



**PERMANENT REPRESENTATION OF PORTUGAL
TO THE OSCE**

Nr. 26/09

NOTE VERBALE

The Permanent Representation of Portugal to the OSCE presents its compliments to all Delegations of the Participating States to OSCE and to the Conflict Prevention Centre, and with reference to decision No 4/03 of the Forum for Security Cooperation, has the honour to convey Portugal's response to the Questionnaire on the Code of Conduct on Politico-Military Aspects of Security.

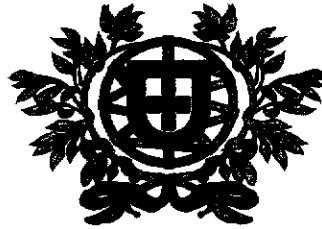
The Permanent Representation of Portugal to the OSCE avails itself of this opportunity to renew to all Delegations of the Participating States and to the Conflict Prevention Centre the assurances of its highest consideration.



Vienna, 5 August 2009

To
All Delegations to OSCE
The Conflict Prevention Centre (CPC)

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THE REPUBLIC OF PORTUGAL

ANNUAL EXCHANGE OF INFORMATION ON THE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY

LANGUAGE: ENGLISH
DATE TO BE EXCHANGED: 15 JUNE 2009

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MINISTRY OF NATIONAL DEFENCE
DEFENCE POLICY DIRECTORATE

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15 JUNE 2009
RESTRICTED
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LIST OF ACRONYMS

AF	Armed Forces
ATCU	Anti-Terrorism Co-ordination Unit
CCOS	Council of Chiefs of Staff
CHOD	Chief of the General Staff
CHODPD	Chief of General Staff Force Planning Directive
COS	Chiefs of Staff of Services - Navy, Army and Air Force
CPC	OSCE Conflict Prevention Centre
ENPS	Environment and Nature Protection Service
GDND	Governmental Directive for National Defence
IGIA	Inspectorate-General of Internal Affairs
ISSC	Intelligence Services Supervising Council
ISSPR	Intelligence Services System of the Portuguese Republic
LMS	Law for the Military Service
MoD	Ministry of Defence
MPL	Military Procurement Law
MoDDMD	Ministry of Defence Directive for Military Defence
MSC	Military Strategic Concept
MSCI	Military Superior Council
NATO SOFA	Force Status Agreement of NATO parties
NATO SOFA(PfP)	Force Status Agreement of NATO PfP parties
NCO's	Non-commissioned Officers
NDAFL	National Defence and Armed Forces Law
NDSC	National Defence Strategic Concept
NDSCI	National Defence Superior Council
NRG	National Republican Guard
OL	Organic Law
PM	Prime Minister
PR	President of Republic
PRC	Portuguese Republic <i>Constitution</i>
PSP	Public Security Police
SDMIS	Strategic Defence and Military Intelligence Service
CMS	Compulsory Military Service
SIS	Security Intelligence Service
SMAF	Specific Missions for the Armed Forces
SP	Services Proposals
UN	United Nations



INTRODUCTION

The Republic of Portugal hereby submits the annual exchange of information on the OSCE Code of Conduct on Politico-Military Aspects of Security. This is in pursuance of its obligations resulting from the decision FSC.DEC/4/03, which commits the participating states to provide each other, and to the Conflict prevention Centre (CPC), relevant information on the Code, including steps taken for its implementation, in accordance with a list of items, no later than 15 April 1999 and any subsequent updates by 15 April of each year.

QUESTIONNAIRE

Question 1:

Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end:

Answer:

Portugal has been strongly co-operating in all the initiatives already adopted by the United Nations, the European Council and in the European Union, with the objective of preventing and fighting terrorism in all its ways and forms.

To this end and in the context of the European Union, namely within the framework of the III Pilar (Justice and Internal Affairs) and also within the framework of the II Pilar (Foreign Policy and Common Security), it was created a Working Group with the designation "GT/PESC/TERR-COTER", that has been following up the issue of terrorism.

It is important to underline that Portugal is bound to the "Common Action" dated October 15, 1996 adopted by the European Council (as per ONEC no L.273 of October 25, 1996), as well as to the European Convention on terrorism repression (as per Law 19/81 of August 18) and to the Europol Convention – which created the European Police Services, to which powers were given to deal with the terrorism infractions already committed or about to be made, specially, those attempting against human life, physical integrity, freedom and welfare, as well as assets of the citizens– and, finally, to the European Convention on Extradition (as per the Resolution no 23/89 of the Portuguese Parliament). Portugal is also bound to the United Nations Convention on Civil Aviation and Maritime Security regarding prevention and repression of terrorism acts.

Since December 2001, according to the 5th Constitutional revision that has been carried out since 1976, our Constitution safeguards the application of criminal judiciary co-operation norms, as established within the European Union scope.

It should be mentioned that National Defence Strategic Concept (point 8), Resolution of the Council of Ministries n°6/2003 of 20th January states that, in respecting the Law, it materializes, among others, the capacity of the Armed Forces to "in collaboration with the



Security Forces, in internal order, and in a close relation with the Allies, in external order, prevent and to face up to terrorist threats”.

Still in this context, Portugal has been following up the works since the very beginning, strongly co-operating with the “Ad-Hoc Committee” especially created by the Assembly-General of the United Nations for the preparation of the Convention on the Suppression of Terrorist Bomb Attacks.

In this field of the bilateral relations, Portugal has signed some co-operation agreements with several countries.

The fundamental principles laid down by the legal instruments administered by the European Council were followed by the Portuguese legislators, not only in the revisions of the penal and prosecuting legislation, but also in the preparation of several legislation regarding, in particular, the protection of terrorism victims and the laundering of money or other assets, resulting from criminal activities, namely from terrorism (our Decree no 325/95 of December 2).

In its fundamental nature, the Portuguese legislation regarding the terrorism prevention and repression matters falls under the Penal Code and Code of Criminal Procedure.

The Decree Law 48/95 of March 15th made some changes over the Decree Law 400/82 of September 23rd, specifically in what concerns the Articles 297 to 301- which determine and inflict the penalty to crimes, criminal associations, terrorist organizations and terrorism - was amended through Law 65/98 of September 2, which led to a change in Article 240 (racial or religious discrimination), Article 275 (explosive substances or similar substances and weaponry) and Article 287 (hijack or alteration of course of an aircraft, ship, train or passenger vehicles).

In 1998, the Prosecuting Penal Legislation underwent its last amendment of the regulations regarding prevention and repression of terrorism (Article 139, which defines the special conditions of protection of terrorism witnesses), after the review process of the terrorism victims compensations, which took place in 1996, as per Law 10/96 of March 23.

It should also be pointed out the Decree no 324/85 of August 6 that rules the legal system of the State servants, both civilian and military, who under the line of their duties or because of their duties can be victims of criminal acts, promoted particularly by criminal associations and terrorist organizations, as a retaliation or intimidation process.

Terrorism and other sort of crimes are also expressed under Paragraph 3 of Article 1 of the Internal Security Law which describes the purposes of the internal security services: “(...) to protect life and integrity of the citizens and to enforce law and democratic order against violent criminality or highly organized criminality, namely sabotage, espionage or terrorism”.



From a political point of view, it should be mentioned that until the 31st March of each year the Government must submit a Report to the Parliament, concerning the country's situation (its internal security) and concerning the activity of the Security Forces and Services developed in the previous year (Article 7 – number 3 of the Internal Security Law).

The Organic Law of the Intelligence Service sets forth its functional duties as follows: "(...) *The Intelligence Service is the sole department within the "ISSPR" (the Intelligence System of the Portuguese Republic) entitled to collect information with the purpose of ensuring the internal security and considered it necessary to prevent sabotage, terrorism, espionage and acts that, by their nature, may affect or destroy the State as constitutionally established in law.*"

In Portugal there is a Security Service – the Criminal Police – whose exclusive competence is to investigate, among others, the crimes of "*terrorist organizations and terrorism*" as well as the "*crimes committed with bombs, grenades, explosive materials or devices, prohibited firearms and booby-traps*".

The Article 28 of the Organic Law of the Criminal Police assigns the tasks of prevention, criminal investigation and co-operation between police authorities regarding the crimes as stated in the previous paragraph to a specific department of this police – "*The Anti-Crime Central Directorate*".

The Police also integrates an extra unit - "*Special Operations Group*" – with the main purpose of fighting situations of declared violence, whose solution is beyond the usual means, as it is the case of terrorist attacks which require the use of special task forces.

(a) List of international agreements, including all United Nations conventions and protocols related to terrorism, to which the participating State is a party:

Concerning the 12 UN anti-terrorism conventions and protocols, Portugal has signed and ratified all of them, and they have all entered into force as the table below shows:

Conventions and Protocols	Date of entering into force
1. Offences and certain acts committed on board aircraft (1963)	04DEC1969
2. Suppression of unlawful seizure of aircraft (1970)	27DEC1972
3. Suppression of unlawful acts against the safety of civil aviation (1971)	14FEB1973
4. Prevention and punishment of crimes against internationally protected persons (1973)	11OCT1995
5. Against the taking of hostages (1979)	06AUG1984
6. Physical protection of nuclear material (1980)	06OCT1991
7. Suppression of unlawful acts of violence at airports serving international civil aviation, supp. To 1971 Convention (1988)	17JAN2002
8. Suppression of unlawful acts against the safety of maritime navigation (1988)	04APR1996
9. Suppression of unlawful acts against the safety of fixed	04APR1996



platforms located on the continental shelf (1988)	
10. Marking of plastic explosives for the purpose of detection (1991)	08DEC2002
11. Suppression of terrorist bombings (1997)	09DEC2001
12. Suppression of the financing of terrorism (1999)	17NOV2002

Since 31MAY2003 Portugal has officially joined the “Proliferation Security Initiative (PSI)” created to control the development and proliferation of weapons of mass destruction between states and non-governmental actors.

(b)+(c) Accession to and participation in other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities. / National measures, to include legislation, taken to implement the international agreements, conventions and protocols cited above:

The Portuguese Armed Forces are entitled, by the Minister of Defence Resolution Nr. 22 749/2001, dated 22nd October 2001, to intervene in those kind of situations that imply, in a military level, the prevention and repression of the so called terrorism. The prevention and repression of the terrorism has been seen as an “external threat” and constitutionally the Armed Forces are responsible, as one of its major tasks, for “the military defence of the Republic from any aggression or external threat”.

The defence measures against maritime terrorism have been implemented nationally IAW correspondent declared alert state. They are part of general measures and mainly, they foresee the surveillance of suspected vessels crossing Portuguese areas of interest and namely in territorial waters as well as the safety of shipping entering ports alongside in harbours, specially allied and friendly ships.

The Navy carries out multiple tasks of law enforcement and state authority at sea to which assigns permanently seven patrol boats and three frigates/light frigates. Marine Forces are also organized to support this effort, employing dedicated special operations teams and security teams in support of ship’s boarding parties. To cope with the threat of terrorism at sea, there are several agencies. However, it is the Navy that encompasses both the expertise, founded on the experience of law enforcement at sea, and the oceangoing assets able to perform such functions. For this purpose, the Navy operates daily in close cooperation with competent agencies.

Although the entire Army Operational Force can be oriented to face terrorism, the following units are the most adequate for that purpose:

- Rapid Reaction Brigade – mainly through 2 Airborne Infantry Battalions, 2 Commando Companies and the Special Operations Force;
- 2 Army Police Companies;
- Military Intelligence and Security Unit;
- 2 EOD Teams.
- 1 Air Defense Battery.



For the defence against civil aircraft used to perpetrate terrorist attacks, the Air Force keeps a 24/7 air surveillance system and quick reaction fighter aircraft at appropriate readiness state. Following the implementation of NATO Renegade concept, the Air Force developed procedures and arrangements to adapt the air command and control system and to streamline the political decision process. Additionally, procedures between the military air defence and the civil air traffic control have been developed and exercised in accordance with NATO and EUROCONTROL guidance.

As a State-Member of the European Union, Portugal has adopted instruments in the legal framework of the European Union concerning the prevention and the fight against terrorism, in the field of police and judiciary cooperation:

- Decision 2003/48/JAI from the Council, of 19th December 2002, concerning the application of specific measures of police and judiciary cooperation in the fight against terrorism, under the terms of article 4^o of Common Position of 2001/931/PESC.
- Decision 2002/996/JAI from the Council, of 28th November 2002, which establishes a mechanism of evaluation of legal national regimes and their application at national level in the fight against terrorism.
- Framework-Decision from the Council, of 13th June 2002, concerning the fight against terrorism.
- Framework-Decision from the Council, of 13th June 2002, concerning joint teams for investigation.
- Decision 2002/187/JAI from the Council, of 28th February 2002, concerning the creation of Eurojust, aiming at strengthening the fight against all serious forms of crimes.
- Decision from the Council, of 6th December 2001, which spreads the mandate of Europol to serious forms international crimes as they are listed in the annex of the Europol Convention.

The National Republican Guard as a military security force helps fight terrorism by enforcing several rules. The organism in charge of this mission is an Infantry Regiment Special Unit, the Special Operations Company.

The remaining NRG Units also contribute to fight terrorism in the fulfillment of their duties because regular patrols gather information from the population.

In territorial waters, within the 12-mile zone, a Special Unit called the Fiscal Brigade is also responsible for protecting national territory against any threats coming in by sea.

(d) Information on national efforts to prevent and combat terrorism, including appropriate information on legislation beyond United Nations conventions and protocols (e.g., pertaining to financing of terrorist groups):

The Law Nr. 5/2002 (11th January 2002) establishes measures to fight organized crime and economic and financial crime. This Law establishes a special regime for the collection of proofs, for the breach of professional secrecy and for the loss of assets in favour of the State in relation to several crimes, specially arms smuggling, terrorism and terrorist organization, money laundering.



The Law Nr. 10/2002 (11th January 2002) establishes measures to prevent and punish money laundering from criminal activities concerning crimes of terrorism.

(e) Roles and missions of armed and security forces in preventing and combating terrorism:

Portugal has (20th December 2002 in Resolution Nr.6/2003) adopted a new National Defence Strategic Concept/NDSC. Adjusting to new threats and changes in the world since 2001, the new concept considers the combat against weapons of mass destruction, terrorist threats and organized crime to be one of the main missions of the Armed Forces. Although these missions are new to the military, they are able to carry out these tasks given the necessary means. Following the adoption of the new NDSC, the government proposed to the Parliament the Military Procurement Law (MPL) which establishes the priorities for major equipment acquisition, and it was accepted in its generality.

The National Military Security Force, NRG develops some missions and is a member of the "Anti-Terrorism Co-ordination Unit" (ATCU). Both, the Fiscal Brigade – working together with the Criminal Police and the Ministry of Finance – and the criminal investigation teams have a major role in combating financial and economic organized crime.

The Special Operations Group is a special tactical unit within the Public Security Police. It was created by Decree n°506/79 of Dec 24th and it is exclusively in charge of carrying out anti-terrorist actions. The Special Operations Group is called into action in case any terrorist or tactical incident takes place, such as high-jacking or kidnapping.

Question 2:

Description of the national planning- and decision-making process – including the role of the Parliament and Ministries - for the determination/approval of: the military posture, including:

Answer:

(a) The Military posture:

The concept of national defence lays down on the Portuguese Republic Constitution, which consecrates the national defence as a State obligation, defines its permanent objectives, as well as the fundamental principles to be followed, and attributes to the Armed Forces the military component of the national defence.

The legal framework of Portuguese National Defence System is defined by the following documents:

- The Constitution of the Portuguese Republic, approved in 1976 and reviewed in 1982, 1989, 1992, 1997 and 2005;
- The National Defence and Armed Forces Law, effective as of 1982;



- The Organic Law of the Armed Force's Structure, effective as of 1992;
- The Organic Laws of MOD, General Staff and Services, effective as of 1993;
- The National Defence Strategic Concept, effective as of 20th January 2003;
- The National Strategic Military Concept, effective as of 22nd December 2003.

Portugal's National Defence Policy is built up in accordance with permanent objectives expressed in the Constitution of the Portuguese Republic and in the National Defence and Armed Forces Law.

Those permanent objectives are:

- National independence;
- Territorial integrity;
- Liberty and security of the population against any external aggression or threat.

Therefore, National Defence Policy has to be :

- Permanent;
- Global, covering military and non-military components;
- Inter-ministerial.

To accomplish permanent objectives, the Constitution and the National Defence and Armed Forces Law establish a balanced system of competence between higher State bodies. We call that the co-sharing system.

That system implies that almost every decision on defence issues is to be taken with the participation of more than one body. The main purpose of that system is to have defence issues or defence policy out of the political struggle. Once objectives of defence policy have higher national dimension, that policy should not be subjected to instability. The Portuguese system considered that the better way to assure stability to defence policy was to share responsibilities and competences between State bodies, calling all of them to participate on it.

The specific decision-making process for the determination of the military posture involves the following institutions and authorities:

- 1- The President of Republic;
- 2- The Parliament;
- 3- The Government;
- 4- National Defence Superior Council;
- 5- Superior Military Council;
- 6- The Minister of National Defence;
- 7- The Council of Chiefs of Staff;
- 8- The Chief of General Staff;
- 9- The Chiefs of Staff of the Services - Navy, Army and Air Force.

The President of the Republic, who is elected:

- Is the Supreme Commander of the Armed Forces;



- Presides to the National Defence Superior Council;
- Nominates and exonerates, under Government proposal, the Chief of General Staff and the Chiefs of Staff;
- Ratifies international treaties;
- Declares state of siege or state of emergency;
- Declares war and makes peace.

Due to his position, the President has the right to be informed by the Government about the Armed Forces situation.

For consultative functions, the Constitution consecrates the **National Defence Superior Council** (NDSCI, art. 274), chaired by the President of Republic who has a qualitative vote.

The procedures reflect a very precisely co-shared responsibility amongst the institutions involved. The main guidelines and measures, including those related to the Armed Forces are inserted in each **Governmental Program** which is subject to parliamentary approval, in order to be exerted the political, legislative and financial competences of this sovereignty institution, that is, in order to frame the national defence policy and control its implementation - Chapter II, art. 7 of the **National Defence and Armed Forces Law** (NDAFL).

The **National Defence Strategic Concept** is a government responsibility, taking into account the NDSC recommendations. Previously to the approval of this Concept, its Relevant Options are subject to parliamentary debate (same chapter, art. 8 Nr. 4.).

The **Governmental Directive for National Defence** is the subsequent step which addresses not only to the Minister of Defence, but also to the other sectorial ministries related to the National Emergency Civil Planning.

The **Military Strategic Concept** goes through a first project which is a Chief of General Staff's commitment, consolidated by the CCOS and submitted to the MoD, which approves it and submits it to the NDSCI for confirmation.

The **Specific Missions for the Armed Forces and the Deployment**, as applicable, is projected by the CCOS commitment and submitted to the Minister of Defence, who presents a ministerial proposal for the NDSCI.

The **Force Goals** are revised every two years under a context of the following six year period. The first phase comprises the elaboration of the project based on the Minister of National Defence Directive for Military Defence (MoDDMD), the Chief of General Staff Force Planning Directive (CHODPD) and the Services Proposals (SP).

During the second phase, the Government promotes the consultation of NDSC, after which the Government proposal named the **Military Procurement Law Proposal** is submitted to the Parliament approval. Coherently, the Government submits the Annual



Budget for the Armed Forces, as part of the national defence budget included in the Annual State Budget.

Both organic laws of the Ministry of Internal Affairs and of the National Republican Guard set out competencies regarding security and defence policies.

In what concerns NRG, its military nature is an asset in defence missions and in very serious situations. For example, if a crisis situation is declared, the operational command of the NRG is passed on to the Chief of Staff via NRG's General-Command.

The National Defence Policy, as defined in the Portuguese Republic Constitution (PRC) and in the National Defence and Armed Forces Law (NDAFL), is a full responsibility of the Government (NDAFL article 7, Nr. 2).

This concept comprises a military and several non-military components (differentiated in the article 5 of the NDAFL) as a consequence of its permanent objectives.

The military component is ensured only by the Armed Forces whose obedience to the sovereignty bodies and binding to the execution of the National Defence Policy is provided for in the articles 19 and 22 of the NDAFL.

The fact is that the performance of the Armed Forces results from a tight legal framework of rules and orientations established at different levels all of them requiring the intervention of the Minister of National Defence and/or of the National Defence Superior Council (articles 22, nr 3, in fine, 23, 24 and 25 of the NDAFL).

The Portuguese Republic Constitution establishes the principle of allegiance of the Armed Forces to the State sovereignty whose only holder is the people (art. 3 PRC). That allegiance is exerted through constitutional means.

The Portuguese Parliament holds the exclusive competence to legislate on the relevant issues regarding the Armed Forces — organization, functioning, and restrictions to the exercise of rights by the military, general basis of the status of military condition, performance of the military courts, administrative-and civil litigation and so on.

Moreover, the Parliament acts on behalf of all citizens, has the competence to supervise the Government and the Administration acts in what concerns national defence issues, organization, functioning and discipline of the Armed Forces (article 40 of the NDAFL).

Furthermore, this Law states (art. 7, nr 4) that the Government must consult with the Opposition forces (procedure provided for on the Opposition Statute as well) on defence policy matters.

The Parliament, which integrates the National Defence Commission, is responsible for the approval of relevant subjects for the Armed Forces. It also has the duty to follow the engagement of Portuguese military forces abroad and, besides its own supervising powers on the Government activity, legislate on the Armed Forces related issues.

The Government is the body responsible for the implementation of the national defence policy and the one that administers the Armed Forces (art.41, NDAFL).



The Prime Minister holds the responsibility of providing the guidelines for this policy both by coordinating the activity of all Ministers in the field of national defence related matters and by leading inter-ministerial activity aimed at its execution.

This policy is drawn and controlled by a specific constitutional Council named National Defence Superior Council presided by the President of the Republic, the Ministers that hold more significant portfolios and two members of the Parliament.

This result in a system shared by the sovereignty bodies regarding the definition and conduction of the national defence policy.

(b) Defence expenditures:

The **Portuguese Parliament** also decides on the **defence budget**. The proposal on the defence budget is prepared and is responsibility of the Ministry of Defence. It is discussed at the level of Council of Ministers, approved and then submitted to Parliament, for approval, as a part of the **overall Government budget**.

Question 3:

Description of:

(a)+(b) Constitutionally established procedures ensuring effective democratic control of the military, paramilitary, and internal security forces, as well as intelligence services, and the police. / Constitutionally established authorities/institutions responsible for the democratic control of the military, paramilitary and security forces:

Answer:

Military:

The Portuguese Republic Constitution states that Armed Forces obey to the competent sovereignty organs, in constitutional and legal terms. Our Constitution states that the Armed Forces are strictly neutral in politic terms and forbids its members to take any political measures.

In 1982, with the NDAFL, the goal to insert the Armed Forces in the State's direct administration, through the National Defence Minister, was achieved.

In 1989, with the creation of the National Defence Ministry as a Department of the Portuguese Public Administration, that process was reinforced.

Ever since, the political guidelines concerning national defence policy, Armed Forces personnel, infrastructures, armament and equipment policies, and budget remain the Ministry's competencies.

The Armed Forces organs are responsible for the operational issues related to the forces engagement.



Paramilitary:

Although the National Republican Guard (NRG) might be considered a Paramilitary Force, it is not. According to the Portuguese Constitution, Portugal has no Paramilitary Force.

Internal Security Forces:

The binding rules of the performance of the Portuguese Police Forces that ensure its political and democratic character are of the exclusive legislative competence of the Parliament, as set forth in Article 164, Paragraph "u" of the Portuguese Republic Constitution.

One of our Parliament's most important function consists of supervising the execution of the Constitution, as well as the bills and the action of the government and administration (Article 162).

The Parliament is, therefore, entitled to supervise the action of the Police Security Forces as clearly stated in the Article 272 of the Portuguese Republic Constitution:

- The Police Security Forces have the task of defending the democratic system and ensuring the internal security and the rights of the citizens.
- The measures taken by the Police Security Forces are set forth by law and they should not be used beyond strict necessity.
- Prevention of crimes, including crimes against State safety, is only permitted, if the general police rules are obeyed and the rights, freedom and safety of the citizens are observed.
- The law establishes the structure of each security force and it shall be only enforceable law throughout national territory.

Members of Parliament can exercise parliamentary control over the government by making use of the right of interpellation as stated in the Constitution. They can also call upon ministers to account for the various parts of their policies, which the ministers must then provide with a reasonable notice, unless it is not in the State's interests to do so (paragraph d) of Article 156). They also have the right to debate the Report of Internal Security that is issued until March 31st concerning every year's activity of the police and security forces, as set forth in the Internal Security Law.

It should also be mentioned the control that can be exercised by the Ombudsman (PRC, Article 23), who acts independently and is appointed by the Parliament.

This institution, foreseen by the Constitution, is similar to those existing in other countries and to which the citizens have the right to address to, in case of claims of any nature related to public administration, including those related to police or security forces. Ombudsman can intervene on his own initiative, after direct acknowledgement or indictment.

Ombudsman has no decisive power and can institute his own informal inquiry, after which he submits his own recommendations to prevent or repair injustices, most of the times by means of releasing his conclusions for public information.



Intelligence Services:

On constitutional terms the exclusive competence to legislate on the Intelligence Services System is attributed to the Parliament.

The present Intelligence Services System of the Portuguese Republic (ISSPR) foresees the existence of two Services with differentiated intervention fields: the Strategic Defence and Military Intelligence Service (SDMIS) aimed at the external threat and the Security Intelligence Service (SIS) aimed at the internal one.

The supervising of these Services is ensured by the Intelligence Services Supervising Council (ISSC), which integrates three citizens elected by the Parliament.

Annual reports on the activities of the Intelligence Services are due for control by the Council.

This Council is entitled to:

- demand additional and detailed information on the activities of the Services;
- be informed about governmental guidelines as regards intelligence research;
- release expert reports on the procedures and global activity of the Services and to present them to the Parliament;
- propose to the Government the adoption of investigation procedures related with activities that may arise any sort of concern.

Due to the events of March 11th 2004, the Portuguese Government decided to expand the ATCU. Nowadays, all Police Forces, including NRG and Intelligence and Security Services participate routinely in ATCU in order to exchange information and intelligence. The purpose is to fight such threats as terrorism with new means.

Police:

Answer already included in answer to question concerning Internal Security Forces.

(c) Roles and missions of the military, paramilitary and security forces as well as controls to ensure that they act solely within the constitutional framework:

Answer:

I - About roles and missions of the following types of forces:

Military:

The Portuguese Republic Constitution defines the purview of the Armed Forces. The main role of the Armed Forces is the military defence of our territory against any external aggression or threat.

Based on the Constitution, the National Defence and Armed Forces Law establishes the main control provisions for the operation of the Armed Forces in what concerns its main commitments and prerogatives of the national sovereignty.



The National Defence and Armed Forces Law also states the limits for the involvement of the Armed Forces in accordance with the international Law and other international commitments to which Portugal is signatory, inside or outside the national territory, including the territorial waters and the air space under the Portuguese responsibility.

Also, as a direct consequence of the constitutional framework, the Armed Forces contribute to actions in support of national foreign policy, specifically for crisis management, peace support and humanitarian operations within UN and OSCE responsibility, emphasizing Portugal's commitment for overall peace and international security and resorting to war only in case of self-defence against any effective or eminent military aggression.

The execution of operations for safekeeping of Portuguese nationals abroad and other public interest missions, like civil protection during natural catastrophes, represent also one important role of the Armed Forces.

According to this commitment, Portuguese Armed Forces fulfill their international obligation participating in several forces under the aegis of the United Nations and other regional organizations, occupying the 40th position among United Nations members (as of 28th February 2009 Portugal is involved with a total of 370 elements).

Paramilitary:

Although the National Republican Guard (NRG) might be considered a Paramilitary Force, it is not. According to the Portuguese Constitution, Portugal has no Paramilitary Force.

Security Forces:

As to the National Republican Guard (NRG):

- to guarantee, within their strict scope of action, the maintenance of the public order, by ensuring the citizens' rights, freedom and welfare;
- to protect citizens and public, and to maintain private and co-operative property, by detecting or punishing any illicit acts performed against them;
- upon request of the judicial authorities, to conduct, as criminal police force, any investigation they may be vested with by law;
- to be responsible for law enforcement and its regulations in general, specifically those concerning traffic and ground transportation;
- to fight against physical infractions, particularly, those regulated by Customs and Excise Law;
- to co-operate in controlling entry and exit of national and foreign citizens in national territory;
- to help and protect citizens and defend and preserve individual property considered to be in danger on account of human or nature's actions;
- to implement new criminal prevention action programmes both under the responsibility of the Ministry of Internal Affairs – criminality prevention in the seashore areas, delinquency prevention in traditional trade areas - and at the multidepartmental level (Municipal Security Councils; Committees for the Protection



of Endangered Children and Youths; as well as a programme which aims at the delinquency prevention and integration of the young people from the most vulnerable neighbourhoods in Lisbon, Oporto and Setubal districts);

- to co-operate in keeping honour guards;
- to co-operate in the execution of national defence policy.

In addition to the above-mentioned duties, the National Republican Guard performs regular and permanent police duties throughout the territory, namely in areas considered of high risk and by direct contact with the populations. The way they act is totally autonomous, but they also operate in collaboration with other public and private investigation agencies, when required to assist and help investigations.

When acting as a criminal police force, the National Republican Guard military who are under the supervision of the Ministry of Justice - Prosecuting Counsel - perform their duties in compliance with judicial orders or the Penal Prosecuting Code. They use all the means they have available in order to attain the best results regarding any investigation assigned or delegated to them by the Prosecuting Counsel.

The Law for the Organization of the Criminal Investigation (LOCI) extended the competence of the National Republican Guard to the medium level criminality investigation. Furthermore, it modernized the coordination system, covering the mechanisms of strategic coordination – through a new organ, the Co-ordination Council, in which the NRG has a seat. It also covers the criminal operational investigation at territorial and hierarchical levels.

NRG depends functionally on the competent judiciary authority although observing the hierarchical organization.

The pattern of National Republican Guard's activity has to do with missions taking place in vast and sparsely populated rural areas, thus, having to deal with an elderly population. At the same time, they act in cities not considered capitals of district as well as in other cities with less than 20.000 inhabitants.

In addition to these daily duties, NRG still dedicates part of their time to crimes against children and victims of violence. Nowadays, they are deeply involved in implementing projects launched by the Ministry of Internal Affairs on domestic violence, school safety, elderly people's safety, trade safety, among others designed from the Project – Communitarian Policing.

In what concerns frontiers control, NRG develops some very important missions, controlling 15 Stations of Maritime and the entire mainland Stations Border control. It also contributes to the good work and implementation of the Mixed Frontiers Stations, and at sea together with the Maritime Service of the fiscal Brigade it oversees yachts, fishing boats, container ships.

The NRG implemented, in 2001, according to its attributions, the Environment and Nature Protection Service, known as ENPS. This Service covers a new, special area within the



already existing Arms and Services. ENPS's general mission is to enforce legal arrangements and regulations concerning the protection and conservation of Nature and Environment, regarding rivers, hunting, fish, forestry resources and any other related matters.

The main duties and missions of Public Security Police are:

- to promote protection that ensures the normal function of democratic institutions, as well as the rights and personal liberties and the respect for the public health, safety, morals or welfare of the citizens.
- to ensure maintenance of order, public safety and tranquility;
- to prevent the organized criminality and further acts against law and its regulations;
- to prevent the organized criminality and terrorism, in co-ordination with other forces and security agencies;
- to ensure execution of administrative acts, when enacted by competent authorities and directed to prevent infringements to law or its continued violation;
- to ensure protection of persons and of their assets;
- to perform the duties assigned to them by the Ministry of Justice;
- to ensure road safety, through control, patrol and regulation of the traffic;
- to ensure safety during sport shows or similar events;
- to perform the duties assigned to them by law in terms of administrative licensing;
- to participate in the port, fluvial and maritime surveillance in accordance with the conditions and terms as foreseen by the law;
- to guarantee the protection of railroad areas;
- to help people and give assistance to injured people and support, in particular, the groups considered of high risk;
- to participate in international missions under the terms defined by the Government;
- to co-operate with other investigation agencies with identical purposes;
- to contribute to training and information of the citizens in matters of safety.

In addition to the above functions, the Public Security Police also performs exclusive and special duties regarding pre-emption of terrorist activities, such as:

- to control the manufacture, storage, commercialization, use and transport of raw incendiary material, ammunition and explosive substances or similar products that are not property of the Armed Forces or of any Security Forces and Security Services;
- to ensure personal safety of Government members and high representatives, both national and foreign, as well as of other citizens that may be under threat;
- to adopt measures to prevent and repress illicit acts against civilian aircraft, within the framework of the airport security.

The Public Security Police has also the Special Operations Group, a single nation-wide unit that specializes in anti-terrorist and tactical actions, as mentioned previously, in page 7, under "Question 1, (e)".



As a criminal force, the Public Security Police acts under the control of the competent judicial authority, as set forth in the Code of criminal Procedure.

Public Security Police is also involved in International Peacekeeping Operations, currently amounting to 209 elements.

II – The existing controls to make sure that police and security forces act solely within the constitutional framework:

It is important to stress that the Portuguese Police Forces are managed and controlled in a strong hierarchical system. Their members are, therefore, under the supervision of the managing directors, inspectors, superintendents and under the disciplinary powers in which their superiors are vested when commanding a unit. Commanding officers are entitled, therefore, to take disciplinary proceedings and to inflict punishment in compliance with the post and function regulations. The disciplinary proceedings can be taken after direct acknowledgement or any claims or indictment of an infraction.

Disciplinary proceedings are only initiated by senior officers. Justice and Disciplinary Committees comprising skilled personnel have been set up for this purpose (this kind of committee is more developed in the Public Security Police).

The Military Disciplinary Rule was replaced by the National Republican Guard and the Public security Police discipline Regulation.

There is also a Directorate General of Internal Investigation for each police force:

- In the National Republican Guard, there is an Office composed of Inspectors and Administrators, accountable for the inspections to be conducted in units and services, namely in what concerns safety, inspection and operational, administrative, logistic and financial activities.
- In the Public Security Police, there is a General Inspector and Inspection Teams, who are entrusted to manage, co-ordinate and supervise the investigations and internal inspections as well as to take proceedings of disciplinary nature.

We may say that internal control is made on a permanent and regular basis; it is exercised by the different echelons of the command chain to the subordinated elements, either through patrols, or through examination of personal management and operational conducts.

Besides this internal control and the control exercised at a parliamentary level and by the Ombudsman as already mentioned in answer 4, there are still other forms of external control, such as the judicial control, which is exercised over the active members of the Force.

In Portugal, with the exception of crimes of military nature, the criminal and disciplinary proceedings are fully different. So, whenever an act constitutes a crime and a disciplinary infraction, two independent law suits are brought in different courts, the results of which



are equally independent from each other. The judicial power is independent and in Portugal it is the Prosecuting Counsel who runs the investigation, even when the latter is conducted by members of the Police Force.

The criminal suit is public after the investigation phase and can be triggered by the Prosecuting Counsel who has the power to do so by itself or after being informed by indictment or claim.

Within this framework, it should be referred the external control exercised by the Inspectorate-General of Internal Affairs (IGIA).

This General-Inspection supervises all the services depending on or under the authority of the Ministry of Internal Affairs, the Civil Governors and the agencies that perform private security. However, the essence of this General-Inspection's action is mainly the control of the police forces.

Within the scope of its inspection, supervision and investigation actions, this Department is entrusted with the execution of ordinary and extraordinary inspections, audits for the appraisal of personal performance, valuation of claims, protests and indictments caused by violation of law, making official inquiries, regular inspections and expert inspections. On its own initiative or by ministerial decision, it can hold judicial inquiries or take disciplinary proceedings against police and security forces' behaviors that violate the essential rights of the citizens.

This IGIA intervenes on a selective basis, since it directly investigates the most serious cases and its way of acting comprehends two control modalities – direct and indirect ones: the 1st, when it is investigating the facts by its own; and the 2nd, when it is only aiding the internal police investigations within the scope, if needed, to propose to a higher level the revision of the disciplinary decision considered illegal by IGIA. It acts after direct or official acknowledgement and indictment brought by other authorities and by identified sources' indictment or claim.

Lastly, it should be stressed the informal control of the police and security forces that is exercised through different non-governmental organizations and media, namely through public indictment of situations that frequently require the intervention and investigation of the competent authorities.

Question 3:

(d) Public access to information related to the Armed Forces:

Answer:

The **public access to information related to the Armed Forces** is the result of a global and consistent policy, based on three pillars:



- **The National Defence Day**

This new military obligation for every eighteen years old male citizens (female can also participate by request), has been contributing to inform young citizens about the aims of National Defence and the Armed Forces role and, consequently, to motivate the ones potentially interested in a military service. At the end of the National Defence Day, the citizens can, if they wish, fill a pre-candidanship form to the contractual or volunteer regimens.

In the year 2010, this military obligation will be extended for female citizens, under the principle of gender equality, which requires men and women to have the same military rights and duties. (Decree Law n° 52/2009 of March 2nd, alters the Regulation of the Law for the Military Service -LMS).

- **Systematic Public Information Campaigns**

In order to divulgate the obligation of the Military Census, for every eighteen years old male citizens (female by request), and the Volunteer and Contractual Regimens.

- **The improvement of the Military Recruitment Structure**

Yonder the improvement of the present military recruitment centres, it was created the first joint military information centre, in Lisbon, in July 2004.

Question 4:

Stationing of Armed Forces on the territory of another participating States in accordance with their freely negotiated agreement as well as in accordance with international law:

Answer:

Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (NATO SOFA) signed in London on the 19th June 1951.

Agreement among the Parties to the North Atlantic Treaty and other States participating in the Partnership for Peace regarding the Status of their Forces (PfP SOFA), concluded in Brussels on the 19th June 1995.

Agreement between the Government of the Portuguese Republic and the Government of Federal Republic of Germany regarding the Portuguese Armed Forces status during temporary stays in the Federal Republic Germany, signed in Bonn on 29th April 1998 and entered into force on 25th June 2001.

Agreement between the Ministry of Internal Affairs and all the other countries of the Coalition Provisional Authority for Iraq (MOU) was signed in 2003.



Question 5:

Description of:

(a) Procedures for the recruitment or call-up of personnel for service in the military, paramilitary, or security forces, if applicable:

Answer:

Military:

The Portuguese Armed Forces completed its transition period, from the Conscript System to the Volunteer System of the Military Service, in September 2004.

The Law for the Military Service (LMS) (Nr.174/99), regulated since November 2000, defines that the military service is now, in peacetime, on a voluntary basis, with the possibility of exceptional recruitment in situations where volunteering proves to be inadequate to meet the needs of the Armed Forces. For non permanent personnel, the law foresees two forms of rendering military service, between which citizens may freely choose: voluntary service, for a fixed period of one year, and contract service, for a minimum of two and a maximum of six years.

The military service was obliged to the male citizens till 2004.

Between 1999 and 2004 we have passed to a transitory period, and in 2004 ended the regime based on conscription and began a new one, based, in peacetime, on a voluntary basis for full career or contract, to all citizens. Nevertheless, in case of exceptional necessity, citizens – both men and women – can be called up to serve as conscripts. Reservists in disponibility may be called-up for refreshment, training or exercise until the last day of the year they complete thirty-five years of age and during the six years following the end of their effective military service, for a maximum of two months.

Since 19 November 2004 we reached the goal of fully professional Armed Forces.

In Portugal, the military personnel are ruled by special statutory legislation, but in specific subjects, as maternity, holidays, they follow civilian rules, although chiefs of staff rule specific maternity aspects concerning military service.

Paramilitary:

Although the National Republican Guard (NRG) might be considered a Paramilitary Force, it is not. According to the Portuguese Constitution, Portugal has no Paramilitary Force.



Security Forces:

In Portugal, concepts such as “mobilization” or “duty calls” do not apply. Members of the police forces are volunteers.

As a consequence of Law for the Military Services (Nr. 174/99), the general conditions for admittance to the National Republican Guard were enlarged, in two fields: the recruitment is no longer based exclusively on the personnel which have done the military compulsory service; and, consequently, the inclusion of Volunteer Military Service and feminine personnel.

The initial training of National Guard elements covers a wide range of subjects with special focus on laws and technical police duties, on military training in general and on vocational and physical training.

Officers' initial training is more demanding and takes place in the Military Academy - a college offering a degree in military sciences.

Besides their initial training, they periodically attend a number of training courses aimed to develop know-how and skills in the field of human rights, liberties and guaranties of the citizens, in police and professional ethics and in issues regarding immigrants and ethnic minorities.

In what concerns admissions in the Public Security Police, candidates may apply to the “Institute of Police Sciences and Internal Security”(only for Officers) or to the Police Training College (for categories below). For Officers, the Institute offers a 5-year course and a degree in Police Sciences, focusing on internal security, law (civil, criminal and European law), public order control, human rights procedures, police and professional ethics, police tactical intervention and leadership and management skills. It aims to train leaders. For the applicants to the Police Training School, they will be trained in the same areas, although not as extensively and will receive special training in police tactical procedures.

After the initial training, police officers must take regular tests and specific training courses, according to the areas they intend to work in.

(b) Exemptions or alternatives to compulsory military service, if applicable:

Answer:

- **The Law for objectors as a matter of conscience** (Law 7/92, 12 MAI, ruled by Decree 191/92, 8 SEP) no longer deals with the alternative to the compulsory military service, that ended in 2004. However the objectors can use it in case of exceptional recruitment and to justify their absence to the National Defence Day. For that they have to present to the National Committee for Objectors a declaration stating that condition. As a consequence, after confirmation by that committee, the name of the objector is included in an objector's list, registered in the Cabinet of Civic Service for Objectors of Conscience, making him eligible for the community service instead of



the exceptional military service with equivalent duration. The educational level and professional ability are taken into consideration, once the educational training is completed, with a view to deciding upon the proper assignment.

The Law for the Military Service (art. 38) exempts the descendants of killed or deficient militaries from Armed Forces.

(c) Legal and administrative procedures protecting the rights of all forces personnel:

Answer:

The democratic political control is exercised through a set of appropriate legislative documents that includes:

- The Portuguese Republic Constitution;
- The National Defence and Armed Forces Law;
- The Law on Organizational Aspects of the Armed Forces;
- The Internal Security Law;
- The Decrees related to the organization of each Service and for the General Staff.

This legal framework made it possible to implement a number of mechanisms that ensure the democratic political control of the Armed and Security Forces, namely:

- **The Military Personnel Statute** altered by the Decrees Law nºs 25/2000 of August 23rd, 197-A/2003 of August 30th, 70/2005 of March 17th, 166/2005 of September 23rd, 310/2007 of September 11th, 330/2007 of October 9th, which is subject to Parliament approval, regulates (art. 18 through 25) the civic capacity of the military personnel including the right to vote and the right to participate in activities of political nature, while not in active duty. By the Organic Law nº3/2001, of August 29th, the Parliament consecrated, with restrictions, the “right of professional association” concerning the military. The rights of the military associations are clearly stated in the Law and from the exercise of the related rights cannot result any kind of harm to the duties and the tasks legally conferred to the military.
- **The Legal Regime for the Purveyor of Justice** (elected by the Parliament) covers his prerogatives related to the National Defence and Armed Forces;
- **The Military Code of Justice**, which is applicable at the courts level (it requires parliamentary approval);
- **The Military Disciplinary Rule** governs the civilian and military behaviour of military personnel in active duty. It includes a chapter related to rights and guarantees;
- **The Law for the Military Service** addresses the management of the human resources for the Armed Forces and the recruitment/call up of personnel for active duty;



- **The Law for objectors as a matter of conscience** no longer deals with the alternative to the compulsory military service, that ended in 2004. However the objectors can use it in case of exceptional recruitment and to justify their absence to the National Defence Day.
- **Both NRG and PSP Disciplinary Rules** are applicable to all their police officers. Civilians working for both NRG and PSP are governed by the Civil Servants Rules.

Question 6:

Instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict included in military training programmes and regulations:

Answer:

All the doctrinaire references applicable to the Armed Forces in the field of Policy, Rights and International Relations rules, War and Humanitarian Laws, are included in the training and educational programmes in a proportion ranging from 10 to 15% for the upper educational levels.

Very specific actions were taken to assure the implementation process of the Code of Conduct, in conformity with the traditional Portuguese military training related with the legal aspects involving armed conflicts.

The translation and publication of the Code was carried out to make possible a rather wide circulation. It was decided to recommend, to the three branches of the Armed Forces, the inclusion of the Code of Conduct in the curricula of the several courses which are taking place in the Navy, Army and Air Force, not only at the level of Military Academies but also of staff Courses.

It has also been decided that, besides the Institutes and Academies, the Code of Conduct should also circulate within the several Commands, mainly through its introduction in the teaching/military training programmes.

In general, the school programmes aim at acquainting the officers and non-commissioned officers (NCOs) with a set of generic concepts regarding the Code of Conduct. These are viewed within the context of the new conditions of the international political scenario, which is currently favourable for initiatives of multilateral co-operation with the purpose of achieving an improved security environment in a more and more extended democratic space.

Portugal ratified, on 18th January 2002, the Statute of Rome of the International Criminal Court, accepting that an external complementary jurisdiction judges its nationals responsible for very serious international crimes – crimes defined as genocide against Humanity and war crimes. Our Constitution welcomes, as Internal Law, the treaties that are regularly ratified by Portugal.



The efforts that the Portuguese police and security forces under the authority of the Ministry of Internal Affairs have been making to enhance training of their regular personnel should be stressed. For the Public Security Police, the main concern has been the education on "Human Rights", - both at training centers and in operational units - on doctrines specifying the limits of police power in the context of international law-abiding texts Portugal is committed to.

The National Republican Guard also includes in their courses – from the category of privates to officers – a training in the area of the international law: the Conventions of Human Rights, the Conventions adopted by the United Nations and to which Portugal is committed, as well as the Conventions within the framework of the European Union and European Council.

The Public Security Police receives special training in the areas of knowledge such as: Basic Rights (as enshrined in the Portuguese Constitution and in the Human Rights Convention), Police Ethics and professional matters, European Law and Internal Regulation for Police Officers.

DGPDN, 15 JUNE 2009