3 Legitimacy and surveillance
Shifting patterns of external control

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Introduction

Armed forces have a long history as strictly hierarchical, utterly disciplined, (semi-) total institutions, vested with a deep sense of professional identity and exercising broadly defined operational autonomy. These characteristics fostered the image and the culture of an inward-looking, self-contained organization. As a rule, an elite-like leadership preferred to keep the politicians and the public at bay, while conducting its core-business.

At the same time however, in modern states the military could be looked upon as a model-bureaucracy, bowing to Government as the highest authority in exercising the monopoly of violence. In democratic societies this kind of vertical external control is strengthened and deepened by parliaments controlling the decisions made by the executive branch. One step further down the line the electorate gets a chance to have its say – with the vote as the ultimate arbiter of decision-making. So in the end one might contend that the external control of the armed forces rests with the people.

Surely both images – the one stressing utter professional autonomy, the other emphasizing strict democratic control – are simplifications which do not do justice to the complexities and the varieties of civil–military relations. Over time and across nations, a lot of different practices occur, reflecting different historical experiences and defense-strategies as well as different political and military cultures. Also schools of thought and scholarly debates have addressed without pause how best practices might look. How can we reconcile the room military professionals rightfully claim for effectively running their organizations and their operations, with the axioms of political control, democratic accountability and public transparency?

In this chapter we address the question how shifting patterns of external control can be understood in the context of ‘legitimacy’ and ‘surveillance’. We start out with a brief sketch of classic debates about the external control of the armed forces. Typically these debates focus on the dynamics of vertical control of military establishment by civilian bureaucrats and elected politicians. Notwithstanding the depth of change we will talk about, one way or another vertical control remains essential. Politicians cannot and should not shun their
responsible, while soldiers will always need to cultivate a professional posture, fitting in with democratic decision-making. The latter part of this equation emphasizes the importance of internal - or self-control - of the military. While this is not the main topic of his chapter, we will regularly run into it as an essential cornerstone of democratic civil-military relations (Born 2003: 159).

After having recapitulated the default tools of vertical control - old and new - we will then turn to developments which stand for a rise, if not a surge, in horizontal control of armed forces. A multitude of stakeholders outside the traditional political-military nexus has become involved in monitoring the performance of armed forces and the whereabouts of its soldiers. Perfectly in line with other fields of public policy and private enterprise, the legitimacy of military institutions and military operations has evolved into a precious resource. It is under constant scrutiny, and surveillance has become the name of the game. In the words of Martin Shaw: 'the gaze of all over all, even if some gazes are more influential than others' (Shaw 2005: 58).

Figure 3.1 contains a rough and schematic line-up of actors, all stakeholders of sorts that are somehow involved in the surveillance of the military, its legitimacy very much included. As Shaw suggests, these stakeholders are unequal in terms of influence and even more, we might hypothesize, when it comes to external control. Certainly the democratization of surveillance and the horizontalization of control do not level out differences in power between people, professions, institutions and states.

In successive sections, that is, after having touched upon vertical control, we will delve into our two key concepts, legitimacy and surveillance. Exploring their relevance for military institutions and operations, we will suggest how developments related to legitimacy and surveillance impinge upon horizontal and vertical control. Thereafter, we will take up legal surveillance as a special and illuminating example of current external control. In the concluding section we will discuss some of the implications and dilemmas of the shifting patterns of external control and the evolving mix of the horizontal and the vertical.

Debating vertical control

The classic issue regarding the control of the armed forces is 'who guards the guards?' (Born 2003: 51). Sometimes this is referred to as the civil-military paradox: 'because we fear others we create an institution of violence to protect us, but then we fear the very institution we created for protection' (Feaver 1996: 150). 'The man on the horseback' (Finer 1962), is the ultimate symbol of this fear, standing for the outright military take-over or coup d'état. From the 1980s onwards the number of military regimes has been in decline, in South America, Africa and Asia. But in some countries the armed forces still constitute a political factor, looming in the background, exercising power when they see fit.

When soldiers (like other civil servants) are politicized, we speak of 'subjective control'. They are party-members (for example in the former USSR), they have a number of guaranteed seats in parliament (Indonesia), or there is a military-controlled national Security Council that has the right to re-evaluate or veto the decisions of the elected government (Turkey). As the two latter examples suggest, this kind of system does not necessarily preclude the workings of democracy. For the European Union though, the role of the military in politics is still one of the barriers in granting Turkey EU-membership.

Conceptually, objective control is the default system for civil-military relations in democracies. It is based on instrumental professionalism, neutral civil servants and political primacy. However, within objective systems there are many differences, starting with the question of supreme command (president, Government, defense minister or other options). More important, 'objectivity' and 'professionalism' are no guarantee for the political neutrality of 'armed servants' (Feaver 2003). Just like civil servants in other governmental bureaucracies, they partly act out of self interest or the interest of their organizational branch or service. Moreover, the positions of the 'principal' (minister, Government, civilian oversight) and the 'agent' (the professional soldier) are intertwined. Sometimes, depending on bargaining processes, the interests converge upon each other, at other times principal and agent will clash.

In 1999, General Wesley Clark wanted to use military force in more robust ways to corner Milosevic in the Kosovo conflict. But Washington, closely and constantly monitoring events and moves through sophisticated surveillance, did not permit indiscriminate suppressive force to protect the Apache helicopters from shoulder-fired rockets as they flew across Kosovo (Coleta and Feaver 2006: 117).
In their seminal work on the external control of organizations, Pfeffer and Salancik (1978) formulated the resource-dependence-theory. They argued that all organizations need resources from their environment in order to survive; 'it is the fact of the organization's dependence on the environment that makes the external constraint and control of organizational behavior both possible and almost inevitable' (Pfeffer and Salancik 2003: 43). 'Legitimacy' was pointed out by Pfeffer and Salancik as one of an organization's most precious resources:

An important part of the management of the organization's environment is the management of social legitimacy. While legitimacy is ultimately conferred from outside the organization, the organization itself may take a number of steps to associate itself with valued social norms. For one thing, the organization may alter or design its actions so that they fit a concept of established legitimacy. That is, the organization may conform to social values. Alternatively, the organization may attempt to change the social definition of legitimacy with respect to its own operations and objectives.

(1978: 196)

Typically, two strategies are pointed out in attempting to acquire and establish legitimacy. Adapting to societies’ norms and values is the first one. Trying to change attitudes and public opinion in the wider society is the second one. Usually the latter is the hardest, Pfeffer and Salancik argue, so in general organizations will prefer to use the first strategy and attempt 'to have its operations redefined as legitimate by associating them with other generally accepted legitimate objectives, institutions, or individuals' (Pfeffer and Salancik 2003: 196). It is illuminating indeed to ponder the ways in which current military operations are being redefined as 'comprehensive', that is, containing defense, diplomacy and development. Much of the surveillance of legitimacy, to be discussed in the next section, takes place within the likes of such a frame.

In this section we outline some of the sociological reflections on the legitimacy of the armed forces, which traditionally have been recognized as a precious resource indeed. In the 1970s, the mainstream of observers spotted a definite decline in legitimacy. Van Doorn defined it as 'the capacity of a social or political system to develop and maintain a general belief that the existing social order and its main institutions are generally appropriate' (1976: 90). Based on this definition van Doorn and others not only saw a decline but even more, a crisis of legitimacy. The waning support for conscription, the excessive violence in former colonies and current conflicts (Vietnam), and the evolving life-styles of a younger generation, all seemed to bring about a growing alienation of the military.

Over time some of these developments lost their relevance or sharp edge, but other indicators could be looked upon as spelling new gaps between armed forces and society. While the end of the Cold War generated a peace-dividend, some argued that it brought about an 'indifferent public' as well (Moskos 2000), typical for 'post-military societies' (Shaw 1991). Unmistakably military
operations in the wake of 9/11 have generated a renewed sympathy for soldiers, but not necessarily lasting support for their missions. In short, legitimacy can still be looked upon as precious. However, it can also be argued that on a more fundamental level the ‘institutional presence’ of the armed forces is quite tene-uous — given the scope and speed of societal and strategic change.

The latter is the view of Burk (2001), who has developed a theoretical framework, which is quite in line with Pfeffer and Salancik’s resource-dependence theory. Burk’s framework is based on two dimensions: material salience (budget and force-size) and moral integration (legitimacy and normative adaptation to the environment) (see Table 3.1).

Armed Forces are morally integrated (legitimate) if they are seen to work for worthy causes that contribute to a ‘good society’. The military should meet the expectations of society that are shaped by norms and values. This dimension also is about fair and decent treatment of citizens in or outside the armed forces. The second dimension, material salience, refers to the extent to which the military is recognized in society for functional reasons, and is measured by its claim on material resources (budget, size of the force).

If highly morally integrated and enjoying high material salience the armed forces can be considered a central institution within society. Burk makes a strong case for the US military as a lasting central institution, no matter occasional legitimacy crises and alleged civil–military gaps. Over the years citizens granted the armed forces strong confidence, usually more than other institutions. The latter has often been observed in other countries as well, most European ones included: trust in the military is comparatively high. Whether this makes European armed forces the same kind of central institutions (high moral integration and high material salience) is something to be discussed. Probably in some nations the military is well respected but also lowly funded — at least in the eyes of some stakeholders. Evidently, this is also a matter of perception. Moreover, while Burk’s dimensions are dichotomous (low or high), the reality of institutional presence in most countries could very well be medium, whether in terms of moral integration or in terms of material salience. In the case where militaries should ‘score’ low on material salience but high on moral integration they are peripheral to society, i.e. they receive neither budget nor personnel to match their high degree of moral integration. When, in contrast, armed forces do receive adequate funding and troops but are not considered morally integrated, they are predatory on the larger society. The position of the armed forces is alienated when the institution lacks both funding and personnel and moral legitimacy. This position could have applied to the US military when the Vietnam War would have eroded legitimacy even further than it already had done.

### Table 3.1 Institutional presence according to James Burk, 2001

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All in all, from this perspective the military can be looked upon as quite in control. As we suggested above, to some degree and in some ways, it also seems to have adopted Pfeffer and Salancik’s strategy to redefine its operations in order to gain and enhance legitimacy. However, at the same time missions prove vulnerable and public support often has been fragile. Notably, after the Cold War politicians in Western societies have developed a rather poor record in convincing their electorates of the wisdom to participate — or in some cases, not to participate — in a range of more or less dangerous military interventions (Everts and Iseninna 2001; Everts and Iseninna 2005).

Whether with regard to the Balkans, Afghanistan or Iraq, it proved difficult to communicate the kind of narrative that would create robust and steadfast majorities, not only sympathizing with the soldiers, but also justifying the risks and supporting the goals of the mission itself. The latter’s legitimacy, fragile to begin with, would sometimes be damaged further by what the world saw, under conditions of global surveillance.

### Global surveillance

While talking about vertical control, we struck on the example of Kosovo, where politicians used the wonders of communications technology to monitor and steer the armed forces whilst in theater (Coletta and Feaver 2006). Because civilian authorities have at their disposal real time data from anywhere on the globe, they can exercise micromanagement and transfer command and control from the battlefield to the capital. Whether this always contributes to the effectiveness and success of military operations, need not bother us here. Our point is that this kind of surveillance typically expands the reach of the state that historically developed it in the first place. In the words of Dandeker:

> ‘Surveillance’ [can be] understood as an expansion of the supervisory and information gathering capacities of the organizations of modern society and especially of the modern state and business enterprise. Thus modern rational bureaucracy is a highly effective and durable mode of surveillance.

(1990: 2)

It is important to realize that the capacity for surveillance by governmental bureaucracies (and by big business) will always be updated too and thus will offer advanced opportunities for vertical control. Having said that, we immediately have to recognize the degree to which civil society writ large, has become involved in surveillance and has broadened the scope and depth of horizontal control. Without doubt, this is a remarkable development, and its impact on the conduct, the image and indeed the legitimacy of military missions, could very well be spectacular.

Shaw has coined the phrase ‘global surveillance’, suggesting how worldwide audiences are watching and judging armies and soldiers, while conducting their operations. According to Shaw
Armed actors must reckon ... with the comprehensive surveillance of their military ventures by global state institutions, law, markets, media and civil society. The best way of characterizing the new mode of war as a whole is therefore global surveillance warfare.

(2005: 56)

Surely, the meaning and validity of this latter phrase is debatable, but it does emphasize how far-reaching a development we might be witnessing.

As suggested in Figure 3.1, there is a great variety of stakeholders, somehow involved in surveillance. They differ in terms of interest (what is their stake?), but also in degrees of institutionalization, professional status and political stance. And as already hinted at in the introduction, they are unequal in power. Not only in comparison with the state and the military organization, but also amongst each other. In assessing the meaning of surveillance, these kinds of differences have to be kept in mind.

The media represent a special, perhaps a supreme, kind of surveillance. By and large monitoring and reporting has been and still is their defining business – granted that their diversity more and more defies any kind of common denominator. Nevertheless, media have a long history of covering war, which regularly went hand in hand with battling political and military authorities and vice versa (Carruthers 2000). On other occasions the identification of journalists with national interests and with ‘their’ soldiers, prevented friction or anticipated censorship. Whether in particular conflicts media-reporting had a decisive impact on the mood of the public, is a heavily researched topic – with the American war in Vietnam as an everlasting benchmark for journalists, policy-makers and military professionals (Carruthers 2000: 108–120, 145–157). In recent conflicts embedded journalism developed into a mainstream modus for accommodating the interests of journalists and authorities. The pros and cons on both sides are a matter of constant media-surveillance (Paul and Kim 2004). A number of journalists still choose to work on their own, making unembeddedness a touchstone for professional independence. Typically new media may foster de-professionalization, like citizens twittering to the world and soldiers blogging to their home-fronts, showing pictures and videos, shot with mobile phones. This kind of surveillance, from below and from within, circumvents mainstream media and official communication policies. It contributes to the image of an endless proliferation of media as (inter) networks without borders – national, professional, political, personal or ideological.

While the latter image seems to mock tight governmental control, the state and its bureaucracies – again: their power never to be underestimated – won’t waver. Media-management does not stop with embedding journalists, but is also part of a sophisticated design known as ‘strategic messaging’ and ‘public diplomacy’. The ‘framing’ of the use of warlike force (Hammond 2007) is crucial for its legitimacy and for justifying its costs, in money and in lives – first and foremost of ‘own’ soldiers but also of ‘innocent’ citizens.

When the latter will be killed because of some fatal mistake or misjudgment, different stakeholders will rush to monitor the incident: relatives, local, national and international authorities, official committees mandated by the military, human rights organizations, and lawyers. To communicate their findings, all of them will use ‘the’ media, but ‘the’ media will also do their own fact-finding and framing. It may very well happen that the unscrupulous party that provoked the incident in the first place, will be the quickest to exploit it for its own propaganda. It will not have any difficulty in getting its message across world-wide audiences. Such is the state of global surveillance in its horizontal modus: the gaze of all over all.

Legal surveillance

Conceptualizing and analyzing the complexities of accountability, Bovens (2007: 455) identified the ‘problem of many eyes’: ‘Public institutions ... are accountable to a plethora of different forums, all of which apply a different set of criteria’. This expression nicely fits our analysis of shifting patterns of control, in the context of legitimacy and surveillance. ‘The gaze of all over all’, also implies many eyes watching and monitoring the performance of the military, making it accountable, exercising control, wielding power.

Eyes can be very coercive indeed but some eyes more than others. While the role of ‘media’ is conspicuous and relentless, it could very well be that other stakeholders – though often making use of the media – have a more focused and durable impact: non-governmental organizations (NGOs) for instance, or organizations of military families, not to speak of local civil society. Here we take the example of ‘legal surveillance’, an elaborate network with criss-crossing horizontal and vertical control, always bordering on legitimacy and looking everywhere with many eyes indeed. In a way, it can be looked upon as the ultimate case in point of this chapter.

Individuals or stakeholder groups can pursue legal procedures to ensure that the armed forces comply with (international) criminal law, human rights, or the law of armed conflict (Zwanenburg 2004). Regarding military operations, individuals can either be passive or active participants, they could be victims or combatants, in any case they are all stakeholders (everyone with an interest). Individuals have a (limited) right to enter into national criminal proceedings since they are victims of or stakeholders in the effects of military operations. For instance, victims and stakeholders are able to initiate or join criminal proceedings against soldiers. In the Netherlands, they also have the right to appeal and press for criminal charges once the public prosecutor decides not to initiate or continue criminal proceedings. As a result of this, when relatives filed a complaint against the public prosecutor’s decision not to initiate charges, the Dutch Appeals Chamber reviewed the case of an officer who shot an Iraqi civilian at a vehicle checkpoint.

The position of individuals (e.g. victims) in international criminal procedures is rather restricted in both the ad hoc (for example the International Criminal Tribunal for the former Yugoslavia ICTY) and permanent tribunals like the International Criminal Court (ICC) (Zahar and Sluiter 2008: 74). Victims have
obtained secondary or temporary ways of pursuing their interests. First, the Prosecutor to the ICTY initially relied heavily upon reports from non-governmental organizations. In the early days, the Office of the Prosecutor simply lacked adequate sources, evidence and information to be able to formulate cases itself (Vlamings 2009). Second, a large number of complaints (i.e. against the Israeli prime-minister Ariel Sharon) were filed with Belgian courts, which had been granted broad extraterritorial jurisdiction between 1993 and 2003, a unique route that has now been barred (Vandermeersch 2005).

International human rights instruments, such as the European Court of Human Rights (ECtHR), offer (groups of) individuals or NGOs who are the victims of the effects of (para)military operations or military conduct, the possibility to file a complaint against the state involved. In this way, human rights bodies have reviewed military conduct in a diversity of situations, ranging from domestic military law enforcement operations (ECtHR: McCann versus United Kingdom), military operations abroad (ECtHR: Ocalan versus Turkey; Carlos versus France) to armed conflict (ECtHR: Isayeva versus Russia). Outside the European sphere, other (regional) instruments like the American Convention on Human Rights, or the International Covenant on Civil and Political Rights, offer a similar mechanism to control military behavior (ex post).

Individuals as well as pressure groups have proved to be influential in the field of international humanitarian law. First, pressure groups and (well known) individuals have been able to initiate a widespread ban on certain means and methods of warfare. For instance, the late Diana, Princess of Wales, advocated the abolishment of anti-personnel mines (the Ottawa process, 1997). Others have successfully pursued the ban of cluster munitions (the Oslo Process, 2008).

In addition to these existing mechanisms in the field of humanitarian law and human rights, and supplementary to existing civil claim procedures, Zwanenburg (2004: 330) advocates the creation of an ombudsman for military peace operations. This institution should be vested with the authority to review military behavior. Zwanenburg’s idea is driven by the fact that formal obstacles could obstruct the applicability of the existing controlling mechanisms. Of course the network of legal surveillance is never complete and its many eyes always want a closer and a better look.

**Discussion: paradoxes of horizontalization**

In this chapter we have outlined shifting patterns of external control in the context of legitimacy and surveillance. Even while we had to confine ourselves to the actions of some of the stakeholders, we hope to have suggested the thrust of the trends and concomitant challenges for politicians and military professionals. In his authoritative assessment of democratic control of armed forces Hans Born formulates the ‘paradoxical effect’ of ‘horizontalization’:

> On the one hand it strengthens the democratic control and leads to armed forces which are embedded in society. On the other hand, horizontal control weakens the primacy of the parliament and the government because of the fact that the control is not exercised by the politicians alone, but also by other social institutions. The media, NGOs, unions, research institutes, as well as other institutes watch the deeds of politicians in parliament and the government, holding them responsible for all (mis-)deeds within the armed forces. Therefore, horizontal control restricts the power of the parliament and the government.

*(Born 2003: 161)*

Leaving aside here the critical dilemma for parliaments – better ex ante or ex post control? – as well as other complexities at the political crossroads of the vertical and the horizontal, we want to emphasize some of the implications for the military profession. Present day armed forces are operating in manifold, multi-layered space- and time-frames. They are connected to each other, to civil society, to institutional sectors which are amalgams of the national and the international, of local knowledge and passing strangers. Soldiers of all nationalities come and go in quick rotations while the footprint of military establishments is bound to be temporary. Surveillance of their performance is a 24/7 business, though there are still bound to be ‘unknown unknowns’. Paradoxically, because of the gaze of all over all, governments and military establishments might feel the necessity to expand the secretive. Of course there’s always the risk that a ‘strategic corporal’ breaks the silence, forwards his photos on the internet, and deals a devastating blow to the mission’s overall legitimacy.

In order to prevent the latter kind of incidents and leaks, governments and central military command might also feel tempted to more and more micro-manage any move on the ground, at sea and in the air. Certainly, as was already hinted at, capacities for surveillance greatly facilitate such an approach. However, ‘without meaningful autonomy, officers will not develop military professionalism and the quality of expert advice on the use of force will suffer’ (Coletta and Feaver 2006: 121). However, not only the advice (and the actions) of officers would suffer, but also, and typically, those of the sergeants, the corporals and the soldiers as well. Of course hierarchy and expertise still matter, but at all levels of the organization, professionalism, in terms of identity and responsibility, is a defining asset. This includes high ethical standards and an attitude of transparency – both crucial in keeping up the legitimacy of performances.

In this chapter we have emphasized repeatedly that legitimacy is a precious resource – if anything, for the military maybe even more than for other organizations. At the same time, the institutional presence of the armed forces could be looked upon as robust. Even if it is not an equally central organization in every country, hardly anywhere in the mainstream of the West it seems overly predatory, alienated or peripheral. In the long run, however, this should not be taken for granted: in an age of surveillance, with so many stakeholders communicating and competing at so many junctions of vertical and horizontal networks, it just might happen that all of a sudden legitimacy slips out of control.
Notes

1 We realize that legitimacy as a multi-dimensional concept knows many definitions. See for a very insightful overview Deephouse and Suchman (2008). For a focus on war and military operations, see Farrell and Maiguashca (2005). In this chapter we go about a bit eclectically.

2 It would be interesting to apply a general stakeholders typology, using 'power', 'urgency' and 'legitimacy' as attributes (Mitchell et al. 1997).

References


