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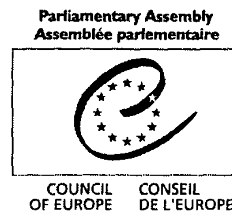

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Democratic oversight of the security sector in member states

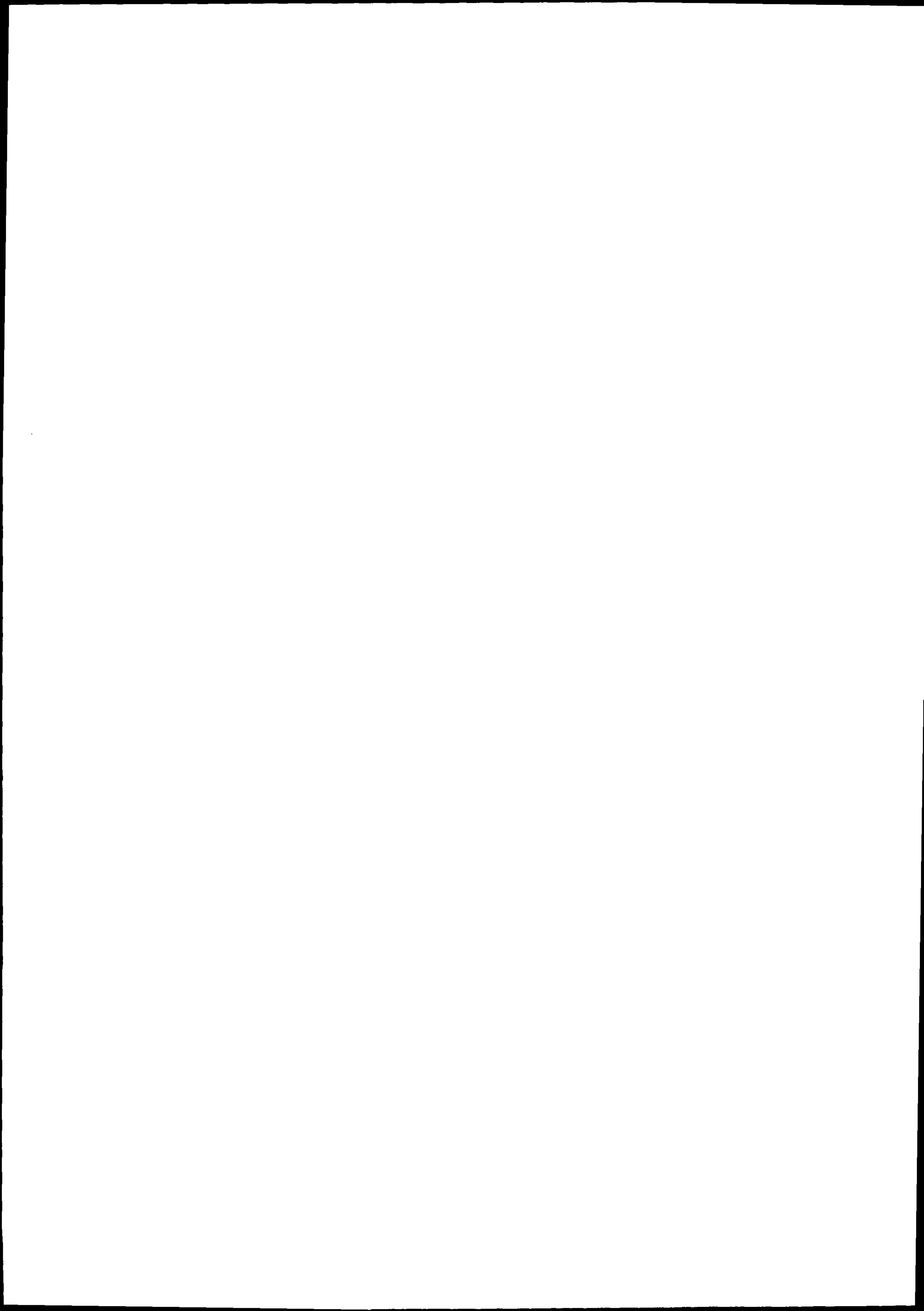
Report
Political Affairs Committee
Rapporteur: Mr Lluis Maria de Puig, Spain, Socialist Group

Summary

In recent years, European societies have felt an increasing need for security. Indeed, today's security threats, such as international organised crime, international terrorism and arms proliferation are more present both at national and at international levels in member states.

A democratic oversight of the security sector is required and government measures must be both lawful and legitimate. This oversight should be organised by implementing a series of specific tools intended to ensure political accountability and transparency.

The Parliamentary Assembly highly recommends a democratic oversight, the essence of which must be carried out by parliament and focused on four main sectors: defence, the police, intelligence services and border management.



i. Intelligence services

a. the functioning of these services must be based on clear and appropriate legislation supervised by the courts;

b. each parliament should have an appropriately functioning specialised committee. Supervision of the intelligence services' "remits" and budgets is a minimum prerequisite;

c. conditions for the use of exceptional measures by these services must be laid down by the law in precise limits of time;

d. under no circumstances should the intelligence services be politicised as they must be able to report to policy makers in an objective, impartial and professional manner. Any restrictions imposed on the civil and political rights of security personnel must be prescribed by the law;

e. the Committee of Ministers of the Council of Europe is called upon to adopt an European Code of Intelligence Ethics (in the same fashion as the European Code of Police Ethics adopted by the Coucil of Europe);

f. the delicate balance between confidentiality and accountability can be managed to a certain extent through the principle of deferred transparency, that is to say by declassifying confidential material after a period of time prescribed by law;

g. lastly, parliament must be kept regularly informed about general intelligence policy;

ii. Police

a. each state must set up its own specific legal framework for the functioning and supervision of a democratic police force. The credibility of the police will depend on its professionalism and the extent to which it operates in accordance with democratic rules and the utmost respect for human rights;

b. given their different mandate and competences, it is important that legislation distinguishes between security and intelligence services on the one hand and law enforcement agencies on the other;

c. the police must remain neutral and not be subject to any political influence. Transparency is also important if the public is to have confidence in the police and co-operate with them;

d. police officers must be given training covering humanitarian principles, constitutional safeguards and standards deriving from codes of ethics laid down by international organisations such as the United Nations, the Council of Europe and the OSCE;

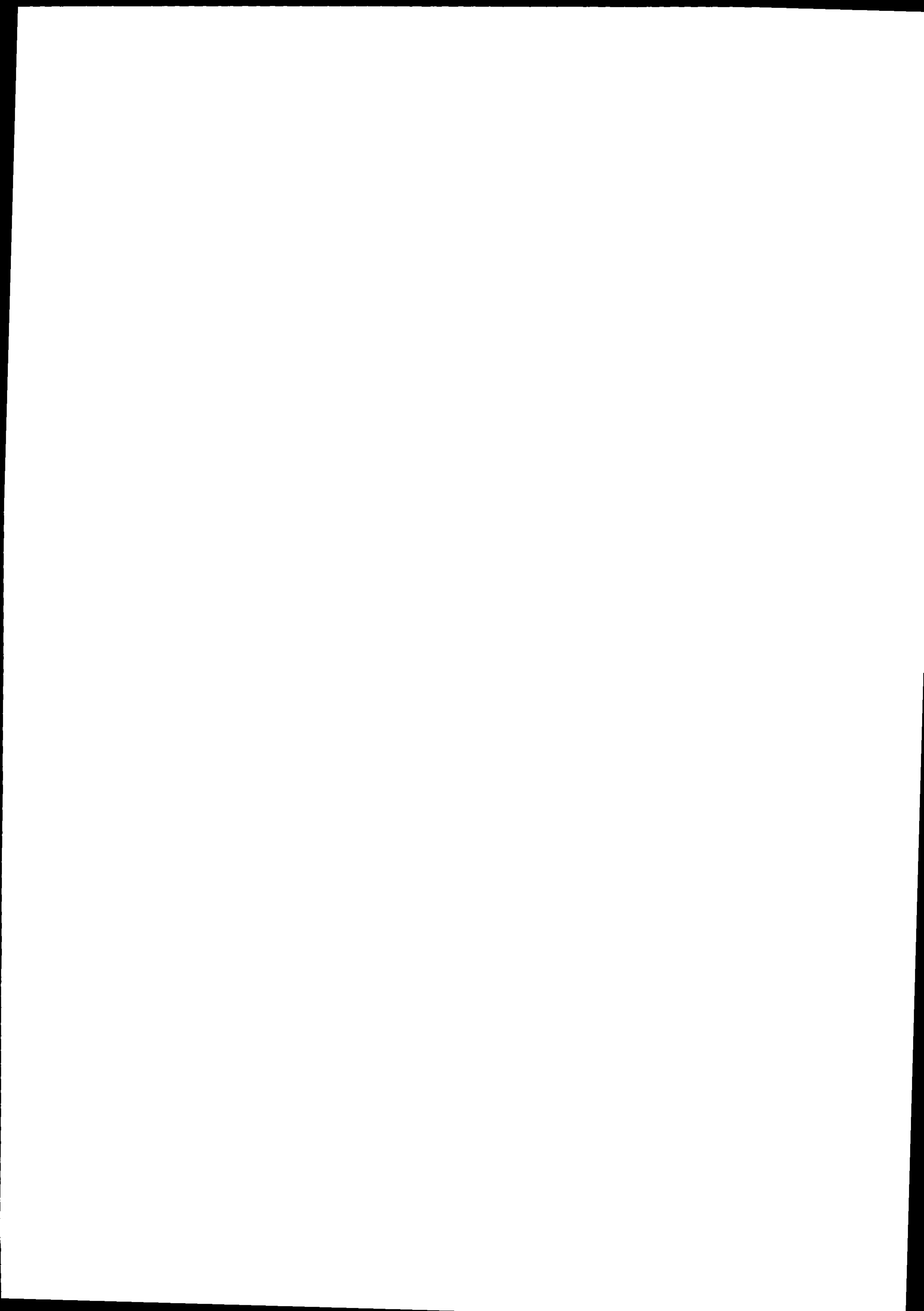
e. legislation in this area must take account of developments in modern technologies and cybercrime and be updated regularly;

f. police action against crime must show due regard for the principle of proportionality, particularly during public demonstrations where there is a significant risk of matters getting out of hand;

iii. Border management

a. as a result of the rise in crime and terrorism, this sector must be subject to heightened democratic supervision and enhanced international co-operation. Clear legislation is needed in this respect to prevent corruption, discrimination and excessive use of force;

b. the principle of the free movement of persons must not be subject to unwarranted restrictions. However, our borders cannot be abused for reasons relating to economic crime, trafficking in human beings, drug trafficking and arms smuggling. Where State authorities consider that there is a threat to law and order and security and consequently apply the border



II. Explanatory memorandum by Mr de Puig[1]

Introduction

1. In recent years, as a result of the rise in terrorism and more complex forms of serious crime (e.g. mafia groups, drug and human traffickers, corruption, transnational crime etc), our societies have felt an increasing need for security. A feeling of danger, insecurity and powerlessness has permeated countries where terrorist attacks have been committed and where there has been a sharp rise in crime. Perceptions of heightened insecurity are now major political issues.

2. Aside from addressing the social, economic and political root causes of terrorism and more complex forms of crime, governments at the national and international level, in response to calls for greater security and protection, have had to agree on measures to combat terrorism and serious crime. All governments have subscribed to the fight against these phenomena and have taken various steps to address the issue, including military, police, administrative, judicial, border and intelligence services measures aimed at improving both prosecution and, especially, prevention.

3. The question has arisen as to the extent to which measures taken to guarantee the security of the state or society in prosecuting crime at all levels could restrict fundamental freedoms and human rights. Demands for greater security have led governments to introduce strict surveillance and search measures which may, on occasion, violate privacy and human dignity. Clearly, there is a problem of striking a balance between our concept of freedom and our need for security.

4. The Council of Europe cannot remain on the sidelines of this debate or the problem itself. The Council is the organisation which formally set out the fundamental rights of human beings and even though it has on numerous occasions taken a clear stance (particularly in the Parliamentary Assembly) on terrorism and crime, it has always insisted that this legitimate fight should be waged with due regard for the rights and freedoms enshrined in the European Convention on Human Rights.

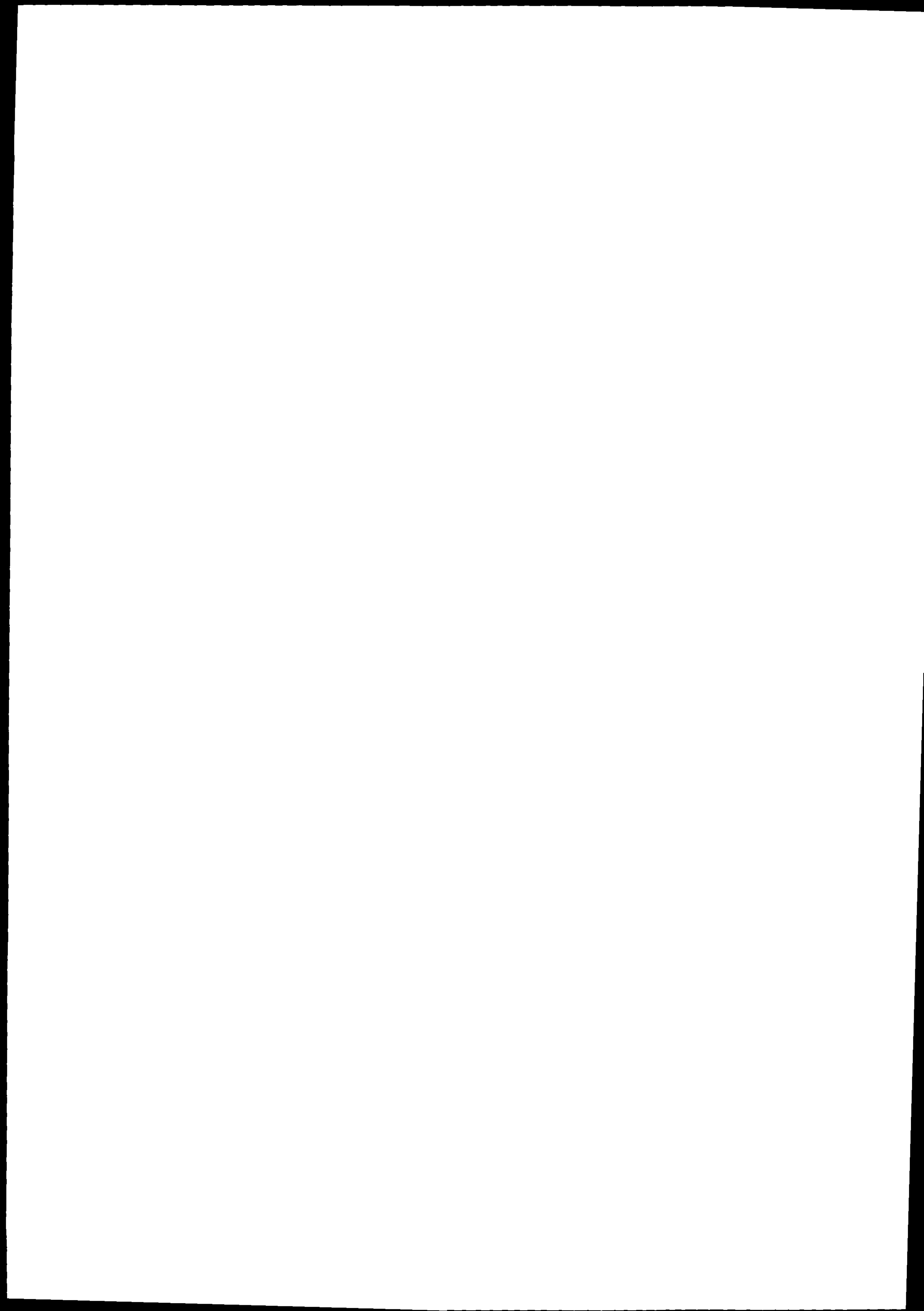
5. To ensure there are no abuses, additional limitations or impunities in the fight against terrorism and organised crime (mafia groups, drug traffickers, etc), there clearly has to be democratic supervision to make sure that the measures adopted by governments are lawful and legitimate. Such supervision must be carried out at parliamentary level. Hence this report and recommendation on measures taken by governments in the security field (defence, intelligence, police, border controls).

6. The security sector plays an invaluable role in contemporary societies. Both the internal and external security and stability of member states have to be protected against new threats and risks, especially after 9/11, that go far beyond the traditional security risks, e.g. terrorist attacks, organised crime, illegal trafficking, inter-ethnic conflict. These new threats require more than military responses but also a coordinated effort from the police, security and intelligence services and border management. The tragic events of 11 September in New York and 11 March in Madrid, and a series of less spectacular but equally appalling incidents (Moscow, Casablanca, etc) have indicated that the police, security services and border management play an especially crucial role in protecting society against these new threats.

7. Democratic oversight of the security sector is part of security sector governance which refers to a multi-actor, multi-level concept of governing the security sector. It includes not only state oversight bodies, such as the executive, parliament, judiciary and independent oversight bodies, but also civil society and international organisations. Furthermore, it includes not only a constitution and a legal framework which lays down the basis of the various oversight mechanisms and institutions, but also norms, standards and a political culture and resources which fosters a willingness among parliamentarians and civil society to oversee the security sector.

8. The various oversight institutions play different roles. The executive is responsible for controlling (in the sense of managing) the security sector on a day-to-day basis. The parliament deals with the general oversight of the security services, including adopting the budget, enacting adequate laws, and conducting inquiries in case of wrong-doing or failing performance. The judiciary plays a crucial role because it gives or withholds authorisation for the use of exceptional powers with a high potential for human rights violations and prosecutes members of the security services in case of wrong-doings.

[1] The Rapporteur expresses his gratitude to the Centre for the democratic control of armed forces (DCAF – Geneva) for its contribution.



d. Adoption and harmonisation of laws across European states, in terms of the fight against money laundering, the euro arrest warrant and a widening definition of terrorism.

e. A swing of the pendulum away from liberty and human rights protection towards a greater focus on security.

15. The last aspect of the fight against terrorism, i.e. giving more priority to security than to liberty, can be witnessed in various ways.

16. Unthinkable previously, many states that had abolished capital punishment, amended their laws enabling them to hand over suspects to countries with capital punishment (e.g. the USA) as part of the co-operation and exchange of information between the countries in the name of the prevention of terrorist activities. A number of countries have introduced new capital offences relating to "terrorism" since 2001. They include Guyana, India, Jordan, Morocco, the USA and Zimbabwe, or discussions for the reestablishment of the death penalty for terrorist activities.

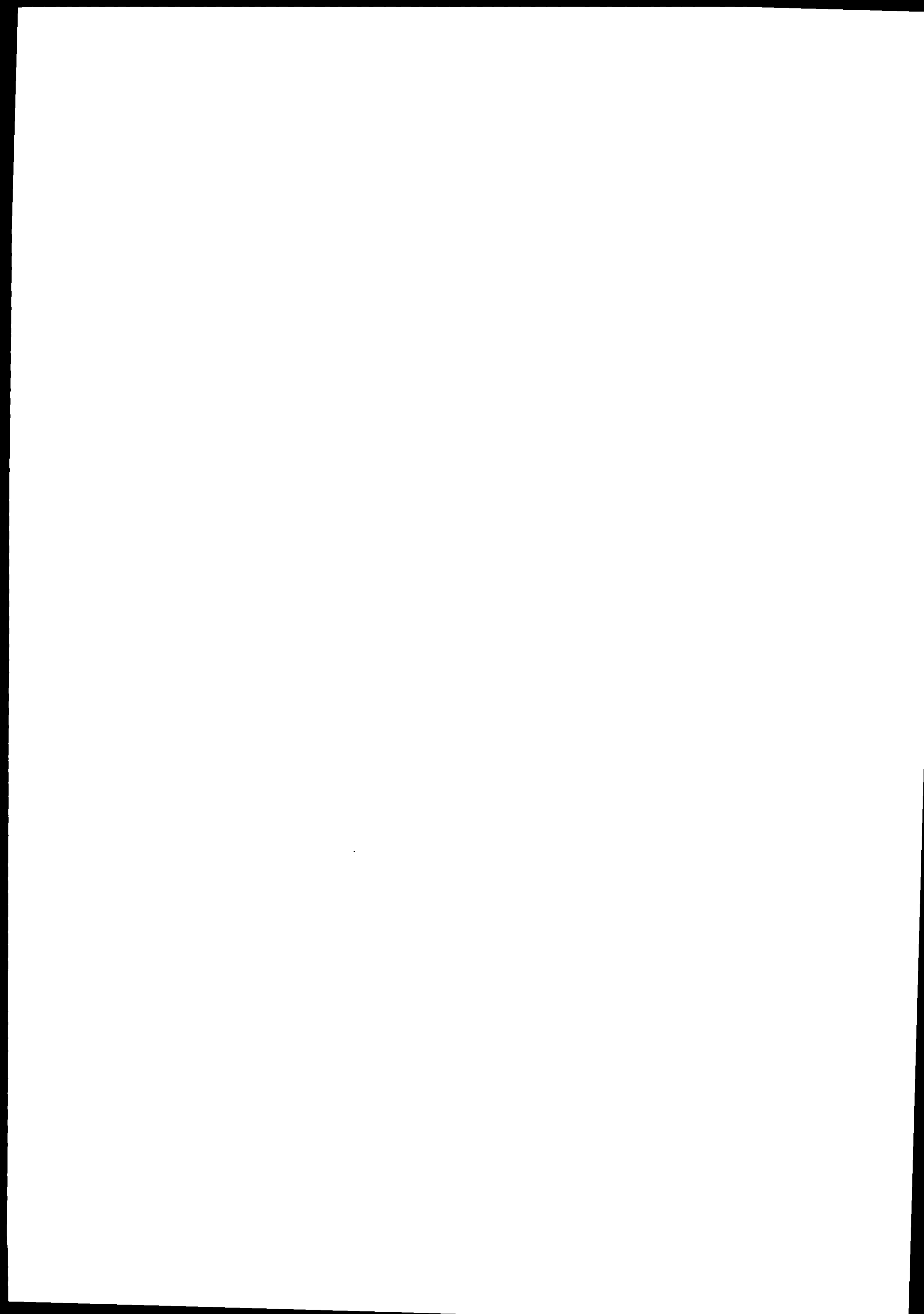
17. Some states have derogated from basic human rights, notably the right of fair trial and created the legal possibility to incarcerate foreigners (immigrants, asylum seekers) indefinitely, without charge or trial, principally on the basis of secret evidence. Concern has been expressed about possible negative effects of new legislation and practices on asylum seekers, including the risk of refoulement and the absence of monitoring mechanisms with respect to the expulsion of those suspected of terrorism to their countries of origin. The guarantee of realistic access to an independent court is a fundamental requirement. This standard is not met by certain anti-terrorism legislation which makes it possible to imprison aliens indefinitely without any access to an independent court. It is recognised that the Council of Europe has adopted the Protocol amending the European Convention on the Suppression of Terrorism.

18. In December 2002, the Ministerial Council of the Organization for Security Cooperation in Europe (OSCE) adopted a Charter on Preventing and Combating Terrorism. The OSCE undertook "to implement effective and resolute measures against terrorism and to conduct all counter-terrorism measures and co-operation in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law."

19. Various states have amended legislation enabling the services to interfere with private communication without informing them afterwards.

20. Other states apply interrogation techniques which are against the right to prohibition of torture, or to inhuman or degrading treatment as provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (e.g. USA). In January 2004, the European Arrest Warrant came into force in eight of the fifteen European Union member states. The preamble to the EU framework decision adopting the warrant reaffirms the absolute nature of the prohibitions against the death penalty, torture, and returns to torture or ill-treatment. The guidelines elaborated by the Council of Europe's Group of Specialists on Human Rights and the Fight against Terrorism, adopted by the Committee of Ministers on July 15, 2002, reaffirm the absolute prohibition against torture in all circumstances "irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted." The guidelines also reaffirm the absolute nature of the prohibition on extradition to face such treatment: "[e]xtradition may not be granted when there is serious reason to believe that: i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment." No exceptions are permitted for either guideline. The guidelines permit states to seek assurances that a person subject to surrender will not be subject to the death penalty, but no express provision is made for states to seek diplomatic assurances that a person subject to surrender will not be at risk for torture.

21. Various states have applied a wider definition to terrorism in their legislation, which has raised concerns it incorporates a whole series of offences currently covered under criminal law, such as by restricting the right of peaceful protest or campaigning (e.g. Belgium, France, Italy, Germany, Spain and the UK). Such implies drawing a tighter line between democratic legitimate protest and terrorist acts e.g. UK where concern has been expressed at reports of attacks and harassment on the basis of



31. It is important that the law also regulates the mandate of security and intelligence services and that the mandate is limited to protecting national security. It is essential that the laws define what national security entails as otherwise the services may move to other areas without the necessity to amend the law with parliamentary approval. Previously, the Parliamentary Assembly of the Council of Europe has argued that the concept of national security should be interpreted narrowly and should not include economic objectives and the fight against organised crime. The reason for interpreting national security narrowly is the fact that otherwise many aspects of political, social and economic life become a security issue. Securitising aspects of social, political and economic life should be a careful process with a system of checks and balances in place including the approval of parliament. The widening of the mandate should not be left to the discretion of the services alone.

32. As previous reports on intelligence oversight have shown, in most countries the appropriate legislation on the functioning and oversight of intelligence services is in place. Concerns exist to what extent the 'adequate' laws are implemented and enforced.

33. Limitations in the civil and political rights of security and intelligence services personnel, should be arranged by law. For example, some countries (e.g. Poland and Ukraine), intelligence officers are not allowed to become members of a political party (in order to safeguard the political neutrality of the services). In other countries, the intelligence officers are not allowed to strike (e.g. Ukraine). These limitations should be in concordance with the ECHR and the European Charter.

34. The role of the executive is to exercise control over the secret and intelligence services, that is to be responsible for the day-to-day management of the services. It is the task of the executive to task and to prioritise the services. Services should not be self-tasking.

35. The government should explicitly instruct the security services to stay outside the political process. Unfortunately, in some countries, such as the Ukraine or in Azerbaijan, the security forces 'are interfering in the political process through criminal and tax investigations of politicians, journalist and influential businessmen.'

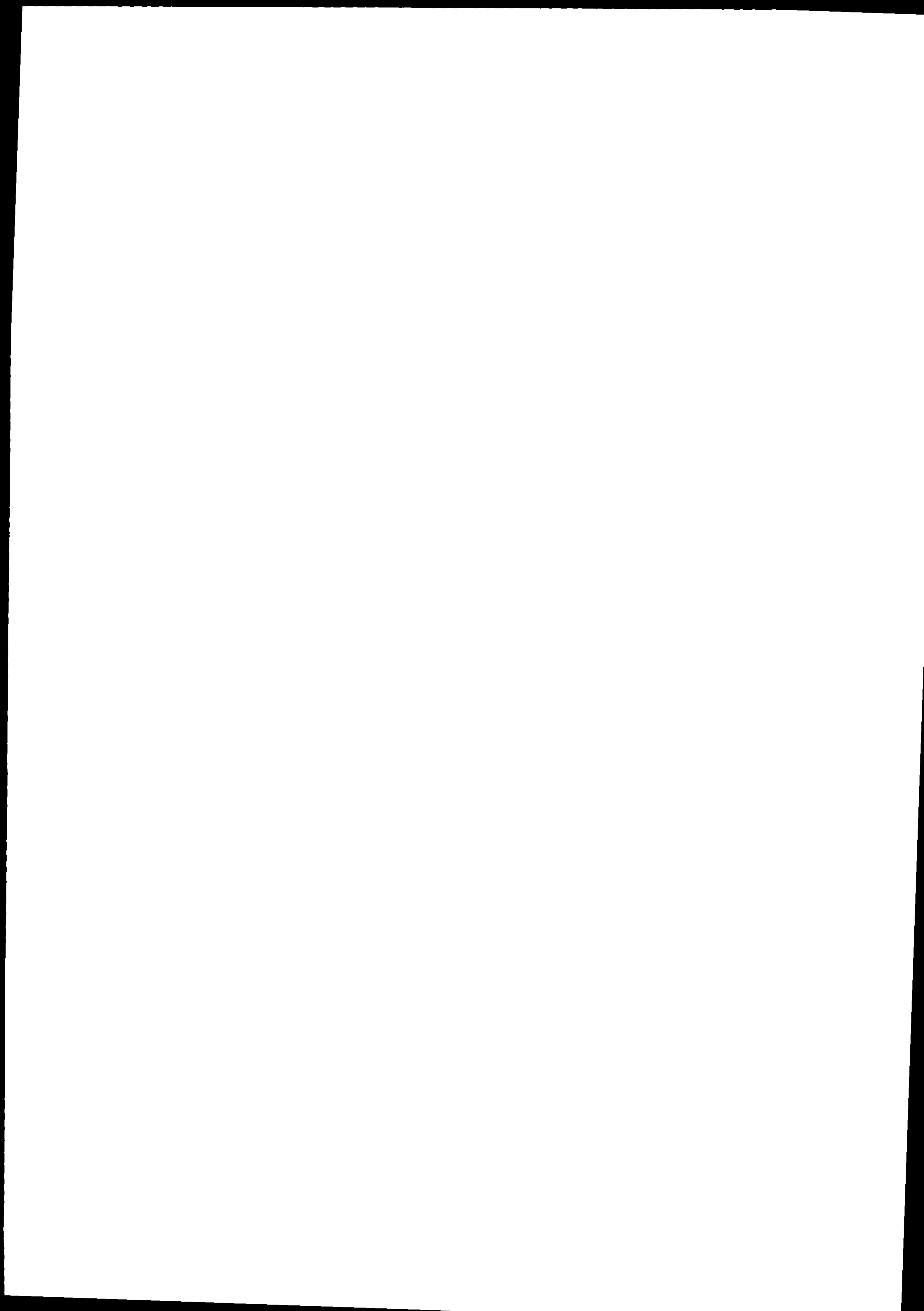
36. In this respect, the executive plays an important role in initiating reform of the services and monitoring its progress. Like other bureaucracies, services have in-built resistance against change, are hindered by red-tape, pursue sometimes parochial interests and prefer procedures above outcomes. It is the responsibility of the executive to take care that intelligence services take initiative whenever necessary, co-operate with other agencies, respect human rights and abide by the rule of law.

37. The role of Parliament. Oversight or scrutiny of the security sector cannot remain the exclusive preserve of the government alone without inviting potential abuse. It is commonplace, aside from their role in setting the legal framework, for Parliaments to take on the task of scrutinising governmental activity. In a democracy, no area of state activity should be a 'no-go' zone for Parliament, including the security and intelligence sector. Parliamentary involvement gives legitimacy and direct democratic accountability. Effective parliamentary oversight of secret and intelligence services includes:

38. First, enacting clear and adequate laws which place the services on a statutory basis. The laws should explicitly regulate what kind of exceptional powers with a high risk of human rights violations may be used in which circumstances and provide for adequate safeguards against abuse.

39. Second, a well-functioning parliamentary committee for intelligence oversight; Having a specialised committee on intelligence is essential as a committee is the main tool of parliamentary work. Therefore, it is unfortunate that some states, such as France, do not have a specialised parliamentary control body. Unfortunately in other countries, the parliamentary intelligence body's independence from the executive is not entirely guaranteed as the members of the parliamentary oversight bodies are appointed by the prime minister and the body's annual report to parliament has to be approved by the prime minister before it can be published.

40. Third, the possibility to control the budgets of the services. Budget control of the security sector is mentioned explicitly in the OSCE Code of Conduct as a key-element of parliamentary oversight. Previous reports of the Council of Europe Parliamentary Assembly have qualified parliamentary budget control of (internal) security services as a minimum requirement. The obstacle here is the existence of so-called 'skunkworks' or 'black budgets', i.e. funds for the services which are not made visible in the yearly budget. As a matter of good governance, all expenditures should be mentioned on the yearly budget and all expenditures should be paid with government money (no external funding). A



harassment seems to be an effective weapon for governments to silence critical press. For example, in Azerbaijan, 40 lawsuits were brought against 18 journalists in 2003, resulting in high fines which are very difficult for newspapers to pay and sometimes lead to bankruptcy. Nor should one forget the serious situation which exists in Belarus and which also existed not so long ago in Ukraine.

D. Challenges and concerns

49. A positive conclusion is that in most countries appropriate laws for the functioning and oversight of the security and intelligence services are enacted. Nevertheless, there is a much improvement possible, both in western and in so-called transition states.

50. For the services with exceptional powers, in most countries legislation is in place. However, it is recommended to bring the functioning and oversight of all services under legislation, i.e. security services, foreign intelligence services, military services and services aimed at signal/electronic intelligence gathering. Outsourcing intelligence gathering to private companies, e.g. internet or mobile phone companies, should be done on the basis of law and by approval of parliament.

51. The use of exceptional powers by the services should be in accordance with the ECHR (especially Article 8 concerning privacy). The laws should be legislated by parliament, necessary in a democratic society, proportionate use of the powers and remedies available for citizens should be legislated. Needless to say that the laws need to be implemented, enforced and respected. Otherwise the law is only a facade for unconstitutional, illegal practices.

52. It is important that the laws on security and intelligence services define the mandate of the services, that is, the laws have to define national security and that their functioning is limited to threats to national security. Only in this way can it be avoided that the security services move to other areas without explicit consent of parliament.

53. The executive is responsible for tasking and prioritising the services, including the reform of the services which is necessary in the new security environment. Especially after 9/11 and 11-M this is necessary to avoid the services "fighting the previous war".

54. Serious concerns exist that in various European states, the government is instrumentalising the security services in the context of the government's struggles with the political opposition.

55. Parliaments should have a specialised committee on intelligence oversight which is independent from the executive in terms of resources, agenda-setting, membership and reporting. Parliament has the power to approve the budget, has access to all necessary information, is able to commission expertise from civil society and has effective reporting mechanisms in place. Parliament should not control (manage) the services operations, sources and methods.

56. An independent judiciary is essential for monitoring the services and includes *a priori* and *ex post* control of the services' operations. The executive and services should not interfere with due process.

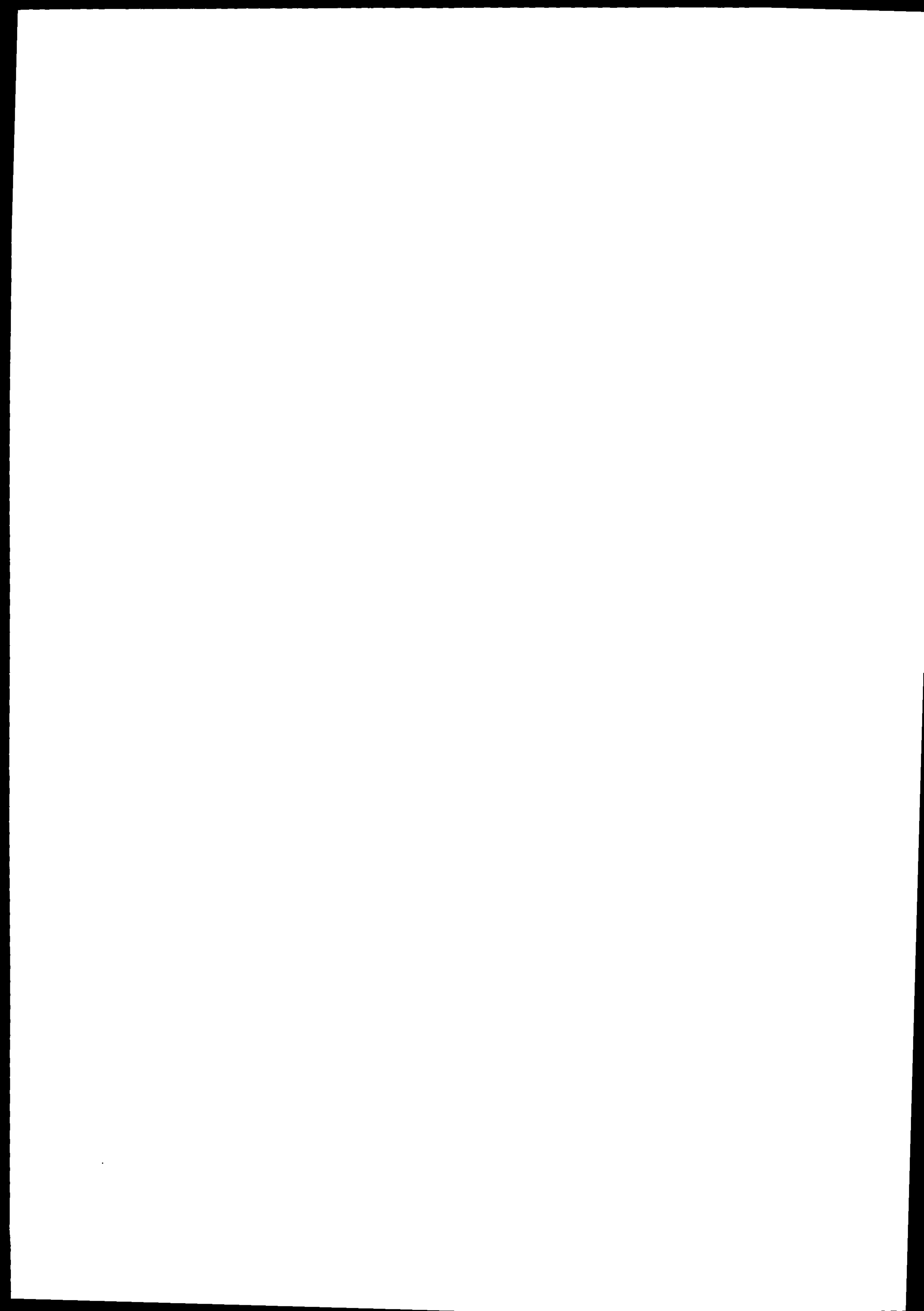
57. Independent review bodies exist (ombudsman, audit offices), preferably appointed by and reporting to parliament. Parliament should check whether legislation is implemented in accordance with parliament's objectives.

58. Governments should refrain from interfering with the functioning of the free press. It goes without saying that the civil rights of journalists are respected and that libel laws are not misused for silencing the press.

Democratic policing

A. Relevance to national security

59. Regular police are responsible for providing law and order, public safety and fighting crime. The nature of the work of police and their powers of arrest means that they have substantial scope to limit people's rights and freedoms. The common view now among many experts is that the fundamental



accountability and control mechanisms such as disciplinary procedures for dealing with allegations of misconduct and evidence that officers are brought before ordinary criminal courts for breaking the law. Second, there should be mechanisms involving police working in partnership with representatives of the community at the national and local level (ie. Accountable to elected political authorities at the national and local level, civilian review boards or committees, municipal boards). And third, there should be an independent (non-police) review and investigation process with its own resources and broad powers to examine serious public complaints about police behaviour, such as an ombudsman.

66. At international level, it seems that states agree on the basic principles of functioning and oversight of police in a democratic state. The most relevant international agreements and code of conducts are:

a. Council of Europe *European Code of Police Ethics.* The Code defines the objectives of the police, the legal basis of its functioning under the rule of law, its relation to the criminal justice system, the desired principles for organisational structure (including the accountability mechanisms), and the guidelines for action/ intervention.
b. UN *Code of Conduct for Law Enforcement Officials.* The Code emphasises the human rights and rule of law dimensions of all police activities, and urges their unconditional observance.
c. UN *Civilian Police Principles and Guidelines.* Although primarily designed as a set of guidelines for policing in the context of peacekeeping operations, it underlines the same general set of themes as other policing Codes, both in relation to the principles and situations in the field. Its added value is the extensive section devoted to training mechanisms.
d. OSCE *Code of Conduct on Politico-Military Aspects of Security.* The Code stating the participating states' commitment to an appropriate balance of assuring effective security and the respect for human rights and fundamental freedoms. It is wider in scope, in that it encompasses the military, paramilitary and internal security forces, as well as intelligence services

D. Problems and challenges

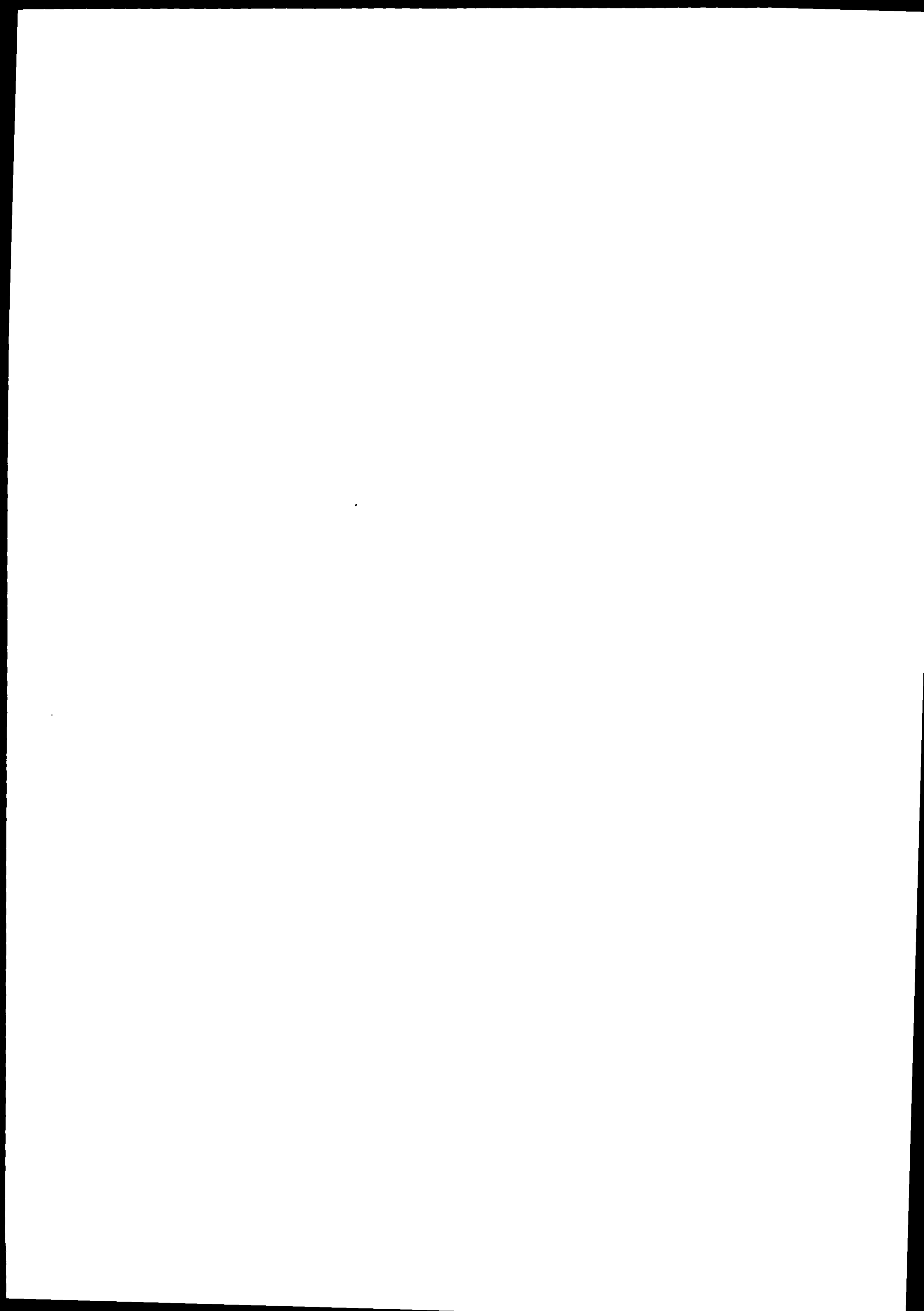
67. The principles of Democratic Policing, and particularly Democratic Oversight of the police are no longer the central subject of the debate, and most experts seem to agree on them. The real problem is the effectiveness of the oversight mechanisms. The internal mechanisms are inherently vested with in-built problems, whereas the effectiveness of the external mechanisms tends to be very variable. The police are likely to resist the pressures from the external bodies they disagree with, and arguably they got quite good at handling that. It is difficult to disentangle which oversight mechanisms are most effective, and while it is sensible to presume that they should be applied simultaneously, their effect can only become tangible if the principles are translated to actions on managerial, personnel, training/ education as well as policy levels. Effective democratic oversight will at the very fundamental level require strong, and perhaps concerted, commitments from both the civil society and the police practitioners. Only then the otherwise indirectly and moderately effective principles may become entrenched in the organisational culture of the police forces.

68. Two of the main problems in the post-9/11 environment are that the emphasis in policing in certain states has shifted to counter-terrorist policing, which tends to be covert and involves increased interaction with security services and intelligence agencies. This is resulting in the blurring of the lines between police and security / intelligence services, and has potential to degrade transparency and accountability. Moreover, the key concern in counter-terrorist policing is maximising efficiency, which may come at the expense of legal and procedural safeguards.

69. The very fundamental core problem of democratic oversight of the police agencies, is either lacking or inadequate legal framework spelling out the mechanisms of accountability and oversight. Naturally, the entailing problems affect the legitimacy of the police, and are also likely to be related to the low indices of professionalism of a particular force in question.

70. In any case, ensuring adequate legislative framework consisting of all the discussed elements is a necessary point of departure towards democratic oversight of the police.

71. The problems of inadequate legislation are to a large extent characteristic of the Council of Europe States that experience relatively the least of the international pressure for reforms.



breakdown of law and order." Regardless of their objective effectiveness at deterring illicit cross-border movements, border controls play an important political and symbolic role in highlighting the state's authority and legitimacy to exert control within a territorial space.

80. The term *border control* must be used with the caveat that borders, like conflict and crime, are at best managed — full control is rarely possible. For that reason, *border management* is sometimes preferred as a term. Here the terms will be used interchangeably. *Border management services* is used as a generalised descriptive term, and may include police, customs, immigration, health inspection and other services, while *border police or border guards* refers to the agents fulfilling functional security roles in border regions. Differences between Council of Europe member states sees the terms border guards and border police used interchangeably and the organisation of the border services of varying types, either as independent and specialised multi-purpose organisations, subordinated to ministries of the interior, or forming part of a national police force. The importance of the border guards' role at the intersection of military/ police, national/international, and internal/external security is now clear even if their categorisation as military or police remains contested.

81. There are three main functions that the border services should fulfil. These are:

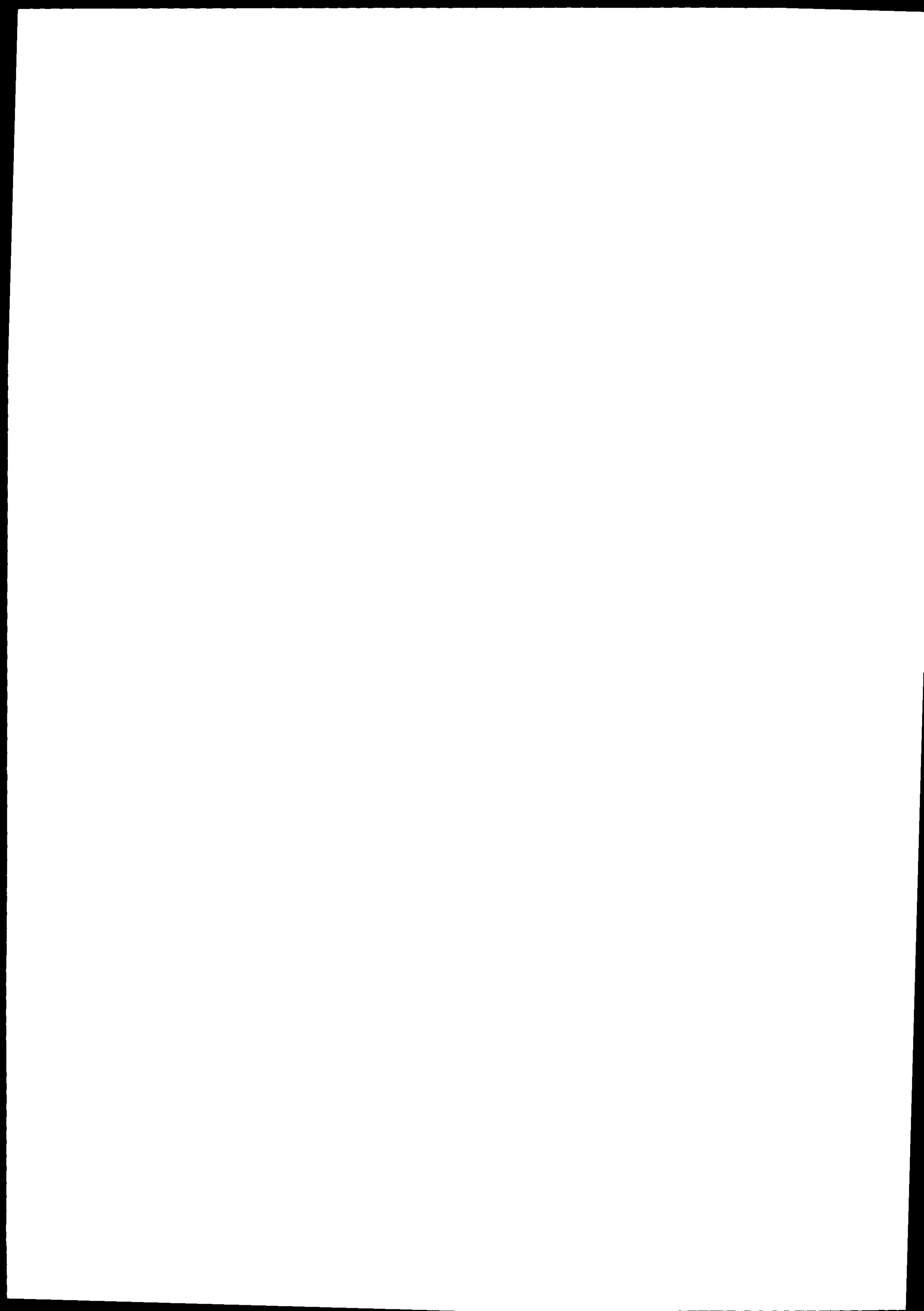
a. Facilitation of lawful traffic (provide facilities for fluent traffic)
b. Protection of rights (human rights and right to international protection)
c. Security (border management and other law enforcement).

82. The EU has long recognised that the development of the single market without internal frontiers in which there is free movement of goods, persons, services and capital would require a commensurate increase in effectiveness of controls at the external EU border in addition to development of common asylum, immigration and visa policies. With the dismantling of internal border controls, member states of the European Union recognised that cross-border or transnational threats are a common concern, they will require common, coordinated and harmonised policies to deal effectively with them. In the case of European border security, this response is found in the concept of integrated border management (IBM). This concept emphasizes the need for all actors concerned with border security threats to coordinate their efforts. Customs offices, migration and various inspection authorities, for example, are encouraged to work closely with border police organisations. With the effects of globalisation and growing inter-dependency, border security is not simply a national concern, but requires international co-operation to tackle common problems. Border management systems therefore include co-operation on the national (inter-agency) and international (bilateral, regional and multilateral such as EU) levels.

83. Border management in the European Union member states is governed by the Schengen agreement of 1985, which entered into force in March 1995. It remained at an intergovernmental competence until 1 May 1999, when the Amsterdam Treaty came into effect and the Schengen acquis became part of the EU machinery in the first pillar. All EU countries, with the exception of Ireland and Britain, are now Schengen countries. Schengen countries have eliminated internal border controls while harmonising and tightening external border controls. Schengen also includes movement towards a common visa regime, an agreed asylum processing procedure, police and judicial co-operation and the creation of a shared computer information exchange system that links data bases of member states with the names of criminal aliens, rejected asylum applicants and other undesirables.

Obligations of border guards to respect human rights of refugees and asylum seekers

84. Border guards fulfil policing and law enforcement missions, and as such border guards have a fundamental duty to protect human rights by preventing the infringement of people's human rights by others and by respecting human rights in the exercise of that duty. As a primary step towards ensuring that human rights remain a core concern of border guards in the fulfilment of their duties, training in human rights and especially how to implement them in the practical aspects of their work should be provided for border guards, customs officers and immigration officials. External civilian oversight and monitoring of respect for human rights by border officials can be performed by NGOs involved in human rights, and advocacy groups working on behalf of refugees and asylum-seekers, anti-trafficking groups and others.



- Essential standards are set as well in the so called Non-binding provisions. The most important part of this category of standards is the Schengen Catalogue, which defines recommendations and best practices.
- Several other relevant documents exist, and the further development towards integrated management of external border will bring in new material.

92. With regard to certain aspects of the European Schengen Information System, there are no sufficient legal safeguards concerning human rights, for example data protection, free movement across borders, rights of stateless people to travel. The appropriate legislative framework should be drawn up and introduced as national legislation.

93. Non-binding provisions include European Council decisions. Naturally, these decisions are of very general nature, but they point out the highest political commitment, which will later be given a more concrete substance in decisions of the Council of Ministers or by the Commission. One decision of the European Council is worth noting here: The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. It emphasised the importance of border management and concluded that management of the external borders shall be carried out by specialised trained professionals. The Tampere Conclusions express a commitment to establish a border security system that meets high standards. These standards can only be met by using specialised trained professionals in border guard duties.

94. Democratic civilian control and oversight of border guards is essential because of the potential of border guards, as a specialised police force, to engage in corruption, discrimination and excessive use of force.

95. Oversight is undoubtedly required to ensure the eradication of corruption, discrimination or brutality but internal means are also vital to addressing such problems, backed up by external sanctions as necessary. The chosen means may differ but all should reflect the objectives of achieving an effective yet democratically controlled and accountable border service that functions with respect for human rights. Leadership will be a key issue in determining the effectiveness of reform; the acceptance of the centrality of human rights and accountability at the highest and most influential levels of the border guard management structure is essential to having the norms accepted through the ranks.

96. Oversight by the courts and the judiciary should apply equally to border management. In Europe, where the Schengen acquis structures the border control systems of member states and an increasing number of aspiring states on the periphery of the EU, legal and judicial knowledge are particularly relevant to the understanding and application of this complex body of law and its interaction with the state's international obligations, including the respect of human rights.

97. Oversight, accountability and transparency concerns also arise with regard to state claims of exception to the Schengen regime. Critics maintain that due to the dominance of security concerns, especially after the terrorist attacks of 11 September 2001, the principle of freedom of movement of persons has been undermined along with other fundamental rights and freedoms guaranteed at the European and international levels, both for EU citizens and third country nationals. The Schengen Convention (Article 2.2) establishes that internal borders may be crossed without checks on persons being carried out. However, it also recognises that where public policy or national security so requires, a member state may decide unilaterally to carry out national border checks appropriate to the situation for a limited period. Even though this was meant to apply exceptionally to emergencies and limited in time, EU member states have used this provision on a regular basis to re-establish border controls. This often occurs when there are high-level international political summits or meetings taking place which are expected to draw demonstrators and protestors. Protestors have been blocked entry into EU member states on the basis of membership in a group, rather than on an individual case-by-case basis. Because this provision remains at the intergovernmental level (ie. state authorities unilaterally take the decision to reimpose border controls), there is complete lack of judicial and parliamentary accountability for the implementation of this paragraph. 'The law enforcement authorities at the national level have wide discretion to determine the existence of a threat to public policy and national security, and the security standards to follow in the particular event.' Through the over-use of supposed emergency clauses to reimpose border controls and to prevent entry to those deemed likely to demonstrate and cause disturbances to public order, states impinge on basic human rights such as the freedom of expression and freedom of assembly. There is a lack of democratic accountability, in particular of the failure to respect the principles of proportionality, transparency and human rights.

committee, industry committee, home affairs committee, etc) are sometimes required to hold joint meetings. The following is therefore a series of examples which cover practically all the supervisory systems to be found in member states.

105. In the Ukrainian parliament (Verkhovna Rada) there is a national security and defence committee. It may decide on its own initiative to hold hearings, but has no power to insist that its decisions be implemented. It has two sub-committees, one responsible for legislative guarantees relating to security, intelligence and counter-espionage bodies, and one relating to the border and customs services. Meetings on matters relating to the fight against terrorism, intelligence and counter-espionage are held in camera with the application of the rules of confidentiality. In practice, parliamentary supervision is inadequate and ineffective. It should be improved by strengthening the powers of the relevant committee and sub-committees.

106. In Finland, the defence committee is responsible for parliamentary supervision of matters relating to military service, the armed forces and the forces involved in peace-keeping operations. The foreign affairs committee is also involved in this latter area. This committee also plays a role in general security policy and deals with questions relating to the EU's Common Foreign and Security Policy. (CFSP). There is no special sub-committee. The committee's meetings are normally held in camera with due regard for the rules of confidentiality. However, the committees may from time to time organise public hearings. They can ask to take statements from ministers, civil servants or other experts. Parliamentary supervision in the fight against terrorism is carried out via hearings with ministers and senior officials and by examining reports drafted by the government, which are debated in the parliament's plenary sessions. Lastly, the government has to obtain a specific mandate from parliament before taking any decision at EU level.

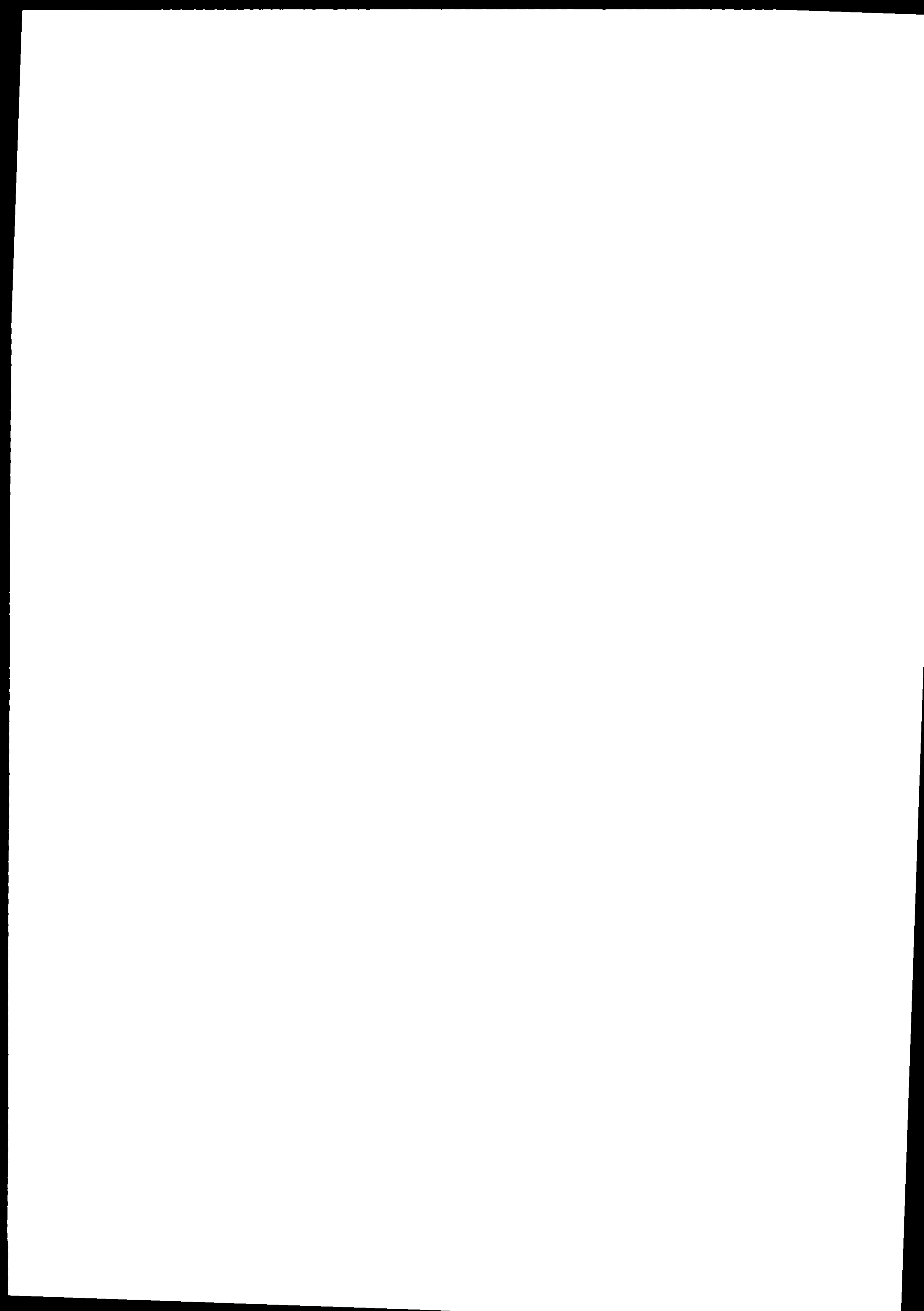
107. The Polish parliament has two chambers. Under the Polish constitution, both the Chamber of Deputies (Sejm) and the Senate have legislative powers, but only the Sejm has the right of parliamentary supervision of the government. The Sejm has a standing national defence committee and a secret services committee. Generally speaking, the defence committee meets in public, but can, where deemed necessary, meet in camera. The secret services committee always meets in camera. The rules of functioning of the Senate's national defence committee and public security committee are similar. All members of parliament have access to documents classified "secret". "Top secret" information can be given to members of parliament following a special request. The defence committee can put questions to members of the government and answers must be given within 21 days. It may also invite representatives of the relevant authorities in order to obtain information it needs for its supervisory activities. However, the national defence committee is not able to hold extraordinary hearings, comparable with a committee of enquiry; however, ad hoc committees of enquiry can be set up to look at specific cases. The Sejm also receives regular audit reports on the activities of government and administration bodies drafted by the Supreme Chamber of Control.

108. In the two chambers of the Romanian parliament, there is a defence, public order and national security committee belonging to the Chamber of Deputies, a joint Chamber of Deputies/Senate committee for parliamentary monitoring of the activities of the Romanian internal intelligence service and a joint committee on the activities of the foreign intelligence service.

109. The committee's meetings are generally held in camera and the members of the committee are required not to divulge any secret or confidential information of which they are made aware. So far, members of parliament do not have automatic access to classified information. In addition, the Senate committee may initiate an enquiry in an area falling under its competence, with the approval of the Senate Bureau.

110. In the fight against terrorism, the Supreme Defence Council has appointed the internal intelligence service as the national authority competent in the field of terrorism. Accordingly, it is the joint committee on parliamentary monitoring of the activities of the Romanian internal intelligence service that is responsible for parliamentary monitoring of the fight against terrorism.

111. In Turkey, the National Assembly has a national defence committee. This committee does not have the authority to monitor the day-to-day activities of the Ministry of National Defence and the armed forces but it is responsible for examining draft legislation relating to national defence, defence strategy, military service etc. Its work is primarily legislative. In general, its meetings are public, but at the request of the minister or two thirds of its members meetings in camera are also possible. The



121. In contrast, the European Parliament is informed about developments in the CFSP and the ESDP either through the Presidency or the High Representative for the CFSP, since it has the right to information. However, it has not the slightest power of supervision in this field. Governments did not wish to grant it such power and expressly refused to do so.

122. The inter-parliamentary bodies in Europe, comprising representatives of national parliaments, which monitor security issues are, amongst others, the NATO Parliamentary Assembly, the OSCE Assembly and the WEU Assembly. The first two are bodies with no legal link with the NATO and OSCE executives and their role is one of "parliamentary diplomacy" rather than constituting a genuine parliamentary dimension of those organisations.

123. On the other hand, the WEU Assembly derives from a treaty (the modified Brussels Treaty) and for 50 years has carried out genuine supervision of European defence policy. It is, however, under threat of disappearing, with no parliamentary supervisory body taking its place. With the establishment of the ESDP and the transfer of the WEU's competences and bodies to the European Union there is a question mark about the survival of this long-standing supervision which, if it disappears, will increase further the European democratic deficit – especially in the security and defence sector.

124. For many years the WEU Assembly has carried out a meticulous job of examining the common defence policy. Everybody acknowledges this. The bulk of its political activity was divided among the Defence Committee, the Political Committee and the Technological and Aerospace Committee. Apart from drafting reports on matters referred to them by the Assembly, the committees regularly organise public colloquies on topical security and defence issues and on arms co-operation, particularly on the technological and aerospace aspects.

125. Following discussion of the reports presented by the committees in response to the annual report of the Council of the WEU, the Assembly votes on the draft recommendations. The Council is obliged to respond to the recommendations adopted. There is no such obligation in other parliamentary organisations (NATO, OSCE). The Assembly can, by an absolute majority of representatives, decide not to approve the annual report.

126. Representatives can put oral questions to ministers or other speakers addressing the Assembly. They can at any time put written questions to the Council, which must reply within a specified time. The mechanisms in the WEU therefore make for an ongoing institutional dialogue between governments and representatives of national parliaments on defence and security matters. Governments have a legal obligation to maintain this dialogue with parliamentarians at European level in the defence sector.

127. This was a major advance for democratic supervision in the field of security and defence in Europe. If, in the event that the WEU Assembly is dissolved, this advance were to lapse and not be carried over in some way or other in the EU, it would be a major step backwards for democracy, one to be avoided at all cost. In point of fact, the European Union's ESDP already suffers from a two-fold democratic deficit.

128. It is only via the WEU Assembly that national parliaments have direct access to information at European level, thanks to the two hats worn by the High Representative and the Secretary General of the WEU, the representatives of the Political and Security Committee (COPS) and those of the WEU Council. Accordingly, a level of dialogue on the ESDP has already become established de facto between the national parliaments represented in the WEU Assembly and the executive authorities. However, if no legal solution is found requiring the European executive to maintain dialogue on the ESDP with a European body representing national parliaments, member parliaments will lose an indispensable source of information and the opportunity for dialogue and exchanging views, so important for monitoring intergovernmental activities on the ESDP at European level and for effective supervision of security problems on our continent.