

III. The role of the Parliamentary Assembly in member states	3
IV. Democratic oversight of other services and of the police force	5
V. Parliamentary accountability	90
VI. A legislative proposal to improve the protection of refugees in the European Union	90
A. Scope and functions of the parliamentary oversight body	92

## Table of contents

### Part 1:

#### Democratic oversight of the security sector in member states

<i>Report of the Parliamentary Assembly</i>	11
Summary	11
Adopted texts	12
Recommendation 1713 (2005) of the Parliamentary Assembly to the Committee of Ministers and its reply	12
Explanatory memorandum	23
A. Introduction	23
B. Intelligence services	25
<i>i. Relevance to national security</i>	25
<i>ii. Recent trends</i>	26
<i>iii. Democratic oversight</i>	29
<i>iv. Challenges and concerns</i>	34
C. Democratic policing	35
<i>i. Relevance to national security</i>	35
<i>ii. Trends in the wake of 9/11</i>	35
<i>iii. Oversight and accountability</i>	36
<i>iv. Problems and challenges</i>	37
D. Border management	40
<i>i. Relevance to national security</i>	40
<i>ii. Obligations of border guards to respect the human rights of refugees and asylum seekers</i>	41
<i>iii. Oversight</i>	42

E. Defence.....	45
i. <i>Overseeing security in the defence sector</i> .....	45
ii. <i>A few examples</i> .....	47
iii. <i>Supervision of European security policy</i> .....	50

**Part 2:**  
**Democratic oversight of the security services**

<i>Report of the European Commission for Democracy through Law (Venice Commission)</i> .....	53
Executive summary.....	53
I. Introduction .....	58
II. Previous Council of Europe work in this area .....	59
A. The Venice Commission study .....	59
B. The Group of Specialists on Internal Security Services (PC-S-SEC) of the European Committee on Crime Problems (CDPC) .....	61
C. The Council of Europe Secretary General's supplementary report ....	61
III. The scope of the present study.....	62
IV. Is there a need for (improved) democratic control?.....	63
V. Accountability .....	68
A. The notion and forms of accountability .....	68
B. General problems in ensuring accountability .....	70
C. Constitutional and organisational contexts.....	73
a. <i>In general</i> .....	73
b. <i>The organisation of the security services</i> .....	74
c. <i>The form of the mandate of the security services</i> .....	76
d. <i>Security priorities</i> .....	77
e. <i>Internal control</i> .....	78
f. <i>Governmental control</i> .....	79
g. <i>Particular accountability problems relating to international co-operation between intelligence agencies</i> .....	80
VI. Accountability and the case law of the European Court of Human Rights .....	82

VII. Internal and governmental controls as part of overall accountability systems .....	85
VIII. Parliamentary accountability.....	90
A. In general .....	90
B. Mandate and functions of the parliamentary oversight body .....	92
C. Membership of the oversight body .....	97
D. Oversight and international co-operation .....	99
E. Other areas where the parliament can be given a role in accountability .....	102
IX. Judicial review and authorisation .....	104
X. Accountability to expert bodies .....	113
XI. Complaints mechanisms .....	120
XII. Concluding remarks.....	123

**Part 3:**  
**Democratic control of the armed forces**

<i>Report of the European Commission for Democracy through Law (Venice Commission)</i> .....	125
Executive summary.....	125
I. Introduction .....	131
II. The scope of the study .....	132
III. The necessity for democratic control of the armed forces .....	136
A. The domestic dimension .....	140
B. The international dimension .....	142
IV. The role of the armed forces in Council of Europe member states.....	148
A. External roles of the armed forces.....	150
1. <i>Defence against external threats</i> .....	151
2. <i>Collective defence</i> .....	151
3. <i>Peacekeeping, crisis management and peace-building operations</i> ..	151

B. Internal roles of the armed forces .....	153	C. International dimension of the control .....	209
1. Military assistance in maintaining public order .....	154	1. Preliminary issues .....	211
a. Counter-terrorism operations .....	154	a. Legal and illegal foreign military presence .....	211
b. Protection of public buildings and installations .....	155	b. International organisations .....	219
c. Protection of borders, coastal waters and airspace .....	155	c. Legitimate character of the use of force and the international body authorising it .....	220
2. Military assistance in case of disasters .....	156	2. Organs involved .....	220
3. Other activities of the armed forces .....	157	a. Intergovernmental institutions .....	220
V. Actors, acts, moments and procedures of control .....	158	b. Inter-parliamentary dimension of the control .....	225
A. General overview .....	158	c. International courts .....	230
B. Domestic level .....	162	3. International standards .....	233
1. Preliminary issues .....	162	a. International treaties .....	234
a. Historical context of national democracies .....	162	b. Codes of conduct .....	236
b. Forms of government .....	163	c. The CIS model law: a comparative perspective .....	237
c. Constitutional rules .....	163	VI. Conclusions .....	238
d. The control organ .....	165		
2. The role of parliaments .....	165		
a. Organs involved .....	166	<b>Appendices</b>	
b. Acts and issues under control .....	172	Appendix A: Overview of national legislation on the authority to decide participation in missions abroad .....	244
c. Mechanisms of control .....	181	Appendix B: Overview of the constitutional rules of appointment of top commanders in selected Council of Europe member states .....	252
3. The role of the executive .....	188	Appendix C: Overview of civil and political rights for armed forces personnel: selected examples .....	259
a. Organs involved .....	189		
b. Acts and issues under control, and mechanisms of control .....	193		
4. The role of the judiciary .....	197		
a. The role of the constitutional courts .....	198		
b. Constitutional provisions referring to military jurisdiction .....	199		
5. Other oversight entities .....	202		
a. Ombudsmen .....	202		
b. Audit offices and courts of auditors .....	206		
6. Internal control mechanisms on armed forces .....	207		
a. Codes of conduct or professional ethics .....	208		
b. Command responsibility .....	208		