



**MINISTÈRE  
DES ARMÉES**

*Liberté  
Égalité  
Fraternité*



**DEFENCE ETHICS**  
**COMMITTEE**

**OPINION ON**

**THE ROLE OF CIVIL ACTORS IN A**  
**COMPREHENSIVE DEFENCE**  
**STRATEGY**

31<sup>st</sup> May 2023



## Executive Summary

*“The secret to happiness is freedom, and the secret to freedom is courage”*

*Thucydides*

**The question of the role of civilians in military operations and as actors in a comprehensive defence strategy has arisen due to the profound transformation of the geopolitical context, in three respects.**

### **1° Deterioration of the international situation and escalating dangers.**

**In the period following the end of the Cold War and the collapse of the Soviet bloc, hopes were raised of a “happy globalisation” and a pacification of international relations.** But wrongly so, as we have seen from the growing number of international and non-international armed conflicts arising outside France over the last 30 years. The French armed forces have sometimes been directly involved in these conflicts, and some have led to terrorist action on French territory.

**However, the threat of major engagements led by States directly challenging our national interests, our territory and the French population had seemed to become less marked. Today, the very nature of conflicts has changed.** Certain major military powers are expressing their ambitions in no uncertain terms and their actions, whether overt or covert, military or otherwise, are undermining peace and stability in the world, testing the resilience of France and its allies, and of many other countries.

### **2° Emergence of new areas of conflict.**

Developments in science and technology have extended competition, contestation and even confrontation to new arenas, including cyberspace, the seabed, outer space, and the information domain.

### **3° Blurring boundaries between the civilian and military spheres.**

**Action in new environments or areas of conflict is blurring the boundaries between the civilian and military spheres.** This phenomenon is fostered by three factors – the dual use of technologies, the ambivalence of many actors, and the opacity of environments – making it difficult to attribute hostile acts or manoeuvres.

**As a result of these changes, the role of civilians and civil society in the defence of France must be re-examined, in the belief that they can play a role, but on two conditions:**

- firstly, **military defence must continue to be provided by military personnel, i.e. by public employees governed by military status, placed under military command and accountable to the constitutional authorities of the Republic;**
- secondly, **defence is a duty for the nation as a whole, but the role of civil actors must be part of a comprehensive strategy including defence, national security and national resilience, and meeting the requirements of engagement and responsibility.**

**Such is the basis of this opinion, the eight guiding principles it identifies and the fourteen guidelines it sets out.**

## **GUIDING PRINCIPLES**

***Principle No. 1:*** France will only use armed force in compliance with international law to legitimately defend itself in the event of aggression, in the context of implementing a United Nations (UN) Security Council resolution or with the consent of the host State. To do so, it must have the means to defend its population, its territory and its interests, to meet its treaty assistance commitments and to take action against hostile state or non-state forces, in all fields and in all environments.

***Principle No. 2:*** Defence is the primary duty of the State, which has the monopoly on the legitimate use of force, but the whole nation must contribute to it. While the armed forces of the Republic are at the service of the Nation and their mission is to defend the Homeland, citizens, companies and civil society organisations are not “consumers of security” but must play an active part in national defence and security. To this end, it is for the Government and Parliament to determine the conditions and limits of the involvement of civil actors, in a responsible manner and based on the issues and risks at stake.

***Principle No. 3:*** There can be no “just war” without a just cause and just means. Neither self-defence nor a United Nations (UN) Security Council resolution can justify breaching the rules of the law of armed conflict, and respect for those rules is one of the fundamental values of the Republic.

***Principle no. 4:*** The uniqueness of the mission assigned to military personnel and the obligations it places upon them, in particular the constitutional principle of having armed force at disposal, prohibit the banalisation of military status and **prevent the delegation of armed force to persons who are not members of the armed forces.**

***Principle no. 5:*** Our country must not take the path of “privatising war” or using “war entrepreneurs”.

***Principle no. 6:*** The Republic must be able to rely on the patriotic commitment of all citizens and all public and private actors, but the Government must act responsibly, taking heed not to expose civilians without protection or legal guarantees.

***Principle no. 7:*** It should be possible to mobilise the forces of the whole Nation in response to major threats and risks (pandemics, natural or industrial disasters, etc.), but without militarising society or undermining the rule of law.

***Principle no. 8:*** The cohesion of the Nation’s elites, primarily the cohesion of senior civil servants, and their ability to understand defence and national security issues, is of major importance for national resilience.

## **GUIDELINES**

**Guideline no. 1:** Doctrine governing the use, in the event of conflict, of civilian staff of the Ministry for the Armed Forces, employees of other defence-related administrative authorities and personnel of public and private entities contributing to the defence effort must be clearly defined by the competent authorities, in peacetime, and should be communicated to those concerned.

**Guideline no. 2:** Similarly, it would be highly advisable to inform civilian personnel required to perform national security service, as set out in Articles L2151-1 to L2151-5 of the French Defence Code, of their obligations and missions in the event that this service is activated.

**Guideline no. 3:** To foster synergies with open source intelligence players, there needs to be a forum for dialogue in which institutional, non-profit and scientific actors can share ideas and build trusting relationships while respecting the scope of action of each one.

**Guideline no. 4:** While the concept of armed force has a clear definition in historical areas of conflict (Land, Air, and Sea) and allows the dividing line to be drawn between what is military and what is civilian, this line is blurred in the new realms of conflict (outer space, cyberspace, the information field, the seabed, etc.). With particular regard to cyberspace and information warfare, it would be advisable to create a defence community, bringing together non-profit and civil society organisations, either formalised by a confidentiality undertaking or simply within the informal framework of flexible cooperation with civilians contributing to our defence.

**Guideline no. 5:** The needs of the armed forces and the Government should be assessed, including with legislative changes, along with the possibilities of developing the business of private military and security companies to meet those needs, giving priority to an approach based on complementarity, support and influence and excluding all possibility of substitution or delegation.

**Guideline no. 6:** In order to provide the necessary guarantees of reliability and security, the French Defence Code could lay down the requisite conditions for the business of private military and security companies (certification of companies, authorisation of employees, armament conditions, seals of approval, etc.), following the example of the French Act of 12 July 1983 regulating private security activities for companies operating on the national territory.

**Guideline no. 7:** France, which is already a signatory of the Montreux document “on pertinent international legal obligations and good practices for States related to operations of private military and security companies (PMSCs) during armed conflict” must only use companies that undertake to provide security services in a responsible manner, in accordance with our values and in compliance with international law. Therefore, France could promote and support the adherence of the companies with which it works to the International Code of Conduct for Private Security Companies (ICoC), the profession’s ethical charter, and assist small and medium-sized French companies in this process.

**Guideline no. 8:** The legal regime of the state of national emergency could be supplemented so that, in the event of a crisis below the threshold of an armed conflict likely to lead to a major conflict directly or indirectly involving France, this conflict can be anticipated, the threat prevented and the wartime economy organised. In particular, in order to promote the efforts of defence industries and services, the regime could authorise limited, temporary and proportionate exemptions from certain substantive or procedural rules laid down by laws and regulations (environmental code, public procurement code, labour code, monetary and financial code, etc.). Article L.2141-1 of the Defence Code could be supplemented along these lines.

**Guideline no. 9:** It would be of great benefit to introduce compulsory service in a military unit, as an officer cadet and then as an officer candidate, for students at the *Institut national du service public* (INSP) and *École nationale supérieure de la police* (ENSP).

**Guideline no. 10:** The Ministry for the Armed Forces could join the “CSR Platform” set up by the Prime Minister within France Stratégie, and encourage the platform to issue an opinion on the type of actions that companies could take, through and with their employees, to strengthen the Nation’s resilience.

**Guideline no. 11:** The National Guard should be reinforced through broader dissemination of information about the operational reserve and the civic reserve to encourage as many companies as possible to sign agreements. In the same vein, a “*Defence CSR*” certification and a “*Defence CSR*” seal of approval could be created for companies that facilitate their employees’ engagement.

**Guideline no. 12:** The territorial echelons of the Armed Forces should systematically contact the companies in their geographical area that are subject to the “non-financial performance reporting obligation”. These companies should also be encouraged to take part in defence initiatives, particularly in the area of cyber security (cf. Guideline no. 4).

**Guideline no. 13:** To encourage all young people in schools to learn about the history of France in combat, it is suggested that none should leave school without visiting a place of national remembrance or attending a patriotic ceremony.

**Guideline no. 14:** To foster the development of a common set of values, youth organisations that work in partnership with defence should be able to draw on a common charter of the commitment values they promote.

This opinion was made by the Defence Ethics Committee after hearing representatives of numerous military and civil authorities as well as leading figures from the world of business. In addition to its internal work and discussions, the Committee has benefited from the work and reflection led by students at the French Air and Space Force’s Fighter Pilot Training School (EAC). The Committee extends its thanks to all those who have contributed to this opinion.

This opinion is solely that of the Committee.

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**APPENDIX 1:** Direct and Indirect Participation in Hostilities

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**PREAMBLE**

- (1) The question of the role of civilians in military operations and as actors in a comprehensive defence strategy must be raised today due to the profound transformation of conflicts. Since the end of the Cold War and the collapse of the Soviet bloc, the threat of major engagements led by States directly challenging our national interests, our territory and the French population had seemed to become less marked. Many countries, including France, then chose to reduce their military budgets, with some even suspending conscription, like France. This led to certain guarding, transport, logistics, training and intelligence missions in support of State military forces being outsourced to “private military companies”. At the same time, a real “military entrepreneurship” developed, with businesses acting on behalf of certain States (the United States, Great Britain, Russia, China, etc.), and in some cases even carrying out missions involving the use of force.
- (2) In reality, this period was never a time of peace, as we have seen from the growing number of international and non-international armed conflicts arising outside France over the last 30 years, in the Balkans, the Caucasus, Africa, the Near and Middle East and Asia, in which the French armed forces have sometimes been directly involved. Most of these conflicts have been asymmetrical and have arisen far from our national territory, even though some have involved acts of terrorism in France. In addition to military operations conducted outside France, attacks or threats of attacks against the population have called for responses in terms of criminal proceedings, domestic intelligence and public security (including requisitioning military resources in the latter case).
- (3) Today, although the terrorist threat remains and our armed forces continue to be active on every continent, the ambitions, threats and manoeuvres of certain military powers are testing the resilience of France and its allies, as well as that of many other countries, and turning their public opinion, civilian infrastructure and economies into targets and issues of the utmost importance.
- (4) Developments in science and technology have further extended the fields of contestation and conflict to new arenas, including cyberspace, the seabed, outer space and the information domain. Action in these environments is blurring the boundaries between civilian and military even more, and most technologies deployed in them are dual-use technologies. Civil and military actors operate jointly or concurrently, and civil actors may, depending on the circumstances, operate in place of military resources or provide them with direct support. The blurred divide between civilian and military spheres and the resulting lack of clarity explain why it is increasingly difficult to attribute hostile incidents or acts to States.
- (5) The proliferation of false information, particularly on social media networks, and the disinformation manoeuvres led by or on behalf of certain States could destabilize public opinion in democracies, accentuate divisions and jeopardise the spirit of defence.
- (6) As a result of these changes, the role of civilians and civil society in the defence of France must be re-examined, in the belief that they can play a role, but on two conditions:
  - firstly, military defence must continue to be provided by military personnel, i.e. by public employees governed by military status, placed under military command and accountable to the constitutional authorities of the Republic;
  - secondly, the role of civil actors must be part of a comprehensive strategy including defence, national security and national resilience, and meeting the requirements of engagement and responsibility.



## **I - DEFENCE SERVES THE REPUBLIC AND ITS VALUES**

- (7) **1. France aspires to peace and does not threaten anyone.** The French Constitution also stipulates: *“The French Republic, faithful to its traditions, shall respect the rules of public international law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people.”*<sup>1</sup>
- (8) **France, which sets great store by multilateralism and an international order based on law, and as a founding member of the United Nations and a permanent member of its Security Council, will only use force on the territory of another State in strict compliance with international law:**
- with the consent of the State in which the intervention takes place;
  - on the basis of a Security Council resolution, under Chapter VII of the United Nations Charter: action with respect to threats to the peace, breaches of the peace and acts of aggression<sup>2</sup>;
  - in the context of individual or collective self-defence in the event of armed aggression within the meaning of Article 51 of the United Nations Charter.
- (9) **However, wanting peace is not enough to be at peace.** Terrorism remains a serious threat. Proliferant states continue to defy the international order guaranteed by weakened treaties. Finally, world peace, our independence and our security are threatened by the overt or covert actions of hostile or even uninhibited powers. **Ensuring our defence and thereby contributing to the stability of the world are absolute imperatives.**

**Principle No. 1: France will only use armed force in compliance with international law to legitimately defend itself in the event of aggression, in the context of implementing a United Nations (UN) Security Council resolution or with the consent of the host State. To do so, it must have the means to defend its population, its territory and its interests, to meet its treaty assistance commitments and to take action against hostile state or non-state forces, in all fields and in all environments.**

- (10) **2. Defence plays a key role in safeguarding the fundamental interests of the Nation, which include national independence, territorial integrity and public protection. These are constitutional obligations incumbent upon all public authorities, and first and foremost on the government, as well as on all citizens and all public and private actors.**

**Principle No. 2: Defence is the primary duty of the State, which has the monopoly on the legitimate use of force, but the whole nation must contribute to it. While the armed forces of the Republic are at the service of the Nation and their mission is to defend the Homeland, citizens, companies and civil society organisations are not “consumers of security” but must play an active part in national defence and security. To this end, it is for the Government and Parliament to determine the conditions and limits of the involvement of civil actors, in a responsible manner and based on the issues and risks at stake.**

<sup>1</sup> Preamble to the Constitution of 27 October 1946 maintained in force by the Constitution of 4 October 1958.

<sup>2</sup> For example, intervention in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.

- (11) **3. Defence is an imperative obligation, but not all means of defence are admissible under the laws of the Republic or under international law.**
- (12) **Firstly, France has ratified most international treaties applicable in the event of armed conflict, as well as those prohibiting the manufacture, possession and use of certain weapons,** i.e. rules of international law which, for humanitarian reasons, aim to limit the effects of armed conflict or to ensure the protection of victims of armed conflict, irrespective of the side to which they belong. These treaties fully commit the State, the public authorities and the French armed forces. Some of the rules or prohibitions they contain also correspond to principles or values inherent in the ethical corpus of the French armed forces (*cf.* the opinion of the Defence Ethics Committee on “[Ethics in Military Training](#)”).
- (13) **Secondly, French criminal law has transposed certain treaty obligations into domestic law, by specifically punishing crimes against humanity<sup>3</sup> as well as war crimes and offences committed during international and non-international armed conflicts,** particularly against persons protected by international law, war crimes and offences related to the conduct of hostilities, and the use of prohibited means or methods of combat.<sup>4</sup>
- (14) **Lastly, the legislator has enacted the general statute of the military which imposes exceptional duties upon members of the armed forces, including the ultimate sacrifice in the name of defending the Nation, while subjecting their action in combat to strict ethical imperatives and compliance with the law of armed conflict.** The Ministry for the Armed Forces has notably issued a remarkable [manual on the law of military operations](#), summarising the main rules governing the use of force by the French armed forces on national territory and abroad, both in peacetime and during conflict.

***Principle No. 3: There can be no “just war” without a just cause and just means. Neither self-defence nor a United Nations (UN) Security Council resolution can justify breaching the rules of the law of armed conflict, and respect for those rules is one of the fundamental values of the Republic.***

<sup>3</sup> Articles 211-1 to 213-4-1 of the French Penal Code.

<sup>4</sup> Articles 461-1 to 461-31 and 462-1 to 462-11 of the French Penal Code.

## **II - DEFENCE IS THE RESPONSIBILITY OF THE NATION AS A WHOLE**

### ***A. Military Defence and Armed Force***

- (15) **1. Military defence is the responsibility of the armed forces, i.e. the Army, the Naval Force, and the Air and Space Force, as well as the National Gendarmerie and the formations attached to them.** Their mission is defined in Article L4111.1 of the Defence Code: *“The armed forces of the Republic serve the Nation. Their mission is to prepare and ensure the defence of the homeland and its best interests by armed force.”*
- (16) These armed forces are under the constitutional authority of the President of the Republic, who is at the head of them with responsibility for national independence, territorial integrity and compliance with treaties.
- (17) **Military status regulates the duties, obligations and rights of the men and women who are governed by military statute and serve in the armed forces (Army, Naval Force and Air and Space Force) or who are members of military corps (engineers, doctors, commissioners, etc.). This includes active professionals and operational reservists, as well as conscripts in the event that conscription is re-established, or citizens who are mobilised and enlisted in the event of mobilisation.**
- (18) **This military status is unique** in several regards:
- a. **It is underpinned by Constitutional foundations**, in particular the principle of having armed force at disposal.
  - b. **Many of the rules of military status**, as defined by the general statute of the military, stem **from the values of honour, dignity and self-sacrifice inherited from our military history**. These values have always been taught in military schools, training centres and units and are today included in the codes of honour of the different armed forces (*cf.* opinion of the Defence Ethics Committee on [“Ethics in Military Training”](#)).
  - c. **The mission leads to a special relationship between soldiers and death**, inflicted, ordered or suffered in the name of the French people and in defence of the homeland; as stipulated in Article L 4111-1 of the French Defence Code, the success of the mission demands of military personnel, *“under all circumstances a spirit of sacrifice, which may include the ultimate sacrifice, discipline, availability, loyalty and neutrality”* and requires them to use armed force, i.e. lethal force, against the enemy, on order or on their own initiative, and outside cases of self-defence or necessity.
  - d. **The duties of members of the armed forces**, as set out by the legislator in the general statute of the military<sup>5</sup> and explained in the general rules of discipline<sup>6</sup>, require soldiers of all ranks, both individually and collectively, to exercise the utmost skill in combat and to behave in a manner consistent with honour and dignity. They are subject, under pressure, to imperatives that require discernment, restraint and lucidity in action in each individual case:
    - obedience to orders received and primacy of the mission;

<sup>5</sup> Articles L.4111.1 *et seq.* of the French Defence Code.

<sup>6</sup> Articles D.4122.1 to D.4122.13 of the French Defence Code.

- readiness to fight, self-sacrifice, risk, engagement as necessary including risking one's life, and the ban on surrendering to the enemy until all means of action are exhausted;
  - in all circumstances, including the most perilous, restraint, respect for the law of armed conflict and protection of non-combatants. Military personnel in combat must therefore respect and humanely treat all persons protected by the applicable treaties, as well as their property; they are prohibited from deliberately targeting protected persons; they must not kill or wound an enemy combatant who surrenders or is out of action; their attacks must only be directed against military targets.
- e. **While discipline is a cardinal virtue in the armed forces, a duty of disobedience is specifically established to protect higher interests: commanders may not give, and subordinates may not carry out, orders that are contrary to the law, to the rules of international law applicable in armed conflict and to international treaties.**
- (19) **2. More generally, the uniqueness of military status**, which implies the obligation for military personnel to use lethal force during a mission and on order, applies only to military personnel, who are recruited, trained and supervised accordingly and are governed by the general statute of the military. **Firstly, this military uniqueness prevents any form of banalisation of military status, which would only weaken our defence and, secondly, prohibits the delegation of armed force to civilians, which would run directly counter to our constitutional law.**
- Principle no. 4: The uniqueness of the mission assigned to military personnel and the obligations it places upon them, in particular the constitutional principle of having armed force at disposal, prohibit the banalisation of military status and prevent the delegation of armed force to persons who are not members of the armed forces.**
- (20) **3.** As already mentioned, the first paragraph of Article L.4111-1 of the French Defence Code stipulates: *“The armed forces of the Republic serve the Nation. Their mission is to prepare and ensure the defence of the homeland and its best interests by armed force.”*
- (21) **Beyond its normative scope, this provision clearly expresses the conception of “the Nation in arms” inherited from the Revolution, which currently applies to professional soldiers and operational reservists, just as it would apply to conscripts or mobilised citizens, where applicable.**
- (22) It is true that this French conception, sometimes described as “sovereign” to put it into perspective, is not shared by all countries: China and Russia, as well as some of our Anglo-Saxon allies, use or have used private military companies, including for defensive or offensive actions in armed conflicts. **It should be underlined that the French conception of armed force is governed both by non-derogable constitutional principles and by strong ethical considerations. From an ethical standpoint, military operations cannot be part of a commercial logic or be driven by considerations of profit.**
- (23) **On a legal level, Articles 5, 15, 20 and 21 of the French Constitution and the constitutional principle of having armed force at disposal as defined by the Constitutional Council, prevent the use of private military companies for missions involving the use of armed force, i.e. permission to inflict death on the enemy in the execution of the mission and outside the scope of ordinary law (self-defence, necessity, murderous journey, etc.).**

**Principle no. 5: Our country must not take the path of “privatising war” or using “war entrepreneurs”.**

## ***B. Defence and National Security***

(24) **1.** In addition to the support missions provided internally by military units and formations for the needs of the armed forces, **civilian personnel from administrative authorities or public or private companies participating in the defence effort or called upon to participate in the “war effort” within the meaning of the law of armed conflict** is also involved, without, of course, “taking a direct part in the hostilities”<sup>7</sup> within the meaning of that same law of armed conflict:

- a. **civilian defence personnel** (permanent and contract employees of the Ministry for the Armed Forces, employees of the French Armed Forces logistics and supply agency (*Economat*));
- b. **employees of other ministries or interministerial departments** discharging duties that contribute to internal security, public protection or defence;
- c. **personnel of State operators** (ONERA, CEA, CNES, etc.) with competency in scientific and technical fields relating to defence;
- d. **personnel of public or private companies in the Defence Industrial and Technological Base (DITB)**, which are particularly supported by financial institutions.

(25) **2.** Defence and national security also encompass territorial administrations and public and private operators whose activities are essential or of vital importance and whose personnel may be required to perform national security service<sup>8</sup>, as well as civil defence actions under the responsibility of the Prefects<sup>9</sup> (support for the armed forces’ services and infrastructure, law enforcement, possible support for military forces, protection against air threats and additional personnel for the civil defence service).

**Guideline no. 1: Doctrine governing the use, in the event of conflict, of civilian staff of the Ministry for the Armed Forces, employees of other defence-related administrative authorities and personnel of public and private entities contributing to the defence effort must be clearly defined by the competent authorities, in peacetime, and should be communicated to those concerned.**

**Guideline no. 2: Similarly, it would be highly advisable to inform civilian personnel required to perform national security service, as set out in Articles L2151-1 to L2151-5 of the French Defence Code, of their obligations and missions in the event that this service is activated.**

(26) The **digital transformation** of the world calls for an in-depth review of the intelligence gathering and analysis capabilities of the armed forces and government services, in order to better anticipate

<sup>7</sup> The definition, according to the law of armed conflict, and the difference between “direct participation in hostilities” and “indirect participation” are explained in the appendix.

<sup>8</sup> Articles L 2151-1 to L 2151-5 of the French Defence Code.

<sup>9</sup> Articles L1321-1 to L1321-4 of the French Defence Code.

increasingly complex crises – in particular by making greater use of civil actors outside the scope of the Ministry for the Armed Forces.

- (27) **In the context of increasingly complex crises and the dramatic rise in the amount of data produced by humankind**, it would be illusory to think that the Government can retain a monopoly on the analysis of geopolitical and security phenomena that France faces or is likely to face in the future. Flows of data and information to be processed have become far too significant for government services that are not always scaled to meet such needs. Likewise, in response to the intricacy of crises, new methods for assessing our environment need to be developed in order to avoid “strategic surprises”.
- (28) In this regard, the Government would gain by **relying more on the extensive analysis and strategic anticipation ecosystem that has developed in France** in recent years. This ecosystem primarily consists of the many digital investigation and analysis groups that have emerged due to the war in Ukraine and the Israeli-Palestinian conflict (and which are attracting great interest among younger generations), experts in geographical areas of interest, and academic researchers and companies that are developing methodologies to gain a better understanding of contemporary conflicts against a backdrop of ever-increasing digitalization.
- (29) France is fortunate to have a particularly rich fabric of non-profit organisations, scientific entities and businesses involved in the collection, processing and analysis of strategic and geopolitical information. The Ministry for the Armed Forces should make better use of this ecosystem, for example **by inventing new ways of interacting with the OSINT<sup>10</sup> ecosystem or by creating new forums for information sharing between the worlds of intelligence and research**. In particular, this would enable the armed forces to better anticipate threats by using new detectors of weak signals outside the military scope or by relying on new methods also developed outside that scope.
- (30) Lastly and above all, the armed forces should **engage with these same actors as they also play a major role in “publicising war”**, which is now increasingly unfiltered and without journalistic intermediaries, through images captured on the spot by the smartphones of civilians or combatants in theatres of operation. This violent content, which often creates a feeling of immediate proximity to the fighting, generates collective emotion and encourages hostile informational manoeuvres, can be kept at a minimum critical distance through the work of open source intelligence players (Osinters) and researchers. In other words, these civil actors could provide help in **raising public awareness and in reflecting on and predicting the information field and its development**.

**Guideline no. 3: To foster synergies with open source intelligence players, there needs to be a forum for dialogue in which institutional, non-profit and scientific actors can share ideas and build trusting relationships while respecting the scope of action of each one.**

**Guideline no. 4: While the concept of armed force has a clear definition in historical areas of conflict (Land, Air, and Sea) and allows the dividing line to be drawn between what is military and what is civilian, this line is blurred in the new realms of conflict (outer space, cyberspace, the information field, the seabed, etc.). With particular regard to cyberspace and information warfare, it would be advisable to create a defence community, bringing together non-profit and civil society organisations, either formalised by a confidentiality undertaking or simply within the informal framework of flexible cooperation with civilians contributing to our defence.**

<sup>10</sup> OSINT: Open source intelligence.

- (31) **3. National defence and security also involve companies that are co-contractors of the armed forces for guarding, maintenance, transport, military training and support services, some of which are known as private military and security companies (PMSCs).**
- (32) **Ethical and legal principles, which preclude resorting to companies to carry out offensive or defensive actions, should not, however, result in depriving our armed forces of the assistance of private companies for technical services.** In this respect, transportation and logistics, training for foreign military personnel, protection of military compounds, mine disposal, the security of certain French interests abroad, and even general intelligence (space, air or submarine) would appear to be relevant sectors in which the complementarity would be most effective, **provided that the shareholders and employees of these companies offer all the necessary guarantees of reliability and competency.** This approach could draw on the recommendations of previous parliamentary studies, in particular information report No. 4350, presented in 2012 by the French MPs Christian Ménard and Jean-Claude Viollet. It would also be consistent with the provisions of Article 42 of the Military Programming Law of 1 August 2023, which now subjects the employment of former French military personnel by foreign entities to an ex-ante control procedure. The development of French PMSCs in segments that are useful to our armed forces would indeed be an opportunity for former servicemen to continue providing their expertise to their country.

***Guideline no. 5:*** The needs of the armed forces and the Government should be assessed, including with legislative changes, along with the possibilities of developing the business of private military and security companies to meet those needs, giving priority to an approach based on complementarity, support and influence and excluding all possibility of substitution or delegation.

- (33) **The necessary guarantees of reliability and security should be required and verified by the Government.**

***Guideline no. 6:*** In order to provide the necessary guarantees of reliability and security, the French Defence Code could lay down the requisite conditions for the business of private military and security companies (certification of companies, authorisation of employees, armament conditions, seals of approval, etc.), following the example of the French Act of 12 July 1983 regulating private security activities for companies operating on the national territory.

***Guideline no. 7:*** France, which is already a signatory of the Montreux document “*on pertinent international legal obligations and good practices for States related to operations of private military and security companies (PMSCs) during armed conflict*” must only use companies that undertake to provide security services in a responsible manner, in accordance with our values and in compliance with international law. Therefore, France could promote and support the adherence of the companies with which it works to the International Code of Conduct for Private Security Companies (ICoC), the profession’s ethical charter, and assist small and medium-sized French companies in this process.

### C. *National Resilience*

- (34) **1. Resilience depends on the strength of our economy and the ability of our society to withstand threats<sup>11</sup> and risks<sup>12</sup>.** It involves **the civic spirit and fortitude of the men and women of our country, national cohesion and solidarity, and the support of our citizens for the armed forces.** Action aiming to strengthen **the spirit of defence and the link between the Armed Forces and the Nation** are the foundation of this resilience.<sup>13</sup>

***Principle no. 6: The Republic must be able to rely on the patriotic commitment of all citizens and all public and private actors, but the Government must act responsibly, taking heed not to expose civilians without protection or legal guarantees.***

- (35) In this respect, even though “Army-Nation link” is a traditional expression, it is somewhat ambiguous as it suggests that the Armed Forces and the Nation are separate spheres requiring a link, whereas **the French Armed Forces are, as stated in Article L4111-1 of the French Defence Code, “the armed forces of the Republic”.** The expression “Army-Nation Community” would be more meaningful and in any case less ambiguous, by evoking the history of France, which has been marked and shaped by wars, a community of values (the values of the Republic) and a **common national destiny** in an unstable, dangerous and unpredictable world in crisis.

***Principle no. 7: It should be possible to mobilise the forces of the whole Nation in response to major threats and risks (pandemics, natural or industrial disasters, etc.), but without militarising society or undermining the rule of law.***

- (36) **The state of national emergency** provided for in Article L.2141-1 of the French Defence Code, consisting of “certain measures designed to ensure the Government’s freedom of action, to reduce the vulnerability of populations or important facilities and to guarantee the security of operations involving the mobilisation or deployment of armed forces or formations attached to them” could be a good lever. **Through its implementation,** firstly, it is possible to **requisition persons, services and property,** and secondly, **to use the national security service and the national security reserve.**<sup>14</sup> The state of national emergency and (general or partial) mobilisation are decided by a decree issued by the Council of Ministers. **This state of emergency regime would benefit from becoming a more explicit level in the ramp-up of our defence and resilience capabilities and from being scalable and capable of intervening well in advance of an open crisis and mobilisation measures.**

***Guideline no. 8: The legal regime of the state of national emergency could be supplemented so that, in the event of a crisis below the threshold of an armed conflict likely to lead to a major conflict directly or indirectly involving France, this conflict can be anticipated, the threat prevented and the wartime economy organised. In particular, in order to promote the efforts of defence industries and services, the regime could authorise limited, temporary and proportionate exemptions from certain substantive or procedural rules laid down by laws and regulations***

<sup>11</sup> According to the 2013 French White Paper on Defence and National Security, threats are defined as “any situation in which France needs to deal with a potentially hostile intent.”

<sup>12</sup> According to the 2013 French White Paper on Defence and National Security, risks are defined as “any danger that does not include any hostile intent but which might impact on the security of France: they therefore include political events as well as natural, industrial, health and technological risks.”

<sup>13</sup> Interministerial reference document on the national resilience strategy in the field of defence and national security, SGDSN, March 2022.

<sup>14</sup> Articles L.2151-2 and L.2171.1 of the French Defence Code.



(environmental code, public procurement code, labour code, monetary and financial code, etc.).  
Article L.2141-1 of the Defence Code could be supplemented along these lines.

(37) **2. The recommendations of the *Haut comité d'évaluation de la condition militaire* (HCEMC) underline the importance of military training for future senior civil servants to ensure the cohesion of the State** ([11<sup>th</sup> report of September 2017](#): “introduce a significant period of military service as part of the curriculum at the *École nationale d'administration* (ENA) [now INSP] and *École nationale supérieure de la police*, including a period of training as an officer cadet, followed by a period of actual service in a military unit”; [17<sup>th</sup> report of July 2023](#): “allow an INSP student to complete a period of military service before being appointed to a permanent post.”

**Principle no. 8: The cohesion of the Nation's elites, primarily the cohesion of senior civil servants, and their ability to understand defence and national security issues, is of major importance for national resilience.**

(38) Considering the geopolitical context and the threats to peace, the training of future senior civil servants **must** include military training followed by a period of command in a military unit.

**Guideline no. 9: It would be of great benefit to introduce compulsory service in a military unit, as an officer cadet and then as an officer candidate, for students at the *Institut national du service public* (INSP) and *École nationale supérieure de la police* (ENSP).**

(39) Resilience requires our citizens to see themselves as stakeholders in the defence of the Nation and they have many opportunities to do so: SNU (universal national service), reservists, and the Armed Forces call on them on various occasions... France is also a country with a dense and vibrant community of non-profit organisations, with many of our citizens engaging as volunteers.

(40) But the life of employees mostly takes place in companies, and many of these entities regard themselves as “corporate citizens” with a duty to engage with the national community to which they belong. Owing to its social responsibility, a “corporate citizen” has a duty to engage with the national community; in this regard, some companies organise, facilitate or even provide their employees with means, facilities and opportunities to engage, as citizens, in activities in the general interest, or even to take part in public services. For example, in some companies, communities of employees who are active in a variety of fields (from volunteer firefighters to fighting poverty, etc.) have developed.

(41) These different forms of involvement in the life of the Nation by company employees can give rise to “skills sponsorship” which:

- firstly, entitles the company to a tax allowance<sup>15</sup>; and
- also allows the employees to engage in their voluntary activities during their working time.

(42) Some companies support<sup>16</sup> their employees' commitment to the spirit of defence through the status of “partner of the National Guard”, which entitles them to the benefits of corporate patronage. In return for the facilities they grant to reservists, companies that have signed an agreement to support the operational reserve policy enjoy certain advantages including:

<sup>15</sup> Article 238bis of the French Tax Code.

<sup>16</sup> On 1 January 2020, 850 companies formalised their commitment by signing an agreement.

- designation as a partner of national defence, by order of the Minister for the Armed Forces;
- deduction of the maintained remuneration from corporate income tax (corporate patronage scheme);
- the possibility of mentioning their support for the National Guard in their non-financial performance report so that it can be included in their corporate social responsibility (CSR);
- recognition of certain reserve periods as continuing vocational training and recovery of the corresponding payroll expenses;
- access to information relative to defence and national security;
- registration for conferences, training sessions and courses organised by the General Secretariat of the National Guard.

**Guideline no. 10: The Ministry for the Armed Forces could join the “CSR Platform” set up by the Prime Minister within *France Stratégie*, and encourage the platform to issue an opinion on the type of actions that companies could take, through and with their employees, to strengthen the Nation’s resilience.**

**Guideline no. 11: The National Guard should be reinforced through broader dissemination of information about the operational reserve and the civic reserve to encourage as many companies as possible to sign agreements. In the same vein, a “Defence CSR” certification and a “Defence CSR” seal of approval could be created for companies that facilitate their employees’ engagement.**

(43) Article 29 of the Military Programming Law of 1 August 2023 amended Article L.225-102-1 of the French Commercial Code on the progressively mandatory “non-financial performance reporting” (for companies with more than 250 employees or more than €25 million in revenues or more than €50 million in total assets) so that this reporting can include a company’s contribution to Defence actions in its CSR activities. Thus, on 3 August 2023, the list of information that may be reported in a company’s declaration of its “social commitments” was updated to include: “actions aimed at promoting the Nation-Army link and supporting involvement in the reserves.”

(44) The possibility for companies of including their Defence-related action in their CSR/ESG reporting should be widely communicated in the business world.

**Guideline no. 12: The territorial echelons of the Armed Forces should systematically contact the companies in their geographical area that are subject to the “non-financial performance reporting obligation”. These companies should also be encouraged to take part in defence initiatives, particularly in the area of cyber security (cf. Guideline no. 4).**

(45) Companies can also directly support our Armed Forces by employing soldiers wounded in operations in positions adapted to their disabilities. This type of action should obviously be included in non-financial CSR/ESG reporting in respect of Solidarity.

(46) **There can be no national resilience without national cohesion.** “Being a nation” means sharing values and a common memory. This shared memory means learning about the history of our country. Without erasing the dark pages, this history must promote the pages of light and make an example of the men and women who uphold the values of the Republic. A shared memory also means learning about the places and periods that have shaped that history.

***Guideline no. 13: To encourage all young people in schools to learn about the history of France in combat, it is suggested that none should leave school without visiting a place of national remembrance or attending a patriotic ceremony.<sup>17</sup>***

(47) Today, many organisations working in partnership with defence welcome young people of all ages and backgrounds (defence cadets, gendarmerie cadets, young firefighters, youth army squadrons, SNU<sup>18</sup>, EPIDE<sup>19</sup>, voluntary military service and adapted military service, etc.) and create conditions conducive to the emergence of shared values and national cohesion. These initiatives should be encouraged and promoted, without prejudice to any others that may be taken by the Ministry of Education.

***Guideline no. 14: To foster the development of a common set of values, youth organisations that work in partnership with defence should be able to draw on a common charter of the commitment values they promote.***

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<sup>17</sup> Patriotic ceremonies fall into three categories and are organised within the framework of:

- annual national commemoration days (8 May, 11 November, deportation remembrance day, 18 June, etc.);
- commemorative programmes decided by the Government (e.g. 80<sup>th</sup> anniversary of the Liberation, WWI Centenary);
- towns with a significant local history (e.g. the liberation of a town, the history of a resistance movement).

<sup>18</sup> SNU: universal national service.

<sup>19</sup> EPIDE: establishment for integration into employment.

## APPENDIX 1

## DIRECT PARTICIPATION AND INDIRECT PARTICIPATION IN HOSTILITIES

- (48) The boundaries of the battlefield have changed considerably over the centuries, and have now taken a new turn with the resurgence of high-intensity inter-state conflicts. In the context of both international and non-international armed conflicts, implementing the principle of distinction between civilians and combatants can become a real challenge in confrontations, since it is now obvious that **participation in combat is no longer limited to uniformed soldiers**. The increasing overlap between civilian and military activities sometimes makes it difficult to identify precisely who is participating directly or indirectly in hostilities, especially in situations of international armed conflict where the role of the population, whether spontaneous and voluntary or instigated by a State party to the conflict, legitimately raises questions in terms of the legal and ethical issues involved.
- (49) The erosion of the principle of distinction brought about by the emergence of new forms and areas of conflict, new technologies and the interpenetration of military and civil actors (population, weapons companies, space, through-life support (TLS), PMSCs) is a growing phenomenon which could, if the circumstances are not properly managed, undermine the protection afforded to civilian objects and people by international humanitarian law and render the identification of military targets all the more complex.
- (50) Although mentioned in the legal corpus of international humanitarian law (IHL),<sup>20</sup> direct participation in hostilities (DPH) by civilians is not defined by the Geneva Conventions and their Additional Protocols. This concept has raised many questions since the beginning of the twentieth century, leading the ICRC to develop a definition of DPH in its Interpretative Guidance. However, France has adopted its own approach to this concept, defining its contours and clarifying the consequences.

### 1. Civilians taking a direct part in hostilities temporarily lose the protection afforded by IHL

- (51) In armed conflict, the **distinction between civilians and combatants** is one of the cardinal principles, the corollary of which is the prohibition on directing attacks against civilians and civilian property, unless they are taking a direct part in hostilities and only for the duration of that participation.
- (52) Based on international doctrine and case law, the French authorities have adopted the following definition: *“DPH is taking part in acts of war or activities related to acts of war which, by their nature or purpose, are intended to strike military targets or the forces of a party to the conflict, and/or taking part in acts benefiting a party to the conflict with the intention of causing harm to persons or objects protected against direct attack.”*
- (53) Acts of DPH include:
- Taking up, carrying or using weapons in connection with combat operations;
  - Taking part in attacks against the personnel, property or equipment of a party to the conflict;
  - Transporting weapons in the immediate vicinity of combat operations;
  - Transmitting military intelligence for immediate use by a belligerent;

<sup>20</sup> Art. 51, paragraph 3 of Protocol I; Art. 13, paragraph 3 of Protocol II

- Acting as a guard, intelligence officer, sentry or observer for armed forces;
- Using a cyber operation to penetrate a military system of a party to an armed conflict in order to gather tactical intelligence for an enemy party for the purposes of an attack (e.g. paralyzing a digital military warning system prior to an air attack);
- Seriously harming (homicide, sexual violence, deportation, etc.) protected persons for the benefit of a party to the conflict, etc.

(54) Thus, **when and for such time as they take a direct part in hostilities, civilians lose the protection against attack afforded to them by IHL. They may therefore be lawfully targeted in compliance with the rules of IHL.**

## **2. Direct participation in hostilities must not be confused with the war effort, which does not entail the loss of protection afforded to civilians**

(55) Conversely, mere support for the war effort by a civilian does not constitute direct participation in hostilities. “Indirect” participation in hostilities does not directly cause harm to one of the parties to the conflict.

(56) This is the case, for example, of:

- Showing support for enemy forces;
- Providing logistics support (food, medicines or equipment) or financial support to the armed forces;
- Transporting weapons, ammunition, vehicles or other military equipment at a distance from combat zones;
- Providing general strategic intelligence or analysis.

(57) This is **indirect participation in the conflict and therefore does not entail the loss of protection against attack afforded to civilians by IHL.**

## **3. The loss of protection applies only to acts of direct participation in hostilities and lasts only for the duration of such participation**

(58) Attacks against civilians taking a direct part in hostilities must be limited to such time as those civilians are involved in an act of DPH. Civilians may be attacked while preparing to carry out an act of DPH, while committing the act and during the disengagement phase, for example when leaving the scene of an ambush in which they have just taken part. Therefore, this concept only allows armed forces in the presence of a civilian directly participating in hostilities to respond within a short timeframe in the event of a threat from the civilian, without necessarily having to be in a situation of self-defence.

(59) However, DPH cannot justify planning lethal attacks against civilians who have committed an act of war in the past. This prior participation alone does not deprive a civilian of status as protected by IHL. **A civilian who has taken part in the hostilities may, however, be prosecuted by the domestic courts for this sole fact.**

**Forces engaged in a theatre of operations must therefore objectively establish, and on a case-by-case basis, whether or not a civilian has lost protection as a result of taking a direct part in the**

**hostilities, having regard to several indicators (behaviour, equipment and any other available information, etc.).**

**Pursuant to France's treaty obligations under the law of armed conflict\*, the Ministry for the Armed Forces ensures that the armed forces have legal advisors who provide operational legal assistance on operational engagements under the authority of the Chief of the Defence Staff (CDS). These legal advisors, more commonly known as "LEGAD", provide expertise and analysis specific to each tactical situation for the theatre command and its staff, during both the planning phase and the conduct of operations.**

## APPENDIX 2

## THE DEFENCE ETHICS COMMITTEE

The Defence Ethics Committee was established on 10 January 2020 by the French Minister for the Armed Forces. It is tasked with **issuing opinions and recommendations to inform political and military authorities of the ethical issues raised by changes in the military function, changes in conflicts, and scientific and technological innovations in defence.** It comprises **18 qualified persons** appointed by the Minister for a period of three years, renewable once.

Current Composition of the Committee (since March 2023)

Bernard PECHEUR	Defence Ethics Committee Chair, Section President (h), <i>Conseil d'État</i> .
Bernard THORETTE	Defence Ethics Committee Vice-Chair, Army General (2S), former Army Chief of Staff.
Christine BALAGUÉ	Professor at IMT-BS, holder of the Good in Tech Chair.
Serge BARCELLINI	President of Le Souvenir Français.
Marie-Germaine BOUSSER	Professor emeritus of neurology, member of the <i>Académie nationale de médecine</i> .
Walter BRUYERE-OSTELLS	University Professor of History, member of the Scientific Council for Historical Research in Defence.
Patrick CAREIL	Inspector-General of Finance.
Hervé de COURREGES	Army Major General.
Michel GOSTIAUX	Chief Defence Procurement Engineer.
Xavier LANDOT	Rear-Admiral (2S).
Aurélie LE CAM	Commissioner for the Armed Forces, legal advisor.
Kévin LIMONIER	Senior lecturer in geography, deputy director of GEODE research centre.
Ariane MICHAUD	Chief Medical Officer of the Armed Forces.
Bruno PAUPY	Colonel, French Air and Space Force.
Guillaume SCHLUMBERGER	General Controller of the Armed Forces on extraordinary mission.
Catherine TESSIER	Director of Research and research integrity and research ethics officer at the French national aerospace research centre (ONERA).
Nicolas THERY	President of the <i>Confédération Nationale du Crédit Mutuel</i> .
Cathy THILLY-SOUSSAN	Financial, legal and ethics advisor, <i>Direction Générale de l'Armement</i> .

**Prior Composition (2020-2023)**

Bernard PECHEUR	Defence Ethics Committee Chair, Section President (h), <i>Conseil d'État</i> .
Henri BENTEGEAT	Defence Ethics Committee Vice-Chair, Army General (2S), former Chief of Defence Staff.
Christine BALAGUÉ	Professor at IMT-BS, holder of the Good in Tech Chair.
Rose-Marie ANTOINE	Former President of the <i>Office national des anciens combattants et victimes de guerre</i> .
Marie-Germaine BOUSSER	Professor emeritus of neurology, member of the <i>Académie nationale de médecine</i> .
Frédéric DOUZET	University Professor at the French Institute of Geopolitics (Paris 8 University) and director of GEODE.
Hervé DREVILLON	Director of Research, SHD.
Michel GOSTIAUX	Chief Defence Procurement Engineer.
Laurent HERMANN	Rear-Admiral.
Jean-Baptiste JEANGENE-VILMER	French philosopher, jurist and political scientist.
Aurélien LE CAM	Commissioner for the Armed Forces, legal advisor.
Bruno PAUPY	Colonel, French Air and Space Force.
Philippe ROUANET DE BERCHOUX	General Medical Officer of the Armed Forces.
Guillaume SCHLUMBERGER	General Controller of the Armed Forces on extraordinary mission.
Catherine TESSIER	Director of Research and research integrity and research ethics officer at the French national aerospace research centre (ONERA).
Nicolas THERY	President of the <i>Confédération Nationale du Crédit Mutuel</i> .
Cathy THILLY-SOUSSAN	Financial, legal and ethics advisor, <i>Direction Générale de l'Armement</i> .
Bernard THORETTE	Army General (2S), former Army Chief of Staff.



### **Committee Opinions**

The opinions of the Defence Ethics Committee and their translations are available on the [Website](#):

2020: Augmented Soldier.

2021: Integration of Autonomy into Lethal Weapon Systems.

2022: Digital Environment of Soldiers.

2022: Ethics in Military Training.

2022: Ethics of Space Defence.