

DEMOCRATIC CONTROL OF ARMED FORCES: A LEGAL OVERVIEW OF THE IMBALANCE OF POWER IN OVERSEEING ARMED FORCES OF TAJIKISTAN

CONTROL DEMOCRÁTICO DE LAS FUERZAS ARMADAS:
UNA DESCRIPCIÓN LEGAL DEL DESEQUILIBRIO DE PODER EN LA
SUPERVISIÓN DE LAS FUERZAS ARMADAS DE TAYIKISTÁN

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Abstract

The 2018 law amendments to the Law of Tajikistan on the Security Council has utterly subordinated the Security Council to the Presidential Apparatus of Tajikistan, thereby, reaffirming ultimate presidential power over this security body. This article conducts a legal analysis of the Tajik legal frameworks on the controlling and supervising of armed forces of Tajikistan by the President, the Parliament, and the Ministry of Defense. The analysis traces the wide competencies and authorities of the President and the feeble role of Parliament in the declaring and maintaining of the state of emergency and martial law. This article pays particular attention to the role of Parliament in the assessment and monitoring of the military budget and expenditures.

Keywords: Democratic control; Armed forces; Organization for Security and Cooperation for Europe; Parliament; Ministry of Defense; State of emergency; Martial law; State budget.

Resumen

Las enmiendas de 2018 a la Ley de Tayikistán sobre el Consejo de Seguridad han subordinado completamente el Consejo de Seguridad al Aparato Presidencial de Tayikistán, reafirmando así el máximo poder presidencial sobre este órgano de seguridad. Este artículo lleva a cabo un análisis de los marcos legales de Tayikistán sobre el control y la supervisión de las fuerzas armadas de Tayikistán por parte del Presidente, el Parlamento y el Ministerio de Defensa. El análisis rastrea las amplias competencias y autoridades del Presidente y el débil papel del Parlamento en la declaración y el mantenimiento del estado de emergencia y la ley marcial. Este artículo presta especial atención al papel del Parlamento en la evaluación y el seguimiento del presupuesto y los gastos militares.

Palabras clave: Control democrático; Fuerzas armadas; Organización para la Seguridad y la Cooperación para Europa; Parlamento; Ministerio de Defensa; Estado de emergencia; Ley marcial; Presupuesto estatal.

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1. Introduction

After the collapse of the Soviet Union, one of the newly independent states, Tajikistan, plunged into a five–year bloody civil war (1992–1997). The war came to an end following the conclusion of a peace treaty between the then Islamic opposition group and the Tajikistan government thanks to the mediating role played by some states and international organizations, such as the United Nations and the Organization for Security and Cooperation of Europe (OSCE). The OSCE remained a vital actor in post–conflict Tajikistan, mainly in assisting the country’s transition towards building and maintaining democracy, the rule of law, security, and human rights. While the

OSCE launched its mission in Tajikistan in 1994, a draft of the OSCE Code of Conduct on politico–military aspects of security (the Code of Conduct) had been the subject of a long and intense discussion among the OSCE member–states in Vienna. Drafters believed that a new document on security in the OSCE region after the fall of the Iron Curtain should provide countries in transition with fundamental provisions to build their security sector based on principles of democracy, the rule of law, and human rights.

The Code of Conduct is a revolutionary politically binding document, as it contains the principles of democratic control over armed forces. It

“... elevated into the realm of international law and cooperation, and the consequence of this is that it creates international soft law in an area of state power and sovereignty hitherto considered as a taboo in international affairs: the security sector”².

Although twenty–four years have passed since the adoption of the Code of Conduct, little on the subject has been achieved in introducing consolidated legislative and practical measures that are compatible with the standards cemented in this landmark document in Tajikistan. The OSCE and other international donors have been investing a considerable amount of financial and technical assistance on projects focusing on border management and police reform in Tajikistan. Permission rendered to foreign donors to deal with the border management was based on the observation that the Tajikistan government could not enhance border control by itself. Police reform was not as successful as expected. To the contrary, some “agencies have become even more corrupt and aggressive toward the population”³. The Police reform packages lacked the introduction of

2 LAMBERT, Alexandre. *The Starting Point of the Code: From Negotiation to Adoption in 20 Years of OSCE Code of Conduct on Politico–Military Aspects of Security: A Commemorative Study on the History, Development, Achievements and Outreach of the OSCE Key Document for Politico–Military Norms and Principles on Armed and Security Forces*, Swiss Armed Forces, Armed Forces Staff, International Relations D, 2015, p. 27.

3 MARAT, Erica, *OSCE Police Reform Programmes in Kyrgyzstan and Tajikistan: Past Constraints and Future Opportunities*, N° 27 – October 2012, EUCAM, EU–Central Asia Monitoring. Available at: <https://eucen-tralasia.eu/2012/10/osce-police-reform-programmes-in-kyrgyzstan-and-tajikistan-past-constraints-and-future->

democratic control, which should have aimed to develop an accountable, transparent institution with a policy of not threatening the population but protecting constitutional values and rights. The aforementioned detrimental consequences were a result of a lacking political will to re-install the police system in a way where police were not beholden to a particular group, or body, which provides power and money.

The Tajikistan armed forces remained as a sector lacking the political motivation to instill reform, and its first-generation reform of civil-military relations was left without adequate consideration and development. Biljana Vankovska argues that "without the rule of law, a democratic form of government may be no more than a cloak for authoritarian practices where the role of the armed forces is strongly emphasized"⁴. Hence, thorough legal research is critical to identify the legal discrepancies and incompatibilities with that of the principle of the democratic control over the armed forces provisioned in the Code of Conduct and Tajikistan national legislation. The current legislation of Tajikistan regulating armed forces was adopted in the mid-1990s and the beginning of the 2000s. The subsequent amendments were mostly related to the President's powers over the armed forces.

This article is aimed at examining the competency of the Tajikistan Parliament and the President, as the head of the government branch, with regard to oversight of the armed forces of Tajikistan. Furthermore, this article investigates the gaps and misbalance of power that exists in the Tajikistan legislation concerning states of emergency and maritime law. Moreover, the competency of the Ministry of Defense, as well as parliamentary oversight over the military defense budget, are examined to explore whether legal provisions comply with the principle of democratic control over armed forces.

opportunities/, last accessed on 25th October 2019.

4 VANKOVSKA, Biljana. Introduction in *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Reality/ies*. Published by: Geneva Centre for the Democratic Control of Armed Forces 2001, p. 10. Available at: http://www.bezbednost.org/upload/document/legal_framing_of_the_democrati.pdf.

2. Primacy of the Democratic Control over Armed Forces under the OSCE Code of Conduct on Politico–Military Aspects of Security

The OSCE Code of Conduct was adopted in 1994 at the 91st Plenary Meeting of the Special Committee of the OSCE Forum of Security Cooperation by 52 member States⁵. It entered into force on 1 January 1995. France initiated the idea of codifying obligations of the member states on security matters in 1992⁶. As the proposal was declined by United States and other NATO member states aliens, except Germany, which proposed to develop a politically binding instrument, as a “Code of Conduct of Security relationship among participants” that was officially presented together with France to the Helsinki Follow–Up Meeting in 1992⁷.

The four core aspects stipulated under Sections VII and VIII of the Code of Conduct are: the primacy of democratic civilian control over armed forces, respect of human rights and freedoms of the armed forces personnel, observance of international humanitarian law by armed forces, and internal use of armed forces in security matters⁸. Paragraph 20 of the Code of Conduct states that:

“Participating States consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. The

5 Tajikistan, as four other Central Asian countries (Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan), became a member of the OSCE on the 30th of January 1992.

6 DEAN, Jonathan, *The OSCE “Code of Conduct on Politico–Military Aspects of Security”: A Good Idea, Imperfectly Executed, Weakly Followed-up*, OSCE Yearbook, Vol.1–2, 1995/96, p. 292.

7 GHEBALI, Victor–Yves, *The OSCE Code of Conduct on Politico–Military Aspects of Security: A Paragraph–by–Paragraph Commentary on Sections VII–VIII (DEMOCRATIC CONTROL AND USE OF ARMED FORCES)*, DCAF Document N° 3, Geneva, 2003. p. 2. The Code proposed by Germany and France was submitted to the Helsinki Follow–Up Meeting with the co–sponsorship of eleven other participating states (Belgium, Bulgaria, Estonia, Greece, Ireland, Russian Federation, Romania, Spain and Kyrgyzstan), Kyrgyzstan was the only Central Asian country among the aforementioned countries.

8 *Ibidem*, p. 8.

participating States will further the integration of their armed forces with civil society as an important expression of democracy”⁹.

While Paragraph 20 of the Code of Conduct cements democratic political control over armed forces as a key element of stability and security, Paragraph 21 of the Code of Conduct further elaborates the question of who has to provide such control. It stipulates that democratic political control has to be maintained and provided by “constitutionally established authorities” vested with “democratic legitimacy”. This Paragraph of the Code of Conduct is the essence of the democratic control of armed forces as it proclaims the primacy of constitutionally established authorities vested with democratic legitimacy over armed forces¹⁰. It also states that authorities constitutionally tasked to control armed forces must operate in a system of true “separation of powers”¹¹.

There is no single, unanimously accepted and definitive normative model for democratic control over armed forces. Hence, the model of democratic control over armed forces has to be elaborated by the state itself based on its political regime, historical background, culture, and other factors.

Andrew Cottey, for example, describes democratic control as the political control of the military by the state’s democratically elected authorities, including certain limitations on: the use of armed forces by the government, parliamentary oversight over armed forces and military defense policy, freedom of discussion of military defense issues, and the engagement of the civil society¹².

Similarly, Simon Lunn defines democratic control over armed forces as decisions made by democratically elected authorities and scrutinized by the

9 OSCE Code of Conduct, 1994, Section VII, paragraph 20.

10 GHEBALI, Victor–Yves and LAMBERT, A. *The OSCE Code of Conduct on Politico–Military Aspects of Security: Anatomy and Implementation*, The Graduate Institute of International Studies, Volume 5, Martinus Nijhoff Publishers, Leiden, Boston, 2005 p. 65.

11 GHEBALI, Victor Yves, *Revisiting the OSCE Code of Conduct on Politico–Military Aspects of Security* (1994), HÄNGII, Heiner, and WINKLER, Theodor (Eds.), *Challenges of Security Sector Governance*, Münster (LT), 2003, pp. 85–117, p., 92; LAMBERT, Alexandre. Op. Cit. 2005, p. 28.

12 COTTEY, Andrew, *Democratic Control of Armed Forces in the OSCE Area: Problems and Challenges*, The OSCE Yearbook, 2001, p. 286.

parliament to ensure legitimacy; “the ultimate aim being to ensure that armed forces serve the societies they protect and that military policies and capabilities are consistent with political objectives and economic resources”¹³. This includes decisions on organization, deployment and use of armed forces, military defense allocations, defining roles, and responsibilities of the military.

Apart from proclaiming the Geneva Center for Democratic Control over Armed Forces (DCAF) as the main framework for intra– and inter–state relations, the Code of Conduct falls short of providing a uniformly applicable model of the DCAF. Hence, it becomes sensible to identify elements of the DCAF based on theories and practices of democratic civilian control over armed forces. In this regard, Andrew Cottey, Timothy Edmunds and Anthony Foster underlined some of the fundamental elements for effective democratic control over armed forces. Included among them are:

- a) Constitutional and legal frameworks outlaw involvement of the military as an institution in politics;
- b) A clear chain of command headed by civilian authority;
- c) Civilian Ministry and Minister of Defense with consist of military and civilians, where civilians are in decision–making positions; subordination of the General Staff to the Ministry of Defense and;
- d) Transparency of the military defense budget¹⁴. Parliamentary oversight must also preside over other military defense issues through its committees¹⁵.

These elements are fundamental but not exhaustive. Interpretation of the security and military defense norms can be extended because of rapidly changed security concerns, new challenges and threats. Mainly their interpretation can

13 LUNN, Simon, *‘The Democratic Control of Armed Forces in Principle and Practice’*, in BORN, Hans, FLURI, Philipp H., LUNN, Simon (eds.) *‘Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector and its Reform: A Collection of Articles on Foundational Aspects of Parliamentary Oversight of the Security Sector’*, DCAF and NATO Parliamentary Assembly, Brussel/Geneva, 2003, p. 83.

14 COTTEY et al, *‘Introduction: Democratic Control of Armed Forces’*, in edited by COTTEY, Edmunds and FOSTER, *‘Democratic Control of the Military in Post–Communist Europe: Guarding the Guards’*, Palgrave Macmillan, 2002, p. 7.

15 BETZ, David J., *‘Civil – Military Relations in Russian and Eastern Europe’*, Routledge Curzon, 2004, p. 13.

be extended with regard to the OSCE Code of Conduct because "the Code is expected to change en route and to gather increasing relevance and additional value as a kind of normative compass for the OSCE comprehensive security regime"¹⁶.

3. Parliamentary Oversight of the Armed Forces of Tajikistan

Parliamentary oversight of the armed forces plays a crucial role in maintaining democratic control. Paragraph 22 of the Code of Conduct states that each participating state will provide legislative approval of military defense expenditures and will exercise restraint in its military spending by ensuring transparency and public access to information related to the armed forces. Paragraph 22 reaffirms the importance of parliamentary adoption of the military defense budget as a normal democratic procedure. Parliamentary oversight ensures the democratic nature of the armed forces, as Parliament is a publicly elected body presenting the public's interests and concerns about security and military defense, as well as ensuring a balance of power and control over the effectiveness of the armed forces in maintenance of security and military defense. In support of this, Hans Born, states that parliamentary oversight constrains the power of the government and thereby a head of State provides the proper maintenance of checks and balances and better represents the interests of people¹⁷.

During the Soviet Union era, the Soviet military defense budget was considered the most confidential and secretly handled issue from the populace, as were almost all key military defense decisions. The planning and review of the military defense budgetary process were under the total control of the Communist Party, as were all military defense policies and activities.

The collapse of the Soviet Union and the subsequent transition of the many newly emerged states to democracy did not change the situation in Tajikistan.

16 DE NOOY, Gert, *'Summary of Main Conclusions'*, in DE NOOY., Gert, *Cooperative Security, the OSCE and its Code of Conduct*, Nederlands Instituut Voo Internationale Betrekkigen (La Haye), Martinus Nijhoff Publishers, Hague, 1996, p. 141.

17 BORN, Hans, et al, *'Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices'*, DCAF & Inter-Parliamentary Union, 2003, pp. 18-19.

On the contrary, Tajikistan inherited the Soviet Union approach of keeping the military defense budget secret, arguing that revealing such information would represent a threat to national security.

Parliamentary oversight ensures democratic oversight, while the government usually exercises civilian control over the armed forces. It is important to distinguish between democratic oversight and civilian oversight, as these two concepts function differently. Democratic oversight is performed in conformity with democratic principles, the rule of law, and legitimacy, while civilian oversight does not require democratic elements and can be effectively exercised even in authoritarian and totalitarian countries, as was the case during the Soviet Union era¹⁸.

There are three fundamental functions of Parliament in overseeing a state budget: namely, the adoption of legislation, controlling the budget, and overseeing the government.

3.1 Parliamentary oversight of the military defense budget

Since 1999, the Parliament of Tajikistan has been operating in a bicameral structure. It has two chambers – Majlisi Milli (the National Assembly – upper chamber) and Majlisi Namoyandagon (the Assembly of Representatives – lower chamber). The National Assembly consists of a total of thirty-three members where twenty-five members are elected on the basis of territorial interests, and the remaining eight members are appointed by the President. The Assembly of Representatives should consist of sixty-three deputies, which are elected directly by the people. A state budget is determined solely by the lower chamber of the Parliament, i.e. by the Assembly of Representatives.

The main law regulating the state budget is the Law of Tajikistan “On State Finance of Tajikistan”, which was adopted on the same day as the Law on Audit Chamber of Tajikistan. The Law of Tajikistan “On State Finances of Tajikistan” lays down the five stages of the budgetary process: 1) preparation;

18 VAN EEKELLEN, Wim F., *Democratic Control over Armed Forces: The National and International Parliamentary Dimension*, Geneva Center for Democratic Control over Armed Forces (DCAF), Occasional Paper N° 2, Geneva, October 2010. Available at: https://www.dcaf.ch/sites/default/files/publications/documents/op02_democratic-control.pdf

2) review; 3) approval; 4) implementation; and 5) control. The control process is also regulated by the Law of Tajikistan “On State Financial Control”. If budget preparation and implementation are under the remit of the government (executive), review, approval, and control are within the power of the lower chamber of the Parliament.

3.1.1 Preparation of state budget

Tajikistan’s “budget preparation” stage is carried out by the government and this process is closed off to public and expert discussions. The budget preparation process happens explicitly within ministries and committees of the government, notably the Ministry of Finance (MoF). The preparation process consists of two stages. In the first stage, the MoF develops the main areas of financial, budgetary, and tax policy for the whole period of budgetary planning and submits information to the temporary budgetary commission under the government of Tajikistan. The law stipulates to the kind of information that has to be included. This information has to be considered and approved by the government, and it may be published if the government chooses to present it for public scrutiny. However, the law does not oblige the government to publish this information.

During the second stage of the preparation process, the Main Administrators of Budget Allocations (MABAs)¹⁹ prepare a mid-term strategy of budget allocations of the respective sectors and submit the strategy to the MoF; it also divides budgetary allocations based on budget classification and submits them to the MoF. Based on the collected information and documents, the MoF drafts the state budget and provides this to the government no later than 20 September each year. If the government approves the draft budget, the draft law is presented to the lower chamber of Parliament. The Law of Tajikistan “On State Finance of Tajikistan” prescribes that review of the draft law for the next financial year, and its approval, are regulated by present law. Unfortunately, the law does not stipulate any procedures or mechanisms for reviewing the budget.

3.1.2 Reviewing of the state budget

19 Under the *Law on State Finances*, amendments made in 2008, MABAs as public authorities represented by ministries, state committees, committees, and agencies authorized to allocate budget resources to subordinate budget entities.

The second stage of the budgetary process is to review. As noted by Hans Born, one of the reasons for the Parliament's lack of interest with regard to the budget of political parties is that political parties, which are represented in government, are not eager to criticize their governmental counterparts and, as a result, the practices and tools of parliamentary oversight are seldom used, except during scandals or in emergencies²⁰. The "review" of military defense budget allocations is undertaken by the Committee on Legal Order, Defense and Security²¹, and the Committee on Economy and Finance of the lower chamber of the Parliament (*Majlisi Namoyandagon* of *Majlisi Oliy Tojikiston*). The Committees have a chairperson, a deputy head, and five members. There is no balance between political parties in the Committee, which leads to a lack of debate and criticism of the policies and draft laws submitted by the government. Forty-four out of the sixty-three deputies of the lower chamber of the Parliament are members of the ruling party, the National–Democratic Party of Tajikistan (NDPT).

In accordance with the Standing Order (Reglament) of the lower chamber of the Parliament of Tajikistan, the two abovementioned Committees have a right to invite experts²² and representatives of public associations²² and mass media to its sessions²³. Although the Reglament grants the committees such authority, in practice the committees have been unwilling to involve these groups in their sessions, even if in order to critically and effectively review the budget, the committee needs different points of view that could contribute to constructive dialogue and make an essential impact on efficient spending and the achievement of military defense policies. For instance, the military defense budget contains not only allocations to strengthen military capacities, but also

20 BORN, H., 'Learning from Best Practices of Parliamentary Oversight of the Security Sector' in BORN, H., FLURI, Ph. and LUNN, S., (Eds.), 'Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector, Geneva Centre for the Democratic Control of Armed Forces', 2010, p. 35

21 Article 23 of Standing Order of the House of Representatives (*Majlisi Namoyandagon*) of Tajikistan (lower chamber).

22 Article 18 of the Standing Order of House of Representatives (*Majlisi Namoyandagon*) of Tajikistan (lower chamber).

23 Article 16 of the Standing Order of House of Representatives.

allocations for social protection and guarantees of the rights and freedoms of military personnel. It is crucial to involve representatives of military unions, non-governmental organizations, and mass media to better understand the situation concerning the social rights of military personnel. In most cases, social guarantees and protections are either inappropriate or are not provided at all.

Another essential aspect of the Parliament's adoption of the state budget is the time frame for review and approval of the military defense budget. As far as regular and long-term policy issues are concerned, the Parliament should have sufficient time to analyze and debate the budget expenditures for military defense. The Parliament should have forty-five days to three months²⁴ in order to conduct all necessary debates on, and improvements to, the draft state budget. Under Tajikistan's Law "On State Finance of Tajikistan", the government submits the draft law to the Parliament by no later than 1st November. The last five state budgets were adopted by the Parliament within eight to nineteen days upon their receipt. No parliamentary hearings were held or participated in by external experts or civil society. For instance, the 2013 state budget was submitted to the Parliament on 8th November, which is a violation of the Law of Tajikistan "On State Finance of Tajikistan". The draft law was adopted and signed by the President on 19th November, although the Law of Tajikistan "On State Finance of Tajikistan" provides two months (1 November–31 December) for review and approval of the state budget. It is worth mentioning that when the Parliament adopts the budget, this does not immediately mean that the law is ratified. It is enforced only after official publication. Before this, the law has to be signed by the President, who has the right to veto. If the President does not agree with the law, he sends the law to the lower chamber of the Parliament with his proposed amendments. If the lower chamber adopts the law for a second time, the President must sign it. After which it is officially published.

The report prepared by the International Monetary Fund's (IMF) fiscal transparency mission which reviewed Tajikistan's compliance with the IMF's financial transparency code noted that the Parliament approves the budget

24 BORN, Hans, 'Security and the Power of the Purse', in BORN, Hans, FLURI, Philipp and JOHNSON, Anders B. (eds), *Parliamentary oversight of the security sector: principles, mechanisms and practices* / [publ. by: Inter-Parliamentary Union; Geneva Centre for the Democratic Control of Armed Forces, 2003.

through broad functional categories. Still, actual allocations are made to individual spending units during the year administratively by the MoF.

Since Tajikistan gained independence, budget allocations for the security sector have remained opaque to the extent that it “hinders the effectiveness and efficiency of armed forces”²⁵. The Budget Open Survey conducted by the International Budget Partnership in 2012, scored Tajikistan’s state budget a mere seventeen out of a possible one hundred, with neighboring states scoring higher: Kazakhstan (48), Kyrgyzstan (20), Russia (74), and Afghanistan (21). An analysis of the budgets from 2007 to 2013 shows that budget allocations for military defense have quadrupled. In 2007, the total allocation for military defense was almost USD 32 million; in the 2014 state budget, the military defense expenditure reached USD 110 million.

The Law of Tajikistan “On State Finance of Tajikistan” demands transparency of the budget, which means that the publication of the state budget and the dissemination of information about its implementation in mass media are mandatory. Furthermore, the law stipulates that the completeness of data on the implementation of budgets and the accessibility of other information about budgets –except for information constituting a state secret or other secret protected by law– has to be published²⁶. In 2008 and 2012, state budgets lacked any information about allocations for military defense and, even when budget allocations were indicated, the budgets show the total sum marked as “not for publication”. A secretive military defense budget means allocation depends on the decisions of the MoF and the Ministry of Defense.

3.1.3 Monitoring of state budget implementation

One of the most significant stages in the budget process is the control of the implementation of the budget. The Parliament has minimal monitoring power over the budget process and the government’s financial management.

25 Transparency International UK, *“The Transparency of National Defense Budgets: An Initial Review”*, 2011, p. 8 Available at https://ti-defence.org/wp-content/uploads/2016/03/2011-10_Defence_Budgets_Transparency.pdf (last visit November 3rd, 2019).

26 Article 8 of the Law of Tajikistan “On State Finance of Tajikistan,” adopted on June 28, 2011, # 723.

Article 60 of the 1994 Tajikistan Constitution, article 26 of the Law of Tajikistan "On State Finance of Tajikistan", and article 37 of the Constitutional Law of Tajikistan "On Majlisi Olii of Tajikistan" stipulate that the lower chamber of the Parliament has the authority to control implementation of the budget. However, there are no legal frameworks with precise mechanisms and procedures to control budget implementation. In 2010, the Parliament adopted amendments and additions to the Constitutional Law of Tajikistan "On Majlisi Olii of Tajikistan", notably article 37, which states that the lower chamber hears reports of ministries, state committees, and other state authorities due to its control over budget implementation. In 2011, the new Law of Tajikistan "On State Finance of Tajikistan" granted the lower chamber of the Parliament the authority to approve the reports on the implementation of the state budget, which are submitted by the MoF.

Neither the amendment made in 2010 nor the Law of Tajikistan "On State Finance of Tajikistan" developed a system of effective parliamentary control over spending of budget allocations. The amendment made in 2010 on the Constitutional Law on Majlisi Oli of Tajikistan does not authorize the Parliament to request reports from government authorities. It only grants the Parliament the authority to hear reports, which is inefficient with regard to controlling the effectiveness and efficiency of spending because the assessment of spending has to be conducted by an independent organ authorized to conduct the audit. It is worth noting that the last reports submitted by the MoF do not contain any detailed information about defense spending. Moreover, the MoF reports a lack of analytical research on spending by some sectors.

Until 2011, the Parliament did not have any independent auditing office which could monitor the spending of the defense budget and prepare analytical reports on how the budget was spent, whether allocations were spent on defined programs and policies, whether there were any corruptions or financial losses, and make recommendations on how the efficiency of spending could be enhanced.

In 2008, the government established an agency for financial control and fighting against corruption (hereinafter the Anti-Corruption Agency). The Anti-Corruption Agency is entitled to manage financial control over the effective usage of state resources and state properties to help ensure the economic security

of Tajikistan²⁷. However, the Anti-Corruption Agency is not an independent institution and is wholly subordinate to the President. Furthermore, there is no public trust in this Anti-Corruption Agency to fight against corruption in the country; the Anti-Corruption Agency prosecutes only low-ranking authorities.

3.1.4 Accountability of the government to the Parliament

The accountability of the government before the Parliament is weak. Although the government submits annual reports about the implementation of the state budget²⁸, and the budget has to be approved by the Parliament²⁹, this does not ensure the effectiveness of such procedures. Although the report on the implementation of the state budget is submitted by 15th July, the Parliament considers and approves the report in November. At the same time, the Parliament also approves the state budget for the following year. Until now, all reports were passed without any parliamentary findings as to whether the budget was implemented efficiently. In short, the approval of the report has taken on a purely decorative character, granting legitimacy to all spending in the military defense sector. It is worth noting that neither the parliamentary committee on economy and finance, nor the committee on defense, have any competence to assess the report of the government. Even if they did, these committees do not have sufficient human resources and mechanisms to accomplish this task, not to mention the lack of will to proceed with such reviews due to the strong power of the National Democratic party's influence in the Parliament.

4. Presidential control over armed forces of Tajikistan

Complying with public international law and international human rights obligations while adopting constitutions and passing legislation after the collapse of the Soviet Union was an essential part of the democratization for Tajikistan. Proclamations of democracy and human rights in fundamental legal documents

27 Article 1 of the Law of Tajikistan "On Agency on State Financial Control and Fighting against Corruption of Tajikistan", 20 March 2008, #374.

28 Article 64 of the Law of Tajikistan "On State Finance of Tajikistan", 28 June 2011, # 723.

29 Article 66 of the Law of Tajikistan "On State Finance of Tajikistan".

had been recognized as an indicator of the country's level of democracy. Even now, more than twenty years after the collapse of the Soviet Union, the legislation of Tajikistan remains one of the main markers of democratic governance and the rule of law. Regrettably, the rule of law with regard to armed forces personnel and democratic control over armed forces is undermined, and democracy could not be legitimately proclaimed without the proper establishment and maintenance of the rule of law³⁰.

Tajikistan's constitutional framework is of particular importance when it comes to democratic control over the armed forces, and better implementation of the OSCE Code of Conduct. Considering the civil war that had destabilized the situation in the country, the 1994 Constitution assigned absolute control over the armed forces to the President.

Under the Tajikistan Constitution, the President is the Head of state and government, the Chairperson of the Security Council, and the Commander-in-Chief. The President is also empowered to appoint and dismiss the Minister of Defense with the approval of the lower and upper chambers of the Parliament, and to appoint and dismiss the Head of General Staff and military commanders. He or she is also responsible for establishing the Security Council and the Council of Justice. At the same time, the President is also entitled to declare martial law and a state of emergency, use the armed forces abroad with the consent of both chambers of the Parliament, appoint judges of military courts, and cancel and suspend acts of government bodies in cases where they conflict with the Tajikistan Constitution³¹.

Except for constitutionally prescribed affairs, the Law of Tajikistan "On Defense" grants the President a wide range of competences in defense policy. Since the adoption of the Law "On Defense" in 1997, eight amendments have been adopted by the Parliament. In 2000, the President was granted the authority to determine state policy in the military sphere.

Since 2005, the President has been authorized to order the deployment of the armed forces and other military formations in the event of armed con-

30 VANKOVSKA, Biljana ed., *Legal Framing of the Democratic Control of Armed Forces and the Security Sector:*

Norms and Reality/ies, (Geneva Centre for the Democratic Control of Armed Forces, 2001), pages 8-9

31 Article 69 of the Tajikistan Constitution, 1994.

flicts, or where the threat of such conflicts could arise within the territory of Tajikistan; to protect territorial integrity and the constitutional form of government, following the approval of such orders in joint sessions of the upper and lower chambers of the Parliament; to declare war, universal and partial mobilization, and martial law over the whole country or in some parts of the country upon the prompt submission of these issues for approval to a joint session of the lower and upper chambers of the Parliament; to order the establishment, reconfiguration, and abolition of military units and military compounds within the limits set by the lower chamber of the Parliament; to appoint and dismiss Ministry of Defense officials and issue decrees related to the office to be submitted to a joint session of the lower and upper chambers of the Parliament; and to order the permanent or temporary transfer of military formations to the operational control of the General Staff of the Armed Forces of Tajikistan.

Later in 2007, the President was further mandated to approve regulations on the general staff of Tajikistan, the procedure of administration of the military oath, liabilities of armed forces personnel for damage caused to the State; to govern other issues directly prescribed in law; to draw up a list of positions for ranking officers; and to appoint and dismiss the head of the general staff of the armed forces and the commanders of the armed forces.

4.1 Security Council of Tajikistan

Under article 60 of the 1994 Tajikistan Constitution, the President establishes and is head of the Security Council. The 2006 Military Doctrine of Tajikistan and the Statute on the Security Council prescribes that the Security Council is the constitutional body of joint leadership over military defense and security issues for making decisions to implement internal and external policies for sustaining the national security, territorial integrity, state sovereignty, and constitutional structure of Tajikistan.

The Security Council staff consists of a Chairperson (the President), Secretary of the Council, permanent members, and members of the Council. Permanent members are the President, chairpersons of both chambers of the Parliament, the Prime Minister, and the Secretary of the Security Council of Tajikistan. The President appoints and dismisses the Secretary of the Security

Council³². Members of the Council can be heads of ministries and departments of economy and trade, finance, international affairs, justice, internal affairs, security, protection of the environment, health, and/or other officials.

Members of the Security Council enjoy equal rights in the decision-making process; a simple majority vote makes decisions. However, the decision-making process overall is unequal due to strong influence by the President. With a lack of independence among chairpersons of both chambers, their votes do not make a significant difference. The President appoints the chairperson of the upper chamber³³, while the chairperson of the lower chamber is a member of the People's Democratic Party, which is headed by the President. The Secretary of the Security Council is directly accountable to the President and the Prime Minister is appointed by the President to whom he is also accountable.

Permanent members of the Security Council are the representatives of the government bodies under the control of the President. The parliamentary opposition is absent in the Security Council which might otherwise have contributed greatly to the development of military defense policies and helped spur electoral interest in defining future security and military defense measures and policies. Although the majority of the members of the Security Council are civilians, decision-making and voting processes lack democratic oversight. Neither the protocols of the Security Council, nor the presidential decrees based on decisions of the Security Council, are open to public scrutiny. Additionally, the Security Council, as an institution, is not accountable to the Parliament. On the 3 August 2018, the Security Council became a structural subdivision of the Executive Office of the President of the Republic of Tajikistan³⁴.

Under paragraph 3 of the Statute of the Security Council, the Security

32 The present Security Council Secretary is Abdurahim Kakhharov since January 2012. From 2009 until 2012, he was a Minister of Internal Affairs of Tajikistan.

33 The chairperson of the upper chamber of the Parliament is Mahmadsaid Ubaidulloev. He has presided in the upper chamber since 2000. From 2000 to 2007, he occupied the position of the Mayor of Dushanbe, the capital of Tajikistan. The present Mayor of Dushanbe is Rustami Emomali, the son of the current President Emomali Rahmon.

34 Law of Tajikistan on "Amendments and additions to the Law of the Republic of Tajikistan "On Security"", 3 of August 2018, Nº 70.

Council is tasked with elaborating, implementing, and assessing the effectiveness of a national security concept (NSC). Since the establishment of the Security Council, this concept has not been adopted. The legislation of Tajikistan does not stipulate which authority is responsible for adopting a NSC. The law is ambiguous as to what kind of security threats are possible and how the government should respond to these threats. There is also a lack of clarity on what roles should be played by constitutionally established authorities, the armed forces, and military formations, as well as law enforcement bodies. The absence of a NSC can lead to misuse of armed forces and other military formations, ineffective coordination of security organs, and a lack of oversight on the work of the Security Council. The Security Council is beyond parliamentary oversight as it remains under the direct control of the President.

4.2 Internal use of armed forces and international military operations

Under article 7 of the Law on Defense, the President is authorized to give orders to the armed forces and other military formations, upon further approval of the decree in a joint session of the upper and lower chambers of the Parliament, in cases of armed conflicts, whenever there is a threat that armed conflicts may arise within the territory of Tajikistan, or whenever there is a threat to Tajikistan's territorial integrity and the constitutional form of the government. In order to deploy the armed forces in the aforementioned situations, there is no need to announce an emergency situation or declare martial law. While armed conflict may somehow be clearly defined, the definition of the threat of such conflict originating can vary and can therefore be interpreted in different ways. Furthermore, the military defense legislation of Tajikistan does not state any time frame within which the Parliament has to approve a presidential decree about using the armed forces.

Article 57 of the Tajikistan Constitution and article 6 of the Law on Defense stipulate that the Parliament (both Chambers) approve any deployment of the armed forces of the Republic of Tajikistan to carry out the international commitments of Tajikistan abroad. However, neither the Tajikistan Constitution nor any legislation outlines the procedure for seeking parliamentary approval. It is neither clear as to the time frame for the decree to be presented to the Parliament, nor is it stipulated as to what kind of information has to be submitted.

5. A State of Emergency and Martial Law: Roles of the President and the Parliament

A state of emergency is regulated by the Constitutional Law of Tajikistan "On a State of Emergency" (Law on a State of Emergency) adopted in 1995³⁵. In accordance with article 1 of this Law, a state of emergency is announced upon the onset of the following situations:

- a) Natural calamities, accidents and catastrophes, epidemics threatening the life and health of the population;
- b) Mass violation of public law bearing towards an actual threat to the rights and freedoms of the population;
- c) Attempts to seize state power or change the constitutional law of Tajikistan by force;
- d) Threat to the territorial integrity of the State leading to a change of the state borders;
- e) Necessity to restore the constitutional law and the functioning of the state bodies.

Under article 2 of the Law on a State of Emergency, a presidential decree declaring a state of emergency has to be immediately submitted to the Parliament, which should be considered in a joint session of both chambers, and then voted on by both separately. Parliamentary approval of a state of emergency has to be granted within seventy-two hours.

The declaration of a state of emergency needs formal approval from the Parliament. However, the cancellation or prolongation of a state of emergency is entirely under the authority of the President³⁶. The Law on the State of Emergency does not specify how long a state of emergency may be extended by the President or how many times it can be renewed. The Law on the State of Emergency also does not require the President to explain any decision to extend or cancel a state of emergency. The Law on the State of Emergency allows for the extension of a state of emergency if "necessary" but does not clarify the conditions that would render an extension "necessary". In so doing,

35 Last amendments to the Law of Tajikistan "On Defense" were made in 1997, 2002, 2005 and 2008.

36 Article 3 of the Law of Tajikistan "On a State of Emergency", 3 November 1995, Nº 94.

it provides excessive leeway for interpretation, thereby granting the President discretion to decide for himself what falls under the meaning of “necessary”. Accordingly, there is no guarantee that a state of emergency may not be used to eliminate political opposition, introduce unwarranted restrictions on human rights and freedoms, postpone elections, or other self-serving purposes that would be more difficult to realize under normal circumstances. Therefore, there is a pressing need for clarification and the adoption of relevant amendments into the legislation.

Under the Law on the State of Emergency, the President is authorized to: reverse any decision of representative organs and officials in districts where there is a state of emergency³⁷; appoint any number of persons necessary during a state of emergency³⁸; and repeal actions of special forms of management after the determined expiry, or prolong the terms of the actions, under the circumstances that were the basis for their initial introduction into practice³⁹. The does not give constitutionally authorized bodies the power to make a decision regarding the use of armed forces during a state of emergency, though armed forces are mentioned in articles 7 and 9 of this same legislation. Section 2 of article 7 of the Law on the State of Emergency stipulates that:

“... persons breaching order indicated in Section 1, article 7 will be arrested by police and **military patrol** until end of curfew, those who do not have identification card will be detained until their identity is established, but no longer than three days. Detained undergo a body search and inspection of their personal effects” (emphasis added).

Similarly, article 9 of the Law on the State of Emergency also commends that:

“... dissemination of provocative rumor, exercising actions, which provoke violation of public order or incitement of national hatred, active

37 Article 5 of the Law of Tajikistan “On a State of Emergency”.

38 *Ibidem*, article 18.

39 *Ibidem*, article 15.

impeding of citizens' and officials rights and interests as well as malicious disobedience to an order of police men, **armed forces personnel** and others, performing official or public duty to maintain a public order or any such actions that violate public order and tranquility of citizens, or violation of the rules of administrative supervision committed in areas where a state of emergency declared, are punishable..." (emphasis added).

Based on the two provisions mentioned above, the armed forces can be deployed during a state of emergency. However, the legislation does not prescribe who should authorize the use of the armed forces, the specific role of the armed forces, and the conditions necessary for their deployment⁴⁰.

6. Martial Law

On 20 May 2019, the Law of Tajikistan "On martial law" (hereinafter Martial Law of Tajikistan) was adopted for the first time since the independence of the country. Article 4.1 of the Martial Law states that martial law can be declared in the case of a grave threat to the security of the state. It further provides that "grave threats to the state security" are threats to the integrity of the state border and the use of force against Tajikistan, including aggression, intelligence, terrorism, and sabotage activities of special services, foreign organizations, and individuals aimed at undermining the national security of Tajikistan. In comparison with martial laws of the Russian Federation, Kyrgyzstan, and Ukraine, the Martial Law of Tajikistan has an extensive list of circumstances under which martial law could be declared. The three aforementioned post-Soviet states can declare martial law only in the situation of aggression. Acts of aggression under the laws of these states reflect acts defined under article 3 of the United Nation General Assembly Resolution 3314⁴¹. Circumstances

40 The use of armed forces is prescribed in the Law of Tajikistan "On Protection of Population and Territories from Emergency Situation of Nature and Technogenic Character". Article 8 of this Law stipulates that the President has the authority to use armed forces in emergency situations. Article 15 of this Law states that the procedure to use armed forces is determined by the President and the legislation of Tajikistan.

41 Article 3 of the United Nations General Assembly Resolution 3314 declares that any of the following acts,

listed in the Martial Law of Tajikistan have broader coverage, which may lead to disproportionality of declaration of a martial law to a committed act. For instance, a single act of intelligence related crime committed by an individual may suffice, in and of itself, as a legal reason to declare a martial law. Martial law, along with a state of emergency, leads to restrictions in almost all areas of life and rights of the population. Such unrestrained discretion may allow room for misuse and pretextual application of the law to derogate human rights, eliminate political opponents and activists, and legitimize every arbitrary measures of the government.

As stated above, martial law is declared through a presidential decree that has to be further endorsed by both chambers of the Parliament. Similar to a state of emergency, prolongation and cancelation of the martial law is under an ultimate discretion of the President.

The Tajikistan Constitution legitimizes measures of derogation of human rights and freedoms only in the case of a state of emergency. However, article 14 of the Martial Law of Tajikistan states that derogation of human rights and freedoms can be pursued based on provisions of the Constitutions and other Tajikistan laws. This provision guarantees that limitations of human rights and freedoms provisioned by article 47 of the Tajikistan Constitution⁴² will be executed during martial law in the same manner as they are stated fora state of emergency. Article 4.2 of the International Covenant on Civil and Political Rights (ICCPR)⁴³ guarantees rights and freedoms, which cannot be derogated

regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression: armed invasions or attacks, bombardments, blockades, armed violations of territory, permitting other states to use one's own territory to perpetrate acts of aggression, and the employment of armed irregulars or mercenaries to carry out acts of aggression.

42 Non-derogable rights during a state of emergency guaranteed by article 47 of the Tajikistan Constitution: article 16, 17 (equality before a court, equality of women and men), 18 (right to life), 19 (right to a fair trial), 20 (deprivation of a house), 22 (protection of privacy), 25 (accessibility of information of political parties, state authorities and officials, and social association) and 28 (right to association).

43 Right to life (article 6); not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (article 7); not to be held in slavery or servitude (article 8); not to be imprisoned for failure to perform a contractual obligation (article 11); not to be subject to retroactive penal measures (article

during a state of emergency. Article 47 of the Tajikistan Constitution does not contain freedom from torture; freedom from cruel, inhuman, or degrading treatment or punishment; freedom from slavery or servitude; freedom of thought, conscience, and religion or belief; freedom from imprisonment for failure to perform a contractual obligation; or freedom from being subjected to retroactive penal measures.

7. Ministry of Defense of Tajikistan (MoD)

Tajikistan did not have its own Ministry of Defense (MoD) during the Soviet Union era. All military issues during the Soviet Union era were decided by the ministry in Moscow and the local military district (Turkestan Military District) in Tashkent, which was fully headed by military personnel, and the Slav officers had almost entirely been in charge of the leadership roles.

Under the Soviets, the Minister of Defense and other high-ranking officials had to obey the orders of, and were accountable to, the Communist Party. The Communist Party left military issues entirely under the control of uniformed personnel, and there was a great shortage of civilians with any military defense expertise. Furthermore, the Communist Party represented the only controlling mechanism over the MoD and the armed forces, which resulted in a lack of democratic principles and separation of powers.

The MoD of newly independent Tajikistan faced a number of challenges after the collapse of the Soviet Union. Tajikistan did not inherit armed forces and was susceptible to threats by the well-equipped Islamic opposition. Even the military formations which were subordinate to the Ministry of Interior and State Security Committee, did not fall under the control of the newly established MoD. On the contrary, these military formations were used against the post-Soviet communist government during the civil war. Disloyalty among the security sector pushed the then President Nabiev to involve the criminal underworld as well as other countries when taking military action against opponents. One of the semi-formal local militia was

15); to be recognized as a person before the law (article 16); to freedom of thought, conscience, and religion or belief (article 18).

the Popular Front of Tajikistan, an armed group consisting mostly of civilians, led by Sangak Safarov, which “represented the main military power in Tajikistan at the time”⁴⁴.

A Tajikistan military expert said that the MoD had been established without an army and with a serious shortage of qualified military personnel having the necessary experience to lead and manage the MoD⁴⁵. In order to establish a new defense institution, the MoD was created as a prototype of the Soviet Union’s MoD, inheriting Soviet institutional structure, processes, and behaviors. The establishment of the MoD in 1993 was driven by the military leadership of the Russian Major General Alexander Shishlyanikov, who headed the Tajikistan MoD until 1995.

Since the establishment of the Tajikistan MoD, the Minister of Defense has never been headed by a civilian. In 1995, Colonel General Sherali Khairulloev was appointed Minister of Defense of Tajikistan and was reappointed by presidential decree on 1 December 2006 before being dismissed on 20 November 2013 after eighteen years as head of the MoD.

During that eighteen-year period under Sherali Khairullaev, the armed forces of Tajikistan achieved some positive changes. However, Sherali Khairullaev failed to conduct the necessary reform to strengthen management within the MoD and local defense authorities, as well as failing to strengthen their relationship with the Parliament, civil society, and the mass media. Corruption, human rights violations, hazing and inappropriate conditions in military units, and weak social protection of military personnel worsened during this time and are still far from being resolved today.

After the presidential elections of 6 November 2013, the President established a new cabinet of ministers and appointed a new Minister of Defense, General Sherali Mirzo, who had been the commander of border troops since 2006, and was subordinate to the State Committee on National Security⁴⁶.

44 ATKIN, Shirin, “Tajikistan: Disintegration or Reconciliation?”, Royal Institute of International Affairs, Russia and Eurasia Programme, 2001, p. 52.

45 Interview with Muzaffajon Babajanov, former military commissar of the Military Commissariat of Kairakkum, Tajikistan, 4 December 2013.

46 As the commander of border troops, Mirzo was a deputy head of the State Committee on National Security.

Under article 69 (4) of the Tajikistan Constitution, the President appoints the Minister of Defense of Tajikistan with the approval of the Parliament. Although the appointment of the Minister of Defense depends on the consent of the Parliament, his or her dismissal is at the discretion of the President, as the Parliament does not have any authority to dismiss the Minister of Defense until the President submits a relevant decree. Additionally, the Parliament does not have the authority to initiate the dismissal of any minister of the executive branch.

The role of civilians within the Tajikistan MoD is insignificant. Almost all decision-making positions are occupied by military personnel and, in cases of interactions with civilians, the military dominates. Civilians working in the MoD mostly work in accounting, the information technology department, and human resource registration. Essentially, they work in positions that do not require involvement in development policies and decision-making processes. There is a stereotype in Tajikistan believed and perpetuated by uniformed personnel that civilians do not have the required adequate skills and knowledge when it comes to military defense issues, and that they could be national security hazards. However, these fears are unjustified.

Civilianization of the MoD of Tajikistan has never been on a state agenda, though appointments of civilians on the decision and policy making positions are prescribed in the Law of Tajikistan "On Armed Forces of Tajikistan", which stipulates that civilians can be appointed to the positions of Minister of Defense, deputies, and other officials of the armed forces of Tajikistan, in "exceptional cases"⁴⁷. From a legal point of view, this means that the positions mentioned above primarily have to be occupied by the military, and only in exceptional cases will civilians be assigned to hold these positions. Additionally, this Law does not define what constitutes an "exceptional case". The lack of such a definition makes the appointment of civilians almost impossible. It is clear that this provision was not enacted to integrate civilians into the MoD but was instead a response to disloyalty within the military.

Another problem with the civilianization of the MoD is the skepticism

Before joining the border troops, he was a deputy of the Minister of Defense of Tajikistan.

47 Article 7 of the Law of Tajikistan "On the Armed Forces of Tajikistan".

and unwillingness of the Minister of Defense to appoint civilians, because of the assumption that civilians do not have the sufficient skills and knowledge to make decisions on military defense matters, and that such competence requires specific defense and military expertise.

The MoD of Tajikistan is a central governmental body that exercises leadership of the armed forces of Tajikistan and local military authorities. It is responsible for the armed forces' development and their ability to carry out defensive tasks. The MoD prepares and issues defense policies and ensures compliance with military defense legislation and effective functioning of military authorities⁴⁸.

The MoD is one of the largest spending ministries in Tajikistan and the most unaccountable and non-transparent ministry in terms of budget spending. The main legal document regulating the MoD is the governmental decree "On Ministry of Defense of Tajikistan" adopted in 2006.

The competences of the MoD are stated both in the Law of Defense and the Statute on the MoD. Some competences stipulated in the Statute on the MoD are similar to those in the Law on Defense.

7.1 The General Staff of the Armed Forces and the MoD

The General Staff of the armed forces (the General Staff) is the main institution for operative control and management of the armed forces of Tajikistan. The President appoints and dismisses the head of the General Staff upon the proposal of the Minister of Defense, and exercises control over the General Staff⁴⁹. Under the Statute on the General Staff, the head of the General Staff is also the first deputy of the Ministry of Defense⁵⁰. Under article 9 of the Law on Defense, the government appoints deputies of the Minister of Defense. Neither the presidential decree on the appointment of the head of the General Staff, nor the government decree on the appointment of the first Minister of Defense could be found in official legal databases. It is unclear how the appointment of one person to two positions is resolved in practice.

In 1997, the Tajikistan President adopted the Statute on the Main Staff

48 Governmental Decree "On the Statute of the Ministry of Defense of Tajikistan", 28 December 2006, #601.

49 Paragraph 6 of the Regulation 'On the Main Staff of Tajikistan', Presidential Decree, 5 June 1997, # 736.

50 *Idem*.

(known as the General Staff after 2009). Interestingly, the Statute on the Main Staff is adopted by the President, while the government adopts the Statute on the MoD. There are legal consequences in cases of contradictions. Under the Law of Tajikistan on Legal–Normative Acts, legal norms adopted by the government are, in the hierarchy of law, lower than a presidential decree, which means that in the case of an overlap, the presidential decree will prevail⁵¹.

The Statute on the Main Staff prescribes the tasks of the General Staff, and the competences of the General Staff. The General Staff has the competences to: provide operational control of the armed forces of Tajikistan, support combat readiness of the armed forces of Tajikistan, assess politico–military situations and determine the level of military threat, organize operational–tactical training of staff and troops, organize and conduct military intelligence in the interest of defense and security of Tajikistan, and ensure the preservation of state secrecy in the armed forces of Tajikistan.

Under the Statute of the Main Staff, the General Staff is subordinate to the Ministry of Defense⁵². However, this Statute stipulates that control over the General Staff is exercised by both the President and the Minister of Defense.

8. Conclusion

Through analyses of the main authorities tasked to control and manage military defense institutions and armed forces, this article argues that Tajikistan has not made any tangible steps toward democratization of their armed forces. On the contrary, any steps to integrate the concept of the DCAF are rejected as posing a threat to the power of an authoritarian ruler.

Therefore, in order for Tajikistan to bring legal frameworks and practice into compliance with the Code of Conduct of DCAF, the country has to take several important steps. The first steps must be strengthening parliamentary control of armed forces and develop and adopt effective legal frameworks and policies on military defense, which could guarantee security and stability in the country. It is also essential to disclose the defense budget and make it

51 Article 7 of the Law of Tajikistan "On Normative Legal Acts of Tajikistan", March 26, 2009, # 506.

52 Paragraph 8 of the Statute "On General Staff".

accessible to the public. Similarly, Tajikistan needs to strengthen the institutional accountability and transparency of their military defense organs at the various levels. Additionally, the task of integrating civilians and military personnel within the MoD should be a priority of the human resource reform aspect of the institutions. On top of that, the existing normative gaps in the state of emergency and martial law legislation of the country need to be revisited and amended. Furthermore, the roles and missions of the armed forces should be clearly defined in order to avoid misuse of the army or usurpation of power by the military. Plus, Tajikistan needs to cooperate closely with think tanks, military and civilian experts, and civil society in order to thoroughly analyze civil military relations in Tajikistan, and to execute and launch reforms. In this regard, non-state actors can be useful in implementing Tajikistan's commitments under the Code of Conduct. Moreover, preventing violations of civilians' rights and freedoms and strengthening the link between the armed forces and the civil society should be seriously considered by the government. Finally, in order for these recommendations to have a genuine meaning and effect, they have to be implemented in collaboration with the OSCE and United Nation institutions, the European Union, and diplomatic missions which provide technical and financial support to Tajikistan in the area of military defense. The DCAF must be an integral part of the security sector reform and governance policies and programs.

9. Bibliography

- ATKIN, Shirin, "Tajikistan: Disintegration or Reconciliation?", Royal Institute of International Affairs, Russia and Eurasia Programme, 2001.
- BETZ, David J., "Civil – Military Relations in Russian and Eastern Europe", Routledge Curzon, 2004.
- BORN, Hans, et al, 'Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices', DCAF & Inter-Parliamentary Union, 2003.
- BORN, Hans, '*Learning from Best Practices of Parliamentary Oversight of the Security Sector*' in BORN, H., FLURI, Ph. and LUNN, S., (Eds.), 'Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector, Geneva Centre for the Democratic Control of Armed Forces', 2010.
- BORN, Hans, '*Security and the Power of the Purse*', in BORN, Hans, FLURI, Philipp and JOHNSSON, Anders B. (eds), Parliamentary oversight of the security sector: principles, mechanisms and practices / [publ. by: Inter-Parliamentary Union; Geneva Centre for the Democratic Control of

- Armed Forces., 2003.
- COTTEY, Andrew, ‘*Democratic Control of Armed Forces in the OSCE Area: Problems and Challenges*’, The OSCE Yearbook, 2001.
- COTTEY et al, “Introduction: Democratic Control of Armed Forces”, in edited by COTTEY, Edmunds and FOSTER, “Democratic Control of the Military in Post–Communist Europe: Guarding the Guards”, Palgrave Macmillan, 2002.
- DEAN, Jonathan, ‘*The OSCE “Code of Conduct on Politico–Military Aspects of Security”: A Good Idea, Imperfectly Executed, Weakly Followed-up*’, OSCE Yearbook, Vol.1–2, 1995/96.
- DE NOOY, Gert, ‘*Summary of Main Conclusions*’, in DE NOOY., Gert, Cooperative Security, the OSCE and its Code of Conduct, Nederlands Instituut Voo Internationale Betrekkigen (La Haye), Martinus Nijhoff Publishers, Hague, 1996.
- GHEBALI, Victor–Yves and LAMBERT, A. ‘*The OSCE Code of Conduct on Politico–Military Aspects of Security: Anatomy and Implementation*’, The Graduate Institute of International Studies, Volume 5, Martinus Nijhoff Publishers, Leiden, Boston, 2005.
- GHEBALI, Victor–Yves, *The OSCE Code of Conduct on Politico–Military Aspects of Security: A Paragraph–by–Paragraph Commentary on Sections VII–VIII (DEMOCRATIC CONTROL AND USE OF ARMED FORCES)*, DCAF Document N° 3, Geneva, 2003.
- GHEBALI, Victor Yves, ‘*Revisiting the OSCE Code of Conduct on Politico–Military Aspects of Security*’ (1994), HÄNGII, Heiner, and WINKLER, Theodor (Eds.), Challenges of Security Sector Governance, Münster (LIT), 2003.
- Governmental Decree “On the Statute of the Ministry of Defense of Tajikistan”, 28 December 2006, #601.
- LAMBERT, Alexandre. *The Starting Point of the Code: From Negotiation to Adoption in 20 Years of OSCE Code of Conduct on Politico–Military Aspects of Security: A Commemorative Study on the History, Development, Achievements and Outreach of the OSCE Key Document for Politico–Military Norms and Principles on Armed and Security Forces*, Swiss Armed Forces, Armed Forces Staff, International Relations D, 2015.
- Law of Tajikistan “On Agency on State Financial Control and Fighting against Corruption of Tajikistan”, 20 March 2008, #374.
- Law of Tajikistan on “Amendments and additions to the Law of the Republic of Tajikistan «On Security»”, 3 of August 2018, N° 70.
- Law of Tajikistan “On State Finance of Tajikistan”, adopted on June 28, 2011, # 723.
- Law of Tajikistan “On a State of Emergency”, 3 November 1995, N° 94.
- Law of Tajikistan “On the Armed Forces of Tajikistan”.

- LUNN, Simon, *'The Democratic Control of Armed Forces in Principle and Practice'*, in BORN, Hans, FLURI, Philipp H., LUNN, Simon (eds.) "Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector and its Reform: A Collection of articles on Foundational Aspects of Parliamentary Oversight of the Security Sector", DCAF and NATO Parliamentary Assembly, Brussel/Geneva, 2003.
- MARAT, Erica, OSCE Police Reform Programmes in Kyrgyzstan and Tajikistan: Past Constraints and Future Opportunities, N° 27 – October 2012, EUCAM, EU–Central Asia Monitoring. Available at: <https://eucentralasia.eu/2012/10/osce-police-reform-programmes-in-kyrgyzstan-and-tajikistan-past-constraints-and-future-opportunities/> last accessed on 25th October 2019.
- OSCE Code of Conduct, 1994.
- Regulation 'On the Main Staff of Tajikistan', Presidential Decree, 5 June 1997, # 736.
- Law of Tajikistan "On Normative Legal Acts of Tajikistan", March 26, 2009, # 506.
- Statute "On General Staff".
- Standing Order of House of Representatives (*Majlisi Namoyandagon*) of Tajikistan (lower chamber). Tajikistan Constitution, 1994.
- Transparency International UK, *"The Transparency of National Defense Budgets: An Initial Review"*, 2011, p. 8 Available at https://ti-defence.org/wp-content/uploads/2016/03/2011-10_Defence_Budgets_Transparency.pdf (last visit November 3rd, 2019).
- United Nations General Assembly Resolution 3314.
- VAN EEKELLEN, Wim F., *Democratic Control over Armed Forces: The National and International Parliamentary Dimension*, Geneva Center for Democratic Control over Armed Forces (DCAF), Occasional Paper N° 2, Geneva, October 2010. Available at: https://www.dcaf.ch/sites/default/files/publications/documents/op02_democratic-control.pdf
- VANKOVSKA, Biljana ed., *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Reality/ies*, (Geneva Centre for the Democratic Control of Armed Forces, 2001).
- VANKOVSKA, Biljana. Introduction in *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Reality/ies*. Published by: Geneva Centre for the Democratic Control of Armed Forces 2001, p. 10. Available at: http://www.bezbednost.org/upload/document/legal_framing_of_the_democrati.pdf