive in the implementation of defence legislation, policies and relevant parliamentary decisions. Parliament has its own staff of experts that help prepare opinions on defence matters. The Parliamentary Commission on National Security is comprised of 17 members and supported by three staffers. Parliament makes regular use of hearings, questions and interpellations.

Since the mid-1990s, Albania has developed an extensive corpus of defence-related legislation, including definition, status, organisation and function of the armed forces, procurement, military service, military policing and intelligence, as well as use of firearms. Albania has also issued a broad array of policy documents, ranging from national defence policy and strategy to procurement strategy and defence planning directives.

However, Albania still faces some challenges. Firstly, there remains a lack of capacity for policy-formulation at the level of the President and the Prime Minister. The National Security Council, the advisory body to the President, lacks expert staff. The Committee of Policies on National Security, established by the Cabinet and advising the Prime Minister, equally has no expert staff except one defence adviser to the Prime Minister. Both bodies are on occasion rivaling. The result is that in practice the Ministry of Defence

formulates defence policies and decision, although this is not explicitly defined in the Constitution.

Secondly, there is a lack of transparency in defence-decision making. The formulation of draft legislation and defence policies have remained closed processes in the government. The required knowledge and expertise are based mainly in the Ministry of Defence. Little information has been revealed on the defence policy review process within the Ministry of Defence and the government. Commissioning independent studies, policies and strategies has not yet become part of defence culture. Foreign military adviser, especially from NATO, have played a significant role in providing input into these documents. The lack of a public information policy by the Ministry of Defence has precluded civil society from playing a role in formulating policy and generating public perception of defence issues.

Bosnia and Herzegovina

Defence reform in Bosnia and Herzegovina has been a key component of post-conflict reconstruction and reconciliation. Although in many regards unique, Bosnia and Herzegovina is an example of successful defence reform as part of nation-building and in a fragile democratic environment. Bosnia and Herzegovina over the last ten years managed to proceed from a highly fragmented security sector imposed by the Dayton Peace Agreement to a balanced civil-democratic defense architecture. Prior to 2001, Bosnia and Herzegovina lacked state-level institutions in terms of security sector governance. Five years later, Bosnia and Herzegovina had established all institutions at the state level necessary for a properly functioning defence sector. The political decision of joining European and European-Atlantic structures and direct international involvement were important factors in this trajectory.

The Constitution of Bosnia and Herzegovina was imposed on the conflicting parties through the Dayton Peace Agreement,¹ which ended for years of war in the country. The Dayton Agreement limited the powers of the central or state government to foreign affairs, trade, monetary policy and other areas referring to the maintenance of the joint state. All other responsibilities including defence were

¹ General Framework Agreement for Bosnia and Herzegovina, December 1995.

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vested in the entities of which the state is composed – Republike Srpska and Federation of BiH. Thus, each entity had its own army which role was defined by the constitutions and laws of the entities. The Parliamentary Assembly, the Presidency and the Council of Ministers of Bosnia and Herzegovina did not have any responsibility over the defence sector. The Constitution only gave responsibility to the Presidency to form a Standing Committee for Military Matters in order to coordinate the armed forces of the two entities.

Then, in July 2001, the Presidency issued a formal statement that Bosnia and Herzegovina would become part of NATO's Partnership for Peace. In response to this, NATO gave detailed recommendations on how to reform the defence sector, including legislation, institutional development, civil-democratic control and planning and budgeting processes. The Presidency established a Secretariat for the Standing Committee for Military Matters, while the internationally-appointed High Representative in Bosnia and Herzegovina established the Defence Reform Committee to steer the reform process in line with NATO and EU standards.

In late 2003, the Parliament of Bosnia and Herzegovina adopted new basic legislation on defence, based on the recommendation of the Defence Reform Commission. Without amending the Constitution, the legislation gave the tri-partite Presidency the authority to decide by consensus on state of war, emergencies and deployment of armed forces abroad. Thus, civilian command was transferred to the state level, whereas administrative responsibility continued to reside with the entities. It also established two new chains of command – operational and supplies – that strengthened the role of the Presidency and provided for a Ministry of Defence on the state-level.

Simultaneously, the High Representative issued a decision to establish a Joint Committee for the Oversight of Defence and Security in the Parliament of Bosnia and Herzegovina. The Committee has unrestricted authority in endorsing or amending policy decisions, including defence missions and resource allocation. It prepares parliamentary opinion on defence issues and relies both on parliamentary staff and independent expert staff embedded in parliament. Parliament uses questions, hearings, and interpellations on defence matters

However, it soon became clear that reform undertaken went not far enough because the exercise of the new authorities met with considerable institutional inertia. Thus, the Defence Reform Commission recommended to consolidate both chains of command under full-state level control, transfer remaining entity defence powers to the state and close entity defence institutions. New defence legislation to this effect was adopted by Parliament in 2005, which created one single army and delineated clearly the competencies of state-level institutions to manage and control the defence sector. Before that, entity parliaments had decided to transfer all defence competencies to the state-level. Also, in 2006 the security policy of Bosnia and Herzegovina, including a defence policy, was published. Furthermore, Parliament issued legislation that abolished conscription, limited the political and public activities of members of the armed forces and established a General Inspector to oversee the behaviour and professionalism of members of the armed forces. A single defence budget was created by law too.

In the new institutional structure, the tri-partite presidency approves defence policies and decisions forwarded by the Council of Ministers and the Ministry of Defence. The Standing Committee for Military Matters is the main forum for executive control of the defence sector. The Chairman of the Council of Ministers makes proposals on defence and oversees the implementation of decisions by the Council. The Ministry of Defence recommends defence policy options and issues order pertaining to with organizational and administrative aspects of defence. Parliament identifies strategic aims of defence, issues laws pertaining to defence and exercises oversight over implementation of policies and laws.

Defence reform in Bosnia and Herzegovina has made significant progress. The fragmentation of the existing security sector through the Dayton Peace Agreement presented a huge barrier for the creation of a democratic and accountable security system. In the post-conflict environment, the political will to engage in nation-building and reconciliation has been crucial; there was a political decision by the entities and the state government to transcend the most politically sensitive issues. The will to joint Euro-Atlantic structures and significant international assistance by NATO were crucial factors too. Both led to

Bosnia and Herzegovina joining the NATO Partnership for Peace (PFP) programme in 2006.

Yet, sustainable defence reform in Bosnia and Herzegovina still faces some hurdles. Challenges include the establishment of financial planning and resource allocation mechanisms for defence, as well as the management of defence budgets with a long-term perspective. There is also a need to reorient the defence budget, which covers mainly the personal expenses, towards a more balanced one that allows for modernization of the armed forces. Also, the reintegration of redundant defence personnel in society has not yet been fully resolved.

Defence Reform in Turkey

Defence reform in Turkey has formed a core element of the emerging SSR process in the country. The reason was the guardian role the army plays in the Turkish political system. The Turkish armed forces play a predominant role in defining what constitutes national security threats and has the main responsibility for formulating defence policy. The army has a strong position in state and society through institutions such as the National Security Council, which functioned in essence as a parallel government, and the military judiciary, as well as media, industry and trade foundations. Parliament and ministries have long played a minor role in defence policy-making and control, and civil-democratic oversight has long been weak in the Turkish Guardian-state.

According to the 1982 Constitution, the Council of Ministers in charge of determining and implementing security and defence policies. The Constitution also stipulates that the Council of Ministers is accountable to the Turkish Grand National Authority, the parliament, which is responsible for examining and limiting the defence budget. The National Security Council by law only has the authority to make recommendations for determining and implementing national security policies. However, despite these constitutional principles, the armed forces, through the NSC and the General Staff, in essence undertook to formulate security and defence policy.

As is the case in the Western Balkans, external factors played an important role in Turkish defence reform. In 1999, the EU officially gave Turkey the status of a candidate for accession. On this basis, Turkey in 2001 adopted a

'National Plan for Adoption of the Aquis', which was revised in 2003. Political reforms to align Turkey with the EU were introduced through two major constitutional reforms packages in 2001 and 2004, and eight legislative packages between 2002 and 2004. In 2003, the Justice and Development Party, elected in 2002, introduced a democracy package in order to reduce the political role of the military as part of compliance with EU membership requirements.

The 2003 democracy package sought to strengthen civil-democratic control by reverting the NSC to its original advisory role and making the NSC law compliant with the Constitution. To this effect, the government abolished the NSC's practice to appoint members of state security courts, the Council of Higher Education and other civilian bodies. The government also increased the number of civilians on the NSC, which now included the Prime Minister and his deputy, the Ministers of Defence, Justice and Foreign Affairs, the Chief of Staff, and the commanders of the branches of the armed forces. This was important because decisions in the NSC are made by majority consensus. It also appointed a civilian as Secretary-General of the NSC and abolished the secret regulation organizing the work of the Council. Moreover, the NSC began to inform public about its activities and published appointments as required by law.

The Justice and Development Party government in 2003 also overhauled parts of the military supply system. All military supplies and related revenues and expenditure were put under the Supreme Court of Accounts, which acts on behalf of Parliament. This step sought to enhance the role of parliament in the defence sector. In a positive development, in 2004 for the first time the budget for education surpassed the defence budget.

However, these reforms notwithstanding, the armed forces and the executive still dominate defence policy making, whereas the parliament oversights and control remain weak. The Grand Assembly, for example, plays no role in defence policy formulation. The national security policy document is recommended to the Council of Ministers by the NSC and published as a form of decree by the former. It is considered a state document with a degree of secrecy. Turkish defence policy is, in essence, shaped by the NSC, the Ministry of Foreign Affairs, and the General Staff.

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Also, Parliament plays no effective role in defence budgeting. Although the Grand Assembly's Plan and Budget Committee is responsible for examining the army's budget, the Ministry of Defence does not present any information of an adequate technical level on military matters to committee members. Members lack the will to discuss the defence budget and have accepted information provided largely uncritically, although Parliament has the power to submit questions and inquiries and present interpellations to the government. Members have resorted to these tools on limited occasions only, and if so, they mostly submitted written questions. In addition, the control of military supplies by the Supreme Court of Accounts, acting on behalf of Parliament, has yet to be realized. Parliament furthermore has not authority to appoint senior officers.

It is too early to assess the trajectory of Turkish defence governance and whether the reforms undertaken will propel sustainable change. From the elections of 2002 until the begin of the EU membership negotiations, the electoral mandate of the Justice and Development Party and the dynamism around the poll acted as powerful reform forces. Efforts of strengthening civil-democratic control of the armed forces came as a combination of foreign policy opportunities and local actors willing to engage in reform. Important steps such as curbing the power of the National Security Council were taken. Although security is still regarded an instrument of state control, the critical threshold of voicing taboo topics has been passed. New consciousness in public opinion, more transparency and new channels of accountability were reached. Yet, since 2005 stronger international pressure such as by the EU and internal political factors such as tension between the Justice and Development Party and the secular bloc have weakened the speed of reform. Important institutional reforms such as strengthening the role of Parliament still remain to be achieved.

Defence Reform in Chile

Defence reform in Chile is situated in the context of transition from 17 years of military rule to democracy. During the 1990s, security sector reform in general, and defence reform in specific, did not make much headway. The institutional resistance to reform was overcome in 2004 with the political agreement and subsequent approval

of a new constitution, which stripped the armed forces of much of its power.

Chile is a presidential democracy with a bicameral parliament, the National Congress, which consists of the Senate (upper house) and the Chamber of Deputies. According to the 1980 Constitution, the President was the high commander of the armed forces. The National Security Council served as the country's highest decision-making body in security and defence matters. Congress, the Chilean parliament, has the authority to approve or reject the defence budget but has no say in the appointment of senior defence officials. Congress may formulate, approve or reject defence legislation; it can also request information from the government and accuse senior officers in the armed forces.

Until 2005, the institutional framework inherited from the military regime allowed for a large degree of military independence from civil-democratic control. The 1980 Constitution stipulated that the armed forces acted as the 'guarantor' of national institutions. The President could directly remove the three commanders-in-chief of the armed forces; the Constitution allowed them to stay in office for four years. In fact, commanders could only be removed with the approval of the National Security Council, in which the army held half of the votes. Also, the President could not promote or remove officers without approval of the commanders-in-chief. The NSC was composed of the president, the speaker of the Senate, the president of the Supreme Court, the chief auditor the three commanders-in-chief, and the director of police. Any two members could convene meetings, even against the will of the President.

The Ministry of Defence, which had had the same organizational structure since 1932, had only limited authority because it was originally conceived as an administrative post only. The Minister of Defence did not have the right to vote in the NSC, as opposed to the commanders-in-chief. Congress has established a defence committee, which operates without permanent expert staff, but suffers from the same lack of effective control and oversight as the government. Under the Constitution the armed forces received a minimum budgetary allocation, which had to be equal at least to the 1989 budget (approximately \$700 million). Congress had no oversight over defence expenditure. In addition to that, the military was also largely autonomous in terms of professional and

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doctrinal training, after the outgoing military regime approved laws that reduced the scope of civilian involvement in professional and doctrinal matters.

During the 1990s, consecutive governments made very little progress towards asserting civil-democratic control in the defence sector. This was due mainly to political unwillingness to confront the military, which enjoyed the support of the political Right. Also, civilian governments had been pursuing different objectives in defence policy-making, making long-term reform planning difficult.

The first civilian government (1990 to 1994) applied a confrontational strategy towards the military, but made only limited changes. For example, the government employed the presidential veto to block promotion of officers involved in human-rights violations, provided only the minimal military budget, and undertook steps to achieve the superiority of the Minister of Defence over the commanders-in-chief. The second civilian government pursued a strategy of engagement and avoided legal confrontation with the military, such as for example whether the Minister of Defence had superior command over all defence institutions.

The only area where both governments promoted important initiatives was the field of human-rights. The first civilian government created a Commission of Truth and Reconciliation in 1990 to collect information on human rights violation committed during the military regime. The reports of the commission provided extensive analysis about of cases of disappearance of victims of the regime. In 1998, the created in national human-rights roundtable that brought together representatives of the army and the security forces and civil society, following the arrest of the former military dictator in Europe. In 2001, the military for the first time admitted their involvement in case of disappearance. The governments also made some headway in centralizing decision-making in the sale of defence equipment and produced a white paper that set out the country's defence policy.

This stalemate between government and the armed forces changed in 2004. After President Lagos arranged for a cross-party agreement, a democratic constitution came into force. On 16 August 2005 a bill embodying 58 constitutional reforms was approved by Congress, and

endorsed then by the president. The presidential terms was reduced from six to four years. The government also ended the practice of designating senators and 'senators for life', leaving just 38 senators elected by popular vote. Crucially, responsibility was removed from the armed forces as 'institutional guarantors'. The National Security Council was stripped of all but advisory powers and can now be convened only by the president. The reform also included the restoration of power to the president to remove the commanders-in-chief of the armed forces and the forces of order. The reform was a milestone for Chile's continuing transition to democracy as it eliminated the so-called 'authoritarian enclaves' (military government appointees who had occupied seats in the Senate and who have traditionally been a block to reforms proposed by the governing left-wing coalition).

Defence Reform in Transitional and Emerging Democracies – Lessons Learnt

Defence reform is a lengthy and complicated process. Defence reform touches upon the most sensitive functions of the state and involves addressing difficult political and structural questions, such as the separation of powers and the division of authority. There is no universally accepted and applicable model of civil-democratic security sector governance which can be copied. Political systems and societal structures and values vary from country to country.

However, a number of key lessons from defence reform in transitional countries can be learned from the cases of the Western Balkans, Turkey and Chile. Firstly, political will and local ownership are crucial. If there is no strong political will to engage in reforms, reform progress will be limited. Key decision-makers must be willing to engage in reform and be able to build coalitions between political stakeholders in the country. External incentives, such as accession to international security structures, can prove useful, but are in itself insufficient.

Secondly, building institutional capacities in the defence sector is important. Developing effective civilian management and oversight institutions for defence – ministries, national security councils, parliaments – requires time, patience and significant technical expertise. Some of that expertise might not be easily available locally

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and have to be brought in from the outside. If this is done, local ownership however should remain a key principle: local stakeholders should initiate reforms and manage the reform process, as well as international assistance to reform.

Thirdly, strengthening parliament is crucial. In a democracy, those who have the authority to decide upon and implement defence policy should be accountable to the elected representatives or even directly to the people. Parliament is the key body for formulating defence legislation, helping set national defence priorities and overseeing the activities of the armed forces. Parliamentary oversight is only complete if parliament oversees five major aspects of defence: policies, personnel, finances, operations and procurement. Oversight depends on three factors: the legal authority to hold the government accountable, the ability to exercise oversight and a critical attitude of parliamentarians. In this regard, political willingness of parliamentarians is crucial. If parliamentarians do not want to hold government accountable, their legal powers are of little value. Often parliamentarians are willing but not fully able to exercise oversight, due to the lack of budgetary and human resources. Trained and motivated parliamentary staff is thus important.

Fourthly, transparency and public participation and support are important to push ahead with reforms and sustain them. Broad societal debate on defence and security issues can help maintain the reform momentum. In this, civil society, human-rights organizations and the media can play an important role.

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