



Calhoun: The NPS Institutional Archive
DSpace Repository

Center for Civil-Military Relations (CCMR)

Faculty and Researchers Collection

2001-06

**Legislatures and Defense: The Comparative
Experience, Occasional Paper #8**

Giraldo, Jeanne Kinney

<http://hdl.handle.net/10945/43361>

Downloaded from NPS Archive: Calhoun



Calhoun is a project of the Dudley Knox Library at NPS, furthering the precepts and goals of open government and government transparency. All information contained herein has been approved for release by the NPS Public Affairs Officer.

Dudley Knox Library / Naval Postgraduate School
411 Dyer Road / 1 University Circle
Monterey, California USA 93943

<http://www.nps.edu/library>



**THE CENTER FOR
CIVIL-MILITARY RELATIONS
NAVAL POSTGRADUATE SCHOOL
MONTEREY, CALIFORNIA**

Occasional Paper # 8

**LEGISLATURES AND DEFENSE: THE
COMPARATIVE EXPERIENCE**

**Jeanne Kinney Giraldo
June 2001**

The U.S. Agency for International Development (USAID) sponsored the research in this report under agreement AEP-A-00-98-00014-00, which established the Partnership for Democratic Governance and Security. The Partnership for Democratic Governance and Security (PDGS) conducts programs to strengthen the capacity of civilians to provide leadership in defense management, policymaking and analysis. The PDGS conducts its programs in cooperation with local legislatures, political parties, civic organizations, academic institutions, media and the civilian elements of the defense establishment.

The PDGS is funded principally through a cooperative agreement with the United States Agency for International Development. Its membership consists of the following four organizations from Argentina, the Philippines, and the United States. These are the National Democratic Institute (NDI); the Center for Civil-Military Relations (CCMR); the Seguridad Estratégica Regional en el 2000 (SER en el 2000); the Institute for Strategic and Development Studies (ISDS).

The views expressed in this publication are those of the author and do not reflect the official policy or position of the Department of Defense of the United States Government.

The Center for Civil-Military Relations

The Center for Civil-Military Relations at the Naval Post-Graduate School (CCMR, Monterey, CA) is an implementing organization of the U.S. Department of Defense's Expanded-International Military Education and Training Program and has amassed both scholarly and practical expertise educating civilian and military defense professionals from more than 40 countries. CCMR was established in 1994 and is sponsored by the Defense Security Cooperation Agency (DSCA). CCMR conducts civil-military relations programs designed primarily for military officers, civilian officials, legislators, and non-government personnel. These programs include courses designed to be taught both in residence at NPS and in a Mobile Education Team (MET) format, depending upon requirements. Three programs offered by CCMR include the MET, the Masters Degree in International Security and Civil-Military Relations, and the Executive Program in Civil-Military Relations.

Jeanne Kinney Giraldo

Jeanne Giraldo is Visiting Instructor in the Department of National Security Affairs at the U.S. Naval Postgraduate School. She earned her Bachelor's degree in Politics from Princeton University and her Master's degree in Government from Harvard University, where she is currently completing her Ph.D. Before coming to NPS, she conducted extensive research on the transition to democracy in Chile, working there as an ITT Scholar in 1989-90 and returning as a Tinker scholar in 1992, 1996, and 1998. She has also worked as a consultant to the Inter-American Dialogue. Her current research focuses on coalition politics in Chile, changes in political representation in Latin America (based in part on a survey administered to congressional representatives in Argentina, Brazil, and Chile), counterdrug/ counterinsurgency efforts in Colombia, and civil-military relations.

Publications include "Development and Democracy in Chile: Finance Minister Alejandro Foxley and the Concertación's Project for the 1990s" in Jorge I. Domínguez, ed., *Technopols: Freeing Politics and Markets in Latin America in the 1990s*; and "Parties, Institutions, and Market Reforms in Constructing Democracies" (with Jorge Domínguez) in Jorge I. Domínguez and Abraham F. Lowenthal, eds., *Constructing Democratic Governance: Latin America and the Caribbean in the 1990s - Themes and Issues*. Most recently, she has written a trilogy of papers on civil-military relations for the Partnership for Democratic Governance and Security: *Democratizing Civil-Military Relations: What do Countries Legislate?*, *Legislative Control of the Military: The Comparative Experience*, and *Defense Budgets and Civilian Oversight*. Professor Giraldo teaches courses on comparative politics, politics and security in Latin America, and research design.

LEGISLATURES AND DEFENSE: THE COMPARATIVE EXPERIENCE

Jeanne Kinney Giraldo

Democratically elected representatives in a country's legislature have an important role to play in formulating defense and military policy and monitoring its implementation (i.e., oversight). Legislative participation in these areas is desirable for a number of reasons. Democracy as "rule by the people" is enhanced by input from all elected officials, not just those who comprise the executive branch. The needs of society and the military are more likely to be balanced to the extent that representatives from all segments of society are consulted in the policy process. Although consulting multiple actors in the Congress on defense issues may be time-consuming, the end result is usually better and longer lasting policy. The policy produced tends to be better as both the executive and military actors involved are forced to defend their positions publicly.

Legislative oversight can determine whether laws are being effectively implemented and whether they do in fact work in the way they were intended. Policy failures can be identified and laws changed accordingly. Consulting the legislature on important issues helps develop a national consensus and decreases the chances that defense policy will suffer serious modifications with a change in government. Such policy stability is particularly important since key aspects of defense, such as procurement decisions or the building of an international reputation, can only be effectively carried out over the long term. Legislative debates on defense issues

contribute to the formation of an informed public that will be able to participate constructively in the policy process in the future. The transparency of this process of open debate and decision legitimizes both the armed forces and defense policy.

In addition to their contribution to good policy making, legislatures can provide a check on executive misuse of the military. Legislative participation in the officer promotion process and the need for legislative approval of the deployment of the military can prevent the politicization of the armed forces and its misuse by the executive for personal, partisan, or unconstitutional ends. Furthermore, the public nature of legislative oversight of defense policy -- the investigation of mistakes and wrongdoing -- can act as a deterrent on executive and military shirking of their duties.

Despite the importance of legislative participation in the formulation and implementation of defense and military policy, the role parliaments play varies greatly among democratic regimes. This paper examines the role the legislature plays in asserting civilian control over the military in a wide range of countries at various stages of democratic development. In particular, it focuses on the factors that affect the willingness and ability of the legislature to participate in the defense arena.¹ The first and second sections discuss the role of the legislature in formulating and overseeing defense policy, respectively, and the factors that shape this role. The third section discusses other powers legislatures might exercise in order to influence the military, such as control over

¹ Countries representing a broad, geographical cross-section are examined: Argentina, Brazil, Germany, Great Britain, the Philippines, Russia, South Africa, South Korea, Spain, and the United States. The countries chosen provide variation with respect to levels of democratic development, regime type

the officer promotion process and the use of the military in internal operations. The final section evaluates the extent to which the legislature is able to develop the expertise necessary to participate effectively in the defense arena.²

1. The Role of Legislatures in Shaping Defense and Military Legislation

The role that the legislature will play in shaping legislation in any policy area will depend in large part upon the constitutional, legal, and political factors that shape executive-legislative relations in a given country. In particular, the presidential or parliamentary nature of the regime, the rules of legislative procedure, and the size and discipline of the parties backing the executive are important in shaping the role of the legislature.³ In general, legislators are thought to have less influence in parliamentary systems where the government controls the legislative agenda and is backed by a disciplined majority party (this is usually the case in Great Britain and, hence, is referred to as the Westminster model). The US Congress occupies the opposite end of the spectrum of legislative influence; substantial powers over the legislative agenda and the content of legislation are often wielded by a Congress dominated by a party that opposes the president (or by a supporting party whose backing for presidential initiatives is often undermined by lack of party discipline). Other presidential and parliamentary systems

(presidential or parliamentary), and the degree to which the legislature participates in the formulation and monitoring of defense policy.

² This paper is meant to be a companion piece to James Lindsay's excellent discussion of the role of the legislature in monitoring the military in the US case. See James M. Lindsay, "Legislative Control of the Military: Lessons from the American Experience," Center for Civil-Military Relations, Occasional Paper # 12, Naval Postgraduate School, Monterey, California, 2000.

³ For a more extensive discussion of the factors affecting legislative capacity in general, see "Strengthening Legislative Capacity in Legislative-Executive Relations," National Democratic Institute for International Affairs, Legislative Research Series, Paper #6, 2000. For a discussion of the influence of legislative

lie somewhere in between, with many presidential systems falling closer to the parliamentary model than the US model. In many legislatures, executive influence is said to approach the “90 percent rule:” the executive proposing 90 percent of the bills and 90 percent of those getting passed.⁴ While this figure understates the legislative influence that occurs behind the scenes during the drafting and amending of legislation, it does capture the contrast between the situation in many presidential and most parliamentary systems of the world and the United States.

While constitutional, legal, and political factors account for variation in the role the legislature plays from country to country, one commonality is the way they have organized internally to handle their main task of shaping legislation.⁵ In almost all countries legislators have created specialized committees in each policy area, with a jurisdiction typically matching that of the executive ministry they shadow (e.g., defense, economy, education).⁶ The creation of committees is usually left to the discretion of the

procedures, see Herbert Döring, “Parliamentary Agenda Control and Legislative Outcomes in Western Europe,” *Legislative Studies Quarterly*, XXVI, 1 (February 2001).

⁴ In other cases, this might be closer to the 60/80 rule: the government introducing 60 percent of the total bills considered by the legislature and 80 percent of those being approved. Regardless of the exact figures, the general point of executive dominance remains the same. David M. Olson, *Democratic Legislative Institutions: A Comparative View*. (Armonk, NY: M. E. Sharpe, Inc., 1994), p. 84.

⁵ See Lawrence D. Longley and Roger H. Davidson, eds., *The New Roles of Parliamentary Committees* (London: Frank Cass & Co., Ltd., 1998). For more on the role of committees, see “Committees in Legislatures: A Division of Labor,” National Democratic Institute for International Affairs, Legislative Research Series, Paper #2, 1996.

⁶ France is the most notable exception, with only six committees operating in its legislature. This division of committees was motivated by a deliberate effort to weaken committees (and hence the legislature, which was deemed to have been too strong during the French Fourth Republic). In other cases, committees are sometimes formed that cover the jurisdiction of two or more ministries – for example, a committee on Foreign Affairs and Defense. The disadvantage of such an arrangement is that the committee will be unable to oversee the activities of the Ministry of Defense and the Ministry of Foreign Affairs as closely as would two separate committees. However, since decisions made in Foreign Affairs often have an impact on Defense (and vice versa), this arrangement might help facilitate the coordination of policy (and any necessary tradeoffs) between the two spheres. Countries with separate committees are usually able to solve the coordination problem quite easily by creating joint committees whenever legislation deals with issues under the purview of more than one committee.

legislature, which implements them either through legislation or congressional protocol (Standing Orders). In very rare cases, committees enjoy a constitutional status. (In Germany, for example, the Defense Committee is the only legislative committee mandated by the Constitution.)⁷ Most democratic legislatures have created defense committees; less frequently, legislatures have created intelligence committees to oversee government policy and operations in this important area.⁸ Committees can examine matters more closely than the entire chamber and the smaller size of the committee usually facilitates compromises between representatives of different parties. In many legislatures, the workload handled by the committees is such that they have been called the “engine room” of the legislature.⁹

Committees have the most influence over the legislative process (relative to the floor) when they can control which bills are considered by the legislature (e.g., the United States) or can pass legislation on their own, without the need for a floor vote (e.g., Brazil). In contrast, committees have the least influence when bills are not required to even pass through their doors and can be directly treated on the floor of the legislature. Most committees fall between the two extremes. They respond to a legislative agenda set

⁷ Article 45a, paragraph 1, of the Basic Law. In Italy, all legislative committees are designated by the Constitution, an apparent reaction to attacks on Parliament during the Fascist regime.

⁸ In addition, Foreign Relations and Internal Security committees sometimes make policy that affects the role the Armed Forces will play, and Budget committees everywhere have some authority over the military by virtue of their input into the defense budget. Although this paper focuses on defense and intelligence committees, the special challenges identified also apply to the other committees when dealing with defense-related issues.

⁹ Richard Calland, ed., *The First Five Years: A Review of South Africa's Democratic Parliament* (Cape Town: Idasa, 1999). Similarly, in the German *Bundestag* committees “carry the chief burden of parliamentary work, exercise their power to amend legislation and function as a ‘responsible critic of the government.’” (“Committees in Legislatures,” p. 6.)

by the government and/or party groups in the legislatures,¹⁰ amend legislation drafted by the executive, and submit a report to the floor on the legislation and proposed changes. These reports provide guidance to legislators on the floor on how to vote by discussing the merits of the policy and revealing the positions taken by different committee members.¹¹

In addition to the functions listed above, defense committees perform a special function not required of committees operating in other policy areas: they serve to balance the right of the public in a democracy to be informed and the need for secrecy that governs some activities and policies in the realm of national security affairs. Defense committee members, if they have the appropriate security clearances, are delegated the responsibility of making decisions on behalf of the public as a whole and their fellow legislators. In the process, defense committees often hold private hearings, in contrast to the usual (and more preferable) committee practice of public hearings designed to contribute to transparency and a public debate on the issue at hand.

Despite these congressional provisions for secrecy, it is not uncommon for the executive to appeal to the national interest and international security obligations to bypass

¹⁰ Committees must be given sufficient time to review the legislation before them, something that is not always the case, particularly with budget proposals submitted only weeks before the budget must be approved. In the German *Bundestag*, committees are “obligated to speedily conclude the tasks assigned to them,” a proviso that usually gives them ample time to consider legislation but does not permit them to take charge of the legislative agenda by stalling projects indefinitely. [See Uwe Thaysen, Roger H. Davidson, and R. Gerald Livingston, eds. *The US Congress and the German Bundestag* (Boulder, CO: Westview Press, 1990), Chart 4 in appendix, note 3.] In many other countries, executives have the option of assigning different levels of “urgency” to a bill, which require the committee to consider the bill during a short time period.

¹¹ While committee reports to the floor are decisive for the committee to influence legislation and are a standard practice in most legislatures, some new legislatures did not initially incorporate this practice (e.g., South Africa).

the legislature's role in making and overseeing policy. In 1978, for example, the German government purchased sophisticated AWACS planes without the consent of the Defense Committee and then failed to give the committee a full accounting. The government justified their behavior by claiming that serious international consequences would have resulted from any other decision.¹² Similarly, the Socialist government in the early 1980s in Spain made important decisions, like the purchase of 72 F-18 fighter jets, without consulting parliament and only informing the legislature after the fact.¹³ In Brazil, the military and the national security council drafted a secret project for military participation in the development of the Amazon (*Calha Norte*) shortly after the transition to democracy and a year and a half passed before Congress even learned of its existence.¹⁴

Despite these obstacles, the legislature has played an important role in shaping defense legislation in many transitional democracies.¹⁵ In Argentina, for example, Congress played an important part in the elaboration of the *Ley de Defensa Nacional* which redefined the military's role after the transition to democracy.¹⁶ In South Africa, the Defence Committee played an important role in the restructuring of the military and, given the importance of the military issue to the transition, was regarded as one of the more influential committees in the legislature in the first years of the new democracy. In

¹² Helmut Schafer and Christian von Stechow, "Control of Security Policy," in Thaysen, et al.

¹³ Antonio Marquina, "Spanish Foreign and Defense Policy Since Democratization," in Kenneth Maxwell, ed., *Spanish Foreign and Defense Policy* (Boulder, CO: Westview Press: 1991), p. 44.

¹⁴ Wendy Hunter, *Eroding Military Influence in Brazil: Politicians Against Soldiers* (Chapel Hill: The University of North Carolina Press, 1997), p. 123.

¹⁵ For a discussion of changes that need to be made to defense and military legislation in order to consolidate democracy, see Jeanne K. Giraldo, "Democratizing Civil-Military Relations: What do countries legislate?" Center for Civil-Military Relations, Occasional Paper #7, Monterey, California, June 2001. For a more general discussion of how legislation can be used to assert civilian control over the military, see Lindsay.

the Philippines, the Defense Committee has been a key actor shaping the decisions taken to modernize the armed forces.¹⁷

The centrality and sensitivity of military issues in many transitions to democracy often requires that policy in this area be the product of consensus among all key parties. As a result, in a number of countries, the chairmanship of the defense committee is allotted to a member of an opposing party in the first democratic legislature. In Spain, a Socialist headed the committee even though the government was led by a party of the center-right, while in South Africa a former head of the South African National Defence Force (and member of an opposition party) headed the Defence Committee in a system otherwise dominated by the governing African National Congress party. Not only have defense committees played a key role in getting legislation passed, but they devote a bulk of their time to this task. One survey suggested that defense committees spent approximately 30-40 percent of their time on legislation (with an additional 20 percent devoted to oversight, 20 percent to the budget, and 20 percent to other activities).¹⁸

2. Legislative Oversight of Defense and Military Policy

Legislative oversight has two functions – to hold the government and the military accountable for their actions and to see if laws are working the way they were intended. Exercising oversight is often an extremely time intensive and laborious task that yields

¹⁶ See José Manuel Ugarte, *La Comisión de Defensa Nacional: Un rol casi inédito*, pp. 244-251 in Gustavo Druetta, Eduardo Estévez, Ernesto López, and José Enrique Miguens, eds., *Defensa y democracia: Un debate entre civiles y militares* (Buenos Aires, Argentina: Puntosur Editores, 1990).

¹⁷ Renato Cruz De Castro, “Adjusting to the post-U.S. bases era: The ordeal of the Philippine military’s modernization program,” *Armed Forces and Society*, 26:1 (Fall 1999).

fewer political and policy benefits than the actual making of legislation. Oversight can be exercised in a number of ways. Many legislatures have provisions for the floor to question ministers, either in person (the so-called Question Time in Westminster parliaments) or through petitions for information sent by individual representatives (or small groups) to the ministry. Most often this kind of questioning is used to score political points, by embarrassing the minister or demonstrating to constituents that their representative is acting on their behalf. It is less effective as an oversight mechanism since the questions can easily be dodged (in the case of Question Time) or ignored (in the case of written petitions, even when laws require a response).

For oversight to be exercised effectively, there must be institutions devoted to such a task. Usually, the defense committees themselves are charged with oversight. In some cases, special subcommittees devote themselves solely to the task of oversight in a given policy area (as is the case in the United States). In others, a separate committee is created to handle oversight of one dimension of policy (e.g., finance) across issue areas (e.g., Public Accounts Committees in Westminster systems), with the obvious loss of expertise in a given policy area that is often essential to oversight.

In some countries, legislative committees have been created to oversee intelligence agencies, but these are not as widespread as defense committees, which exist in almost every legislature. In South Africa, members of the majority government (who had been targets of government intelligence when in the opposition) took advantage of

¹⁸ Bruce George and Alison Graham, "Defence Committees in Democratic and Democratising Legislatures," paper presented to the Workshop of Parliamentary Scholars and Parliamentarians, Berlin,

the transitional moment, when attention was focused on these issues and the intelligence agencies were weaker, to create legislative committees overseeing the intelligence agencies. In the United States, in contrast, legislators were content to delegate the management of intelligence agencies to the executive until a series of abuses were revealed in the early 1970s; the House and Senate Committees on Intelligence celebrated their first full year of existence in 1978. Many other countries lack congressional oversight of intelligence agencies altogether (e.g., Brazil, Great Britain, Russia, Spain). In Russia, intelligence agencies are subject to a vague and unenforced requirement to give reports to the legislative branch. In Brazil, a 1999 law called for the creation of a joint Parliamentary Committee to monitor intelligence agencies, however, this is left to the discretion of the Congress, where there seems to be little interest among legislators in serving on such a committee.¹⁹ As of June 2001, the committee has not even been created.

In addition to forming specialized committees, legislators often find it necessary to rely on the help of others in monitoring executive and military behavior. This help takes two main shapes: “police patrol” and “fire alarm.” “Police patrol” approaches, as the name suggests, involve creating mechanisms that actively search out mistakes and malfeasance: audits carried out by independent agencies and reporting requirements written into legislation are two of the most common forms. “Fire alarm” monitoring, in contrast, occurs when outside parties interested in a policy area, such as the news media or special interest groups, raise the alarm about misguided policy or actions. Both forms

August 1994, pp. 20, 23.

of oversight function by punishing misdeeds that are discovered and/ or implementing legislation to correct policy mistakes; they also work by deterring behavior that might be exposed by routine checks or concerned parties.

In the area of defense, police patrol approaches have been employed by a number of countries. In the United States, legislation frequently requires an agency to inform a committee before or after it makes a policy decision or requires the General Accounting Office of the Congress to carry out audits and other evaluations. Of the 5704 GAO staff employed in 1979, 1200 were tasked with defense auditing (21 percent of the staff) and 230 of 983 reports submitted in FY 1979 were on defense issues (23 percent of the total).²⁰ Like the committee staffers and Congressional Research Service personnel, the GAO plays a proactive role in monitoring the implementation of legislation. Since 1974, it has been authorized to inform Congress on its own initiative.²¹ In Great Britain, in contrast, the Comptroller and Auditor General is an office holder of the Crown and as such does not conduct inquiries at the request of the committees of the House of Commons. Unlike the GAO, it makes no recommendations or criticisms in its reports.²² Between 1965 and 1978, it conducted only 47 inquiries on defense issues (an average of 3.4 per year).²³

¹⁹ Marco Cepik, "The New Brazilian Intelligence System: An Institutional Assessment," paper presented at the Naval Postgraduate School, Monterey, California, June 2000, p. 12.

²⁰ If classified reports sent directly to the DOD were included, the percentage would be even higher, See Andrew Cox and Stephen Kirby, *Congress, Parliament and Defence: The Impact of Legislative Reform on Defence Accountability in Britain and America* (New York: St. Martin's Press, 1986), p. 20.

²¹ For more on the evolution of the GAO role, see "The Background and History of GAO." Available at <http://www/gao.gov/about/history.html>.

²² Cox and Kirby, pp. 12-13.

²³ Cox and Kirby, p. 13. These reports were debated by a total of 98 MPs (Cox and Kirby, p. 15).

In South Africa, the president appoints Inspectors General to oversee the National Intelligence Agency, which conducts domestic intelligence, and the South African Secret Service, which is responsible for foreign intelligence work. The Inspectors General report to the Joint Committee on Defense in the legislature, which monitors expenditures and orders investigations of abuses.

Fire-alarm monitoring is also common, with human rights groups, mothers' and youth groups, and independent think tanks monitoring government policy on such issues as human rights, conscription, and national security, respectively. Despite this, the use of fire-alarm monitoring in defense-related areas (especially intelligence) tends to be less effective than in other policy areas. The number of independent groups in civil society with the ability and interest in monitoring intelligence tend to be fewer than those in other policy areas.²⁴ In some countries, strict national security laws prohibit the free expression of criticisms in defense-related areas on the grounds of national security (e.g., South Korea, Great Britain).

3. Other powers

In addition to formulating policy and overseeing its implementation, legislatures are often able to influence military and defense policy in a number of additional ways. One of the most important and regular avenues is through control over the defense budget. Policy preferences should be reflected in the budget, and the amount of money assigned to different functions will affect the roles and missions undertaken by the armed

²⁴ Loch Johnson, "The U.S. Congress and the CIA: Monitoring the Dark Side of Government," *Legislative Studies Quarterly*, V: 4 (November 1980), pp. 477-99.

forces. Legislative control over the budget also provides an incentive for the military to be attentive to the preferences of the legislature and their demands for information as they carry out their policy and oversight duties.²⁵

In addition, the legislature often has the duty of overseeing the executive in the exercise of his or her prerogatives as commander-in-chief of the armed forces. For example, as commander-in-chief, the executive usually has the power to promote officers to the high command and to command the use of troops. Both issues are often central to the debate over the role of the armed forces that occurs in countries transiting away from a military regime or civilian police state towards a democracy and it is important for constitutions or related legislation to specify the relative roles of the executive and the legislature in these spheres.

In many countries, congressional participation in the officer promotion process helps to prevent the executive from using personal or partisan criteria to guide personnel decisions. In Indonesia, an important reform in the democratization process were laws passed in 2000 giving the DPR (People's Representative Assembly) the right to approve or disapprove the President's decision to appoint and dismiss the commander of the armed forces and the national police chief.²⁶ In Spain, the Parliament holds extensive discussions on nominees for promotion and then makes recommendations to the

²⁵ For a more in-depth discussion, see Jeanne K. Giraldo, "Defense Budgets and Civilian Oversight," Occasional Paper # 9, Center for Civil-Military Relations, Monterey, California, June 2001.

²⁶ *Indonesia's Road to Constitutional Reform: The 2000 MPR Annual Session*. An Assessment Report. National Democratic Institute for International Affairs. October 2000, p. 6.

executive.²⁷ In contrast, the 1988 Brazilian constitution and the 1993 Russian constitution reserve for the President the exclusive responsibility for promoting all general-officers. In addition, the screening and selection of officers permits legislatures to send a strong message about the kind of behavior that is expected of the military – a message that the executive may be unwilling or unable to send. In Argentina, for example, the Senate occasionally refused to confirm President Raúl Alfonsín's nominees to the high command in order to express their repudiation of any officers involved in human rights violations.²⁸

Most constitutions also require legislative participation in decisions to invoke a state of siege or state of emergency and deploy troops domestically. One survey of legislation in 77 countries revealed that in 12 cases the parliament alone had the right to declare an emergency, and in another 51 cases parliament was required to approve any governmental declaration of a state of emergency.²⁹ In the Federal Republic of Germany and the United States, for example, the congress alone has authority to declare a state of emergency in case of internal disturbance. In Spain, the Government can declare a state of emergency in response to internal disturbances only with parliamentary approval; this lasts for 30 days and can be renewed with parliamentary approval for another 30.³⁰ Some newly democratizing countries have reversed existing laws which permitted the executive the right to declare a state of emergency without congressional approval: for example, the new Filipino constitution requires legislative and judiciary approval of a declaration

²⁷ Jorge Zaverucha, "The Degree of Military Political Autonomy during the Spanish, Argentine and Brazilian Transitions," *Journal of Latin American Studies*, 25 (1993), p. 294.

²⁸ Zaverucha, p. 294.

²⁹ International Parliamentary Union, *Parliaments of the World*, second edition, volume 1, 1986, p. 1273.

³⁰ International Parliamentary Union, p. 1274.

of martial law, but only after 60 days.³¹ In contrast, the Brazilian and Russian constitutions give Presidents the ability to call on the military to restore law and order without Congressional approval.³²

Civilian Expertise

As discussed above, one of the main challenges the legislature faces in exercising its jurisdiction over policy formulation and oversight is overcoming the dominance of the executive, which has access to a much greater supply of expertise and information than the legislature. While the executive's near monopolistic control over information applies to most policy areas, in the defense arena the deck is even more stacked against legislative influence. Secrecy laws exacerbate the natural information asymmetry between the legislature, on the one hand, and the executive and the military, on the other. The executive and the military can appeal to "national security" to withhold information and thus to effectively deny the legislature jurisdiction over certain issues. The information asymmetry is often exacerbated by legislators themselves who are said to have little interest in developing expertise in military matters and would rather focus on areas that are more electorally profitable. These challenges plague legislative oversight of defense, even in countries with a long democratic history, like Great Britain. Even in the United States, the combined expertise of the president's political advisers, the

³¹ Carolina G. Hernandez, "Political Developments in the Philippines," p. 182 in Thomas W. Robinson, ed., *Democracy and Development in East Asia: Taiwan, South Korea, and the Philippines* (Lanham, MD: University Press of America), 1990.

³² Article 137 of the Brazilian constitution requires the President to attain congressional authorization for a state of siege when law and order are threatened. However, if Congress refuses, the President can invoke Article 142 of the Constitution to call out the military. [Jorge Zaverucha, "The 1988 Brazilian Constitution and its Authoritarian Legacy: Formalizing democracy while gutting its essence," *Journal of Third World Studies*, 15:1 (Spring 1998).] The Russian Constitution gives the president the right to introduce martial law and states of emergency with notification only of the appointed Federal Council.

administrative staff of the Department of Defense, and the professional soldiers in the military gives the executive an edge over the legislature in their control of the expertise necessary to manage the country's defense. The challenges are still greater in countries transiting away from authoritarian regimes with a history of secrecy, military prerogatives, and executive dominance of the policy process.

Faced with this reality, legislatures must find ways to cultivate the expertise necessary to challenge the executive and to participate effectively and credibly in constructing the laws that will regulate the military's role and in monitoring the implementation of these laws. Regardless of the formal rules governing the passage of legislation, a legislature is more likely to be consulted in pre-legislative stages and its recommendations heeded at later stages if it has expertise. In addition, expertise is a necessary ingredient for responsible policy making. The following sections highlight the special challenges defense committees face in cultivating expertise among their members, developing a professional staff, and eliciting information from the executive, the military, and other experts.

Committee Members

Typically, committee seats are divided among parties in proportion to their share of the seats in the legislature and then assigned to legislators by their party leaders, in large part based on their individual requests. Since legislators usually self select into committees in this fashion, they often have some personal or electoral interest in defense. Active duty or retired officers holding seats in the legislature are the most likely to self

select into defense committees. This is the case in Russia where military officers serve on (and head) the Defense Committee of the State Duma and often are the only members with security clearances.³³ Other committee members may be civilians who have been involved in defense issues and civil-military relations, either as academics or as members of the government (it is not uncommon, for example, for a former minister of defense to serve on the Defense Committee in the German *Bundestag*).

Committee members without a military background or prior experience in defense issues will need to develop their expertise on the job. How much time they are able to devote to this and whether they will use the knowledge gained to stake out a role independent of the executive depends on a number of factors.

To the extent that developing expertise and exercising oversight requires access to classified information, civilian legislators are often at a disadvantage relative to their military counterparts who already have clearances. In a number of countries, distrusting legislators are wary of the possible costs an overly secretive or vengeful executive branch might impose on the holders of security clearances. In Russia, for example, civilian defense experts in the Defense Committee do not hold clearances because they want to retain the right to travel abroad without restriction.³⁴ In Brazil, legislators opposed a provision of a bill on intelligence oversight proposed by the government of Fernando

³³ David Betz, "No Place for a Civilian: Russian Defence Management from Yeltsin to Putin," paper presented to the International Studies Association, 41st Annual Convention, Los Angeles, March 14-18, 2000. The Indonesian military have 38 "reserved" seats in the legislature, the holders of which act as a voting bloc (unlike the military representatives in the Russian Duma). The balance of power in the current legislature in Indonesia gives the military a swing vote on most defense issues. This enables the military to exert a great deal of influence on defense policies and on efforts to exert civilian control over the military.

³⁴ Betz.

Collor de Mello because it imposed stiff penalties on those who disclosed information (five to ten years for intentional disclosures and three to five years for unintentional leaks).³⁵ In Great Britain, members of the House Committee on Defence are not security vetted but they can access material classified as NATO Top Secret.³⁶

At a very practical level, committee members need to have time to develop their expertise. Legislators can only realistically be expected to participate effectively in one or two committees; those assigned to multiple committees are unlikely to develop expertise in all of them. A certain stability in committee membership is also necessary, so that individual committee members are in their post long enough to learn the material and establish key relationships with the ministry staff and other more independent experts in the defense area. This stability is undermined if there is a high turnover at election time, as is often the case in many developing countries where the identification of the electorate with parties is unstable or where the legislature is only a stepping stone to personal wealth or other political offices, and is not a desirable career in and of itself.³⁷ In some countries, the practice of rotating committee chairs and memberships among party representatives so that all spend some time in the more “desirable” committees – usually those that provide access to state resources – militates against the development of expertise.

³⁵ Hunter, p. 64. The law that was eventually passed in 1999 does not specify how much access legislators would have to secret information nor the penalties imposed in the case of an information leak (Cepik, p. 12).

³⁶ George and Graham, p. 16.

³⁷ In other cases, a shortage of qualified personnel may be the motive behind high turnover rates. In South Africa, for example, 122 of 400 National Assembly members and 13 of 27 committee chairs left their posts

In general, legislators will only have an incentive to invest their time and political capital in developing their own expertise (or creating institutions which house legislative expertise) if it serves their career goals, whether these be reelection, policy influence, a future position in the ministry of defense, or some combination of the above. For example, if legislators have to work hard to defend their seat from challengers and defense is not an electorally salient issue, they are unlikely to devote much time to developing their expertise in that area. In contrast, legislators who feel relatively secure about their chance of reelection, have an interest in policy, and believe that the legislature as a whole (and, in particular, the committees of which they are a part) can influence the shape of legislation, will have an incentive to develop their expertise. Members of the opposition can use this expertise to shape legislation and to oversee the executive. Members of the governing party tend to have less of an interest in oversight (and the public scandals often associated with this activity). Frequently, however, they will have an interest in policy formulation. Loyal party experts can contribute to good governance (and hence government popularity) in at least two ways: by monitoring legislative proposals put forth by their own ministers, correcting any miscues, and/or by brokering compromises between parties in the committee. Often, the committee is a place for aspirants to government positions to develop and showcase their expertise in a given subject matter. In the case of a coalition government, committee experts are likely to pay special attention to the legislative proposals made by ministers from allied parties to ensure that they respect the coalition contract.

even before the first term ended in 1999. The majority were ANC members who were appointed to other posts in the government (Calland, p. 10).

Despite these benefits of committee input, party or government leaders often discourage independent behavior by committee members and chairs. They are able to do this in a number of ways. In some parliamentary systems (e.g., Germany, Great Britain), government members sit on committees and are able to influence the proceedings. In Russia, the Ministry of Defense has chosen a less orthodox approach to influencing the defense committee. It endorses slates of officers in legislative elections, many of them active duty, who then act as allies of the Ministry in the Duma. The Ministry ran 123 officers in the 1996 legislative elections;³⁸ subsequently they were able to block the passage of a law changing conscription.³⁹ More commonly, party leaders can exert influence through their control over the naming of committee members and government leaders through their power to appoint legislators to government positions. In Great Britain, for example, the Whips Office, the Ministry of Defense, the Cabinet Office and chairmen of the committee “collude” to prevent independent behavior by committees.⁴⁰ “Subversive” chairs are co-opted by being promoted to roles as parliamentary leaders (e.g., whips) or ministers, where they are required to toe the party line.⁴¹

Legislative Staff

In addition to developing their personal expertise, committee members rely on a professional committee staff, congressional research services, and outside experts in independent or party think tanks for the expertise necessary to exercise their legislative

³⁸ Marybeth Peterson Ulrich, *Democratizing Communist Militaries: The Cases of the Czech and Russian Armed Forces* (Ann Arbor: The University of Michigan Press, 1999), p. 144.

³⁹ Alexei G. Arbatov, “Military Reform in Russia: Dilemmas, Obstacles, and Prospects,” Working Paper, International Security Program, Belfer Center for Science and International Affairs, Harvard University, September 1997.

⁴⁰ Cox and Kirby, p. 298.

and oversight tasks. In the US House of Representatives, for example, each of the 19 standing committees is authorized to hire 18 professional staff assistants and 12 clerical aides (plus one additional staffer allotted each subcommittee).⁴² The House Armed Services Committee employs around 81 staffers and the Senate Armed Services Committee 51; many have a military or civilian background working in the Department of Defense.⁴³ In 1985, committee staff in the House of Representatives numbered 2146, personal staff 7528, and research staff 2595 (counting the General Accounting Office, the Congressional Research Service, and the Congressional Budget Office).⁴⁴ Committee staffers often play a proactive role, negotiating and working to build coalitions, while the Congressional Research Service is charged with providing Congress with a list of subjects and policy areas that committees might analyze in depth. A host of think tanks covering the ideological spectrum monitor government policy on a wide range of defense-related issues.

This stands in stark contrast to the level and nature of staffing available to the legislature in other countries. To the extent that committee and research staff are trained professionals, they tend to be librarians or lawyers rather than individuals with expertise in defense matters. In Great Britain, for example, the Research and Parliamentary Division employed around 100 people in 1980, most of them librarians. In contrast, during the same year, the Congressional Research Service in the US employed 614 research and information specialists supported by over 250 clerical and administrative

⁴¹ Bruce George M.P. and J. David Morgan, "Parliamentary Scrutiny of Defense," *The Journal of Legislative Studies*, 5: 1 (Spring 1999), p. 10.

⁴² "Committees in Legislatures," p. 15.

⁴³ George and Graham, p. 11.

staff.⁴⁵ After a recent improvement in staff resources the Defence Committee in Great Britain can now rely upon four retired military personnel and two academic advisers. In South Africa, the committee staff for the entire National Assembly was increased in late 1995 from 25 to 60. Most of the staff are professionals trained in law.⁴⁶ In Argentina, committee staffs usually number about half a dozen – one staffer assigned to the committee and the others provided by the party leadership.⁴⁷ South Korean committees are advised by half a dozen policy specialists.⁴⁸ The legislature as a whole has a decent-sized reference staff but this tends to be underutilized and bureaucratic.⁴⁹ A survey of 29 defense committees in Europe revealed staff resources varying from one person (in Ireland, Iceland, and Norway) to ten (in Ukraine). In a number of cases, defense committees in newly democratizing Central and East European legislatures were better staffed than those in Western Europe.⁵⁰

The German *Bundestag* perhaps comes closest to the United States in employing a serious-minded professional staff to assist in the legislative process, yet even there the numbers pale in comparison to the United States. In 1987, research services staff numbered 234 in comparison with 2595 individuals so employed in the United States. The 519 delegates to the *Bundestag* employed 2200 personal staff members,⁵¹

⁴⁴ Thaysen et al., Table 10 in appendix.

⁴⁵ Cox and Kirby, 21.

⁴⁶ “Committees in Legislatures,” p. 17.

⁴⁷ “Committees in Legislatures,” p. 16.

⁴⁸ Chan Wook Park, “The National Assembly of the Republic of Korea,” *The Journal of Legislative Studies*, 4: 4 (Winter 1998), p. 78.

⁴⁹ Susan Webb Hammond, “Recent Research on Legislative Staffs,” *Legislative Studies Quarterly*, XXI, 4 (November 1996): pp. 543-576.

⁵⁰ George and Graham, pp. 13, 23. The best staffed defense committee in Western Europe was Italy with five assistants.

⁵¹ Thaysen et al., Table 11 in appendix. Elsewhere the numbers given are 500 party group employees and 1800 personal assistants; regardless of the specifics, the general level is the same.

approximately 10 percent of whom were academics or legislative experts.⁵² In 1982, every standing committee in the German *Bundestag* had one executive-rank civil service secretary, one senior assistant and one or two clerical staff.⁵³ In the *Bundestag*, unlike the US Congress, most of the funding is channeled through party groups (*Fraktionen*) rather than committees and most of the policy experts are employed by these groups. In 1987, the *Fraktionen* employees numbered 619.⁵⁴

A number of factors account for the discrepancy between the United States and other legislatures in levels of staffing. In some cases, particularly in developing countries, the level of resources available to the government are simply much lower than in the United States. This, however, cannot explain the differences between staffing in the US Congress and parliaments in Great Britain or Germany (nor the similarities between Western Europe and Eastern Europe). In most countries other than the United States, the executive has control over resources and few incentives to invest in the development of independent sources of information and expertise for the legislature. This is particularly the case in presidential systems or in parliamentary systems where a majority party controls the executive. In Germany, for example, the majority Christian Democrats controlled the executive for much of the post-war period and realized that any resources allocated to the legislature could be used by the opposition Social Democrats to challenge the government. When the Christian Democrats and Social Democrats formed the Grand Coalition in 1969, efforts to increase parliamentary resources were no longer

⁵²Suzanne S. Schüttemeyer, "Hierarchy and Efficiency in the *Bundestag*: The German Answer for Institutionalizing Parliament," p. 45 in Gary W. Copeland and Samuel C. Patterson, eds., *Parliaments in the Modern World: Changing Institutions* (Ann Arbor: The University of Michigan Press, 1994).

cast in terms of strengthening the opposition party at the expense of the government. Instead, they were seen as a means of strengthening the parliamentary majority relative to the “establishment” (i.e., the few members of parliament who were members of government or party leaders and as a result had access to resources). The internal challenge to the establishment was given weight by leftist criticism of an unresponsive legislature coming from outside of parliament in the late 1960s.⁵⁵ Individual legislators were given more resources, and parties (in an effort to avoid excessive decentralization of the legislative process) fortified the system of federally-financed party working groups within the legislature.

Even where the legislature has access to resources, it does not always have the incentive to spend the money on professional staff, instead preferring personal staff, the majority of whom perform administrative or constituency services rather than policy development. Although personal staffers comprise the majority of the staff in the US Congress (outnumbering committee staff by a ratio of approximately 3.5 to 1), the proportion for developing countries is often much more skewed (as of 1993, the ratio of personal staff to committee staff in the Argentina House was approximately 26 to 1).⁵⁶ In

⁵³ Winfried Steffani, “Parties (Parliamentary Groups) and Committees in the *Bundestag*,” in Thaysen et al., p. 285.

⁵⁴ Thaysen et al., Table 11 in appendix.

⁵⁵ Werner Blischke, “Parliamentary Staffs in the German *Bundestag*,” *Legislative Studies Quarterly*, VI, 4 (November 1981), p. 536.

⁵⁶ The ratio for the United States is calculated on the basis of the figures given in the previous paragraph. The Argentine numbers are calculated based on the figure of 6 staff members per 38 standing committees and the 23 personal staffers allotted to each of the 257 deputies (“Committees in Legislatures,” p. 16). The ratio for the Argentine Senate is 29:1, based on the 98 personal employees allotted to the 72 Senators (and the 41 permanent committees in the upper house).

Great Britain, the House of Commons Defence Committee spent approximately 69% of its allotted budget in 1996-97 on travel and under 4 percent on specialists.⁵⁷

Ability to Solicit Information

In addition, a number of legal provisions and institutional mechanisms affect the ability of committees to access the expertise necessary to make good policy and exercise effective oversight of the military and executive. In all policy areas, executive ministries are jealous of their legislative prerogatives, and bureaucratic agencies are averse to outside monitoring; as a result, both groups tend not to be forthcoming with information solicited by Congress. Consequently, it is important that committees have formal powers both to request such information and to enforce the requests. These powers include the right to request government documents, summon witnesses (including ministers), and hold public hearings. In the United States, congressional invitations to testify are taken seriously because Congress has the power to subpoena witnesses and to cut the budgets of non-complying agencies. In most other countries (e.g., Germany, Great Britain, Russia, South Africa), committees do not have the legal power to require the attendance of ministers, civil servants, or other witnesses. The only power the committees have is the power to embarrass the executive politically for non-compliance.

Executive and bureaucratic reluctance to reveal information is exacerbated in the defense arena, where policy makers and especially the military have been historically accustomed to operating behind a veil of secrecy and unaccountability. Although the

⁵⁷ George and Morgan, p. 10

need for secrecy is certainly justified on a number of issues, the temptation is for the executive and the military to hide behind appeals to national security and secrecy laws to avoid sharing information with the legislature. In Germany, where the Defense Committee has traditionally played an important role, it took three years of negotiating for the Defense Committee to come to an agreement with the Minister of Defense on the release of information related to arms procurement in 1977 and, even then, the agreement was an informal and unwritten one.⁵⁸ In Russia, secrecy is common in defense legislation; decrees are signed but not published. A new secrecy law was passed in 1993, but its details were not made public at the time.⁵⁹

Even when national security concerns are not invoked, defense committees still face challenges in gathering expert testimony on legislation. One reason is the relative lack of experts in defense issues in civil society in many countries, and especially in new democracies where defense topics have traditionally been the sole preserve of the military. Another reason is the difficulty of soliciting independent, expert testimony on executive proposals from members of the military who are subordinate to the executive as commander-in-chief of the armed forces. This contrasts with other issue areas, where both career civil servants from the relevant ministry as well as the affected parties (e.g., farmers, teachers, labor unions) often give testimony critical of the executive project. In the case of defense, the affected party is usually the military and, in many cases, the military often staffs many of the positions of expertise within the ministry of defense.

⁵⁸ Schafer and von Stechow.

⁵⁹ Betz. They appear to still be secret to this date.

Democracies must decide whether or not the military should be allowed to provide dissenting opinions to the legislature. In the United States, for the most part prior to 1940 the military limited itself to echoing the President's position in testimony before Congress.⁶⁰ After World War II, however, Congress insisted that military leaders be free to present their views directly to the congressional committees and this was codified in the National Security Act of 1949.⁶¹ In many other countries, however, the practice is for the armed forces to represent the government's view before Congress. In Great Britain, independent testimony by either members of the ministry of defense or the armed services carries with it an implicit requirement of resignation. In Germany, dissenting views are provided informally but not in official testimony.⁶² In Spain complaints about the military budget or other issues are lodged with the executive rather than the Congress.⁶³

Conclusion

The creation of defense and intelligence committees with jurisdiction over policy, oversight, and budget issues is necessary for the legislature to exercise its essential role in shaping national security policy and civilian control over the military. In many countries, however, the constitutional and legal framework marginalizes the role of the legislature relative to the executive in formulating and implementing policy. Some legislatures manage to overcome these obstacles and turn their limited legal powers into real

⁶⁰ Samuel P. Huntington. *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (New York: Vintage Books, 1957), p. 414.

⁶¹ *Ibid.*, pp. 415-416. Of course, individual judgment and career considerations enter into whether military personnel actually express their personal views or not, but the legal provision for such a free expression is in place.

⁶² Schafer and von Stechow.

authority. In large part, this can be attributed to their willingness and ability to generate expertise in defense issues. While defense committees will benefit from any measures taken to strengthen the legislature as a whole, specific efforts targeted at defense are required to overcome the special challenges posed by this area. An organized and informed civil society that is able to put defense and military issues on the political agenda will both enable and encourage responsible legislative execution of its responsibilities and encourage the legislature to press for more powers from the executive. The legislature will be empowered to the extent that public pressure on the executive and military weakens their ability to appeal to secrecy in the name of national defense (and thus remain unaccountable to the legislature and the public). To the extent that defense becomes a politically salient issue for political parties and their representatives, legislators will be more likely to carve out the time from their struggle for political survival to play a policy and oversight role on issues of defense and civilian control over the military.

⁶³ Lynn M. Maurer, "Parliamentary Influence in a New Democracy: The Spanish Congress," *The Journal of Legislative Studies*, 5: 2 (Summer 1999).