



*NATO Research Fellowship Programme*

*Democratization of the political life and the political structure in Poland and their impact on state's behaviour in foreign and security field.*



**Teresa Ło - Nowak**

*Final Report*

Wroc<sup>3</sup>aw 1997

## CONTENTS

<i>Introduction</i> .....	<b>2-3</b>
The structure of the Report .....	<b>4-7</b>
Part One : THE ANALYSIS OF THE PROVISIONS REGARDING THE FOREIGN POLICY OF POLAND AS WELL AS STATE'S SECURITY AND DEFENCE POLICY UNDER THE AMENDMENT OF 1952 CONSTITUTION AND 1992 CONSTITUTION	
a\ Foreign policy and international policy areas .....	<b>8-16</b>
b\ Issues of Poland security and defence policy .....	<b>17-24</b>
Part Two : FOREIGN POLICY AND DEFENCE ISSUES UNDER THE AMENDMENT OF 1952 CONSTITUTION AND 1992 CONSTITUTION	
a\ Some practical consequences concerning foreign policy and international relations under the Amendment of 1952 Constitution and 1992 Constitution .....	<b>25-31</b>
b\ Some practical consequences concerning security and defence policy .....	<b>31-45</b>
Part Three : FOREIGN POLICY OF POLAND AND CIVIL AND DEMOCRATIC CONTROL OVER THE ARMY UNDER THE NEW CONSTITUTION .....	
	<b>46-51</b>
 <i>References</i> .....	 <b>52-58</b>

## *Introduction*

One of the oldest questions in political sciences appeared in the beginning of the political transition in Poland, namely: What kind of conditions lead to democracy? What kind of conceptual and institutional framework protects the democracy and democratic rules of the game? A lot of studies indicate that while some countries had undergone at least some form of democratisation, only a few had actually achieved democratic consolidation that is 'a regime that meets all the procedural criteria of democracy and also in which all politically significant groups accept established political institutions and adhere to democratic „rules of the game”<sup>1</sup>.

This Report deals with the problem of institutional choice and shape of the regime in Poland during and after transitional phase. The basic aim of the Report is to analyse the process of the creation of democratic structures and institutions responsible for the state foreign, security and defence policies. This Report introduces a revised institutional explanation theory by focusing on structures and institutions as well as on competencies of state authorities.

To this end, the Author is going to present how the institutional and structural choice has effected Poland's foreign policy as well as security and defence policies. The essential aspiration of this Report is to demonstrate the dynamic process of creation of authorities' spheres of influence, their competencies and power. Poland's political regime represents a mixed system. It is necessary to stress that Poland originally opted for the parliamentary system but under the pressure from Solidarity leader L. Wałęsa, the institutional division of powers was revised to form a mixed system. This state of affairs is preserved now, under a new constitution accepted in referendum of 25 May 1997. As president A. Kwaśniewski explained in an interview on 20 May 1997, „In general, in the new constitution we stick to a provision that, I hope, will work in Poland. The President is in the middle, he is neither a chief of executive branch nor is he a person

the has only nominal and ceremonial duties. There are instruments in his disposal that let him act effectively in moments of confusion and in crisis situations.”<sup>2</sup>

## **The structure of the Report**

This Report consists of three integrated parts:

I. In the first part of the Report, the Author analyses a legal framework as well as competencies of institutions and structures dealing with foreign, security and defence policies in Poland. The research concentrates on constitutional provisions i.e. the Amendment of the 1952 Constitution in force since April 1989, and on the 1992 Constitution, the so called 'Little Constitution' as well as on documents, opinions of experts and statutes dealing with the state's foreign, security and defence policies.

II. The second part of the Final Report provides very detailed analysis of activities, co-operation and competition among politicians and institutions responsible for the creation of a new democratic order or political regime in Poland. In that regard, the regime changes in Poland from 1989 till 1996 offered an ideal opportunity for further intellectual and practical reflection on institutional choice and governmental models. However, the process of political, structural and institutional transformation, with continuous changes taking place, is very complex; from the legislative transformation to the political system of the foreign policy creation, civilian control over the Armed Forces and also its modernisation.

The main object of this stage of the research programme is to examine negative and positive influences of the unpredictability and uncertainty associated with the absence of clear-cut and firmly established rules of the game, and actions of the President, Government and Parliament in the foreign, security and defence policies. The point of departure is a thesis that constitutional regulations in a country in transition phase promotes confusion and misunderstanding regarding the power over the state's foreign and security policies as well as defence system. Lack of clear and precise constitutional solutions in those fields creates a rivalry between a president, government (mainly Ministry of Foreign Affairs and Minis-

try of National Defence) and parliament, concerning the power and margin of independence in running state foreign, security and defence policies.

III. The last part of the Report takes under consideration some problems related to a new project of Polish constitution, or speaking more precisely, with new constitutional solutions regarding foreign, security and defence issues. In that part of the Report, the Author includes documents, opinions of experts, communications and acts which are used in this paper.

The problem of relationship between the political regime and the process of creation as well as execution of the state foreign, security and defence policies is particularly interesting in the context of the research of the most favourable structural and institutional forms of co-operation between the legislative and executive branches. Taking into account the thesis mentioned above, it makes sense to stress that fascination with the democratisation process in Poland, and generally, in post-communist Europe, has obscured the crisis of values, structures of states, moral norms, rules of behaviour etc., in some states of the region. That is because the transition period from totalitarianism to democracy is a period of enormous complexity with regard to the domestic structure of power and democratic institutions that provokes, limits or excludes controversies among leading political groups or coalitions of groups over the sphere of influence. Important elements of this transitional reconstruction of the domestic structure of power include democratic institutions and democratic constitution. Therefore, before setting out to analyse it, it is useful to make some preliminary observations.

\* we must be sure not to overlook important differences between emerging democracies (such as in CEECs) and established democratic regimes existing in countries with a long tradition of uninterrupted sovereignty,

\*\* a very important element in the evaluation of a democratic political regime is the origin of a democratic order,

\*\*\* the third distinction that is meaningful for this analysis is that between various models of democracy since every country has its characteristic form of democracy.

The fall of communism in CEECs was perceived as a point of departure towards the process of political transformation. This historical event which also gave birth to hopes for the rapid success of democracy and prosperity, activated a gigantic social movement in that direction. The faith in the inevitability of the victory of democratic ideas over totalitarian or authoritarian regimes was in fact a dominant element. Unfortunately, it was forgotten that it was a very complex process which would simultaneously liberate forces that are still very difficult to control.

As an example we can point to Polish experiences during the transition to democracy and misunderstandings concerning the division of power between the executive and legislative branches. An important element of this transitional reconstruction of the domestic structure of power was a remodelling of existing domestic institutions. It permits reduction in quarrels over an authority and put democratic standards of governing into practice. Common to this conception is the idea that the general structure and norms regarding a political regime largely determine the types of leaders selected to rule and the nature of political pressures they face while in office, as well as how they respond to them. The main, but not the only reason for that is that democratic regimes, as compared to authoritarian ones, are less likely to initiate domestic quarrels concerning institutional (legal) and actual spheres of influences or employ force in resolving internal and international conflicts. An essential part of this thesis is the assumption that democracies have inherent to them an ability to be a more peaceful form of government because they „tend to give leadership to personalities of a more conciliatory type, to attach importance to respect for law, to oppose military preparation and war, and to value liberty, humanity, and welfare above power”<sup>3</sup>.

The validity of such theses is important in each individual case. In the case of countries undergoing a political transition, they have a very special dimension. The choice of correct institutional and structural solutions becomes then the key regime question for a state. To a considerable extent, it also determines the effectiveness of its foreign policy and external security.<sup>4</sup> A specific example of this type of change is Poland and her accepted constitutional regulations.

The situation in Poland of 1989-1996 was a great historical opportunity for the country to transform its regime from totalitarian model to a democratic one. That period can be sometimes viewed in perspective of the state's inability to break down old political system and rules of the game. Cyclically recurring crisis situations showed that clearly. That fact was noticed by the observers and resulted in less favourable perception of the transition process. This phenomenon, however marginal, did not restrained a profound remodelling of political regime in Poland.

At the first stage of the process, we were concerned with the basic changes in the political values of the state, including ideology, and those were on a scale which only a few could ever predict. First of all, they resulted in the repudiation of political system and political structures and institutions. Secondly, they determined new directions of state foreign, security and defence policies, and redefined „*raison d'etre*”.<sup>5</sup> It affected the relationships and preferences between the state's institutions responsible for security, defence and foreign affairs, too. So, it had been self-evident that new regulations, especially constitutional provisions, were essential for the establishment of a very precise conceptual framework for the state regime in transition, to define - in a very detailed way - the competencies of the legislative and executive branches, the scope of their power as well as some formal and procedural regulations concerning the creation and implementation of Poland's foreign, security and defence policies.

**PART ONE : The analysis of the provisions regarding Polish foreign policy as well as state security and defence policy under the Amendment of 1952 Constitution and 1992 Constitution.**

a\ Foreign Policy and International Policy Areas

We are concerned here with solutions accepted in the Amendment to the Constitution of the Polish People's Republic dated 7 April 1989, and the Constitutional Act of 17 October 1992 „On mutual relations between legislative and the executive branches of the Republic of Poland and territorial autonomy”, called the „Little Constitution”. Yet, we still lacked a real constitution. Its preparation during the operating phase of the „Round Table” Parliament turned out to be impossible. The reason was strong divisions between the Solidarity minority and the overwhelming communist majority (65%) in the Parliament, regarding a model of Constitution. The Lower Chamber of the Parliament opted for a parliamentary system, whereas the Senate forced a presidential formula. Reservations were also expressed about the credibility and authority of such Parliament to pass a new constitution, a document that has to adhere to standards of a democratic state. The dissolution of the Parliament in summer 1991 finally closed that matter all together.<sup>6</sup> What remained hence was the Amendment to the 1952 Constitution.

In general, it can be emphasised that provisions contained in the April Amendment of 1989 referring to the scope of powers of the executive and legislative branches as well as presidential competencies concerning foreign policy, activities in international relations and security matters were not very precisely defined neither were they described during the debate at the „Round Table”. The vagueness that was thus caused was the natural consequence of doctrinal disputes concerning the role and position of the president among state authorities and also the scope of his powers in relation to the government and the parliament. That

vagueness led to competence disputes involving ministry of foreign affairs, ministry of defence and the president. Such state of affairs must have affected negatively the practical implementation of Polish foreign policy.

The scope of presidential powers adopted in the April Amendment was, in effect, a political compromise of the negotiating parties, that is, Solidarity and the government authorities. In general, the presidential position, according to the conceptual framework of the April Amendment, was clearly limited to his political role during the phase of transformation from a totalitarian state to parliamentary democracy. The legislators' justification for that was stressed here. The concept was to create such a role for the president that he could function, precisely, as a guarantor of a state with the socialist political system.

His competencies as defined in the April Amendment and in other acts, basically paralleled those of the former State Council (a collective president in constitutions of socialist states) and its chairman, and also those that State Council did not pose. It also created the most controversial aspect of his competencies. The scope of his powers had decisive influence on the political model of the state and presidency itself.

The first group of competencies (powers) did not raise much of the controversy and hence, obtaining political consensus regarding powers in this sphere was achieved easily since it covered the traditional powers of a 'head of state' that is, representing the state in international affairs, heading the State Defence Committee and the Armed Forces.

The April Amendment however, did not provide for a very clear and explicit separation of the executive powers of the president from his role as a head of state. Among the six groups of powers that the president was vested with, as stated in the April Amendment of 1989, the two covered the issues of foreign policy and international relations and also the defence and security policies. Simultaneously, these matters also fell under jurisdiction of the government, and

exactly, the ministry of foreign affairs and ministry of defence although this particular area, as regulated by constitutions of democratic states, is considered to be of fundamental significance<sup>7</sup> mainly because it deals with creation and implementation of foreign policy, creating conditions for external and internal security and control over the state's Armed Forces.

The constitutional provisions, regarding mentioned above areas provoked some questions, doubts and anxiety about the future and the results of the regime transition. The resulting situation undoubtedly clouded the vision of Poland as a stable and democratic country. There were attempts to resolve that, but despite implementation of other political reforms, they continued to be based on the communist constitution and worked towards consolidation of communist mechanisms of governing.

There was an increasing awareness in the society of a need to reform the executive branch. A new, much awaited constitution was becoming the synonym and symbol of Poland as a democratic state with structural but also with functional mechanisms characteristic of 'mature democracies'.

The creation and winning acceptance for it, wasn't however a simple undertaking. The political squabbles between the representatives of the outgoing socio-political formation and a new political elite, continued. The disputes in the triangle: the parliament, government, president, regarding competencies and their scope, and the role, and position of each of these central institutions in a new constitutional model of the state were stalling the progress in talks.<sup>8</sup> The fundamental and very controversial problems revolved around state's foreign and defence policies as well as the influence of the president, government and the parliament in those areas. While acknowledging that with a deep concern, one might ask: is that a very special Polish feature, characteristic of only Polish transformation? I doubt it.

We could observe very similar processes and problems in other Central and East European countries. Scholars and politicians sought to uncover factors and models that facilitated or stalled the process of democratic transition. Some of them stressed the role played by the formal „rules of the game” in shaping the democratic regime, others stressed functional solutions. According to G.M. Easter thesis, a very crucial element in choosing a constitutional model of a state under transition is the structure of the old regime elite, as „they emerge from the breakdown phase, determines institutional choice in the transition phase”<sup>9</sup>. Internal fragmentation of the old regime elite in Poland could have, in fact, decided a conceptual model for choosing a constitutional model of the State.

In trying to explain the case of Polish way of regime’s transformation, we ought to have in mind very general rules of behaviour referring to the creation or transformation of any state into democratic one. The constitution is the most important element of that transformation . In respect to Poland, the prolonged controversies and disputes were either paralysing the process or sharpening political crises. The most evident example of this was the dissolution of Parliament by the President L. Wałęsa in May 1992, so that he could dismiss J. Olszewski from the post of Prime Minister. Undoubtedly, this internal action hampered the image of Poland as a stable and democratic country. On 17 October 1992, the Parliament passed, „for a period needed for preparation and acceptance of a new Polish constitution”, a temporary Act *‘On mutual relations between the legislative and executive branches of the Republic of Poland and on territorial autonomy’*, commonly called the Little Constitution<sup>10</sup>. It introduced and detailed the following:

- the principle of tri-division of powers (legislative, executive and judiciary) and the mechanisms of their mutual balance
- description of division of authority between the parliament, government and president

- definition and structure of the following branches: the legislative (Sejm and Senate), executive (president and government) and judiciary (independent courts).

In this way, the Little Constitution brought Poland - though in an imperfect manner - to a political model functioning in countries with a consolidated democratic system. Its most characteristic trait was the distinct reinforcement of the presidential authority at the expense of the legislature and the other part of the executive branch.<sup>11</sup>

Its creators were convinced that provisions of the Little Constitution relating to the competencies of the main state institutions were designed to eliminate disputes between them. These expectations, however, were not fully met since, contrary to them, the powers of each branch were not defined clearly and completely. Although the Little Constitution broke with the relevant solutions contained in the April Amendment, it was still too vague. In the opinion of L. Moczulski (the leader of the Confederation of Independent Poland), the provisions of the 1992 Constitution had introduced even greater confusion.<sup>12</sup>

The Art. 25 of the 1992 Constitution relates to the general power of the president. He is a representative of the executive branch. In his political capacity, according to the Art. 28, clauses 1 and 2, he assures the compliance with the Constitution of the Republic of Poland, guards the sovereignty and security of the state, the inviolability and indivisibility of its territory and compliance with international agreements.

According to the provisions of art. 32, 34 and 35, the president provides a general oversight in the field of foreign policy, national security and is the Supreme Commander of the Armed Forces. Simultaneously, according to provisions of Art. 51, the foreign and internal matters are under jurisdiction of the Cabinet, that manages the whole government administration. The art. 52 states that matters of foreign policy, that are not explicitly reserved for the President, remain a busi-

ness of the Cabinet. Among the numerous matters mentioned in the art. 52, there are those that relate to the maintenance of international relationships, entering into international agreements with other governments and international organisations, and providing external security.<sup>13</sup> The minister of foreign affairs is responsible for their implementation. His duties include the practical policy implementation, coordination and a general oversight of the entire foreign relations, and ensuring their conformity with a general line of the state foreign policy. However, the scope of his powers has not been precisely defined. Similarly, the relation of powers belonging to the foreign minister to the same of the president was not clearly defined. The minister of foreign affairs is a person responsible before the parliament for the content, quality and dynamics of foreign and international policies. The dependence of the minister on the president in this field seems to be expressed in the fact that president can express an opinion on a candidate for the minister of that department, whose candidacy was announced earlier by the Prime Minister. It can reasonably be claimed that solutions accepted here are similar to a familiar model existing in states with a clearly strengthened presidential powers in relation to the position of a government and parliament. Unfortunately, the Little Constitution has not precisely stated the manner of the relations between him, government and the three important ministers i.e. Minister of Foreign Affairs, Minister of National defence and Minister of Home Affairs. They have also become a subject of conflicts, criticism and a source of political tension. And, therefore, we might ask the following questions:

- how much has the position of the president been strengthened in relation to the government, and
- whether, and in what way has this lack of adequate legal precision affected the process of formulating and implementing foreign and security policies

To answer those questions we should bear in mind that the presidential powers regarding foreign policy are not executed individually but with the government compulsory participation.

Firstly, the president appoints and recalls ambassadors and other representatives of Republic of Poland with the consignment of the Prime Minister and a relevant minister (art. 32, clause 2, in relation to art. 46).

Secondly, the provisions of the Little Constitution state explicitly that the president maintains contacts with other countries and even with Polish representatives abroad, through the minister that is relevant when it comes to foreign matters (art. 32, clause 3) and not through its 'own' state minister (art. 48, clause 1). Such provisions seem to be quite clear and are included in the part of the Little Constitution regarding government powers. The Cabinet (the Cabinet), according to the art. 51 of the Little Constitution, 'carries out the foreign policy' and manages the whole of the government administration, and thus, the foreign policy. Its powers also cover maintaining foreign relationships, entering into international agreement with other governments and international organisations and providing the external security of the State (art. 52, clause 2, sub-clauses 7 and 8). As it is underlined in a relevant literature, the 'constitutional principle of assumption of government authority (art. 51, clause 1) in the case of doubts, has been established. That means that foreign policy co-ordination should belong to the Cabinet, that acts in that field under general leadership of the president and working with him.

The interpretation enlarging the powers of the president in that regard - characteristic of the President Lech Wałęsa term - led to the creation of two parallel centres responsible for shaping of foreign policy: presidential and governmental. That situation was in obvious contradiction to the quoted above provisions of the art. 32, clause 3 of the Little Constitution (the Report's part II describes the actual practice in that field).

The ambiguities regarding provisions of the Little Constitution that deal with foreign policy field result from the lack of modern constitutional regulations on powers of the Minister of Foreign Affairs. The binding document in that field is ‘completely anachronistic’ (according to the opinion contained in the Report prepared and published by the Legislative Council working with the Prime Minister and concerning the urgent and necessary changes in the legal system of Republic of Poland) Resolution of the Cabinet and the State Council of 28 December 1968. Over the years, the work on a new Act has encountered several obstacles and, in effect, such a situation created an unfavourable for diplomatic practice ‘loophole’.

The Little Constitution did not regulate a very important for Poland issue of hierarchy of international and domestic laws. That loophole was closed by the art. 90 of the new Constitution that was accepted in the referendum of 25 May 1997. The Little Constitution also lacked regulations regarding the judiciary control of compliance of international agreements with the Constitution, compliance of domestic laws with international agreements, and did not have a constitutional authorisation regarding the transfer of state powers to international organisations, for example - European Union. That last provision couldn’t appear in the Little Constitution because of the specifics of the that period. The psychological reasons also played a role; it dealt with a very important issue of sovereignty that was just regained. The new Constitution contains such provision but it is still the one that is the most criticised.<sup>14</sup>

The competencies of the Parliament in the area of foreign policy are based on its general legislative, controlling and executive functions. According to the articles 1, 13 and 17, the Parliament fulfils its duties by passing Acts and other legal documents. According to the art. 24, Sejm ‘may pass the resolution on a state of war’ (in the case when it does not convene, the president may do so). According to the art. 25, the deputies are entitled to questioning (interpellation) the

Prime Minister and a relevant minister (in this case, the Minister of Foreign Affairs). Indirectly and in a limited way, the Parliament may influence appointments of ministers of foreign affairs and national defence; by passing the vote of confidence, the Parliament accepts relevant candidates proposed by the prime minister. Parliament has also a substantial influence on foreign and security policies by the virtue of the right assigned to it to decide on the state budget in that sphere. This is defined in the Budget Act, and thus, it affects the dynamics, capabilities and directions of foreign and defence policies. A large role, however, was envisioned for the parliamentary Committees of Foreign Affairs and National Security. They both have considerable margin of independence. It is a result of compromises concerning directions of foreign policy, defence etc. These Commissions provide opinions about candidates for ministers of those departments. The Little Constitution contained relatively minor changes regarding the competencies of the parliament comparing to the April Amendment. It underlined that the role of parliament in passing opinions and influencing the final shape of foreign policy and external security of the country, is significant. One controversial problem, however, has arisen regarding competencies of the parliament in nominating the staff of the Ministries of Foreign Affairs and Defence.

Summing up, it is necessary to stress that it was a conviction of the creators of that constitution that its provisions in relation to the powers of the main state authorities, served to avoid disputes between them. Their structure, powers and privileges in the areas of foreign policy and security matters were meant to balance themselves, rather than compete. One might say that the aim of the constitutional regulations was to 'exhort' to co-operate. The Extraordinary Parliamentary Commission responsible for the preparation of the 1992 project stressed that 'the Constitution calls for the efficient co-operation of executive and legislative branches provided they work with good will and remember about Polish *raison d'état*'.<sup>15</sup>

The issues of a civilian control over the Armed Forces as well as defence policy in a democratic state constitute a very substantial element of the conceptual framework of the state political system.

The essence of a civilian control over the Armed Forces reflects the subordination of the Armed Forces to a political authority of the state. The relationships between civilians and the Armed Forces' commandership, and relationships between executive and legislative branches with respect to the security and military matters are also expressed by the tenet of the subordination of the Armed Forces to the political, civilian authority of the state. That is because in a democratic society, 'the power', understanding military power, is under control of civilian politicians, independently of a matter being under consideration. They also decide on the spectrum of the issues used to be treated as 'the sphere of military power' and 'the sphere of civilian power'.<sup>16</sup>

The civilian control over the Armed Forces is therefore viewed as a very essential element of the democratic transformation process in any country. Regarding the establishing of the civilian control mechanisms and structures in Poland, very important steps were made, both in legislative area and in a practical dimension. However, it is still quite difficult to put some solutions into force, since Poland has a deep historical tradition of the military presence in political and social life.<sup>17</sup> Polish Armed Forces played also very important role in the national independence effort during WW I and WW II. In the beginning of 90s', for the first time since WW II, a chance for creation of such security and defence structural framework which would respond to the standards of democratic society, has appeared.<sup>18</sup> Of course, after 1945, the rules concerning civilian control over the Armed Forces were included in the 1952 Constitution. As a matter of

fact, they had only political meaning, without any practical consequences of influence on the democratisation of security and defence policies creation process. The point is, that the real chain of authority in that sphere went as follows: Moscow, Political Bureau of PZPR, Ministry of National Defence (the head of the Ministry was always a military man). Created in 1958, by the Polish Government, the National Defence Committee (KOK), in fact, totally subordinated the Ministry of National Defence and Ministry of Foreign Affairs to the power of PZPR.<sup>19</sup> The situation started to change slowly beginning in 1990, the time when the Polish Government began showing interest in tightening mutual relations with NATO. It is necessary to say, that the first official national document in which that idea was pronounced was ‘The Principles of Poland’s Security Policy’ adopted by the National Defence Committee and signed by the Polish President L. Wałęsa on November 2nd 1992.<sup>20</sup> Shortly after, the first regulations regarding the idea of civilian control over the Armed Forces were introduced in the April Amendment.

A very important provision of the April Amendment changed the role of the National Defence Committee. The NDC became an institution responsible for the state security policy, a body standing over the Parliament regarding security and defence issues. The Parliament powers were limited to the issues relating to a creation of general rules on the country’s defence policy.<sup>21</sup>

The election of L. Wałęsa for the President of RP in December 1990, marked the beginning of the second stage in the process of introduction of civilian rule over the Armed Forces. The main driving force behind that process was the President himself and a team of specialists working with the President’s Bureau. Their goal was to strengthen the executive branch by transferring much of the powers from the communist dominated Parliament to the President. At the same time, the reforms in that field were being prepared by the Cabinet of Prime Minister J. Bielecki. The civilian Deputy Minister of Defence, J. Onyszkiewicz con-

tributed much of his personal effort too. On 11th of March 1991, he presented on the Interdepartmental Commission on Reforms (appointed in February 1990) a package of proposals that included:

1. appointment of a civilian as a Ministry of National Defence
2. transformation of MON into a civilian department
3. limitation of the military bodies' executive powers (mainly that of General Staff) to military matters only
4. submitting a Chief of the General Staff directly to the authority of the Minister of National Defence.<sup>22</sup>

The goal of the Deputy Minister, Mr. Onyszkiewicz, was also to merge financial and personnel branches of MON with the General Staff and to create an independent department that would oversee military infrastructure. The General Staff itself was to be restructured in such a way so as to fit it in the structure of MON. It is to underline that much of those proposals by J. Onyszkiewicz and J. Kuriata, the other Deputy Minister, were implemented. The side effect of those, was ensuing dispute between Prime Minister J. Bielecki, the President, Parliamentary Commission on National Defence and Constitutional Commission on National Defence.<sup>23</sup> The dispute revolved around regulations regarding the role and powers of the President and the Minister of National Defence in the field of the state security and defence. Its essence was a desire of President L. Wałęsa to widen his executive powers at the expense of the government and parliament, and strengthening of military structures (mainly the General Staff) by positioning it, in the power structure, directly under the President.

The regulations of the April Amendment and relevant provisions of the Compulsory Military Service Act of 21 November 1967<sup>24</sup> ran contrary to each other and that even deepened the authority conflict between the President and government, especially the Ministry of National Defence and a Chief of the General Staff.<sup>25</sup> The Little Constitution of 17 October 1992 didn't improve the things

either, although it was intended to break the disputes and stop the rivalry between state authorities responsible for the external security and national defence. It was also meant to give credence to the claim that Poland was a democratic state with a law system that was up to the constitutional standards of democratic countries.

The main message of the Little Constitution was to be a political neutralisation of the Armed Forces, and thus, elimination of the possibility of influencing them by the political parties. But, in general, that goal was achieved only partially. The main reason was, 'that other Acts and regulations regarding powers of the main state bodies over the Armed Forces hasn't been changed'<sup>26</sup>. Particularly, it concerned the amended Compulsory Military Service Act of November 1967, Service by the Professional Soldiers Act of 30 June 1970, Military Discipline and Responsibility for Breach in Discipline, and for Offending Soldier's Honour and Dignity Act of 31 March 1963, and many others.<sup>27</sup> A legal refurbishing of the whole sphere of security and defence required, however, more time. Most of the legislation regarding that area was created in a different political reality and their transformation and adaptation to the new reality was taking a lot of time. Despite that, in the years 1990-1993, some 10 Acts that were the most important for functioning of the Ministry of Defence and relations on the line Ministry of Defence - President - General Staff, were amended.<sup>28</sup>

In „the Little Constitution”, the sphere of problems associated with external security and defence of the state falls under authority of the President, government and minister of defence. These central institutions have the most say in the question of civil powers over the Armed Forces. This is an indispensable element in the formula of the democratic state and one of the basic conditions for meaningful and independent existence in the international society. That prerequisite requires clear definition of the role, place and function of the Armed Forces in the structure of a democratic state. It should be stressed that the Armed Forces are one of the most important components of that structure, although not a power

by themselves. However, due to their specific organisational characteristics, the functions they are to perform must be adequately fitted in that structure. Adequately means, in such a way that it is possible to have efficient control over them. To make that possible, the Armed Forces should be politically neutralised. That means that such legal provisions should be accepted so as to prevent them from becoming a player in the area of state governance and remain only a tool of the government. Of no less significance in a democratic state is the non-political character of the Armed Forces.

According to „the Little Constitution”, the president is ‘the highest authority over the Armed Forces’ (art. 35, clause 1). During a wartime he nominates the Chief Commander and has the power to dismiss him (art. 35, clause 3). In comparison with the April Amendment, he has considerably more powers regarding the appointment to the most important posts in the defence department and in the Armed Forces. He also nominates and dismisses the Chief of the General Staff of Polish Armed Forces, commanders of services and regional commanders (recommended by a minister of defence, art. 35, clause 2).

He is also entitled to a wider participation in the appointment of the minister of defence (by issuing his opinion about a candidate for that post, art 61). Simultaneously, eliminated was a possibility of collision of powers inside the executive branch, which was not the case under previous regulations.

The general effect of provisions contained in „the Little Constitution” is:

- \* a more cautious selection of the Armed Forces staff,
- \* creation of a specific sphere of influence for the president in this field.

The first was considered a positive outcome of introduced reforms. However, the second one could cause some tensions and misunderstanding concerning a margin of presidential and governmental inter-dependence. The reason for choosing such constitutional arrangements was the fact that they did not determine a state system: presidential or parliamentary. But because of the lack of very

precise constitutional regulations regarding above matters, the issue of civilian control has created a space for potentially dangerous conflicts between Ministry of Defence, President and General Staff, for the next three years.

The regulations of „the Little Constitution”, in the section specifying presidential powers in regard to the external security did not provide him with a formal tool which would enable him to personally command the Armed Forces. The ‘supreme authority’ formula has in itself, to a considerable extent, a traditional meaning typical of such a constitutional entry, rather than being the norms defining material powers of the president.

The body that was to aid the President in implementation of his powers over the Armed Forces - according to the art. 34 of „the Little Constitution” - was to be the National Security Council (the Council did not deal with a matter of Armed Forces development, that was reserved for a civilian department of MON). Under the Little Constitution, the President had wide powers in regard to the security and defence as a Chairman of the National Defence Committee (KOK). One has to underline that such an important institution has not been included in „the Little Constitution”. Instead, it was described in detail in the quoted before, November 1967 Act on Compulsory Military Service. The both documents created a legal situation where powers of the President and MON were unclear and, sometimes, contradicting each other unintentionally provoking conflicts between those state bodies.<sup>29</sup>

The executive directive of the President of 13 December 1991, regarding makeup and powers of the National Defence Committee (KOK) and powers of the National Security Bureau (BBN)<sup>30</sup> made the NSB the most important, although not envisioned in the constitution, body responsible for shaping the security policy and defence of the state. Indirectly, it also strengthened position of the President as the Chairman of the National Defence Committee. That, and provisions of the art. 9, clause 2 of the amended Act of November 1967<sup>31</sup> provided

him with wide powers regarding the security and defence policies; the president could by means of executive directives, acts that are legally inferior to the constitution, decide on issues so important for the country.<sup>32</sup>

„The Little Constitution” does not provide clear description of powers of relevant departments. According to the art. 56, clause 1 „the scope of powers of a minister is defined by the relevant Act”. Regarding the ministry of defence, it was the November 1967 Act. In the opinion of many experts, provisions of that Act did not fit the regulations of „the Little Constitution” „creating a legal state that was far from clear”.<sup>33</sup> When analysing government powers in shaping the state defence policy in the years 1992-1995, one may state that it wasn't meaningful. That started to change with the creation of the Committee on Defence Matters of Republic of Poland.<sup>34</sup>

The Parliament takes a special place among state authorities responsible for defence. Its wide controlling and legislative powers enabled introduction, in a relatively short time, of legislation that brought Poland closer to the standards required by the NATO and, in general, by democratic countries. The turning point in that regard was, undoubtedly, the year of 1994. The consecutive Acts and other regulations describing power of the main state bodies in regard to a civilian control and command of the Armed Forces let us state that Polish defence system steadily evolved to the point where „a civilian and democratic supervision of the Armed Forces ceased to be a theoretical concept only”.<sup>35</sup> Among the legislation that broke with the past system the most important was the Act on a Minister of Defence of 15 December 1995. Its greatest value is that it details the powers of a minister of defence regarding the Chief of Staff, military structures, military prosecutors office and military courts. The Act's provisions subordinated the Chief of Staff to the Ministry of Defence. Such provisions create a civilian control of the Armed Forces and help to integrate the Ministry of Defence (regardless of state's political model: presidential or parliamentary).<sup>36</sup> The Act delegates to the

provisions of future constitution matters concerning authority and process of decision making in the field of security and defence. It does not state which of the main state authorities (the president, parliament or government) is empowered to make such decisions and in what way.

The quoted Act became a legal basis for the regulations regarding civilian and military departments within the Ministry of Defence. According to the legislation intentions, the Ministry of Defence had to introduce its inner regulations through a directive (art. 10, clause 2). At the same time, the Cabinet was obliged to prepare more detailed legal acts concerning the Ministry of Defence and its Statute (art.10, clause 1 and 2).<sup>37</sup>

The Parliamentary Commission on National Defence plays an important role in supervising the Armed Forces. In the years 1991-1993, the Parliament and representatives of Ministry of Defence, General Staff and President's Office worked on the Polish defence doctrine and restructuring of armament industry. In the years 1993-1995, there were parliamentary sessions that dealt entirely with defence issues of Poland.<sup>38</sup> In April of 1994, the new office dealing with relations Parliament-Ministry of Defence was created within that ministry. It was called the Under Secretary for Parliamentary Matters<sup>39</sup> and given to a civilian coming from the ruling coalition. It was one of the examples of the process of strengthening civilian control of the Armed Forces. That new institution confirmed the change in perception regarding relations: Ministry of Defence - Parliament and was an example of continuing reforms within that ministry.

**PART TWO : The Foreign Policy and International Relations under the Amendment of 1952 Constitution and 1992 Constitution.**

a\ Some practical consequences concerning foreign policy and international relations under the Amendment of 1952 Constitution and 1992 Constitution.

The period from May 1990 till December 1996 covered two presidencies; that of L. Wałęsa and A. Kwaśniewski. Certainly, the years of presidency of Lech Wałęsa were more meaningful. That period provides a lot of interesting materials supporting conviction of the right-wing politicians coming from such parties like PC (Alliance of the Centre) and Ruch dla Rzeczypospolitej (Movement for the Republic) that President Lech Wałęsa was too strong a personality to allow for the presidential model assumed in the Little Constitution and let him mediate disputes and tensions between the executive and legislative branches. That concerned, in particular, matters associated with his activities in the field of foreign policy and him being a supreme power over the Armed Forces. The regulations in those areas were perceived as a source of danger for the democracy. The doubts related to the presidential powers that entitled him to „supervise the foreign policy and national security matters” (art. 28). The broader interpretation - accepted by Lech Wałęsa - assumed the right to exercise other powers than „supervising the foreign policy and national security matters”. These rights were mainly related to the exertion of influence on a staff of the Ministries of Foreign Affairs, Defence and Home Affairs (the so called presidential departments).<sup>40</sup> Such an interpretation of powers resulted from a perception of presidency as an independently acting institution limited only by the requirement of non-violation of the Constitution by the means of special powers.

The practice of L. Wałęsa presidency provides several interesting examples confirming this thesis. However, I strongly believe that such situation could occur in any country on its way from a totalitarian regime to democracy.

It is evident that a transition time markedly reveals a lack of democratic rules of governing. The tenure of A. Kwaśniewski seems to be slightly different in

that respect. Any remaining question marks will be answered by his activities while in the office. The provisions of art. 32, clauses 1 and 3 of „the Little Constitution” are somewhat of the novelty („the president provides general leadership in the field of foreign relations”). It may seem to imply that the President is a creator and executor of the state’s foreign policy. This, however is not so. Bearing testimony to this, are the provisions of the above mentioned art. 32, clause 3, art. 33, 46 and 51, clause 2, point 7, and art. 55, clause 1, and art. 56. It is difficult to find in them any real presidential powers in that area; it rather seems to be a strict co-ordination of work with relevant ministries. The experience gained during tenures of Foreign Ministers K. Skubiszewski, A. Olechowski, W Bartoszewski and, to a lesser extent, D. Rosati, seems to suggest a number of misunderstandings in that field. Starting from 1991, disputes about a pattern of foreign policy, its directions and main creators, seem to spread a shadow over that area. A very symptomatic signal was a criticism of K. Skubiszewski and behaviour of president L. Wałęsa during the attempted coup in Moscow, in August of 1991. Without consulting relevant ministers, the president ordered mobilisation of Armed Forces and appointed a non-constitutional crisis group (Advisory Committee) for a period of the coup. In effect, the meeting of the Advisory Committee of the President called in August 1991 transformed into a forum for mutual accusations and suspicions. One of the opposing figures, among others, was the next Defence Minister, Mr. J. Parys.

Such characteristic, two-track foreign policy, together with some incoherence in activities of the Ministry of Foreign Affairs, despite assurances to the contrary of minister K. Skubiszewski, lasted even afterwards.<sup>41</sup> An example could be a presidential initiatives „NATO-bis” and „EU-bis” which were not consulted with the Ministry of Foreign Affairs, but were announced by the president during his visit to Germany in April 1992.

21

The „NATO-bis” proposal was the most controversial one, aimed at the strengthening the relations with NATO. It resulted from two factors: L. Wałęsa’s character and his determination to have a decisive impact on state’s foreign policy and his wrong estimation of Poland’s position on the Continent. Another example of controversy between the government, the president and Parliament erupted by the occasion of a treaty with Russia. During his visit in Moscow in May 1992, president L. Wałęsa was to sign the Polish-Russian treaty prepared by the government of J. Olszewski (with K. Skubiszewski as the Minister of Foreign Affairs).<sup>42</sup> However, two hours before the commencement of talks with B. Jeltsin, the Polish President received a cryptogram in which the Prime Minister withdrew his permission for such talks. In such a situation, L. Wałęsa started negotiations with President Jeltsin as if against the stand of Polish Government. The treaty was signed anyway. That was an unprecedented event in the history of Polish diplomacy, since the functions of the president as a head of state include signing international agreements previously prepared by the government and not negotiating or renegotiating them. Should signing of the Polish-Russian treaty, in this situation, be considered a personal success of President Wałęsa?

The dualism in Polish foreign policy was also illustrated by conceptual differences between the Prime Minister J. Olszewski (6 December 1991 - 5 June 1992) and L. Wałęsa regarding directions of Poland’s Western policy. Whereas the President urged priority for the relationships with Germany, J. Olszewski, during his visit to Italy in April 1992, clearly suggested shifting the emphasis from Germany to Italy (his conviction was that Italy was the state that would lead Poland into Western Europe).

The disputes and tensions between L. Wałęsa and J. Olszewski as well as between L. Wałęsa and Parliament did not subside till the creation of a new Government of H. Suchocka (11 July 1992 - 25 May 1993).<sup>43</sup> Moreover, it should be

emphasised that chances of reaching a real compromise in the triangle: president - government - parliament were not realistic. The reason for that was the presidential nomination of gen. Wilecki for the post of Chief of Staff of Armed Forces. That wasn't a good news in regard to the cooperation between a new Minister of Defence, J. Onyszkiewicz, and the Armed Forces. Gen. Wilecki was viewed as a very ambitious officer interested in reinforcing Armed Forces's position at the cost of Minister of Defence.<sup>44</sup> As predicted, the situation didn't improve. The state of a strong tension between the Belweder and W. Pawlak, who formed the next Government (26 October 1993 - 4 March 1995), regarding directions and initiatives of foreign policy, persisted. The controversy revolved around presidential power to nominate the staff of so called presidential ministries: Ministry of Foreign Affairs, Ministry of Defence and Ministry of Home Affairs. Despite constitutional provisions, L. Wałęsa strongly insisted on his rights regarding those ministries. A lack of new constitutional regulations concerning the position and competencies of the Minister of Foreign Affairs ( a relevant Act of 1974 was still in force) undoubtedly hindered the cooperation between the minister and the president.<sup>45</sup> The misunderstandings that arose in this area, most emphatically illustrate the essence of that conflict. Its existence and its increasing dynamics were made possible by the unclear and inexplicit provisions of the Little Constitution in the field of great significance for any country, and especially for a country „drifting” with difficulty towards a model of democratic state. The „clean hands” action introduced by A. Olechowski, then Foreign Minister, created additional grounds for conflict between W. Pawlak, A. Olechowski and L. Wałęsa. Besides, minister A. Olechowski, personally nominated by L. Wałęsa, started his tenure with a proposal to pass a new Act on Foreign Minister Position and Competencies. It had to lead to new disputes between him, the new coalition Government SLD/PSL and the president.<sup>46</sup> In opinion of former minister, W. Bartoszewski „Minister A. Olechowski - as the first Foreign Minister - had been strongly confronted with the

situation where he had to struggle for his constitutional rights to nominate an ambassador or under-secretary of his own ministry.<sup>47</sup> W. Pawlak and A. Olechowski also appeared to have conflicting views on a speed and forms of Poland's integration with EU and NATO as well as directions and options of Polish foreign policy. Those problems were the subject of controversies during work of the Parliamentary Commission on International Matters in January 1995. The mutual accusations of the Prime Minister and minister Olechowski regarding a lack of co-ordination in the field of foreign policy and claims that A. Olechowski was to independent in his personnel policy, and that he wanted to eliminate the Prime Minister from the foreign policy creation process, undermined a previous consensus reached in that field.<sup>48</sup>

The departure of the minister A. Olechowski in January 1995 deepened the government crisis and additionally weakened Poland in the international arena. The new Cabinet of J. Oleksy (4 March 1995- 26 January 1996)<sup>49</sup> started, again, with the disputes regarding the Prime Minister's right to nominate the staff of so-called presidential ministries. Mr. J. Oleksy strongly insisted on his constitutional prerogatives (art. 32 and 33 of Little Constitution) in that field; as the Prime Minister he is responsible for internal and foreign policies.<sup>50</sup> The negotiations on that issue continued from February 16th to March 3rd 1995. Finally, the President personally nominated W. Bartoszewski for the post of Foreign Minister, M. Okoński for the post of Minister of Defence and A. Milczanowski for the post of Minister of Home Affairs.

Mr. Bartoszewski's willingness to become a Minister of Foreign Affairs in J. Oleksy Government was seen by the observers of Polish political scene as a very positive signal. He was respected within Solidarity movement and internationally. He was also experienced in the diplomatic field. Mr. Bartoszewski's nomination removed, or rather reduced, the worries of opposition about the power monopolisation by the SLD/PSL coalition. We may consider the year of

1995, as a very successful and fruitful one in respect to Polish contacts with EU and NATO. For example, Poland completed 1994 PfP Individual Programme and successfully started 1995 PfP Individual Programme, it accepted provisions of „NATO Enlargement Study” and many others. It needs to be stressed that the Minister of Foreign Affairs co-operated very closely with the Minister of Defence with respect to PfP. To make contacts more effective, an Inter-Ministerial Team for Co-ordination of Polish Foreign Policy regarding NATO and EU, was created. Moreover, the Minister of Foreign Affairs started formula 16+1 negotiations on NATO. Meanwhile, we could observe a tendency to reinforce SLD/PSL coalition unity so as to speak in one voice on foreign policy and security matters, even if some controversies still existed.<sup>51</sup> This very important aspect of foreign policy was the subject of discussion during a great parliamentary debate in May 1995. Almost all the deputies, regardless of their party affiliation, accepted the view of Mr. Bartoszewski on the need of one voice in foreign policy. The crucial issue, while considering the question of democratisation of structures and procedures in the foreign policy field, was still the Foreign Minister independence from the president. Strengthening the position of that minister was an open question during the discussion on the Act on Defence Minister.<sup>52</sup>

On 19 October 1995, Mr. A. Kwaœniewski became the next president (in the second round he won 51.72% of the votes). Such an election outcome was perceived by the Solidarity circles as a disaster with unforeseeable consequences for transformation process and the one that created a real possibility for its reversal.<sup>53</sup> Regardless of such worries, Mr. Kwaœniewski presidency seems to be slightly different in this respect. The foreign policy, defence and security issues have been free of political tension and competition quarrels. The co-operation between the foreign minister and the president has also been assured. Such an opinion refers to directions, forms and methods used when implementing the state’s foreign policy. Nevertheless, some objections regarding the present coali-

tion, its credibility and political ambitions raised by the opposition seem to persist. As the former foreign minister, A. Olechowski stressed - „the entire legislative and executive powers wound up in the hands of the same political option”, and at the same time „there is an absence of very clear and precise legislation regarding the competencies and position of the main authorities within political framework”.<sup>54</sup>

From this point of view, a very symptomatic event took place when the Foreign Minister, D. Rosati, reprimanded two top officials of that ministry who prepared, together with the Euro-Atlantic Association, the Report on cost calculation of NATO enlargement, without his approval.<sup>55</sup> The Chairman of the Sejm Commission on International Matters, B. Gieremek expressed his disapproval with the actions of the minister.<sup>56</sup> A pressing problem is a new Act covering competencies of a Minister of Foreign Affairs. That question hasn't found its solution yet. It is a kind of paradox that the Ministry of Defence, an institution that seems to be the most difficult to regulate, has its own **Act on the Minister of Defence** while an Act concerning the competencies of Foreign Ministry is still an open question. That area is still covered by the relevant 1968 Act. Regardless of the fact that the new Constitution eliminates some controversial issues in that field, a new Act on Foreign Ministry is needed.

b\ Some practical consequences concerning security and defence policy

The provisions of 1992 Constitution - as it was analysed in part I of this Report - contained solutions that should have stimulated the co-operation between the executive and legislative branches as well as between the president and minister of defence and the General Staff. According to the legislation in force „the president is the supreme authority over the Armed Forces” (art. 35). He can nominate and dismiss - with the consent Minister of Defence - the Superior Commander (art.

35, clause 2). In the wartime, he can nominate and has a power to dismiss the Chief of Staff of Armed Forces (art. 35, clause 3). In comparison with the April Amendment he has considerably more say in nominating important officials in the defence department and in Armed Forces (art. 61). Such constitutional regulations were to eliminate any possible collisions of competencies inside the executive branch. However, contrary to the expectations they resulted in the following:

- more cautious selection of the personnel of the General Staff
- creation of a special presidential sphere of influence in the security and defence fields

The first was perceived as a positive element regarding democratisation of the relationships between executive and legislative branches. The second, however, caused a lot of tensions and disputes among politicians within state authorities and in the years 1990-1995 provoked conflicts that were dangerous for a democratic transition process in Poland. They revolved around the issue of „the extent of the President’s and Chief’s of Staff independence and their powers comparing to the same of the Minister of Defence.

The first phase of that conflict related to declarations announced almost simultaneously by the Prime Minister, J.K. Bielecki, Minister of Defence, J. Onyszkiewicz and President L. Wałęsa. The declarations stated a determination of their authors to start profound reforms in the defence department and in the area concerning relations between the Minister of Defence and the Chief of Staff.<sup>57</sup> Mr. Onyszkiewicz and President L. Wałęsa suggested quite different approaches: L. Wałęsa’s proposition aimed at strengthening his executive powers (because the Sejm was at that time totally dominated by the communists, as Mr. Wałęsa stressed) while minister J. Onyszkiewicz and Prime Minister J. K. Bielecki were interested in creation of a new conceptual model of relationships between the Ministry of Defence and Chief of Staff, and also between the President and Ministry of Defence. Their reforms would create a civilian control over

the Armed Forces and would create parliamentary controlling mechanisms over the Ministry of Defence and the Armed Forces.<sup>58</sup>

Such different ideas and preferences had to provoke dispute in the triangle: president - government - Sejm. After the collapse of J.K. Bielecki's Government in December 1991, for the moment, the reforms were pushed by the former Deputy Ministers, Mr. J. Onyszkiewicz and B. Komorowski. The situation changed when a new Prime Minister, J. Olszewski nominated Mr. J. Parys for the post of Minister of Defence (Mr. Parys was the first civilian minister since the beginning of transformation in 1989). A conflict between President L. Wałęsa and J. Olszewski's Government exploded when Mr. Parys questioned presidential prerogatives as „the highest power over the Armed Forces” and dismissed gen. B. Komorowski from his post and appointed for his position Mr. R. Szeremietiew (from the Movement for the III Republic). Minister J. Parys appointed also Mr. R. Sikorski (a person unknown to the Polish political scene) for the post of the Deputy Minister of Defence.<sup>59</sup> Those developments resulted in a political crisis that threatened the stability of the country. Besides, reforms proposed by Mr. Parys and the „presidential” National Security Bureau differed from each other completely. The proposals of the National Security Bureau aimed at extending presidential powers over the Armed Forces by directly subordinating the General Staff (and its Chief) to the President L. Wałęsa while Mr. Parys wanted it to be subordinated to him. A lack of comprehensive legislation in that area and serious differences in understanding the essence of civilian and democratic control over the Armed Forces hindered process of changes in that field. The disputes and worries about spheres of influences and a scope of independence among Mr. Wałęsa, minister J. Parys and Mr. J. Olszewski became intense because of the very individualistic personalities of those political figures. According to A. Michnik's opinion „L. Wałęsa wanted to be a charismatic national leader, acting in accordance with the rules established in Solidarity times. He strove to have such power

over the country as he had over the Solidarity movement. Those powers included influence over the Government, Parliament, Armed Forces, police and the judiciary system as well.<sup>60</sup>

The controversies between Mr. Parys and President Wałęsa spread into Parliament. A dramatic moment came when Mr. Parys accused the President of involving the Armed Forces in the politics. A special commission was created to resolve that problem (25 April 1992). The Commission absolved Mr. Wałęsa from those accusations. The President dismissed Mr. Parys on 23 May 1992 and Sejm, after a dramatic session, dissolved the Cabinet of J. Olszewski (5 June 1992). The reason of the Sejm action was the implementation of governmental „inspection resolution” prepared by the Home Minister, A. Macierewicz.<sup>61</sup>

The new Cabinet of Ms. H. Suchocka (11 July 1992 - 25 May 1993) set new hopes for better co-operation on the line: president - government - parliament. The new Defence Minister, Mr Onyszkiewicz, declared his readiness to start implementation of reforms regarding Armed Forces that he began when he was a Deputy Defence Minister in J. Bielecki’s Government. Besides, state of good co-operation between him and Minister of Foreign Affairs, Mr. Skubiszewski, was perceived as a good prognosis for those reforms.<sup>62</sup> They would result in simplification of the Defence Ministry structure and creation of more precise framework for relationships between a Defence Minister and Chief of Staff.

First of all, the Minister of Defence would manage the financial and personal policies in both institutions. It meant that relevant and separated structures would be replaced with the one responsible for both, finances and personnel.<sup>63</sup> Unfortunately, at the same time Mr. Wałęsa dismissed the Chief of Staff, gen. Z. Stelmaszczuk and appointed for that post gen. Wilecki. Gen. Wilecki was well known as a person deeply interested in strengthening position of Armed Forces at the cost of the Minister of Defence and in extension of powers of the General Staff in regard to the security and defence matters.

The counteraction of Mr. Wilecki hampered minister Onyszkiewicz reforms. Acting with a strong support of Mr. Wałęsa, gen. Wilecki consequently worked to enlarge a range of presidential powers and privileges regarding security and defence policies as well as strengthening the position of Armed Forces against the civilian Minister of Defence.<sup>64</sup> So, we can say that the process of disintegration of the Ministry of Defence has begun; the civil part of the Ministry of Defence linked its interests with the Government and Parliament while its military part and the General Staff was strongly opting for Mr. Wałęsa.

Such a situation, undoubtedly, did not help in time when Poland declared its determination and readiness for strengthening relations with NATO.

The reforms in the Armed Forces, democratic and civilian control of the Armed Forces and clear rules of behaviour regarding executive and legislative branches, those were the conditions of Poland's future NATO membership. The disputes on the position of Defence Minister as well as the powers of the Chief of Staff increased in the fall of 1993 after gen. B. Komorowski's appointment for the post of the Defence Minister in the new Cabinet of Mr. W. Pawlak (26 October 1993 - 4 March 1995). Mr. Komorowski's reforms in the Armed Forces went in two directions: on the one hand, they aimed at increasing the Government powers concerning security and defence policies, and on the other, they aimed at strengthening the position of the Defence Minister opposite President by taking away some powers, regarding the Armed Forces (or speaking more precisely - the General Staff), from the National Security Bureau. Those proposals indirectly limited presidential privileges resulting from his functions as the Chairman of the National Defence Committee. They also tried to create a credible system of civilian control over the Armed Forces by strengthening the Ministry of Defence at the cost of Chief of Staff (for example, Mr. Komorowski wanted to get back the control over the Department of Civil Education, Intelligence Service and Counter-

Intelligence Service). Despite those efforts the position of Mr. Wilecki strengthened considerably.

Some usual disputes concerning the position of the Defence Minister toward the Prime Minister appeared also inside the Cabinet of Mr. Pawlak.<sup>65</sup> The struggle between Mr. Komorowski, Chief of Staff, President Wałęsa and inside the Government itself with respect to the conceptual model of civilian and democratic control of the Armed Forces continued to threaten the internal stability and credibility of Poland as a democratic state. An example of that was a close cooperation of Chief of Staff with Mr. Wałęsa while bypassing the Ministry of Defence and its head. In autumn of 1994, a serious conflict arose involving the Minister of Defence, P. Kołodziejczyk, gen. T. Wilecki and Mr. Wałęsa. The essence of that dispute was exactly the issue of civilian control over the Armed Forces and a subordination of the General Staff (practically the whole Armed Forces) to the Minister of Defence, since it is him who is responsible before Parliament for defence and state security. For that reason he also must have the right to decide on matters concerning Armed Forces, preferably, he must have the right to make binding decisions. Speaking in general, Mr. Kołodziejczyk proposed a number of amendments to the Little Constitution which would in precise way divide the competencies of a civilian Minister of Defence and the General Staff. Neither gen. Wilecki nor Mr. Wałęsa agreed to those proposals.<sup>66</sup>

We deal here not simply with a personal dispute, although it seemingly may so appear, but with the conflict of two different philosophies on the place of Armed Forces in the structure of state institutions and also two philosophies on the function of Armed Forces in the state. The President L. Wałęsa aspired to take control over them, the police and special services. The position of Mr. Komorowski, and earlier, J. Onyszkiewicz, was clearly against such tendencies. Thus, the co-operation of gen. Wilecki and the President, observed in the spring of 1994, signalled their wiliness to sideline the Defence Minister, P.

Ko³odziejczyk, although in accordance with the principles in force in a democratic state, it was the Chief of Staff who should be dismissed for insubordination. Instead, the Prime minister dismissed Mr. Komorowski (10 November 1994). That was a distinctive signal that the position of the Armed Forces is on the rise. In the ensuing discussion over the formula of civilian power over the Armed Forces, the opinion that appeared to dominate was the one emphasised by the new chief of the National Security Bureau, Mr. H. Goryszewski (June 1994), that the President should have a direct authority over the Armed Forces. The project of the Act on Powers, which was to regulate the question of authority over the Chief of Staff, submitted by himself for discussion in the Parliament only deepened tensions that prevailed in that field. He proposed, among other things, that the supreme authority of the President over the Armed Forces, in purely administrative matters, be performed through the Minister of Defence, whereas in the question of his direct command, that should be performed through the Chief of Staff.

The omission of the Defence Minister in discussions resulted in the famed dinner at the Drawsko military training ground, during which an unprecedented voting took place. The participating generals were to state their opinion on ability of Mr. Ko³odziejczyk to co-operate with gen. Wilecki. It was all too evident that that whole issue was only a pretext to show Mr. Ko³odziejczyk's incapability to head the Ministry of Defence.<sup>67</sup> A general opinion prevails that without a permission of L. Wa³e³sa „the Drawsko dinner” wouldn't be possible<sup>68</sup> and that the ensuing dismissal of Mr. Ko³odziejczyk would not have occurred. The Drawsko matter, beside an earlier conflict around the Ministry of Defence demonstrates a lack of understanding of the significance of a civilian control over the Armed Forces appropriate in a state with established democratic political system.<sup>69</sup>

To enable the President to perform his functions, the Little Constitution granted him - as it was outlined in the part I of this Report - the power to nomi-

nate a Chairman of the National Defence Committee. Through the National Defence Committee the President is to execute his powers in the field of internal and external security of the state.

According to the presidential Directive of 13 December 1991, the National Defence Committee was „a proper authority regarding policy creation on the state’s security and defence”. Its functions included collection and presentation of information on the state of national security, defining dangers to that security and preparation of proposals aimed at neutralising those dangers.<sup>70</sup> The National Defence Committee was subordinated to the President in two ways. First, the President as the Chairman of the Committee had a tremendous influence on that institution and secondly, he was a direct superior of the Secretary of the National Security Bureau „the executive body of the N.D.C.”

Reporting about the process of democratisation of the structure responsible for the state security and defence policy, one has to emphasise a very ambiguous position of the Parliamentary Commission on National Defence in respect to Mr. Wałęsa’s attitude in relation to Mr. Kołodziejczyk during the „Drawsko dinner”.<sup>71</sup> That state allowed Mr. Wałęsa to continue his pressure on the Government and especially the Ministry of Defence. The reforms announced by the Secretary of the National Security Bureau, Mr. Goryszewski fully reflected the essence of presidential policy intended on strengthening the position of Armed Forces and the General Staff in the structure responsible for Poland’s security and defence policy. The state of tensions between the President and the Cabinet became even more evident at the turn of 1994/1995. After dismissal of Mr. Komorowski in November 1994, his post remained vacant till March of 1995. The President demanded removal of the Prime Minister and threatened dissolution of Parliament regardless of the fact that it would be illegal. The situation approached the point of a state crisis. Gen. Wilecki was supposed to be appointed a new Prime Minister by Mr. Wałęsa.<sup>72</sup> A very dramatic moment came during the par-

liamentary discussion on Polish foreign and security policies in January and February 1995. Taking part in that discussion, President Wałęsa very ostentatiously called for strengthening the Armed Forces' position within current structures and declared that „the military men ought to rule over the Armed Forces”.<sup>73</sup> Obviously, such a declaration impaired Poland's chances for a NATO membership (the civilian control over the Armed Forces is a basic condition for that membership).

L. Wałęsa's position contrasted with a general conception represented by the majority in Sejm as well as by SLD/PSL coalition. A new government with J. Oleksy as the Prime Minister (4 March 1995 - 26 January 1996) recommended a very clear model of civilian control over the Military and greater independence of Defence Minister from the Chief Commander and General Staff.<sup>74</sup> The acting Minister of Defence, J. Milewski presented Sejm with the conceptual model of a transition in that field. First of all, he stressed the need for a new legislation regarding the Armed Forces and Defence Minister powers over the General Staff. In his opinion, the Chief of Staff had to be subordinated to the Defence Minister, not to the President. „Such is the logic of our constitutional provisions”, he said. Contrary to the project originated in the National Security Bureau, the one submitted to the Parliament by Mr. Milewski in March 1995 emphasised the need for creation of a democratic defence system in Poland, i.e. such mechanism in which „ a defence policy creation belongs to the political authorities while military actions and training during peace time belongs to the military men”.<sup>75</sup> Also Mr. Okoński, the new Defence Minister recommended by President Wałęsa<sup>76</sup> declared his readiness to help resolve that problem but he didn't make any impact in that field.

Independently from a crisis situation with respect to the relations between President and the Armed Forces on one side and the Ministry of Defence and Government on the other, Poland achieved a very substantial progress in its rela-

tions with NATO. On 2 February 1994 the Prime Minister, W. Pawlak signed the PfP treaty. As the first post-communist country Poland also signed the PfP Individual Programme (5 July 1994).

The progress in development of Polish relations with NATO was facilitated by the signing of two agreements which provided a formal, legal basis for further relations:

The Information Protection Agreement signed in Brussels on November 3rd. 1994 and the Status of Forces Agreement (SOFA) which presently is in the process of ratification by the Polish parliament. In January of 1995, Polish government delivered to the NATO headquarters a document outlining general guidelines for Polish policy toward PfP. The document described directions of Armed Forces' transition and a state of defence system. It also included some financial and technical data regarding implementation of PfP. That paper and talks with NATO that followed it, resulted in completion of negotiations (20 April 1995) on a document called „The Defence and Planning Process” which was equivalent of the DPQ (Defence Planning Questionnaire).<sup>77</sup> Poland was, again, the first post-communist state to do so.

On the issue of a civil and democratic control of the Military, the end of 1995 marked the end of the first phase of Polish reforms regarding the overhaul of security and defence systems that intended to create a co-operation between the civilian and military authorities i. e. Ministry of Defence and General Staff and a new law system in that regard. The following documents regulating the security and defence issues were adopted by Sejm in 1995:

- ◇ February the 16th, the Act concerning basic defence problems
- ◇ October the 2nd, the „Information on implementation of the Act from 16th of February”
- ◇ December the 16th, The Act on Minister of Defence which describes in a detailed way the scope of his powers and independence, his position in the secu-

rity and defence system and especially, his position opposite the General Staff and its Chief.<sup>78</sup>

On 19th of December 1995, Mr. A Kwaœniewski (SLD) was elected the next President of Poland. Since then, the system of relations among state authorities began taking more clear a shape. The present model of the presidency does not provide for an ideal co-operation, democratisation and stabilisation of the decision making process but the presidency of Mr. Kwaœniewski seems to be different in that respect. More than one year into his term, Mr. Kwaœniewski does not confirm the worries of the opposition regarding his activities in the field of foreign policy and security, and defence matters. However, in the beginning it appeared that his victory might hinder Polish NATO aspirations and its desire to become a member of EU and WEU for the reason that „Kwaœniewski election means acceleration of the re - communisation of Poland” or that ”the SLD return to power might be a threat to the new political deal in Poland”.<sup>79</sup> But for some observers, Mr. Kwaœniewski was perceived as „a very pragmatic and gifted politician or simply, a cynical opportunist who will be trying to remove any doubts concerning his policy toward Russia”.<sup>80</sup> The widely held opinion was that for the NATO and EU, the most important would be his acts and not symbols and even his political past.<sup>81</sup>

For the purpose of this Report, we will take under consideration the still-open question of a civilian and democratic model in defence field and description of powers, and competencies in that regard. That problem provokes the greatest polemics because of the absence of clarity in that area.

It was believed that a proposal by the President-elect to create a National Security Council as an advisory body for the President could become an important element of linking the presidential powers of „general management” over foreign and security policies, with the powers of the Government to „manage” and „decide” on those matters. Increasing the functions of the National Security

Council would create the possibility for harmonising actions taken by the Government, Parliament and President. Unfortunately, completing the staff of the National Security Council is still an insurmountable problem<sup>82</sup> and the process of finding an organisational and legal formula that would guarantee the effective control of Armed Forces by the President and Ministry of Defence is still in progress. The disputes regarding understanding the idea of a civilian control over the Armed Forces resulted in passing by the Parliament the Act on the Minister of Defence, in force since 14 February 1996. It is the most important Act concerning the position and functions of the Chief of Staff and Minister of Defence. Its provisions are evidently in favour of the latter; the minister performs his duties with the assistance of the General Staff and in accordance with the concept of that Act, he can make decisions concerning the structure, organisation and operation of the Armed Forces (after obtaining an opinion on those matters from the Chief of Staff).<sup>83</sup> An open question, as of today, is how the Minister of Defence will execute the provisions of the long-awaited Act on Powers. The Act on Minister of Defence does not give an answer to the two important questions, which of the principal state authorities: the president, government and parliament, has to make the fundamental decisions concerning the security and defence, and what will be a procedure of the decision making process. These matters have been omitted in the Act on Minister of Defence, instead, they were referred to the new constitutional regulations. J. Simon, an American expert on security and defence problems in the CEECs', described the above Act as „a master-stroke”, the decision that eliminates arguments against NATO enlargement. He said, ‘I am really happy because of this’.<sup>84</sup>

Summing up, we can say that a real democratic overhaul of the Armed Forces took place, in fact, when Mr. Wałęsa left his office.

In the middle of 1996, the next step in that direction was taken; the Chief of Staff position has been incorporated into a civilian structure of the Ministry of De-

fence, thereby providing its minister with an important tool for a secure civilian control over the Armed Forces.

Another vital decision was creation of a separate chain of command for the Armed Forces, with the Minister of Defence at its top. The Chief of Staff became one of the 5 Deputy Ministers in the Ministry of Defence. The reforms carried under the Act of December 1995, created substantial progress in that area. However, even the best model of the relationships between civilian and military structures does not protect them from suspicions and rivalry. They exist in all countries, even the ones with a long democratic traditions.

The implemented reforms put to rest the worries about a democratic transition in Poland.<sup>85</sup> When it comes to a legislative and institutional aspect, the problem of security and defence system was still regulated by the Little Constitution. Due to the instability of political scene and a lack of democratic traditions in respect to the Armed Forces' position in a constitutional model, the work on a new constitution progressed rather slowly. But, finally, in June 1996, the Constitutional Committee of the National Assembly completed its work and after discussion in the Parliament, and after being accepted in the referendum of 25 May 1997, the new Constitution is expected to be in effect in autumn 1997.

Mr. Kwac̄eniewski, explaining a long time it took to complete the constitution, listed few basic reasons: the worries of the first post-1989, not-so-democratically elected Parliament, that it lacks legitimacy, its lack of experience and knowledge in the field of democracy and differences in opinions on a state constitutional model. The 7 years that passed since the beginning of work of the Constitutional Commission of the National Assembly made everybody aware of the fact that for a normal functioning of the state one needs a clear and precise description of state authorities' powers and relations between them or „otherwise, it is an invitation to quarrels and conflicts or irresponsibility”.<sup>86</sup>

Giving a speech at the forum of member countries of the North Atlantic Council, on 17 January 1996, Mr. Kwaœniewski listed the most important for Poland aspects of its foreign policy and national security:

- \* a stable and predictable foreign policy for „now and future”
- \* its steady goals i.e. integration with NATO and EU,
- \* a need for individual contacts with countries seeking a membership in NATO according to the formula 16+1,
- \* Poland’s readiness to present its own proposals regarding co-operation within formula 16+1,
- \* constant work on bringing Polish Armed Forces and political structures to the NATO standards and „a full implementation of the rule of a civilian control over the Armed Forces”.

We know the standards regulating the civilian-military relationships in the West’ he said during that forum. He continued, ‘While working on a new constitution, we seek to introduce clear provisions regarding the division of powers between the main state authorities during peace-time and in extraordinary situations. Knowing the importance of those issues, we introduce new regulations without waiting for the acceptance of a new constitution. One of the first legal acts that I signed after taking the office of the President was the Act on the Minister of Defence. That Act established a clear rule of a civilian control over the Armed Forces’.<sup>87</sup>

The Act mentioned by the president is a basic piece of legislation systematising the work of the Ministry of Defence, General Staff and its Chief. Other legislation in that field covers some 10 Acts and 600 directives regarding the relationships and power of the civilian authorities over the Armed Forces and the General Staff. One of the most essential matters is implementation of the Sejm Resolution of 16 February 1995, on the basic problems of the state defence. Besides areas that were regulated under the Act of 15 December 1995, the Resolu-

tion obliged the Government, among others: to provide for a steady rise in a military budget so as for it to get to the 3% of the GNP till 31 December 1997, to outline the defence outlays for the next 5-year period, and to prepare a long-term plan dealing with the Armed Forces' development.<sup>88</sup>

The deputy minister Karkoszka described the state of implementation of that Resolution at the parliamentary session in June 1996. Undoubtedly, a lack of detailed executive directives to that Resolution hinders the implementation of many of its provisions. The main problem is financing of the Armed Forces' restructuring. The legal frame for that creates the project of an Act on Compulsory Military Service accepted by the Government on 5 November 1996. It is to replace the amended Act on the Common Duty of Defence of the Republic of Poland.<sup>89</sup>

### **PART THREE : Foreign policy of Poland and civil and democratic control over the Army under the new Constitution**

The new Constitution accepted in the referendum on 25 May 1997, puts the matters concerning foreign policy and the state security and defence in the chapter that deals with the powers of the state's main authorities. There are no separate chapters regarding the state defence. Those were delegated to be regulated by ordinary Acts (art. 117). The constitution, though, because of the importance of those matters, regulates „the extraordinary states” in the Chapter XI. The Sejm and Senate is the highest legislative authority in the state (art. 95). The Constitution is the most important legislation. The foreign policy, international relations and external security matters are the business of the Parliament that passes relevant Acts.

The Regulations of the Sejm accepted through the Resolution of 30 July 1992, entitles it to the substantial controlling powers. The Resolution of 13 March 1995, on the Government's duties toward Sejm and Senate and its representation in the work of the Parliament<sup>90</sup> imposed on the Ministry of Foreign Affairs and Ministry of Defence a duty to co-operate with the Parliament with the preparation of a state budget and to initiate legislative acts. It is to remind that the above Resolution of 1995, obliged the Ministry of Defence to appoint a Secretary or Under Secretary who would work with the Parliament. Because of that duty, the Ministry of Defence issued a Directive (21 April 1994) creating such an office. The Directive was amended in February 1996 providing for the creation of Under Secretary for Social and Parliamentary Matters in the Ministry of Defence.

The parliamentary commissions play the most important role. They work with relevant ministries (in this case with the Ministries of Defence and Foreign Affairs) on creation of current and long-term policies regarding foreign affairs and state security (art. 110). The legislative and controlling functions of the Parliament

is expressed by its right to question (interpellation) the Prime Minister and his Ministers (art. 115). Sejm can also influence the state foreign policy by deciding on the state budget. The Sejm, passing the budget Act, and Senate accepting it by a resolution, decide on the state outlays on a foreign policy and international relations (arts. 219 and 223).

Indirectly and in a limited way, the Sejm may influence nominations for the posts in the ministries that deal with foreign policy and state defence, by deciding on the confidence vote and accepting a Cabinet proposed by the Prime Minister (art. 155). The Sejm also decides, in the name of Republic of Poland, about the states of war and peace. The resolution of war can only pass when the country is under an armed attack or when so obliged by the international treaties on a mutual defence. When the Sejm is not in session, the state of war is being declared by the President.

The President of the Republic of Poland „guards the sovereignty and security of the state and the sanctity and indivisibility of its territory”. When it comes to the foreign policy and international relationships, the President „represents the state in foreign relations” (art. 133, clause 1). The new Constitution did not include in its context the imprecise articles 32 and 33 of the Little Constitution that said of the general „leadership (of the President) in the field of foreign relations”. The President, because he „represents the state in foreign relations”, nominates and recalls Polish representatives in foreign countries and with the international organisations, ratifies and withdraws from international agreements, accepts and withdraws his acceptance of foreign representatives. An important entry in the art. 133 is its clause 3, stating that in the field of foreign policy, the President „works with the Prime Minister and a relevant minister”. The legislators expressed that way their intention to provide for co-operation and not a rivalry between those authorities.

It can be said that, in the new Constitution, the presidential powers in the field of foreign policy were limited to the representation of the state outside, and positions of the Prime Minister and a Cabinet were strengthened (art. 146 and 148). Similarly, presidential powers regarding defence issues have been limited too.

In the field of exterior security and state's defence, besides provisions of already quoted art. 126, the President is a „superior commander of Armed Forces” (art. 134, clause 1). In the time of peace, the President executes his powers as „a superior commander” through the Minister of Defence (art. 134, clause 2). The President appoints a Chief of Staff and the top military commanders (art. 134, clause 3).

The new provision is the one that deals with a tenure of a Chief of Staff. In the new Constitution, the President appoints the Chief of Staff and top military commanders without preceding motion on that matter of the Prime Minister (art. 134, clause 3). In the war-time, the presidential power to nominate the Chief Commander must be preceded by a relevant motion to that effect by the Prime Minister. The same procedure is in effect when recalling the Chief Commander (art. 134, clause 4). The detailed powers of the President regarding the Armed Forces, as intended by the authors of the Constitution, will be regulated by a proper Act (art. 134, clause 6).

The new Constitution, and that is a significant novelty, precisely describes powers of the Prime Minister, making him responsible for the Cabinet appointments (art. 154, clause 1) and for its work (art. 148). That means that removed were any doubts concerning so called „presidential ministries” included in the provisions of the Little Constitution. The President's role regarding the Cabinet, according to the art. 144, was limited to the nomination of the Prime Minister (clause 3, pt. 11), acceptance of the Cabinet as a whole (art. 154, clause 1) and accepting dismissal of the Cabinet (art. 144, clause 3, pt. 12). Indeed, the provi-

sions of the art. 146, clause 1 and 3, state that „the Cabinet conducts interior and foreign policies” and „within the scope and according to the constitutional provisions and ordinary Acts, provides the exterior security”, „manages, in general, relations with foreign countries and international organisations” and „manages, in general, the defence issues”, but in the consecutive entries (especially the art. 149) the Constitution clearly designate relevant ministers to „direct specified departments of the governmental administration or to carry out duties as described by the Prime Minister”.

The powers of the Cabinet in the field of state’s security and defence are limited to the Prime Minister’s motion on appointment or dismissal of the Chief Commander and to the co-operation of the Minister of Defence with the President in nominating to the military ranks described in relevant Acts (art. 134, clause 4 and 5). For the purpose of this Report, it is important to mention the art. 146 of the new constitution. The clause 1, includes a general directive for the Cabinet in the field of foreign and interior policies. The following clauses (especially the clause 4, pt. 7, 8 and 11) impose on the Government the duty of conducting the policies that would provide state’s external security and a general management in the field of state’s defence.

As it was said earlier, the new constitution does not describe powers of a Ministry of Defence (neither the powers of a Ministry of Foreign Affairs). In the first case, starting 14 February 1996, the Act on the Ministry of Defence, is in force. (Still, there is no relevant Act on a Minister of Foreign Affairs). At the same time, the ministries of defence and foreign affairs are to be responsible before the State Tribunal (art. 198) similarly like some of the one-person executive bodies in the field of state’s defence. One of them is to be a Chief Commander. Those persons also will be responsible before the State Tribunal.

To show the changes that take place within the state authorities responsible for the state’s security and defence, one has to mention again the Act of 14 De-

ember 1995 on the Minister of Defence and provisions of the new Constitution. Both cover almost the entire field of security and defence. According to the Act of December 1995, „the Chief of Staff is the highest ranking, when it comes to his functions, commissioned officer” (art. 7, clause 2) and „he commands the Armed Forces on behalf of the Ministry of Defence in the peace-time” (art. 6, clause 1).

In the chain of command, the Chief of Staff is subordinated to a Minister of Defence (art. 7, clause 1). Such a provision is to integrate institutions responsible for a defence and, one must underline, it complies with the requirement of a civilian control of the Armed Forces (art. 13, clause 1, pt. 1 and art. 14, clause 1). The new Constitution designates the President to be a superior commander of Armed Forces, and who executes his powers in that field through the Ministry of Defence. The constitution does not specify the position of a Chief of Staff. That matter is regulated under the Act of 15 December 1995. Its art. 7, clause 1, states that „the Chief of Staff of Polish Armed Forces is subordinated directly to the Minister of Defence”.

One can say that the Constitution accepted in the referendum closes an important period in Poland’s political and structural transformation, a period of seeking a legal and organisational model that is representative to the democratic countries. That concerns a structure of state authorities, their powers toward each other and the scope of their responsibilities and mutual subordination. It is safe to state that in connection with other legislation already in force or being work on, and regarding detailed matters of foreign policy, external security, human rights and liberties, extraordinary states etc., the Constitution creates a clear picture of decision making centres of power. It is not to say that we achieved an ideal state in that matter. It is rather difficult to achieve in such a short time. The mature democracies spent a lot of more time to create their political models of a state.

Polish foreign policy will be somewhat hindered by the lack of an Act on Minister of Foreign Affairs. We also await issue of several executive directives in connection with the Sejm Resolution of 16 February 1995 regarding basic problems of national defence. But the achieved state of affairs lets us hope that a practical implementation of our foreign and security policies will avoid some traps that were existent in the Little Constitution.

The new Constitution will be in force three months from the date of its publication.

---

## References :

<sup>1</sup> M. G. Easter, *Preference for Presidentialism. Postcommunist Regime Change in Russia and the NIC.* „World Politics. A Quarterly Journal of International Relations”, vol. 49, No 2/ Jan. 97, p. 185

<sup>2</sup> „Gazeta Wyborcza”, 20.05.1997

<sup>3</sup> D. Hagan, *Domestic Political System and War Proneness* (in:) „Marshon International Studies Review”, 1994, vol. 38, supp. 2, p. 185

<sup>4</sup> T. Łoœ- Nowak, *Is Democracy a Prospect for Peace and Security in East-Central Europe?* ( in:) *The Future of Central Europe*, ed. by A. Duma³a & J. Z. Pietracø Lublin 1996

<sup>5</sup> H. Kissinger, *Domestic structure and Foreign Policy.*(in :) *Foreign Restructuring .How Government Respond to Global Changes*, ed. by I. A. Rosati, I. D. Hagan and M. W. Samson III Columbia 1994.

<sup>6</sup> Special Report by W. Osiatyñski on the role played by personal rivalries, the questionable legitimacy of the Assembly ( in:) „East European Constitutional Review”, Spring 1994, vol. 3, no. 2.

<sup>7</sup> Compare with : constitutional solutions established in such countries as, for example France, Germany, USA, Great Britain ( in:) M. Filipiak, M. Tarkowski, *Civil and Democratic Supreme Authority over the Armed Forces*, Warsaw 1994

<sup>8</sup> S. Mainwaring, *Presidentialism, Multipartism and Democracy ; The Difficult Combination.*( in:) „Comparative Political Studies” 26, no 2/ July 1993

<sup>9</sup> M. G. Easter, op.cit., p. 187

<sup>10</sup> W. Sokolewicz, *April Amendment to the Constitution* ( in:) *The State and Law*, no 6.; D. Waniek, *Society and Constitution : Determinants of Acceptance of Political Changes* (in:) *Problems of Sociology of the Constitution*, Warsaw 1991

<sup>11</sup> J. Wo³piuk, *Powers of the President of the Republic of Poland from art 28 of the "Small Constitution"* ( in:) *Small Constitution in the Process of Political Transformations*, ed. by M. Kruk, Parliamentary Edition, Warsaw 1993. ; M. Mojak, *Institution of the President during the Period of Political Transformation.* Parliamentary Edition 1994

<sup>12</sup> L. Moczulski, ( in :) *Meetings*, 10 - 11 XI 1992, no 50, p. 26

<sup>13</sup> W. Sokolewicz, *Foreign policy legal and constitutional Aspects.* ( in: ) *Bulletion. Expertises and Legal Opinions* , no 2/8/1993, Sejm Office, Warsaw 1994, p. 43/44

<sup>14</sup> Art. 90 of a New Constitution of 1997 ( in:) *The Constitution of the Poland Republic*, Warsaw 1997, p. 17

<sup>15</sup> The Report of the Extraordinary Parliamentary Commission concerning 1992 Constitution project ( in : ) Stenographic Report of 22 Session of the Sejm of the Poland Republic. 31 VII 1992, Warsaw 1992,182 and further.

<sup>16</sup> H. Kohn, *Beyond the Control. The Crisis in the Relations between the Army and Civilian Power* (in:) „Political Report” 1995, no. 14

<sup>17</sup> R. Kuřniar, *The Problem of the National Security in the Policy of Poland*. „Polish Political Science Yearbook” ,1996

<sup>18</sup> It is worth noting that in the former Poland had the regulation regarding civil control over the army. In Polish Constitution of 1921 we can find the regulations concerning civil control over the army, however the regulations were not successfully realised ( see : ) Bulletin. Expertises and Legal Opinions. no 2/8/93. Sejm Office. Warsaw 1994, p. 34/5

<sup>19</sup> L. Garlicki, *Parliament and Poland's Security Matters* .(in : ) Bulletin. Legal Expertises and Opinions....p. 35

<sup>20</sup> The Basic Problems of Poland Defence. The Government Document dated 28 VI 1994 ( in:) The Expertises and Studies Bureau. Section of International Matters. Information no 246/1994.; L. Dudek, *About Defence Doctrine of III Republic of Poland*. ( in: ) Polska Zbrojna 10 - 12 VII 1992

<sup>21</sup> National Defence Committee consists of : the president - as the chairman ; the Prime Minister - as the first deputy ; Minister of Foreign Affairs and Minister of National Defence - as deputies; the head of Presidential Office, Minister of Finance, Minister of Home Affairs, the Head of General Staff and the Head of Government Office. (in:) Dziennik Ustaw 1967 , pos. 36 .

<sup>22</sup> Interview with Minister J. Onyszkiewicz ( in:) „Polska Zbrojna”, 26 - 28 IV 1991., and Interview with president L. Waćsa. ( in:), „Gazeta Wyborcza”, 1 - 3 II 1991.

<sup>23</sup> Sejm Commission Session, 5 April 1991 ( in: ) X Term Sejm Annals, since 4 -10 April 1991, No 16, p.13

<sup>24</sup> Dziennik Ustaw 1992, no. 4, pos. 16 ; see also : T. Sokořowski, *The directions and the functions of the legislative work reforming the style of the Defence Ministry and the Polish Army functioning*. ( in : ) T. Sokořowski i T. Uliński, *The Parliament and the Defences. Ministry of National Defence*, Toruń 1996 p. 101 and further.

<sup>25</sup> After the prime minister J. K. Bielecki's resignation , J. Olszewski become the prime minister. He appointed J. Parys as the head of Ministry of National Defence. It should be stressed here that J. Parys was the first civil minister of defence in Poland since 1945.

<sup>26</sup> J. Mordwiński, *Civil Control of the Republic Poland Army by the president, the government and Ministry of National Defence under Little Constitution and the other acts.* (in : ) Bulletin. Expertises and Legal Opinions, no 2/8/93, Sejm Office, Warsaw 1994, p. 29

<sup>27</sup> Dziennik Ustaw z 1992 r., no 8, pos. 31., Dziennik Ustaw z 1992 r. No 5 ,pos. 17

<sup>28</sup> T. Sokołowski, op cit., p. 101 and further.

<sup>29</sup> See part II

<sup>30</sup> Monitor Polski, no 47 ,Warszawa 31 XII 1991

<sup>31</sup> A. Kamiński, *Some comments on legal and political subordination Polish Army to the State Authority 1992 - 1994.* ( in: ) Constitution and Defensive System, National Defence Ministry, Warsaw 1996, p. 27

<sup>32</sup> It is worth admitting that Wałęsa's decision to dissolve the Parliament resulted in lapsing of J. Olszewski's government.

<sup>33</sup> J. Mordwiński, op. cit. p. 29

<sup>34</sup> The Government vote from 28 III 1995 r. on The Governmental Defence Issue Committee ( in: ) Monitor Polski, No 18, poz. 220.

<sup>35</sup> This estimation is presented by J. Simons in : *Polish Military Relations and NATO expansion*, Warsaw 1995.p. 18/19

<sup>36</sup> Dziennik Ustaw z 1996 r., no 10, poz. 56

<sup>37</sup> The Ministry of National Defence Rules and Regulation was accepted by the government on 9 VII 1996 ( in: ) Dziennik Ustaw , 1996, no 88, pos. 399 oraz Dziennik Ustaw z 1996, no 94, poz. 426

<sup>38</sup> The Governmental Documents from 28 VI 1994. The Basic Defence Problems of Poland under the Polish Defence Doctrine ,( in : ) The Expertises and Studies Bureau. The Sejm Office. IX 1004, Information no 246/ 1994

<sup>39</sup> The first Under-Secretary of the State was D. Waniek ( 1994 - 1995). Since January 1996 the function has been acting by A. Załucki. This institution was established by the Cabinet instruction, no 75 from 21 IV 1994. The instruction is novelised by the next instruction, no 13 from 12 II 1996.

<sup>40</sup> A narrow interpretation of this entry is understood as the right to realise more detailed competence, formulated in separate constitutional norms.

<sup>41</sup> The press conference of Minister K. Skubiszewski ( in: ) Gazeta Wyborcza) 19 III 1991

<sup>42</sup> President L. Wałęsa in Sejm discussion ( in: ) The Report from 14 Poland Sejm Session, 8 V 1992, Sejm II Term, Warsaw 1992, p. 151

<sup>43</sup> Ibidem

<sup>44</sup> „Gazeta Wyborcza”, 4 III 1997; 11 III 1997 ( some reflections after gen. Wilecki’s dimission).

<sup>45</sup> Act of Foreign Minister Office from 29 V 1974 ( in : ) Dz Ustaw ,No. 21, pos. 115, 1974 r., Foreign Minister Instruction from 17 II 1988 , novelted by Foreign Minister Instruction from 24 VIII 1989, no 23 from 11 IX 1989 and no 7 from 31 V 1990 ( in:) Monitor Polski, no 23/ 11 IX 1989 and no 7 from 7 31 1990

<sup>46</sup> „Polityka”, 14 X 1994

<sup>47</sup> M. Bartoszewski, Poland’s reason of the State. The Foreign Ministers discussion on Poland’s foreign policy ( in : ) Ad Meritum, Spring/ Summer 1996, p. 9

<sup>48</sup> The Sejm Foreign Policy Bulletin from 31 I 1995., „Yearbook of Poland Foreign Policy”, Warsaw 1996, p. 188 - 191. „Gazeta Wyborcza” 6 I 1995.; „Tygodnik Solidarność”, 6 I 1995

<sup>49</sup> The Report from 50 Poland Sejm Session on 24 V 1995, Sejm II Term, Warsaw 1995, p. 11 - 20 ; For nomination of J. Oleksy as Prime Minister, the SLD/PSL coalition was agreed to accept Z. Okoński , the President’s candidate, as minister of defence. On it side, SLD advocated A. Kwacina as the candidate for minister of foreign affairs.

<sup>50</sup> „Polityka”, 6 I 1996 ; 20 I 1996

<sup>51</sup> Discussion in Sejm Commission of Foreign Matters, 31 I 1995. (in : ) Report of the Sejm Commission meeting , no 31, Sejm Office. Warsaw 1995

<sup>52</sup> Some controversies inside coalition concerned the forms, methods and rate of NATO, EU and WEU accession. ( in : ) The Report from 50 Poland Sejm Session in 24 May 1995. Sejm II term, Warsaw 1995, p. 11 - 20 ; The question was also strongly stressed in the „Report Poland - NATO” prepared by independent working organisation „ Euro-Atlantic Club”. Among the others, the Authors of the Report postulated : the restoration of the position of Foreign Policy Ministry as the principal institution for foreign policy co-ordination: creation an institution with the competencies of very effective creation foreign policy strategy. (in : ) „Strategic Year-book of 1995/1996”, Warsaw 1996, p. 269 .

Sejm discussion concerning the project of the Act on Minister of National Defence ( in:) The Report from 55 Poland Sejm Session on 12 VII 1995. Sejm II Term, Warsaw 1995, p. 36-37., See also (in : ) The Report from 67 Poland Sejm Session on 13 XII 1995 ( in:) p. 13-21

<sup>53</sup> Minister W. Bartoszewski for example resigned form his position as Foreign Policy Minister.

<sup>54</sup> Minister Olechowski opinion during discussion on Poland’s reasons of State (in: ) Ad Meritum, op.cit., p. 37.

<sup>55</sup> The Report was presented to the opinion of 20 I 1997. According to the evaluation of some experts the Report is the best paper on the subject so far.

<sup>56</sup> Minister of Foreign Affairs information about the Polish foreign policy directions and actions ( in:) The Report from 79 Poland Sejm Session in 9 V 1996. Sejm II Term, Warsaw 1996, p. 83-90., „Gazeta Wyborcza”, 14 IV 1997

<sup>57</sup> President L. Wałęsa in Polish Sejm ( in : ) The Report from 14 Poland Sejm Session on 8 V 1992. Sejm I Term, Warsaw 1992, p. 151

<sup>58</sup> Minister J. Onyszkiewicz interview ( in : ) „Polska Zbrojna”, 26 - 27 IV 1991

<sup>59</sup> „Gazeta Wyborcza” 30 I 1992., „Rzeczpospolita”, 8-9 II 1992

<sup>60</sup> „Gazeta Wyborcza” 15-15 XII 1992

<sup>61</sup> The Report from 15 Sejm Session on 23 V 1992. Sejm I Term, Warsaw 1992, p. 170., The Report of the Investigation Commission of Defence Ministry Declaration from 6 IV 1992, (in:) ibidem, p. 165-170., The Report from 17 Sejm Session ....on 4 VI 1992, p. 64

<sup>62</sup> The Report from 43 Sejm Session from 29-30 IV 1993. Sejm I Term, Warsaw 1993.

<sup>63</sup> „Polska Zbrojna” 22 III 1992., 29 III 1993., Polityka 2 III 1996

<sup>64</sup> „Rzeczpospolita” VI 1993

<sup>65</sup> „Polska Zbrojna” 27 III 1993

<sup>66</sup> See the discussion ( in:) „Gazeta Wyborcza”, 2 II 1994., 14 VI 1994., 7 X 1994., 29-30 X 1994, 21 XI 1994., „Wprost” (weekly) 4 XII 1994.

<sup>67</sup> As a reason of minister P. Kołodziejczyk dismissal, prime minister W. Pawlak pointed out the unsolved matters, in essence the Act of Defence Minister. As a matter of fact H. Goryszewski was the person responsible for preparation of the Act. However, not him but minister P. Kołodziejczyk was dismissed.

<sup>68</sup> „Gazeta Wyborcza”, 7 X 1994., 13 X 1994, 14 X 1994

<sup>69</sup> „Rzeczpospolita”, 11-12 IV 1992., „Polityka”, 10 IV 1993

<sup>70</sup> „Monitor Polski”, no 47 of 31 X II 1991, item 332

<sup>71</sup> The Report from 20 Sejm Session on 13 V 1994, Sejm II Term, Warsaw 1994, p. 196 and next.

<sup>72</sup> „Gazeta Wyborcza”, 2 II 1992., 6 II 1995., „Tygodnik Solidarność”, 6 I 1995

<sup>73</sup> „Gazeta Wyborcza”, ( wyst<sup>1</sup> pienie Wałęsy w Sejmie ), 19 I 1995., B. Borysewicz , the member of the KOR spoke about possible application of „ Jeltsin variant” by L. Wałęsa. B. Geremek emphasised law violation by president Wałęsa. A. Kwapiński warned against succeeding drawing the Army into politics ( in:) „Gazeta Wyborcza”, 6 II 1996

<sup>74</sup> The Report from 50 Sejm Session on 24 V 1995. Sejm II Term, Warsaw 1995, p. 11 and next., The Report from 55 Sejm Session on 12 VII 1995. Sejm II Term, Warsaw 1995, p. 36 - 37.

<sup>75</sup> J. Milewski, Deputy-Minister of National Defence Report on the matters concerning the civil control over army model ( in: ) The Report from 20 Sejm Session on 13 V 1994. Sejm II Term, Warsaw 1994, p. 191 ., Interview. with J. Milewski ( in: ) „Gazeta Wyborcza”, 8 III 1995., An Information concerning Poland’s defence matters ( in: ) The Report from 41 Sejm Session on 19 I 1995. Sejm II Term, Warsaw 1995, p. 100 - 191

<sup>76</sup> President L. Wałęsa blocked J. Milewski candidacy on the post of Ministry of Defence.

<sup>77</sup> E. Haliżak & K. Rud, Polish - NATO relations ( in: ) Polish Political Science Yearbook 1996., E. Firlej, *On the Road to NATO : Economic and Legal Priorities on the Integration.* ( in: ) „Reports”, No. 2, 1997 r. Ministry of Defence.

<sup>78</sup> M. Faliński, B. Jabłoński, T. Sokołowski, *Civil and Democratic Control over the Army in Poland* .( in: ) , Defence Ministry Bureau ,Toruń 1996,p. 59., T. Sokołowski, The directions and functions of the legislative reforms referring to Ministry of Defence and Polish Army ( in: ) The Parliament and the Defences, Ministry of Defence, ed. by T. Sokołowski & T. Uliński, Defence Ministry Bureau Toruń, 1996, p. 101-119.

<sup>79</sup> A. Michnik , A. Hall ( in: ) „Gazeta Wyborcza”, 21 XI 1995, 31 X 1 XI 1995. ; B. Gerek. „Wprost”, 10 XII 1995

<sup>80</sup> „Gazeta Wyborcza”, 25-26 XI 1995

<sup>81</sup> The Cabinet information concerning some basic state’s defence issues ( in: ) The Report from 83 Sejm Session on 26 VI 1996, Sejm II Term, Warsaw 1996, p. 55.

<sup>82</sup> In May 1996 , a member of the parliament and former defence minister J. Onyszkiewicz informed A. Kwaciewski of his inability to complete the staff of the National Security Council. ( in: ) „Gazeta Wyborcza”, 19 XII 1995, 14 II 1996.

<sup>83</sup> A. Karkoszka, Deputy-Minister of Defence Report about the latest Act of Minister of Defence ( in: ) The Report from 83 Sejm Session on 26 VI 1996. Sejm II Term, Warsaw 1996, p. 55. ; „Wprost”, 21 VII 1996., „Rzeczpospolita”, 18 VII 1996.

<sup>84</sup> „Gazeta Wyborcza”, 11 III 1997.

<sup>85</sup> The Report from 33 Sejm Session on 21 X 1994. Sejm II Term, Warsaw 1994, p. 19, 29, 34,94. Such opinion expressed by J. Simons - specialist for matters of civil control over the army in the Institute of National Strategic Studies ( in: ) „Gazeta Wyborcza”, 14 VII 1995. Alike evaluated the situation former Minister of Defence in October 1995 ( in: ) „Gazeta Wyborcza”, 21-22 10 1995.

<sup>86</sup> The Interview with President A. Kwaciewski ( in: ) „Gazeta Wyborcza”, 20 V 1997

---

<sup>87</sup> „Strategic Yearbook 1995/1996”, Warszawa 1996, p. 303

<sup>88</sup> „Monitor Polski” , 1995 , no 8, pos. 109

<sup>89</sup> Government information on the state of realization of the Sejm Resolution of 16 II 1995 ( in:) Sejm documents, no 1287 & 1287 A . The discussion on this subject (in:) „Sejm Diary”. 26 VI 1996.; „Polska Zbrojna”, 6-10 XI 1996., „Rzeczpospolita”, 27 VIII 1996

<sup>90</sup> „Monitor Polski”, 1992, no 26, pos. 85 and „Monitor Polski”, 1995 r., no 18, pos. 19.