

**UNITED STATES MISSION  
ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE**

**No. 2010/016**

**NOTE VERBALE**

**The Mission of the United States of America to the Organization for Security Cooperation in Europe presents its compliments to all of the other Delegations and Permanent Missions to the OSCE, the Forum for Security Cooperation, and the Conflict Prevention Center, and has the honor to submit the United States of America's completed response to the 2010 questionnaire on the Code of Conduct on Politico-Military Aspects of Security.**

**The Mission of the United States of America to the Organization for Security Cooperation in Europe avails itself of this opportunity to renew to all Delegations and Permanent Missions to the OSCE, the Forum for Security Cooperation, and the Conflict Prevention Center, the assurances of its highest consideration.**



**U.S. Mission to the OSCE  
April 15, 2010 Vienna**

**To all Permanent Delegations and Missions to the OSCE  
The Conflict Prevention Centre**

## **Section I: Inter-state Elements**

### 1. Account of measures to prevent and combat terrorism

1.1 To which agreements and arrangements (universal, regional, subregional and bilateral) related to preventing and combating terrorism is your State a party?

The United States is a party to the following twelve of the thirteen universal multilateral conventions currently in force related to states' responsibilities for combating terrorism:

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963)
- Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention, 1971)
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973)
- Convention on the Physical Protection of Nuclear Material (1979)
- International Convention Against the Taking of Hostages (1979)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988)
- Convention on the Marking of Plastic Explosives for the Purpose of Identification (1991)
- International Convention for the Suppression of Terrorist Bombing (2002)
- International Convention for the Suppression of the Financing of Terrorism (2002)

The United States is also party to the 1976 OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance.

In addition, the United States supports a broad range of international and national efforts to prevent and combat terrorist activities. These efforts are guided by the United Nations Global Counter Terrorism Strategy adopted by the General Assembly on September 8, 2006 and reaffirmed on September 4, 2008; UN Security Council Resolutions 1267, 1373 and 1540, among others; the United States National Security Strategy; and the United States National Strategy to Combat Weapons of Mass Destruction.

In the aftermath of September 11, 2001, the United States collaborated with partner nations to take action against Al Qaeda and its supporters and to eliminate the threat posed by international terrorism, including deterring states from supporting, harboring or acting in complicity with international terrorist groups.

Forty states are contributing coalition forces to the campaign against international terrorism, including twenty OSCE participating States. Coalition members' contributions include providing personnel, equipment and assets for use on the ground, air and sea. Some have also provided liaison teams, participated in planning, provided bases and have granted the U.S. over-flight approval. As of March 2009, approximately 36,000 coalition military personnel were serving alongside U.S. forces.

The United States also actively participates with coalition members in a number of bilateral and multilateral law-enforcement agreements and arrangements that aid in combating terrorism. Most law enforcement actions concern information sharing and cooperation over borders. In connection with these efforts, coalition members are also reviewing and improving domestic legislation in support of international conventions.

The United States has engaged in extensive diplomatic and partnership actions, via the United Nations, NATO, and other bilateral and multilateral fora, to support our efforts to counter terrorists and terrorism. Some of these initiatives include, inter alia:

- U.S. Department of State Regional Strategic Initiative, which coordinates counterterrorism efforts, capacity-building and assistance in partner countries across specific, multi-state regions ([www.state.gov/s/ct](http://www.state.gov/s/ct));
- The Proliferation Security Initiative ([www.state.gov/t/isn/c10390.htm](http://www.state.gov/t/isn/c10390.htm));
- G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction;
- The Global Initiative to Combat Nuclear Terrorism, endorsed by 75 countries ([www.state.gov/t/isn/c18406.htm](http://www.state.gov/t/isn/c18406.htm));

**Error! Hyperlink reference not valid.**- G8 Action Plan to Enhance Transport Security and Control of Man-Portable Air Defense Systems (MANPADS);

- Wassenaar Arrangement initiatives to strengthen controls over MANPADS, resulting in the endorsement of such controls by more than 95 countries from four multilateral organizations (the Wassenaar Arrangement, OSCE, APEC, and OAS) ([www.wassenaar.org](http://www.wassenaar.org));
- The U.S.-Russia Arrangement on Cooperation in Enhancing Control of MANPADS. (2001-2009.[state.gov/r/pa/prs/ps/2005/42647.htm](http://state.gov/r/pa/prs/ps/2005/42647.htm)); and - Numerous training and capacity-building programs – to include countering cash couriers, breaking terrorist abuse of charities, law enforcement training, border security, and critical infrastructure protection - via regional multilateral bodies such as the OSCE, OAS, APEC, and NATO.

1.2 What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?

The United States has enacted domestic legislation including the criminalization of acts covered by the Conventions and Protocols, assertion of U.S. jurisdiction over such acts, and the imposition of severe penalties for the commission of such acts.

Twenty-one Bills and Joint Resolutions related to the attack of September 11, 2001 have been signed into law, including:

- USA PATRIOT ACT of 2001 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) as extended and amended by the USA Patriot Improvement and Reauthorization Act of 2005;
- Air Transportation Safety and System Stabilization Act;
- Terrorist Bombings Convention Implementation Act of 2001;
- Bioterrorism Response Act of 2001
- Enhanced Border Security and Visa Entry Reform Act of 2002;
- A joint resolution on authorization for Use of United States Armed Forces against those responsible for recent attacks launched against the United States of America (2001)

For further information about U.S. legislation initiatives, please visit: <http://thomas.loc.gov/home/terrorleg.htm>

1.3 What are the roles and missions of military, paramilitary and security forces and the police in preventing and combating terrorism in your State?

The National Counterterrorism Center (NCTC) was established by Presidential Executive Order 13354 in August 2004 and is responsible for leading U.S. efforts to combat terrorism at home and abroad by analyzing the threat, sharing information with partners, and integrating all instruments of national power to ensure unity of effort.

The Department of Homeland Security (DHS) was created in January 2003 to protect the nation against threats, including terrorist attacks, to the homeland. The Department analyzes threats, guards U.S. borders and airports, protects critical infrastructure, and coordinates the national response in emergencies. The Department includes, inter alia, the following major components:

- The Directorate for National Protection and Programs, which works to advance the Department's risk reduction mission;
- The Office of Intelligence and Analysis, which is responsible for assessing current and future threats to the U.S. through the use of multi-source intelligence;
- The Office of Operations Coordination, which is responsible for monitoring the security of the U.S. on a daily basis and coordinating activities within the Department and with governors, Homeland Security Advisors, law enforcement partners, and critical infrastructure operators in all 50 states;
- The Federal Law Enforcement Training Center, which provides standardized, career-long training to enforcement professionals;
- The Domestic Nuclear Detection Office, which works to enhance the nuclear detection efforts of federal, State, territorial, tribal and local governments, among others, to ensure a coordinated response to such threats;
- United States Customs and Border Protections (CBP), which is responsible for protecting U.S. borders from the infiltration of terrorists and terrorist weapons while facilitating the flow of legitimate trade and travel;

- United States Immigration and Customs Enforcement (ICE), which is responsible of identifying and shutting down vulnerabilities to U.S. border, economic, transportation, and information security;
- The United States Coast Guard, which protects the public, environment, and U.S. interests in U.S. ports and waterways, along the coast and on international waters;
- The Federal Emergency Management Agency (FEMA), which prepares the United States for hazards and manages response and recovery efforts following any national incident; and
- The United States Secret Service, which protects the President and other high-level officials and investigates counterfeiting and other financial crimes, including, inter alia, computer based attacks on U.S. financial, banking and telecommunications infrastructure.

For further information on the Department of Homeland Security, please review: <http://www.dhs.gov>.

The Federal Bureau of Investigation (FBI) is the lead law enforcement agency for investigating acts of domestic and international terrorism. The Federal Bureau of Investigation (FBI) relies on a vast array of partnerships across the nation and around the world to disrupt and defeat terrorists. For example, Joint Terrorism Task Forces (JTTFs) are teams of state and local law enforcement officers, FBI Agents, and other federal agents and personnel who work shoulder-to-shoulder to investigate and prevent acts of terrorism. Information on FBI activities can be found at: <http://www.fbi.gov/terrorinfo/counterrorism/waronterrorhome>.

The National Guard, along with the Naval Militia, is part of the organized militia reserved to the States by the Constitution of the United States under Article 1, Section 8. In peacetime, the National Guard is commanded by the governor of each respective State or territory. When ordered to active duty for mobilization or called into federal service for emergencies, units of the Guard are under control of the appropriate Military Department Secretary. The National Guard supports homeland defense at the State and federal level through a variety of critical roles. For specific functions and roles of the National Guard in preventing and combating terrorism, please visit: [www.ngb.army.mil/features/homelanddefense/index.html](http://www.ngb.army.mil/features/homelanddefense/index.html).

The U.S. Northern Command (USNORTHCOM) was established October 1, 2002 to provide command and control of Department of Defense (DoD) homeland defense efforts and to coordinate defense support of civil authorities within its assigned Area of Responsibility (AOR). USNORTHCOM anticipates and conducts Homeland Defense and Civil Support operations to defend, protect and secure the United States and its interests. USNORTHCOM's geographic AOR for the conduct of normal operations includes the air, land, and sea approaches to North America, and the surrounding water out to approximately 500 nautical miles, the Gulf of Mexico, the Straits of Florida; the Caribbean region inclusive of the U.S. Virgin Islands, British Virgin Islands, Puerto Rico, the Bahamas, and Turks and Caicos Islands. USNORTHCOM plans, organizes and executes homeland defense and civil support missions, but has few assigned forces. The command is allocated forces whenever necessary to execute missions, as ordered by the President and Secretary of Defense. For more information on USNORTHCOM's role in preventing and combating terrorism, please visit: [www.northcom.mil](http://www.northcom.mil).

1.4 Provide any additional relevant information on national efforts to prevent and combat terrorism, e.g., those pertaining inter alia to:

- Financing of terrorism;

The U.S. Government has used economic sanctions as a tool against international terrorist organizations since 1995. UN Security Council Resolution 1267 provides the means under international law for applying economic sanctions to international terrorist individuals and groups.

Following the events of September 11, 2001, President Bush issued Executive Order (E.O.) 13224, significantly expanding the scope of U.S. sanctions against international terrorists and terrorist organizations. E.O. 13224 provides the basis for blocking the funds of terrorists and anyone associated with terrorist groups or terrorism. The Department of State and the Department of the Treasury co-lead the campaign to expose, isolate, and incapacitate the terrorists' financial networks. The Department of the Treasury, Office of Foreign Assets Control (OFAC), is responsible for administering two sanctions programs targeting international terrorists and terrorist organizations. OFAC also administers four sanctions programs targeting terrorism-supporting governments and regimes. Implementation of programs targeting international terrorist organizations has resulted in the blocking in the United States of almost \$19.8 million related to an international terrorist organization or other related designated party. More than \$1.6 billion in assets of six designated state sponsors of terrorism also are located within U.S. jurisdiction. Of that amount, over \$567 million are blocked pursuant to economic sanctions imposed by the United States. For more information on OFAC and to review the "Terrorist Assets Report Calendar Year 2009 Annual Report to the Congress on Assets in the United States of Terrorist Countries and International Terrorism Program Designees," please visit:<http://www.treasury.gov/offices/enforcement/ofac/reports/tar2009.pdf>.

Through the Department of State, the United States also endeavors to freeze the assets of "state sponsors of terrorism." Pursuant to the Anti-terrorism and Arms Export Amendments Act of 1989 (which revises three separate United States statutory provisions on terrorism), the uniform statutory process for designating a country as a "state sponsor of terrorism" is through a determination by the Secretary of State that "the government of that country has repeatedly provided support for acts of international terrorism." The United States has currently designated four states (Cuba, Iran, Syria, and Sudan) as State Sponsors of Terrorism. Such designations have led to approximately \$280 million in frozen assets in 2009.

Under Section 40A of the Arms Control Export Act, as amended (22 U.S.C. 2781), the United States may also prohibit the sale or license of defense articles to countries that the President determines and certifies to the U.S. Congress as not fully cooperating with U.S. antiterrorism efforts. Unlike State Sponsor of Terrorism designations, determinations as to whether a country is fully cooperating with U.S. antiterrorism efforts must be made annually. Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela are currently determined to be not fully cooperating with U.S. antiterrorism efforts.

The United States has also implemented the relevant recommendations and special recommendations set out by the Financial Action Task Force (FATF), which is an inter-governmental, international standard-setting body that develops and promotes national and international policies to combat money laundering and the financing of terrorism. The U.S. is currently focused on implementing and promoting standards pertaining to countering bulk cash smuggling, abuse of charities, and illegal alternative remittances.

-- Border controls;

The Department of Homeland Security (DHS) has the primary responsibility for securing the United States from criminal or terrorist exploitation. Within DHS, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are central to this mission.

CBP is the single, unified border enforcement agency of the United States charged with securing U.S. borders while simultaneously facilitating the flow of legitimate trade and travel. CBP has developed numerous initiatives to meet these twin goals, including the Western Hemisphere Travel Initiative, the Global Entry program, the Container

Security Initiative/Secure Freight Initiative, and the Customs-Trade Partnership Against Terrorism. A comprehensive summary of CBP actions and programs can be found at:

<http://www.cbp.gov/xp/cgov/about/accomplish/>.

ICE is responsible for identifying, investigating and dismantling vulnerabilities regarding the nation's border, economic, transportation, and infrastructure security. As such, ICE is charged with the investigation and enforcement of over 400 federal statutes within the United States, in the interest of protecting the United States and upholding public safety by targeting the people, money and materials that support terrorist and criminal activity. Examples include:

- Travel document security (i.e. passports);
- Container and supply chain security;
- Security of radioactive sources;
- Use of the Internet and other information networks for terrorist purposes;
- Legal co-operation including extradition;
- Safe havens and shelter to terrorists and terrorist organizations.

For more information on ICE programs, please visit: <http://www.ice.gov/pi/topics/index.htm>.

## 2. Stationing of armed forces on foreign territory

2.1 Provide information on stationing of your States armed forces on the territory of other participating States in accordance with freely negotiated agreements as well as in accordance with international law.

The United States continues to deploy forces in many locations throughout the world both bilaterally and within an alliance context. The United States is a party to multilateral and bilateral status of forces agreements (SOFA) with more than 100 nations, each freely entered into by the host nations.

The United States has continued to play a key role in the Partnership for Peace (PfP) program. The Agreement Among the States Parties to the North Atlantic Treaty and the other States Participating in the Partnership for Peace regarding the Status of their Forces (the PfP SOFA opened for signature in Brussels June 19, 1995) provides status protections and authorizations that enable the forces of countries participating in the PfP program to station themselves on the territories of other participating States, and to join in combined exercises and training. Other agreements to be specially noted are the SOFA under the Dayton Peace Treaty with Croatia and with Bosnia and Herzegovina, which contain provisions affecting the personnel who are supporting the ongoing peacekeeping missions in Bosnia and Herzegovina and other countries in the former Yugoslavia. In regard to Kosovo, the NATO-led Kosovo Force (KFOR) was established by United Nations Security Council Resolution 1244 to provide, inter alia, for the establishment of a secure environment in which the UN Interim Administration Mission in Kosovo (UNMIK) can operate. The status of KFOR derives from its mandate under Resolution 1244. KFOR and UNMIK have issued a joint statement, and the Special Representative of the Secretary General (SRSG) has promulgated a regulation, defining the status and privileges and immunities of KFOR and its personnel.

Kosovo declared independence on February 17, 2008. In its Declaration of Independence, Kosovo reaffirmed "that NATO retains the full capabilities of KFOR in Kosovo." Kosovo has also committed to respect the responsibilities

and authorities of the international military presence pursuant to UN Security Council Resolution 1244 and the Ahtisaari Plan, including the status, privileges, and immunities currently provided to KFOR under UNMIK Regulation 2000/47.

The United States has entered into a number of additional SOFAs to enable the presence of U.S. forces in many locations to facilitate their activities in the continuing war against terrorism. These agreements are consistent with the agreements noted above.

SOFAs are critical to the success of all manner of combined activities including training, peacekeeping, and humanitarian assistance. They commonly address such issues as the right to wear uniforms and bear arms, legal jurisdiction over the forces, exemption from customs and taxes, provision for the use of military camps and training areas, and liability for and payment of claims.

### 3. Implementation of other international commitments related to the Code of Conduct

3.1 Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence- and security-building as an element of indivisible security are implemented in good faith.

Office of the Secretary of Defense (OSD) commitments to arms control are outlined in Department of Defense Directive (DoD) 2060.1. It is DoD policy that all DoD activities shall be fully compliant with arms control agreements that the United States is a party to. The Under Secretary of Defense for Acquisition, Technology, and Logistics shall oversee implementation of, and provide guidance through appropriate chains of command for, planning and execution throughout the DoD to ensure that all DoD activities fully comply with arms control agreements. The Under Secretary of Defense for Policy shall develop and coordinate DoD policies and positions on arms control implementation and/or compliance issues and represent the Secretary of Defense with coordinated DoD views in discussions, negotiations, meetings, and other interactions with representatives of foreign governments on issues concerning DoD implementation of, and compliance with, arms control agreements.

Robust verification, compliance, and implementation are essential to maintaining and strengthening the integrity of arms control, nonproliferation, and disarmament regimes. In this regard, the Department of State's Bureau of Verification, Compliance, and Implementation leads the Department in all matters related to the implementation of certain international arms control, nonproliferation, and disarmament agreements and commitments. This includes staffing and managing treaty implementation commissions, creating negotiation and implementation policy for agreements and commitments, and developing policy for future arms control, nonproliferation, and disarmament arrangements.

The Department of State's Bureau of Verification, Compliance, and Implementation also ensures that appropriate verification requirements and capabilities are fully considered and properly integrated throughout the development, negotiation, and implementation of arms control, nonproliferation, and disarmament agreements and commitments and ensures that other countries' compliance is carefully watched, rigorously assessed, appropriately reported, and resolutely enforced. The Bureau of Verification, Compliance, and Implementation is responsible for preparing the President's annual report to Congress on "Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments." The Bureau is further required to prepare verifiability assessments on proposals and agreements, and to report these to Congress as required. The Bureau also prepares the President's semi-annual Iran, North Korea, Syria Nonproliferation Report to Congress, which identifies entities that engage in the transfer of controlled items to and from Iran, North Korea, and Syria and authorizes the imposition of sanctions against these entities.

3.2 Provide information on how your State pursues arms control, disarmament and confidence- and security-building measures with a view to enhancing security and stability in the OSCE area.

DoD makes certain that negotiations take place on the basis of accurate information about U.S. military forces to ensure that agreements are equitable and contain practical measures for enhancing military security in the OSCE area.

The Department of State's Bureau for Verification, Compliance, and Implementation is responsible for implementing the following European conventional arms control agreements: the Treaty on Conventional Armed Forces in Europe (CFE), the Vienna Document 1999 Confidence-and Security-Building Measures (CSBMs), the Treaty on Open Skies, and arms control elements of the Dayton Peace Accords. Implementation efforts also include providing policy and administrative support to the Chief Arms Control Delegate in the U.S. Mission to the OSCE; providing support and personnel to NATO committees, including the NATO High Level Task Force (HLTF), the Verification Coordinating Committee and the NATO-Russia Council Arms Control Experts; and, support for the promotion of CSBMs in regions of the world beyond Europe, in connection with OSCE efforts at wider sharing of OSCE norms, principles, and commitments with Mediterranean and Asian partners.

The Bureau also leads the Department in providing sophisticated support to arms control, nonproliferation, and disarmament policymaking, including information technology support and secure, near-real-time government-to-government communications linkages with foreign government treaty partners, and educational seminars and workshops. The Nuclear Risk Reduction Center operates around-the-clock government-to-government communications links to the OSCE Communications Network, which provides for the expeditious handling of time-sensitive and routine notifications under the Vienna Document and the Open Skies Treaty.

## **Section II: Intra-State elements**

### **1. National planning and decision-making process**

1.1 What is the national planning and decision-making process in determining/approving military posture and defence expenditures in your State?

National Planning and decision-making in determining military posture begins at highest level of government. The President signs out the National Security Strategy (NSS) which expresses the President's vision and outlines goals aimed at enhancing the security of the United States. The Secretary of Defense then uses the NSS to write the National Defense Strategy (NDS), which provides guidance on the Department of Defense's goals and strategies for achieving the objectives in the NSS. The National Military Strategy (NMS) signed by the Chairman of the Joint Chiefs of Staff supports the NSS, implements the NDS and provides strategic guidance and military objectives for the Armed Services.

The United States Congress has power over the military budget and it also has the power to enact legislation imposing substantive restrictions on the size and composition of U.S. military forces, consistent with the President's constitutional authorities.

Appropriations for U.S. military forces are determined through the legislative process and by executive branch implementation of the laws passed by Congress. Early each year the President submits a budget proposal that recommends the amounts of funds to be spent for particular military purposes. The two Houses of Congress then develop legislation that may or may not be consistent with the President's recommendations.

Once defense authorization and appropriations bills are passed by Congress, the President may sign them, allow them to become law without his signature, or veto them. A Presidential veto can be overridden only by a 2/3 majority in each House of Congress. Once the defense authorization and appropriations bills become law, the President generally implements them through the Department of Defense.

All phases of this process are conducted publicly, except for a very limited class of information related to particular programs that are classified in order to protect national security.

1.2 How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?

The Department of Defense takes into account the security concerns of other states through the negotiation and observations of arms control agreements. These negotiated agreements reflect the concerns of their States Parties. In addition, the DoD reviews new weapons systems proposed for development to ensure they are in accordance with current arms control agreements. The DoD actively manages its military activities and procurements to make sure that the United States is in full compliance with arms control agreements.

On November 28, 2005, the Department of Defense issued Directive 3000.5 (Military Support for Stability, Security, Transition and Reconstruction (SSTR) Operations) that established Department policy and assigned responsibilities within the Department for planning, training, and preparing to conduct and support stability operations. Stability operations include military and civilian activities conducted to establish or maintain order in States and regions. Integrated civilian and military efforts are key to successful stability operations. Whether conducting or supporting stability operations, the Department of Defense is prepared to work closely with relevant U.S. Departments and Agencies, foreign governments and security forces, global and regional international organizations, U.S. and foreign nongovernmental organizations and private sector individuals and the private sector. The Department of Defense leads and supports the development of military-civilian teams. Their functions include ensuring security, developing local governance structures, promoting bottom-up economic activity, rebuilding infrastructure, and building indigenous capacity for such tasks.

The Department of Defense coordinates relations with the Department of State's Office of the Coordinator for Reconstruction and Stabilization, created on August 5, 2004, to enhance U.S. institutional capacity to respond to crises involving failing, failed, and post-conflict states and complex emergencies. The core mission of this Office is to lead, coordinate, and institutionalize U.S. government civilian capacity to prevent or prepare for post-conflict situations, and to help stabilize and reconstruct societies in transition from conflict or civil strife, so they can reach a sustainable path toward peace, democracy and a market economy.

The United States actively contributes to international security through its participation in international peace keeping operations. Recent U.S. involvement in peacekeeping includes operations in: the Balkans, Central African Republic, Haiti, Iraq, Liberia and Sudan.

In cooperation with the military forces of other nations, the U.S. military assists nations to build their defense capacity against threats to stability, including transnational threats such as terrorism and the narcotics trade. Current operations in Afghanistan are one example of how U.S. military forces engage in activities across the spectrum from peace to conflict.

## 2. Existing structures and processes

2.1 What are the constitutionally established procedures for ensuring democratic political control of military, paramilitary and internal security forces, intelligence services and the police?

Article II, section 1 of the Constitution of the United States provides, "the executive power" is vested in the President. Article II, section 2 further provides, "the President shall be the Commander in Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States." This provision has been interpreted to mean that the President's authority as Commander in Chief extends to all the military forces of the nation, including the Air Force, the Marine Corps, and the Coast Guard.

Article I, section 1 provides, "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Article I, section 8 provides that among the powers of the Congress are the powers to lay and collect taxes, to provide for the common defense, declare war, raise and support armies, provide and maintain a navy, make rules for the government and regulation of the land and naval forces, provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions, and provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States.

Although the President appoints senior civilian and military officials (including the promotion of senior military officers), such appointments are generally subject to the advice and consent of the Senate.

Also to be considered is review by the judicial branch. Under Article III, section 2 of the Constitution: "the judicial power shall extend to all cases ... arising under the Constitution, the laws of the United States, and ... to controversies to which the United States shall be a party." In this regard the Supreme Court of the United States may hear appeals from the U.S. Court of Appeals for the Armed Forces in criminal cases. Lawsuits can be brought against the U.S. Government and the military in federal district courts, although subject to certain limitations such as sovereign immunity. Courts may interpret laws passed by Congress, resolve certain controversies over separation of powers, award money damages, and issue injunctions and writs of habeas corpus.

2.2 How is the fulfillment of these procedures ensured, and which constitutionally established authorities/institutions are responsible for exercising these procedures?

Congress has enacted the Uniform Code of Military Justice, which empowers the President and the military chain of command to exercise effective discipline over the armed forces. The President has implemented this legislation in the Manual for Courts Martial, which provides detailed rules on the conduct of judicial and non-judicial proceedings for all the military departments. The exercise of this disciplinary power is also subject to independent judicial review by a civilian court, subject to the overall supervision of the U.S. Supreme Court.

Of special importance is the Posse Comitatus Act (18 U.S.C. 1385), as implemented by the Secretary of Defense, which provides criminal penalties for anyone who uses the military forces of the United States (active or the reserve components when acting under federal authority) to enforce civil law unless otherwise authorized by law to do so. This means that the U.S. military ordinarily cannot be used as police to enforce civil laws in the United States. This does not include military police duties. The numbers of military police available are limited, and they are trained for military rather than civil police functions.

The basis and rules for the collection of intelligence and conduct of intelligence operations are clearly defined publicly by statute and executive orders. The framework for U.S. intelligence is found in the National Security Act of 1947 (50 U.S.C. 401-504), as amended, including significant amendments establishing a new Director of National Intelligence, found in the Intelligence Reform and Terrorism Prevention Act of 2004. This statute establishes the National Security Council, the Central Intelligence Agency, intelligence activities by the Department of Defense, funding rules, accountability to civilian leadership, and Congressional oversight. Among other things, the National Security Act requires that certain congressional committees be kept fully and currently informed of U.S. intelligence

activities. The key Executive Order in this regard is E.O. 12333 of December 4, 1981, as amended by Executive Order 13355 dated August 27, 2004 and Executive Order 13470 dated July 30, 2008. There are also numerous legislative provisions that protect privacy and access to information. These activities may be subject to judicial review.

2.3 What are the roles and missions of military, paramilitary and security forces, and how does your State control that such forces act solely within the constitutional framework?

U.S. military forces are at all times subject to the civilian control and authority of the President and the Secretary of Defense. Congress also exercises its legislative authority to regulate the armed forces. The exact division of authority between the President and the Congress is a matter of frequent debate, but it is clear that the military forces are at all times subject to the collective authority of the elected and appointed officials of the executive branch and the elected officials of the legislative branch of government.

The members of the National Guard are under the authority of the governors of their States when not in federal service. When in Federal service under U.S. law, the members of the National Guard are for all practical purposes in the same status as members of the regular military forces. Members of the reserve forces are subject to the same conditions of service as members of the regular military forces when they are called to active duty. The importance of the reserves and the National Guard has greatly increased as they are regularly called up for duty for military installation security, peacekeeping, and other combined operations. This is particularly significant in specialized areas such as civil affairs and military police where the military personnel with these needed skills exist primarily in reserve and guard units.

The Federal government agencies involved in protection of the internal security of the United States include, inter alia, the Federal Bureau of Investigation and the U.S. Marshal Service within the Department of Justice; the Secret Service, Immigration and Customs Enforcement and the Coast Guard within the Department of Homeland Security (except when the latter is operating as a specialized service under the Navy in time of war or when directed by the President. By statute, the Coast Guard is a military service and branch of the armed forces.) Each of these agencies is under the authority of the President and cabinet officers appointed by the President with advice and consent of the Senate. Relevant committees of the Congress exercise oversight of these Federal agencies. In cases where these agencies work in concert with active military forces it is normal to draw up a memorandum of understanding to provide for respective responsibilities and financial arrangements. In some cases the civilian agencies may request support that the active armed forces may provide on a reimbursable basis.

The intelligence services of the United States operate under the direction and oversight of the President and senior officials appointed by the President. They are also subject to congressional intelligence oversight.

State and local police forces are subject to the control of elected executive officials and legislative officials of elected state and local governments, and to the judicial review of the courts.

Many of the specific statutes that apply to the Department of Defense are contained in Title 10 of the United States Code, which describes the functions of the Department of Defense, its powers, and its key officials. It establishes the Military Departments, the Chairman of the Joint Chiefs of Staff, combatant commands, the reserve components and their inter-relationships. Special rules provide for military support to civilian law enforcement agencies (chapter 18), humanitarian and other assistance to foreign countries (chapter 20), Department of Defense intelligence matters (chapter 21), and the Uniform Code of Military Justice (chapter 47). Title 10 also includes provisions pertaining to training, pay, procurement, and financial accountability. There are statutory positions such as the General Counsel of the Department of Defense, and the General Counsel of the Departments of the Army, Navy and Air Force, and the Judge Advocates General of the Departments of the Army, Navy and Air Force who ensure provision of proper legal

advice, reviews of programs and operations, and oversight. Also of particular importance is Department of Defense Directive 5500.07, "Standards of Conduct," dated November 29, 2007, and the Joint Ethics Regulation (JER) that implements it. These directives apply to all personnel of the Department of Defense and establish rules to implement the principle of public service as a public trust, and to ensure that U.S. citizens can have complete confidence in the integrity of the Department of Defense and its employees. These directives cover the areas of conflicts of interest, political activities, use of benefits, outside employment, financial disclosure and training. Federal law also has established the Offices of Inspectors General. The Department of Defense and the separate military departments have independent Inspectors General who conduct inquiries into allegations of fraud, waste, and abuse. Further, they review current organizational matters and provide advice to the civilian and military leadership on whether there are better or more efficient ways to obtain the same or better results.

With regard to Standards of Conduct, the United States participates in exchanges with many countries with regard to military legal matters. Standards of conduct are part of the discussions during such exchanges. U.S. military personnel continue to meet with military and civilian officials in other countries to discuss military personnel issues and standards of conduct for military and civilian defense personnel. Uniformed legal personnel have visited countries in Eastern Europe, South America, Africa, and Asia to provide lectures and instruction on discrete legal topics.

### 3. Procedures related to different forces personnel

#### 3.1 What kind of procedures for recruitment and call-up of personnel for service in your military, paramilitary and internal security forces does your State have?

Procedures for recruitment for the regular military forces and their reserve and National Guard components are established by statute. Although authority for compulsory recruitment ("the draft") still exists, it has not been exercised since 1973. Since that time all recruitment into the U.S. military forces has been on a voluntary basis. The minimum age for enlistment in the armed forces is 18 years, or at age 17 with parental consent. Discrimination in recruiting on grounds of race, religion, gender, or ethnic origin is prohibited. Statutes passed by Congress establish conditions under which the President has the authority to order members of the reserve and National Guard to active duty.

In January 2000 the United States joined with other nations in Geneva in the United Nations Working Group drafting an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The result of this working group effort was an Optional Protocol that requires States Parties to raise the minimum age for voluntary recruitment into their national armed forces to an age greater than 15 years and commits States Parties to take all feasible measures to ensure that members of their armed forces under age 18 do not take a direct part in hostilities. The Protocol also bars compulsory recruitment below age 18. This Optional Protocol was adopted by the United Nations General Assembly on May 25, 2000 and subsequently entered into force on February 12, 2002.

The United States signed the Optional Protocol on July 5, 2000 and became a party to the Optional Protocol on December 23, 2002. The United States declared at that time that the minimum age for voluntary recruitment into the Armed Forces was 17. The United States also provided the following understanding:

"...with respect to Article 1 of the Protocol

(A) the term "feasible measures" means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;

(B) the phrase "direct part in hostilities"-

(i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and (ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and

(C) any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken."

3.2 What kind of exemptions or alternatives to military service does your State have?

As indicated above, no individual has been compelled to enter military service since 1973. Existing statutes authorizing compulsory service provide an exemption from service for persons who have conscientious objections to any military service. They also provide for assignment to noncombatant duties for those who do not object to all military service but who have conscientious objections to performing combatant duties. Individuals whose conscientious objections crystallize after they have entered military service may be honorably discharged administratively.

3.3 What are the legal and administrative procedures to protect the rights of all forces personnel as well as conscripts?

The Uniform Code of Military Justice provides procedural guarantees for courts martial that are similar to the rights enjoyed by defendants in the civilian criminal courts, and in some respects exceed civilian standards (e.g., counsel is provided without cost for both trial and appellate proceedings). Both military judges and defense counsel are assigned to separate commands reporting to the Office of their respective Military Department Judge Advocates General in Washington to prevent any inference of command influence on their performance of duty. The courts-martial system has an appellate system that allows those convicted of serious offenses to appeal their cases to the United States Court of Appeals for the Armed Forces, whose five civilian members are appointed by the President and provide independent civilian review of the military justice system. In accordance with federal law, the United States Supreme Court may also review convictions by courts-martial to ensure that defendants were not denied any constitutional right and that the proceedings were not contrary to law.

Administrative proceedings are conducted in accordance with procedures and standards established by Congress and the President, and federal courts are available to review claims of unfairness or illegality in such proceedings. Federal statutes guarantee the right of military members to file complaints with the Inspector General of their military department and with the Inspector General of the Department of Defense, and to communicate freely with Members of Congress. Department of Defense policies permit military members to exercise their religion freely, to participate in certain political activities during non-duty time and in their personal capacity, and to vote in elections on the same basis as other citizens.

Also available to military personnel and their families is an extensive legal assistance program that provides legal advice and services in regard to wills and powers of attorney, matrimonial matters, debt issues, and taxes. This support is especially important to military personnel deploying on overseas missions and to the families who remain behind. Military personnel being deployed on overseas missions receive as part of their deployment processing a review of the documents and legal issues that would be important to them while away from their families. There is

also a program to ensure that military personnel are aware of their right to vote, and assistance given in applying for and mailing absentee ballots.

#### 4. Implementation of other political norms, principles, decisions and international humanitarian law

4.1 How does your State ensure that International Humanitarian Law and Law of War are made widely available, e.g., through military training programmes and regulations?

A Department of Defense Directive (the latest version is DoD Directive 2311.01E, dated May 9, 2006) establishes the "DoD Law of War Program." Among other elements, the Directive requires that each of the DoD components establish effective training and dissemination programs. The DoD components have established training and dissemination programs under which (1) all persons entering the U.S. armed services receive general training on the Law of War; (2) individuals receive specialized Law of War training commensurate with their duties and responsibilities (e.g., ground combatants, aircrew, naval personnel, military police, religious personnel, and medical personnel); (3) refresher training is provided as appropriate; and (4) Law of War topics are included in exercises and inspections. The Department of Defense is also drafting a comprehensive Law of War Manual for training and reference purposes. The manual is currently under review by a select committee of peers from other countries. Their comments will be considered before final approval.

4.2 What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?

A special effort has been made in recent years to train military personnel and units assigned to participate in peacekeeping and humanitarian operations in the Law of Armed Conflict rules that are particularly applicable to them. For example, units operating in Bosnia and in Kosovo receive special training. Training standards are coordinated within NATO to ensure that all participating nations have similar rules and standards. Such training is also practiced in multinational training exercises including Partnership for Peace (PfP) programs. Rules of engagement and operations plans are regularly reviewed by both national and NATO attorneys to ensure compliance with the international Law of Armed Conflict. Also of note is the requirement to provide training on human rights standards to all personnel deploying to countries in South and Central America. In addition, rigorous training programs continue for U.S. forces both in the United States and deployed outside the United States. The U.S. Armed Forces have vigorously applied law of war training and principles during the current war against terrorism. Despite new challenges and changing circumstances, law of war principles are scrupulously applied. As noted in the January 29, 2009 Statement before the OSCE Permanent Council, new steps have been taken to ensure observance of the law of war by members of the armed forces.

4.3 How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity?

Congress has enacted the Uniform Code of Military Justice, which empowers the President and the military chain of command to exercise effective discipline over the armed forces. The President has implemented this legislation in the Manual for Courts Martial, which provides detailed rules on the conduct of judicial and non-judicial proceedings for all the military departments. The exercise of this disciplinary power is also subject to independent judicial review by a civilian court, subject to the overall supervision of the U.S. Supreme Court.

Of special importance is the Posse Comitatus Act (18 U.S.C. 1385), as implemented by the Secretary of Defense, which provides criminal penalties for anyone who uses the military forces of the United States (active or the reserve components when acting under federal authority) to enforce civil law unless otherwise authorized by law to do so.

This means that the U.S. military ordinarily cannot be used as police to enforce civil laws in the United States. This does not include military police duties. The numbers of military police available are limited, and they are trained for military rather than civil police functions.

4.4 What has been done to provide for the individual service member's exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?

Department of Defense Directive 1344.10, February 19, 2008, provides that members of the Armed Forces on active duty should not engage in partisan political activity. They are encouraged to vote, but may not be candidates for political positions. Members of the Armed Forces on active duty shall not participate in fundraising or campaign activities, rallies, or conventions. The requirements of the Directive are derived from appropriate provisions of the United States Code including provisions which make certain prohibited conduct criminal offenses. Additionally, Title 10 Section 973 of the United States Code limits or prohibits active members of the Armed Forces from accepting employment and from holding or exercising the functions of a civil office in the United States Government.

4.5 How does your State ensure that its defence policy and doctrine are consistent with international law?

The Department of Defense assures that its defense policy and doctrine are consistent with international law by having its policies and programs, orders and operations reviewed by trained defense and military lawyers at every level from the Office of the General Counsel to the Secretary of Defense to the judge advocate officers who serve in the field with military units. There are both civilian lawyers in each Military Department, and military lawyers serving with commands at every level. Each Military Service: Army, Navy, Air Force, has a Judge Advocate General and trained military lawyers to advise commanders and their staff.

### **Section III: Public access and contact information**

#### 1. Public access

1.1 How is the public informed about the provisions of the Code of Conduct?

The Department of State's Bureau of Verification, Compliance, and Implementation's website provides a link to the OSCE's activities in the politico-military dimension: <http://www.state.gov/t/vci/cca/>.

The Department of State's Bureau of European and Eurasian Affairs' website also provides a link to the OSCE homepage: <http://www.state.gov/p/eur/rt/osce/index.htm>.

1.2 What additional information related to the Code of Conduct, e.g., replies to the Questionnaire on the Code of Conduct, is made publicly available in your State?

The Department of State's Bureau of Verification, Compliance, and Implementation's website provides a link to OSCE activities in the politico-military dimension: <http://www.state.gov/t/vci/cca/>.

1.3 How does your State ensure public access to information related to your State's armed forces?

Information related to U.S. armed forces and defense is available to the public through the following official websites:

-- Department of Defense: <http://www.defense.gov>

- Joint Chiefs of Staff: <http://www.jcs.mil>
- United States Army: <http://www.army.mil>
- United States Marines: <http://www.marines.mil/Pages/Default.aspx>
- United States Navy: <http://www.navy.mil/swf/index.asp>
- United States Air Force: <http://www.af.mil>
- United States Coast Guard: <http://www.uscg.mil>

## 2. Contact information

### 2.1 Provide information on the national point of contact for the implementation of the Code of Conduct.

The United States point of contact for implementation of the Code of Conduct is the Office of Chemical and Conventional Weapons Affairs, Bureau of Verification, Compliance and Implementation, United States Department of State. For additional information, please visit: <http://www.state.gov/t/vci/cca/index.htm>, or call 1-202-647-7988.