



20 Years of OSCE Code of Conduct on Politico-Military Aspects of Security

A Commemorative Study on the History, Development, Achievements
and Outreach of the OSCE Key Document for Politico-Military Norms
and Principles on Armed and Security Forces



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With a Foreword by Didier Burkhalter, President of the Swiss
Confederation and Chairperson-in-Office of the OSCE 2014

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Foreword

Didier Burkhalter

President of the Swiss Confederation
and Chairperson-in-Office
of the OSCE 2014



Awareness and implementation efficiency of the Code of Conduct have reached an encouraging level in the OSCE area in the 20 years of the Code's existence. The Code of Conduct remains uncontested by the OSCE participating States as an unparalleled norm-setting document. Echoing the principles of conduct between states laid down in the United Nations Charter and the Helsinki Final Act, it sets out both inter-state and intra-state norms for politico-military conduct. It also promotes the implementation of international humanitarian law and the notion of indivisible security in a globalising world.

The Code of Conduct has been the first “toolkit for soft security”. It is also the first-ever multilateral instrument to encompass norms and principles regulating the conduct of armed and security forces both at the national and international level. It herewith addresses central areas of sovereignty and state power.

As a neutral country with a longstanding humanitarian tradition and as the depositary state of the Geneva Conventions, Switzerland welcomed the Code of Conduct idea from the start. Once the Code entered into force on 1 January 1995, Switzerland became therefore one of the main sponsors of initiatives and activities to raise awareness, improve implementation and promote its outreach within and beyond the OSCE area.

Together with Germany and later Austria, Switzerland initiated a number of training courses, workshops and seminars for civil servants, diplomats, armed forces personnel and parliamentarians dealing with implementation of the Code of Conduct. In 2008, the three countries also launched a proposal to publish on the internet the information exchanges of all OSCE participating States on shared security issues, thereby extending openness and transparency to our citizens.

The Code of Conduct, together with other confidence- and security-building measures, has contributed to the transformation of the doctrine, planning, posture and rules of engagement of OSCE participating States' armed forces. It also regulates the rights and duties of their service personnel.

Switzerland has also been active in disseminating the norms and principles enshrined in the Code of Conduct among the OSCE Mediterranean and Asian Partners for Co-operation. As a first step, together with Germany, we provided the first translation of the Code of Conduct into Arabic, which has since been promoted through activities with OSCE Partners for Cooperation in the Mediterranean region. In 2013, Switzerland together with Germany and Austria organised a workshop on the Code of Conduct in Malta in which the majority of the Mediterranean Partners for Co-operation actively participated. Similar workshops are planned in Tunisia and Mongolia for 2015.

Although the Code of Conduct has not been reviewed since it entered into force, it remains an invaluable tool for dealing with contemporary security challenges. Switzerland is committed to supporting the Code of Conduct beyond its Chairmanship.

To mark the 20th anniversary of the adoption of the Code of Conduct, Switzerland has the honour to present this commemorative edition. It recalls the beginnings of the Code of Conduct and the milestones accomplished since, while also looking towards the challenges of the future. It is intended to be a source of inspiration, offering food for thought for a constructive security dialogue.

I would like to extend my sincere gratitude to all those who have contributed to the dissemination and implementation of the Code of Conduct, as well as to the editors and authors of this commemorative study.

Editors & Authors

Andreas Aebi is a member of the National Council for the Swiss People's Party representing the canton of Bern and has chaired the Swiss Delegation to the OSCE PA since December 2013. Mr. Aebi, who is a farmer and auctioneer, took up his seat in the National Council in 2007. He is a member of the Swiss Federal Parliament's Foreign Affairs Committee, which he chaired in 2012 and 2013, and specializes in agriculture policy. He is committed to food security, both on a national and international level. His resolution entitled 'Food security, limited water resources and stability in the OSCE area', adopted at the Annual Session of the OSCE PA in Baku in July, advocates support for high quality local agriculture.

Prasenjit Chaudhuri (co-editor) is Head of the Swiss Verification Unit since 2005 and Deputy Head of the Euro-Atlantic Security Cooperation Division since 2008 in the Ministry of Defence. Currently, he is also the designated Project Leader of the Swiss Armed Forces for politico-military issues and projects during Switzerland's OSCE Chairmanship 2014 and the troika years 2013–2015. He holds the rank of a Colonel of the Swiss Armed Forces and a degree in political science and history (lic. phil.) from the University of Zurich. Previously, from 1993 to 1999, he worked at the Center for Security Policy and Conflict Research of the Federal Institute of Technology Zurich. At his current position in the Swiss Verification Unit he is dealing with the OSCE Code of Conduct and is in charge of the Swiss Information Exchange on the Code since 1999. Since 2004, he has been actively engaged as a guest or key note speaker in Code of Conduct Workshops and Seminars.

Anton Eischer is the Senior Military Adviser of the Permanent Mission of Austria to the OSCE in Vienna. During this assignment he held the position of the FSC Chairs coordinator for four years. His active engagement and tireless efforts led to the decision of pS on awareness raising and outreach, the update of the Code of Conduct questionnaire as well as the establishment of the Reference guide. In his function he participated at numerous regional seminars on the Code of Conduct as presenter and moderator. He holds a Master degree on International Relations of the University of Vienna. As an active officer of the Austrian Armed Forces he carries the military Rank of a Colonel. In his former functions he participated at negotiations on arms control of weapons of mass destruction. Prior to that he served as an officer at company and battalion level.

Fabian Grass works as Forum for Security Co-operation (FSC) Support Officer in the OSCE Conflict Prevention Centre in Vienna. He advises the Chairmanship of the FSC on matters related to the confidence- and security-building measures and on the Code of Conduct on Politico-Military Aspects of Security. He is seconded to this position by Switzerland since 2011. Previously, he worked for the Swiss inter-ministerial Taskforce on Nuclear Disarmament and Non-proliferation, the Swiss Delegation to the UN Conference on Disarmament and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Geneva Centre for Security Policy (GCSP). He holds a Master's degree in International Relations from the Graduate Institute of International and Development Studies, and the rank of Specialist Officer (Captain) in the Swiss Armed Forces.

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Detlef Hempel is a Politico-Military Adviser of the Permanent Mission of the Federal Republic of Germany to the OSCE in Vienna. During this assignment he held the position of the FSC Chairs coordinator since the year 2011 until now. In this function he assist the FSC Chair and Troika to develop modalities for implementing the various steps in furthering the implementation of the CoC, assist the FSC Chair on issues related to the CoC and work in close co-ordination with the FSC Chair, and is authorized to consult with participating States on views related to the CoC, while reporting to the FSC Chair. In his function he organized and participated at numerous regional seminars and workshops on the Code of Conduct as presenter and moderator and established the group of friends of the CoC in Vienna in the year 2012. He holds a diploma on education of the University of Hamburg. As an active officer of the German Armed Forces he carries the military Rank of a Lieutenant Colonel. In his former functions he worked at the Bundeswehr Verification Centre, as a member of the Vienna Document division. Prior to that he served as a Military Police officer, last function as Battalion Commander in Hilden, Germany.

Alexandre Lambert (co-editor) is academic director and professor at the School for International Training (SIT Study Abroad) at its Switzerland branch and program

on “Global Health and Development Policy” (since 2014); from 2006–2013, he was co-director and professor of the SIT Switzerland branch and program on “International Studies and Multilateral Diplomacy”. From 2001–2005, he was lead researcher at the Graduate Institute of International and Development Studies (GIIDS) in Geneva, coordinating a research project on the OSCE Code of Conduct commissioned by the Geneva Centre for the Democratic Control of Armed Forces (DCAF). From 2000–2001, he was project officer at DCAF, and from 1999–2000, he was civil servant at the security policy section of the Swiss Federal Department of Defense. He earned a Ph. D. from the GIIDS and published extensively in the fields of civil-military relations, democratic control of armed forces, and the OSCE Code of Conduct. Since over a decade, Dr. Lambert has been providing independent expert advice to the Code’s implementation process.

David Law (co-editor) is Senior Associate at the Canada-based Security Governance Group and Senior Fellow at its partner organisation, the Centre for Security Governance. From 2003 to 2011, he was Senior Fellow at the Geneva Centre for Democratic Control of Armed Forces. From 1984–94, Mr. Law worked for the NATO Political Directorate where in his last position he headed up the Policy Planning Unit. He has also worked as a consultant with several NGOs and intergovernmental organisations, with assignments in some forty countries. Mr. Law has held several teaching assignments in Europe and North America, and written widely on security and governance issues.

Hans Lüber is the Senior Military Adviser of the Permanent Mission of Switzerland to the OSCE in Vienna. During this assignment he has specialized in implementation and outreach efforts of Code of Conduct and has as such regularly participated OSCE-wide as presenter and moderator in workshops and seminars to the Code of Conduct. He holds a Master degree in Business Administration from the International Institute for Management Development (IMD) in Lausanne and a Master Degree in Law from the University of Berne as well as Barrister Permit from the Supreme Court of Berne. As a former Mountain Infantry Regiment Commander he carries the military Rank of a Colonel and was promoted General Staff Officer. Prior to his defense-diplomacy career he worked for almost two decades in various leading functions in the Swiss financial service industry.

Derek Lutterbeck is currently Deputy Director and holder of the Swiss Chair at the Mediterranean Academy of Diplomatic Studies in Malta (MEDAC). He has also worked as a consultant for the Geneva Centre for Democratic Control of Armed Forces (DCAF), the United Nations Office on Drugs and Crime (UNODC), and the International Centre for Migration Policy Development (ICMPD). Derek Lutterbeck

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Paulyn Marrinan Quinn, S.C., is a lawyer and was appointed as the founding Ombudsman for the Defence Forces of Ireland and gave effect to new ground-breaking independent civilian oversight legislation. A member of the Expert Group convened by the OSCE/ODIHR to write the 'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel,' Paulyn played an active role in developing the International Conference of Ombudsman Institutions for Armed Forces Personnel (ICOAF) to encourage outreach, capacity building, and sharing experience in this field. The first female Ombudsman in the Republic of Ireland, she was founding Insurance Ombudsman and established a Centre of Excellence in the study and practice of conflict resolution processes in Trinity College, Dublin where she was Adjunct Professor in Mediation & ADR Studies.

Thomas W. G. Schmidt (co-editor) is Deputy Head of the Regional Military Cooperation section, International Relations, Ministry of Defence. He is also a Military Policy Expert of the OSCE Chairmanship Project Team in the Ministry of Defence and Senior Advisor of the OSCE Task Force in the Ministry of Foreign Affairs during Switzerland's OSCE Chairmanship 2014 and the troika years 2013–2015. He holds the rank of a Lieutenant Colonel, being a battalion commander in the Swiss Armed Forces, and a Swiss Federal Diploma in Human Medicine from the University of Bern. At his current position, he is in charge for the projects related to awareness rising, better implementation and outreach of the Code as well as the responsible for the elaboration of the Swiss Information Exchange on the Code. Since 2006, he has been actively engaged in the concept development, the organization and as a lecturer and trainer of Code of Conduct Workshops and Seminars all over the OSCE area.

Dr. **Monika Wohlfeld** is the holder of the Chair in Peace Studies and Conflict Prevention, established at the Mediterranean Academy of Diplomatic Studies (MEDAC) in Malta by the German Ministry of Foreign Affairs. Previously she was the Deputy Director of the Conflict Prevention Centre of the Organization for Security and Co-operation in Europe, responsible for field operations. She served as Head of External Co-operation of the OSCE and as Senior Diplomatic Adviser to the Secretary General. She has been a Senior Research Fellow at the Western European Union Institute for Security Studies in Paris, and Researcher at the War Studies Department at King's College London.

Introductory Remarks

In the evening of 8 July 2014, at the venerable Museum of Military History in Vienna, the OSCE Code of Conduct's 20th Anniversary was formally celebrated in form of a commemorative event hosted by Austria, Germany, Switzerland and Moldova, the Chair of the OSCE Forum for Security Co-operation (FSC). OSCE Heads of delegations and representatives from the capitals were invited to celebrate the event. The following day, on 9 July, the 3rd Annual Discussion on the Implementation of the Code of Conduct was held at the FSC in the Hofburg.

This commemorative edition sponsored by the Swiss government and OSCE chairmanship 2014 is another highlight of the Code's 20th Anniversary, presented in an innovative form as compilation of multi-stakeholder expert contributions to the Code. Indeed, the ten chapters have been written by authors representing both state- and non-state parties, including statutory government- and politico-military representatives of OSCE institutions and participating States, as well as independent experts from academia, non-governmental institutions, and civil society. Authors were given far-ranging liberties to draw and present their book chapters and themes from their respective perspectives. While it was not possible to make a clear-cut separation of individual book chapter themes, content overlaps in-between the chapters was reduced to a limited amount. Hence, the volume is structured into ten chapters set out in different clusters.

Chapter 1 examines the historical framework conditions of post-Cold War Europe that gave birth to the Code, taking into account the various initiatives and challenges to transform the European security architecture and to adapt its normative framework in the aftermath of the collapse of communist regimes in Central and Eastern Europe. Therefore, it inter alia reviews the formal negotiation process of the Code (1992–1994) against the background of the geopolitical context in which those negotiations took shape.

Chapters 2–4 examine the Code's formal implementation process and initial outreach activities since its entry into force. Chapter 2 examines the role of OSCE executive structures, including field operations and the OSCE Secretariat, to enhance implementation and promote the dissemination of the Code. Particular attention is given to the Forum for Security Cooperation, the OSCE's main decision-making body on politico-military aspects of security, examining lead institution such as the

FSC Co-ordinator and the Group of Friends on the Code. Furthermore, the chapter describes the main implementation tools, including the annual information exchange, reference guide, and annual implementation discussion meetings. It finally takes a look at major awareness raising-, outreach- and implementation support initiatives; aspects that are further elaborated in the third chapter of this volume. Chapter 3 draws a qualitative assessment of the yearly OSCE participating States' information exchange on the Code of 2011–2013, taking into account a cross-cutting sample of OSCE participating States and in order to identify major trends in the current evolution of the information exchange. Chapter 4 further elaborates various awareness raising-, knowledge exchange-, and regional seminars and workshops with emphasis on first and second generation field implementation activities.

Chapters 5–7 address intra-state aspects of the Code reflecting the principle of democratic control of armed forces. Chapter 5, against the background of the experience of the first Ombudsman of the Defence Forces of Ireland. It examines the emerging cross-national cooperation framework of armed forces ombudsmen to raise awareness and exchange good practices in the safeguard of armed forces personnel's human rights and fundamental freedoms. Chapter 6 examines the relationship between the Code' intra-state provisions under its sections VII and VIII on the one hand, and the emerging concept of security sector reform (SSR) on the other hand. Thus, it *inter alia* identifies the potential for mutual synergies and complementarity between the Code and SSR in the promotion of security sector governance. Chapter 7 reflects the opportunities and limitations of involving national parliaments and the OSCE Parliamentary Assembly as key stakeholders of democratic oversight in the security sector, as well as in the enhancement of the Code's implementation and its promotion as a multi-stakeholder instrument.

Chapters 8–10 address the most recent implementation and outreach activities and trends. Chapter 8 evaluates the objectives and outcomes of the first implementation and awareness raising event held with the OSCE Mediterranean Partners of cooperation in Malta 2013, and against the background of the Code's translation into Arabic language. It herewith also reflects the Code's third generation of outreach to the partner countries in neighbouring regions of the OSCE. Chapter 9 recalls the evolutionary milestones and follow-up negotiations in the FSC, assessing the main review processes and special FSC meetings held on the Code. It also discusses the potential risks related to the possible reopening of the Code and explains the role of like-minded participating States and friends of the Code. Chapter 10 finally, introduces the evolving geographical and thematic outreach activities. It discusses the potential for further outreach to and awareness raising among

Mediterranean and Asian partners of cooperation, as well as the opportunities of the Code's promotion in line with International Humanitarian Law and Confidence and Security Building Measures, as well as in the framework of co-operative security and disarmament mechanisms. It also identifies possible ambiguities and shortcomings within the Code's normative framework and how they can be addressed without the need for reopening and updating the Code.

Basel, December 2014

Prasenjit Chaudhuri

Alexandre Lambert

Thomas Schmidt

Chapter I

The Starting Point of the Code

From Negotiation to Adoption

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Academic Director & Professor

School for International Training (SIT Study Abroad), Switzerland

Introduction

The OSCE Code of Conduct on Politico-Military Aspects of Security (here after: the Code) came into effect as a politically binding document on 1 January 1995.¹ The Code is the normative residue of a geopolitical discussion on how to redefine and amend post-Cold War Security in Europe. After the fall of the Berlin Wall and the subsequent reunification of Germany (1989), as well as with the collapse of the Soviet Union and the dissolution of the Warsaw Pact (1991), the so-called *European security architecture* had to be revisited. Upon the withdrawal of Warsaw Pact troops (from East-Central Europe to Central Asia), a considerable number of former member states of the Warsaw Pact, while confronted with the need to rebuild their newly independent states and their defense sectors *quasi* from scratch, wished to redefine their respective geostrategic place and role in a 'post-Cold War era'. And the Code did help set the frame (sections I – VI).

At the same time, a new type of mainly internal and civil armed conflicts had emerged, especially in the territories of the (breaking-apart) Former Yugoslavia and Former Soviet Union. As these conflicts tended to cause large-scale human rights violations and disproportionate use of force against civilian populations, the CSCE security community found itself obliged to look into a new set of norms addressing the very 'role of armed forces' in society. In fact, the early- and mid-1990s offered a unique window of opportunity to not only *redefine conventional (inter-state) politico-military standards* in Eurasia; time was also ripe to negotiate and add an entirely *new*

1 OSCE Code of Conduct on Politico-Military Aspects of Security, § 39.

set of intra-state norms of conduct in the security sector – an opportunity that the CSCE community would cease against the background of the largest ever ‘democratization wave’ in history.

This region-wide democratization process had seen the bulk of post-communist countries, including the Russian Federation, evolving from totalitarianism toward liberal democracy. After all, post-Cold War Europe needed a normative framework document that would help shape democratization, by taking into account the particular context and needs of post-communist societies. The military coup against Michael Gorbachev in Moscow in the early 1990s – still fresh in the memory of the Code’s drafters – served as an ‘early warning’ that the post-communist democratization process would entail serious risks, and that it could in turn only be consolidated if the defense sectors *themselves* would be put not only under effective civilian control and democratic oversight domestically, but also international scrutiny.²

The arguably ‘revolutionary’ aspect of the Code is that it is (still) the only politically-binding document worldwide, *negotiated* by a statutory regional and multilateral organization³ addressing politico-military aspects of security, to define the principle of *democratic control of armed forces*. Codified in the Code’s sections VII and VIII, and taking into account that the OSCE is the largest regional security organization in the world encompassing the bulk of established democracies and industrialized countries, this principle is herewith elevated (*quasi* irreversibly) into the realm of international law and cooperation, and the consequence of this is that it creates *international soft law* in an area of state power and sovereignty hitherto considered a taboo in international affairs: the security sector. Reflecting this fundamental act introduced into the international community, the Code’s ultimate rationale is set forth in §10 of the CSCE Budapest Summit Declaration (cit.):

*“Continuing the CSCE’s norm-setting role, we have established a ‘Code of Conduct on Politico-Military Aspects of Security’ that, inter alia, sets forth principles guiding the role of armed forces in democratic societies.”*⁴

This chapter examines the historical and geopolitical framework conditions that led to the negotiation of the Code, taking into account within the first section the main initiatives and debates in the immediate post-Cold War era (1989–1992). Some Western European states promoting a more ambitious project originally wanted to have a *legally*

2 See for instance: Alexandre Lambert: Democratic Civilian Control of Armed Forces in the Post-Cold War Era,

3 The OSCE is i.a. one of the statutory regional organizations under the U.N. Charter.

4 Budapest Summit Declaration, §10. Emphasis added (Italics) by author. <http://www1.umn.edu/humanrts/osce/new/budapest-summit-declaration.html>

binding Treaty defining post-Cold War Security in Europe. As this proposal did not reach consensus throughout the CSCE area, an optional project of drafting a merely *politically-binding Code of Conduct* could finally gain broad enough support, culminating into the launch of the Code's formal negotiation process in 1992. Negotiations took no less than two years ending with the Code's formal endorsement by the heads of states and governments at the Budapest Summit in December 1994. The second section of this chapter therefore evaluates this negotiation process, taking shape in the Forum for Security Cooperation (FSC) that was newly created in 1992. Formal negotiations would further reflect the *geostrategic transformation* throughout the OSCE's impressive Northern Hemisphere landscape stretching 'from Vancouver to Vladivostok'.

Geopolitical Framework Conditions and Rationale of the Code (1989–1992)

In 1992, the CSCE Review Conference in Helsinki ('Helsinki II') created the FSC and commissioned to the Forum to *i.a.* elaborate the Code.⁵ Consequently, negotiations took place in the Forum from September 1992 to November 1994.⁶ The final phase of the negotiations then took place at the CSCE Summit in Budapest, beginning early December 1994. It is interesting to note that the final version of the Code would not be adopted as a separate document. Rather, it is enshrined as *Chapter IV of the Budapest Document*.

Historically, the root causes that have led to the negotiation of the Code refer to some of the lessons learned from the civil armed conflicts on the territories of the Former Yugoslavia and the Former Soviet Union after the end of the Cold War. Conventional military armed forces were not always the main actors in these conflicts. There were also a number of state- and non-state paramilitary organizations involved, as well as state internal security forces. As a matter of fact, these forces were often not subject to effective parliamentary oversight nor were they registered under international arms control arrangements. It is important to note that especially (post-)communist defense- and security sectors tended to encompass badly accountable paramilitary- and internal security forces. The Code aimed at bringing these forces under more effective

5 Dean, Jonathan, "The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed-Up", OSCE Yearbook 1995/1996, Baden-Baden (Nomos Verlagsgesellschaft) 1997, pp. 291–297, p. 291.

6 Hennig, Ortwig, "The Code of Conduct on Politico-Military Aspects of Security", OSCE Yearbook 1995/1996, Baden-Baden (Nomos Verlagsgesellschaft) 1997, pp. 273–289, p. 273.

civilian control and international scrutiny while promoting post-Cold War defense and security sector reform. §20 of the Code implicitly states that unaccounted security forces may not only pose a risk to democratic societies but may pose also a threat to international security and stability.⁷ Marton Krasznai, former director of the Conflict Prevention Centre (CPC) within the OSCE Secretariat coined this challenge as follows:

“The idea of the Code ... was born out of the recognition that the establishment of proper, well-functioning civilian control (rather than the control of the Communist Party) of the armed forces of Central and East Europe would be a long, difficult process that could pose certain risks. The bloody wars on the territory of the former Yugoslavia and the former Soviet Union in the first half of the nineties, where the most brutal atrocities were committed by paramilitary forces (of course, often with the quiet support of the professional military) made the negotiation and adoption of such a document even more urgent.”⁸

Sections VII and VIII of the Code on democratic control and use of armed forces and the Code’s provisions more generally set a normative framework for the use of armed forces both for internal and international security missions, and introduce the principle of democratic control of military, paramilitary- and internal security forces, as well as of intelligence services and the police (§20). Herewith, in Europe, security has ceased to be an exclusively national matter, and hitherto, OSCE participating States do have a *‘droit de regard’* on how 3rd participating States govern their security sectors. Ortwin Hennig called this *civilizational step* in the realm of international security cooperation:

“The Code of Conduct seeks to elevate the standards of political civilization among OSCE participating States with regard to the use of military power and thus to fill a gap in collective norm-setting ... Hitherto, the ... framework of norms ... has largely omitted statements on dealing with military power. It was only after the end of the block confrontation that it became possible, and at the same time necessary ... to go beyond standards for the protection of the individual and national minorities and make the effort to find multilateral norms for an area at the heart of ... (state) ... sovereignty by establishing politically binding rules for the politico-military aspects of their conduct, both internally and externally.”⁹

Heinz Vetschera underlines that the Code ‘transcends’ the principle of democratic control of armed forces against the need for enhanced transparency in international

7 And §25 of the Code adds provisions on irregular armed forces.

8 Krasznai, Marton, “Promoting Democratic Control of Armed Forces in South-East Europe: the role of the OSCE”, Collection of documents, EAPC/SEEGROUP Workshop on Civil-Military Interaction in Security Management: The Case of South-East Europe, Sofia, 27–28 June 2002, Centre for International Security Policy, Federal Department of Foreign Affairs, Bern, September 2002, pp. 22–26, p. 22.

9 Hennig, op. cit., p. 274.

security politics. According to Vetschera, this would *i.a.* prevent 'accidental' wars and surprise attacks: "Because of the requirements of increased openness and transparency, the question of democratic control transcends the area of domestic policies, and becomes an element of international security policy."¹⁰ For Vetschera, this would enhance not only political but also military stability, stating that with the adoption of the Code and the fact that democratic control over the armed forces herewith becomes an 'object of multilateral international effort', "the OSCE participating States reached a new quality in their security relations".¹¹

Victor-Yves Ghebali did in turn emphasize that the Code, with §20, does establish a positive correlation between political stability, security, and democracy. Herewith, as he argues, for the first time a formal connection is made between the *politico-military- and the human dimension of security*. According to Ghebali, the Code therefore goes beyond the definition of rules of *inter-state* conduct and introduces new *intra-state* rules of conduct in the security sector. In other words, the Code "intrudes into an area of state power which has hitherto been considered a *sanctum sanctorum*: armed forces".¹²

Negotiation and Adoption of the Code (1992–1994)

As referred to in the introduction of this chapter, the ideas that lead to the Code are rooted in the changing strategic environment in Europe after the end of the Cold War. Going far beyond the elaboration of a 'Code of Conduct', France took the initiative to put forward a legally binding *Pan-European Security Treaty* that would redefine the institutional security architecture in the Northern Hemisphere. The French initiative would have potentially strengthened the (former) *Western European Union (WEU)*.¹³

France did first present her legally-binding treaty project within NATO where it was rejected by the United States for the sake of keeping NATO the lead security organization in Europe. Even when France subsequently presented her project in the CSCE ministerial council in January 1992, it did not receive broad support by fellow

10 Vetschera, Heinz, "Security Policy and Democratic Control", Anton Bebler (ed.), *Civil-Military Relations in Post-Communist States – Central and Eastern Europe in Transition*, Westport 1997, pp. 15–21, p. 16.

11 Ibid, p. 20.

12 Ghebali, Victor-Yves, "The Normative Contribution of the OSCE to the Democratic Control of Armed Forces: The Added Value of the 1994 Code of Conduct on Politico-Military Aspects of Security", Wilhelm Germann/Timothy Edmunds (eds.), *Towards Security Sector Reform in the Post Cold War Europe*, Bonn International Center for Conversion/Geneva Center for the Democratic Control of Armed Forces, Baden-Baden (Nomos), 2003, pp. 133–144, p. 133.

13 Dean, op. cit., p. 292. The WEU had its headquarters in Paris.

CSCE participating States.¹⁴ Still, from a geopolitical perspective, it is significant to note that the original ideas and initiatives towards the Code came from Europe, including from the EU herself. From a Western European perspective, the 'novelty' was that for the first time in the history of the CSCE, a multilateral politico-military proposal was not initiated as usual from within NATO, but was actually promoted through the EU.¹⁵ Jonathan Dean interpreted this shift in European Security as follows:

“Influenced by the original French proposal for a treaty, the EU members, for the first time in the CSCE caucusing separately from NATO members, wanted a text defined norms of European Security.”¹⁶

This means that within the preliminary deliberations regarding the very aim of the Code, differing ideas were expressed first and foremost *within* what was formerly the 'Western bloc'. And most interestingly, at the CSCE Helsinki Follow-up Conference in 1992 ("Helsinki II"), an amended project proposing a Code of Conduct that would only be politically binding and set forth jointly supported by *France, Germany, and the Russian Federation* received large support both in Western, Eastern, and Southern Europe.¹⁷ Consequently, Helsinki II assigned the task to the FSC to negotiate a 'Code of Conduct on Politico-Military Aspects of Security' under Item 12 of the "Program for Immediate Action".¹⁸

Four OSCE participating states or groups of states would dominate the formal negotiations that subsequently started at the newly created Forum for Security Cooperation (FSC): (1) Poland; (2) European Union; (3) Turkey; (4) Austria and Hungary. The corresponding *four main proposals* submitted by those 4 parties largely gave shape to the negotiation process and shall therefore be further analyzed hereafter.

The *first proposal* was submitted by *Poland*.¹⁹ This proposal was the most ambitious from a political point of view, including with regards to certain sensitive inter-state norms. Against the background of difficult historical memories vis-à-vis Nazi-Germany during WWII and the Soviet Union during the East-West block confrontation, Poland

14 Victor-Yves Ghébali, *L'OSCE dans l'Europe Post-Communiste, 1990–1996. Vers une Identité Pan-Européenne de Sécurité*, Bruxelles (Bruylant), 1996, p. 171.

15 Ibid. P. 172.

16 Dean, op. Cit. P. 292. Emphasis added by author.

17 "Proposition présentée par les délégations de l'Allemagne, de la Belgique, de la Bulgarie, de l'Espagne, de l'Estonie, de la France, de la Grèce, de l'Irlande, de Malte, de la Pologne, de la Roumanie, et de la Fédération Russe : Code de Conduite sur les relations entre les Etat participants dans le domaine de la sécurité", CSCE/HM/WG2/I, Helsinki, 19 May 1992.

18 Terpstra, p. 1; Ghébali, Victor-Yves, "Introducing the Code", Gert de Nooy (ed.), *Cooperative Security, the OSCE, and the Code of Conduct*, De Hague (Kluwer Law International), 1996, pp. 5–14, pp. 5/6.

19 "Proposal submitted by the Delegation of Poland: Code of Conduct in the Field of Security", CSCE/FSC/FC.5/Rev.1, Vienna 18 November 1992. According to Ghébali, Austria and Hungary would participate in this proposal. Ghébali (OSCE), op. cit., p. 172.

intended to create a European security system providing for *guarantees against military domination*.²⁰ While §13 of the Code does implicitly *prohibit military domination*²¹, Poland's ultimate intention to have an *extended prohibition for the use of force and military aggression* (beyond the already existing international provisions of the U.N. Charter and the Helsinki Final Act) did not get a chance during the negotiations. However, and with the support of the EU, a comparatively weak reaffirmation of the principle of *restraint in the use of force* was nevertheless included in §8 of the Code.²² Moreover, due to Poland's initiative, the principle of *solidarity* was sanctified in §5 of the Code and would become a prominent provision of post-Cold War European Security, including with regard to the current situation in Ukraine.²³

Another sensitive issue put forward by Poland was the principle of political *neutrality* of the armed forces, especially as it also referred to *paramilitary forces*. As indicated in section 1 of this chapter, paramilitary and internal security forces played a key role in the escalation of armed conflicts on the territories of the former Yugoslavia and former Soviet Union. More generally, Poland very much pushed for *democratic civilian control* and *parliamentary oversight* over military and security forces, and regarding political neutrality, Poland's proposal clearly distanced itself from any totalitarian form of government: "No participating State will allow its armed forces to serve the interests of a single particular political grouping or ideological system."²⁴ Elaborating on paramilitary forces, Poland was particularly concerned with what she called '*paramilitary organizations*', structures that had been used by totalitarian regimes such as Nazi Germany and the Soviet Union for politico-military domination, internally and externally. Since the issue was still highly sensitive for a number of OSCE participating States, especially in post-Soviet Europe, Poland ultimately failed in her intention to have the Code binding these structures to the principle of political neutrality.²⁵ Still, her effort led to the adoption of a separate

20 Dean, op. Cit., p. 292.

21 §13, second sentence: "No participating State will attempt to impose military domination over any other participating State."

22 §8 stipulates: "The participating States will not provide assistance to or support States that are in violation of their obligation to refrain to the use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Charter of the United Nations or with the Declaration of Principles Guiding Relations between Participating States contained in the Helsinki Final Act."

23 Typically, §5 reflects the circumstance that the OSCE is not a collective defense organization but rather a cooperative security organization: "They (the participating States) are determined to act in solidarity if CSCE norms and commitments are violated and to facilitate concerted responses to security challenges that they may face as a result. They will consult promptly, in conformity with their CSCE responsibilities, with a participating State seeking assistance in realizing its individual and collective self-defense. They will consider jointly the nature of the threat and action that may be required in defense of their common values."

24 Proposal submitted by Poland, op. Cit., p. 3.

25 Regarding paramilitary organizations, Poland's proposal suggested the following remarkable provisions: "Each participating State will execute full constitutional, legal and political control over the functioning of paramilitary organizations. Each participating State will refrain from allowing paramilitary organizations to be established or to serve the particular aims of a grouping or organization to gain or maintain political power ... (and) ... the participating States will not use paramilitary organizations to circumvent limitations concerning the use and size of their armed forces." The provision of 'political neutrality' was nevertheless included in §23 of the Code dealing with the civil rights of armed forces personnel.

paragraph (§26) explicitly dealing with 'paramilitary forces'. §26 (implicitly) prohibits the use and development of paramilitary forces by participating States in an attempt to circumvent international arms control agreements.

The *second proposal* was submitted by the *United Kingdom* on behalf of the *European Union*. Geopolitically, it is quite interesting to note that this EU proposal was co-sponsored by both European and non-European NATO member States, including Norway, Iceland, and Canada.²⁶ Consequently, this UK/EU proposal was supported by all NATO member States except the *United States* and *Turkey*, reflecting two sets of conflicting interests within the 'Western' camp in the OSCE: United States vs. Europe; Turkey vs. the EU.²⁷

One of the most significant aspects of the EU proposal was that it elaborated on the consequences of the use of armed forces in emergency situations, including in the event of their assignments for *internal security missions*. While § 36 and §37 deal with internal security missions, especially concerning the protection of civilian populations, the EU ultimately failed to have an explicit provision stating that these missions had to be subject to the *Rule of Law*. The Code did also fail to take into account another proposition by the EU proposal to have the participating States exchange information regarding the extent, duration, and objective of internal security operations performed by both military and paramilitary forces.²⁸ Another significant provision put forward by the EU but which then failed to be included in the Code was that the *individual accountability* of armed forces personnel (as such provided by § 30 and §31 of the Code) would also be tied to the principle of *international criminal prosecution*. Finally, the EU wanted a clause allowing for the establishment of *fact-finding-missions* in the event of a violation of the Code's norms. While the membership candidate Turkey was concerned that the EU could use the Code to put pressure on her concerning the situation of national minorities such as the Kurdish population²⁹, the United States was somehow irritated by the fact that the main initiative towards the Code's negotiation came from the EU and not from NATO (see also the concluding remarks within this chapter section).

The *third proposal* submitted by Turkey was in part a kind of 'counter-proposal' to the one submitted by the EU (see second proposal above). However, beyond her concern to reduce the scope of the Code's regulations on the role of the armed forces in society³⁰,

26 "Elements for a CSCE Code of Conduct Governing Mutual Relations Between Participating States in the Field of Security, (proposal) submitted by the United Kingdom/European Community, Canada, Iceland and Norway", CSCE/FSC/SC.7, Vienna, 16 December 1992.

27 See also the proposal submitted by Turkey further on in this chapter.

28 Still, the Questionnaire requests the participating States to exchange information on the roles and missions of military and security forces, including in the event of counter-terrorism.

29 See i.e. the above-mentioned Copenhagen Criteria of membership, including the provision to protect national minorities.

30 Ghébalí (in: Gert de Nooy), p. 6.

and in particular concerning internal security missions, Turkey, more generally did address what could be referred to as '*new security threats and challenges*'. Consequently, her proposal ranged from illicit drug trafficking to the need to protect the environment and address the issue of migrant workers.³¹ In this capacity, building on an implicitly comprehensive concept of security, the Turkish proposal came astonishingly close to the joint proposal of Austria and Hungary.

In response to the EU, Turkey put the emphasis on counter-terrorism which ultimately led to the adoption of §6 of the Code. However, Turkey's motivation was not restricted to balancing a possible emphasis on human rights in the Code; her proposals on new risks and challenges to national and international security were actually quite comprehensive and fairly forward-looking, at least if one considers the evolving security dialogue within the OSCE throughout the subsequent two decades. Turkey did in fact refer to specific risks stemming from the *intersection of terrorism and organized crime*, emphasizing *i.e.* the urgency to address illicit trafficking of arms and drugs. More particularly, the Turkish proposal warned about threats stemming from 'organizations, groups, and communities' whose activities may aim at the subversion of constitutional democracy. While back in the mid-1990s, the main motive for Turkey when making assessments about threats was potentially the issues she had on her own territory with the Kurdish minority, she also referred to *broader socio-political problems*, parts of which would be emphasized in the Code, e.g. in §17. In fact, Turkey identified totalitarian ideologies, racism, xenophobia, intolerance, ethnic conflicts, aggressive nationalism, religious fundamentalism, and even socio-economic polarization as the greatest threats to contemporary security – reflecting herewith the OSCE's emphasis of comprehensive and cross-dimensional security.³²

Finally, Turkey made some other potentially innovative proposals, including the request that participating States should exchange information on their national legislations, governmental programs, foreign policy guidelines, official public statements, as well as military doctrines to illustrate their compliance with the Code. And Turkey also suggested that the Code should be promoted not only at the United Nations, but that it should also be brought to the attention of neighboring States in the Maghreb region, as well as Asian states such as Japan – in short: a chosen group of states that were going to become in the near future part of Mediterranean and Asian partner countries of the OSCE.

31 "Proposal submitted by the Delegation of Turkey: Code of Conduct Governing the Mutual Relations of the CSCE Participating States in the Field of Security", CSCE/FSC/SC.8, 16 December 1992.

32 §17 of the Code would incorporate many of these risks and challenges, adding Anti-Semitism. In possible contrast, however, to the Turkish proposal, §17 indicates that many of these Problems and tensions to also have to do with the disregard of human rights and fundamental freedoms.

Interestingly, since 1993, under Danish presidency, the EU's overall negotiation posture had been intensified, as the Union established a specific group of experts on the Code.³³ The result was that the EU presented a revised text proposal for the Code by 30 June 1993 which was co-sponsored by NATO member States Iceland and Norway.³⁴ At the same time, EU-internal consultations on the Code were anything but homogeneous. Some of the discussions turned around the question of whether the Code should adopt a *narrow or a broad security concept*, and whether the Code should actually include a definition of security in the post-Cold War era. Interestingly, by 1994, became a common practice for the EU to consult with Norway and candidate countries Austria, Finland, and Sweden. According to Hain-Cole, this mechanism did however not bring results, as the EU would pursue consultations on the Code mainly with co-sponsors from NATO.³⁵

The *fourth proposal* was jointly submitted by Austria and Hungary. Referring to the above-mentioned debate regarding the concept of security within the EU and among EU candidate countries, the joint Austria-Hungary proposal stood out in that it suggested a *comprehensive and (implicitly cross-dimensional) security concept*, from arms control to the protection of human rights, including economic rights, as well as the protection of the environment. And as it especially provided for far-ranging *intra-state norms of conduct in the security sector*, the very title of the Austrian-Hungarian proposal significantly differed from 3rd parties' proposals, including Turkey: "*Proposal of a CSCE Code of Conduct Governing the Behavior of the Participating States towards Each Other and of Governments towards their Citizens*".³⁶ It might be relevant to note that in comparison to this proposal of Austria and Hungary, the EU proposal promoted a comparatively narrow concept of security that essentially built on the *CSCE Acquis* of inter-state provisions. To complete the picture, Hungary, by February 1994, added another proposal of her own about the *democratic control and use of armed forces*.³⁷ This is most significant in that the whole sections VII and VIII – roughly 50% of the Code's provisions – are exactly about this matter (section VII: democratic control of armed forces; section VIII: democratic use of armed forces).

Concerning key OSCE countries like the United States and the Russian Federation, they played a fairly modest (if not complicating) role during the negotiation process of the Code. Not only did neither of them submit any proposal of their own. With regards

33 Hain-Cole, Crispin, "Negotiating the Code: A British View", Gert de Nooy (ed.): *Cooperative Security, the OSCE, and the Code*, De Hague (Kluwer Law International), 1996, pp. 29–32, p. 29.

34 "Proposal on a CSCE Code of Conduct Governing Mutual Relations between Participating States in the Field of Security, submitted by the Delegation of Denmark on behalf of the European Community and its Member States, Iceland, and Norway", CSCE/FSC/SC.21, Vienna, 30 June 1993.

35 Hain-Cole, op. Cit., p. 31.

36 Proposal submitted by Austria and Hungary, CSCE/FSC/SC.22, Vienna, 15 September 1993.

37 "Proposition Relative au Contrôle politique démocratique des forces armées et de leur utilisation", CSCE/FSC/SC.25, Vienna, 23 February 1994.

to the Russian Federation, its occasional assertions seemed to aim essentially at watering down certain provisions of democratic civilian control, including in the event of armed forces' deployment for internal security missions. Sadly, once the Code was adopted by the end of 1994, the armed forces of the Russian Federation violated many of the Code's central provisions on democratic control of armed forces in the civil armed conflict in Chechnya, especially concerning the disproportionate use of forces against civilian populations. In the case of the United States, it showed themselves mainly to pose as a counter-weight to the EU, and consequently to lead the 'coordination of opinions' among Western European countries.³⁸ Ironically, if the U.S., through their representative and lead coordinator Jim Hinds, finally became more pro-active during the very last negotiation rounds, this very circumstance would just illustrate that the ultimate objective of the U.S. was not the Code but European geopolitics and (implicitly) the maintenance of NATO as the lead security organization on the old continent.

In conclusion, the Code's negotiation process reflected three main areas of tensions and challenges. The first tensions that complicated the negotiations arose between the EU and the U.S. over the very *definition of European security* in the post-Cold War era and accordingly over the possible redistribution of security competencies in-between NATO, the WEU, and the EU. Still, for the EU, the Code was a prestigious matter, as it represented the first concrete manifestation of its newly adopted CFSP. Progressively throughout the negotiation process, the EU became a decisive critical mass to push for the final adoption of the Code by the OSCE at its Budapest Summit. The second contention was about the *concept of security* and contrasting visions of narrow (EU) vs. broad (Austria/Hungary) conceptions. Unfortunately, the participating States could not agree on a new definition of security. The 3rd field of diverging views turned around Poland's quest for enhanced guarantees against military domination and restraint in the use of force. Even if she did not succeed to formally impose this norm within the Code, alternative provisions were adopted, including the freedom of participating States to choose their own security arrangements (§10), which implies for instance that any former member state of the Warsaw Pact (that was dissolved in 1991) could hitherto apply for membership in NATO. As a matter of fact, throughout the two decades since the Code's adoption in December 1994, both NATO and the EU considerably enlarged their membership deep into post-communist Europe and do now stand right at the borders of the Russian Federation.

38 Alexandre Lambert, "OSZE Verhaltenskodex to Politisch-Militärischen Aspekten der Sicherheit : Zur Rolle der Streitkräften in Demokratischen Gesellschaften", Zürcher Beiträge, Nr. 71, Forschungsstelle für Sicherheitspolitik, Zürich (ETHZ), 2004, p. 37. <http://www.isn.ethz.ch/Digital-Library/Audio/Detail/?ots591=40db1b50-7439-887d-706e-8ec00590bdb9&lng=en&id=10434>

Conclusion

Retrospectively, taking stock of 20 years of geostrategic transformation in Europe, it is possible to assert that the Code did not only assist in consolidating post-Cold War norms in the field of politico-military aspects of security. Arguably, it also contributed (even if unintentionally) to the emergence of a 'new divide' along East-Western geographical areas (a 'Euro-Atlantic' bloc and 'Eurasian' bloc), and this evolving new divide would already be apparent back in the mid-1990s. Against this background, it is worth reminding two major factors that would drive the Code's coming-about.

First, key former Warsaw Pact countries that had been occupied by the Former Soviet Union, especially Poland and Hungary, took leadership in the initial stages of the Code's negotiation process. Not only had they fresh collective memories about the risks stemming from both communist and Nazi totalitarianism; they openly aspired to membership in both NATO and the EU. And alongside the Czech Republic, they actually succeeded by 1999 and 2003 respectively. And the so-called Euro-Atlantic enlargement process (combining the joint enlargement processes of NATO and the EU) was one of the major manifestations of the transforming geostrategic landscape in post-Cold War Europe – at least from a 'Western' perspective. In any event, the Code's inter-state norms (sections I – IV) did implicitly endorse the Euro-Atlantic enlargement process.

Secondly, it was no other than the EU that eventually became the decisive factor in the second phase of the Code's negotiation and its final adoption. This fact coincided with its launch at Maastrich (1992) of the *Common Foreign and Security Policy (CFSP)*. Not only could the EU herewith pursue a security and defense policy independently from NATO; it would actually use the Code's negotiation process at a crystallizing point for operationalizing the CFSP. At the same time, NATO responded by the creation of its own standards and regulations on democratic control of armed forces (DCAF). In fact, the principle was one of the building blocks of its Partnership for Peace (PfP) Program launched in 1994 and has hitherto become a major field of activity within the Alliance's Partnership Action Plan/Defense Institution Building (PAP-DIB) program. Significantly, NATO did not only define DCAF as a condition of membership in both the Alliance and PfP; it explicitly refers to the OSCE Code of Conduct as the normatively reference document.³⁹

39 Section 6 of the NATO Partnership Working Document requests from Partner Countries to make progress in the Implementation of the OSCE Code of Conduct. <http://www.nato.int/tpf/docu/d990616a.htm>. According to Heiner Hänggi: "... European and Euro-Atlantic organizations are using the OSCE Code of Conduct as a reference document for defining the principle of good governance of the security sector. This holds particularly true for NATO's Partnership for Peace (PfP) program, which makes democratic control of defense forces a condition sine qua non of membership." Hänggi, Heiner, "Good Governance of the Security Sector; its Relevance for Confidence-Building", Heiner Hänggi (ed.), *Practical Confidence-Building Measures: Does Good Governance of the Security Sector Matter?*, Geneva Center for the Democratic Control of Armed Forces, DCAF Working Paper series, No. 107, p. 11.

Herewith, it should be underlined that the three regional organizations (OSCE; EU; NATO) do not only compete but also cooperate, e.g. by means of indirectly coordinating their activities – and based on reciprocal advantages – towards the consolidation of a regional institutional framework that fosters peace and stability and consolidate democracy in Europe. In order to complete the picture, let us just remember that the EU, at its Copenhagen Summit in 1993, had introduced, beyond its own *acquis* of economic criteria (*Acquis Communautaire*), explicitly *political criteria of membership*, including democracy, human rights, Rule of Law, and even the protection of national minorities.⁴⁰

In conclusion, post-Cold War Europe succeeded in negotiating an OSCE-wide framework document introducing new norms regulating the role of armed forces in democratic societies while re-endorsing the CSCE *acquis* of (inter-state) norms in the politico-military dimension of security. In a perspective of more than a decade after 9/11, it is fair to say that it is especially the Code's *intra-state norms* that never had a real chance to be drafted as legally binding provisions, let alone be subsequently ratified by a majority of national parliaments throughout the OSCE. Ironically, while today, many OSCE participating States tend to emphasize the need to update the Code according to 'new security threats' such as transnational terrorism and organized crime, democratic control of armed forces remains as urgent a concern as it was back in 1990s, including in the field of counter-terrorism and counter-narcotics. And while the Code is now brought to the attention of cooperation partners in the Mediterranean region and in Asia, it is important to remind that its very credibility will remain tied to both "the letter and the spirit" that gave birth to this still unparalleled document: the need to put armed forces within a democratic constitutional framework: in short: a Rule of Law. In 1997, Ortwin Hennig coined this as follows:

*"Until recently and international discussion of the organization and social position of the armed forces in a state was political taboo ... The Code of Conduct ... represents a first hesitant attempt to develop common political structures in the constitutions of OSCE States with the goal of helping to put their military forces into a democratic framework."*⁴¹

The OSCE herewith innovates the way the international community is dealing with politico-military affairs, as the Code's heritage is potentially of high importance also to 3rd world regions. After all, the promotion of functional security sectors and

40 To complete the 'European Security and Institutional Architecture' it may be worth referring to the normative framework on democracy, human rights, and Rule of Law, set by the Council of Europe (CoE). In fact, both the OSCE and the CoE, like NATO and the EU, did considerably enlarge membership after the end of the Cold War, and the CoE did also contribute to the regulation of security forces, including in the event of their assignment for internal security missions.

41 Hennig, *op. cit.*, p. 289.

what is hitherto referred to as reform and good governance of the security sector, by the end of the 1990s after the Code, has been recognized by the international development community as a *prerequisite of sustainable economic development*. The 2002 issue of the United Nations Development Program's (UNDP) Human Development Report states: "Core principles for democratic governance of the security sector can help governments balance the need for secrecy with the need for greater democratic control. But few countries approach this ideal, and democratic governance is being held back by a systematic failure to transform the role of the military and the police."⁴² And emphasizing the need for both justice and security sector reform, UNDP recognizes: "An unreformed (justice and security) sector will not only be unable to prevent conflicts from arising, but may often cause or worsen the conflict."⁴³

42 2002 HDR, p. 89.

43 UNDP and Justice and Security Sector Reform, <http://www.undp.org/erd/jssr>, p.1.

Chapter II

The OSCE Secretariat's Support to the Implementation of the Code of Conduct

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Introduction

The key objective of the Code of Conduct is to govern the role of armed forces in democratic societies. The commitments that were undertaken by consensus 20 years ago can be considered revolutionary.¹ Still today, the Code of Conduct provides important guidance for structuring the domestic security sector, safeguarding the rights of armed forces personnel and taking into account legitimate security concerns of other States. As a “mother document” for the contemporary understanding of security sector governance and reform (SSG/R), the Code sets out important principles for the democratic oversight of armed, internal, paramilitary, intelligence and police forces. However, the more ambitious are the goals of a document and the more political its objectives, the more challenging is the implementation. This holds true for the Code of Conduct. Hence, over the past years, the implementation mechanisms of the Code of Conduct have been gradually strengthened. As implementation is the primary responsibility of the participating States, the Code of Conduct cannot be stronger than the collective will of its signatories and their readiness to be bound and guided by its provisions. In addition to the participating States and complementary to their responsibility, the OSCE executive structures have played an important role in strengthening the implementation of the Code. They have provided practical assistance, advised participating States, contributed to outreach activities and raised awareness among the participating States, Partners for Co-operation, other regions, organizations and civil society more broadly.

1 Dr. Alexandre Lambert, “The Code of Conduct on Politico-Military Aspects of Security: A sleeping revolution”, <http://www.osce.org/fsc/104195>, 13 October 2010.

This chapter aims to provide an overview of the role of OSCE executive structures in supporting the Code of Conduct. It sheds light on the role of the Forum for Security Co-operation (FSC) by showcasing different implementation tools and exploring how OSCE executive structures have been active in outreach, awareness-raising and implementation in respect of this key normative document.

The role of the OSCE executive structures

The term “OSCE executive structures” is used to designate different components within the OSCE family, namely, the Secretariat, its institutions and field operations. The Secretariat, based in Vienna, includes, among others, the Conflict Prevention Centre (CPC) as one of the key players in the implementation and outreach of the Code. The institutions also comprise the High Commissioner on National Minorities (HCNM) based in The Hague, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) based in Warsaw, as well as the Representative on Freedom of the Media (RFoM) operating out of Vienna. Lastly, the OSCE executive structures include the 16 OSCE field operations, which operate in South-Eastern Europe, Eastern Europe, the Caucasus and Central Asia.

OSCE Secretariat

Within the Secretariat, the CPC provides the most direct support to implementation and outreach in respect of the Code. Founded in 1990, the CPC plays a lead role in providing assistance and advice across the OSCE family on the Code of Conduct. The CPC supports field operations through its regional desks, and assists the Chairperson-in-Office and other OSCE bodies in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation. Within the CPC, the FSC Support Section deals directly with the Code of Conduct. This Section supports the work of the FSC and its Chairmanship on all relevant FSC agenda items. It also advises and assists participating States in the implementation of their politico-military commitments, including the Code of Conduct. The FSC Support Officer – a seconded position within the section – acts as the OSCE-wide focal point on the Code of Conduct and bears the main responsibility in co-ordinating the work of OSCE executive structures in supporting the Code and in raising awareness.

Within the OSCE Secretariat, the recently created Transnational Threats Department (TNTD) also provides direct and subject- specific support on the Code of Conduct. This includes in particular the issues of policing, terrorism and border guards.

OSCE field operations

A considerable amount of support is provided by the field operations. In fact, some 80 per cent of OSCE staff and around 60 per cent of the core budget are dedicated to activities on the ground.² As field operations are based on a mandate agreed between the host State and the Permanent Council (PC), they do not always include an explicit politico-military component. In most cases, however, OSCE field operations are very active in promoting the Code and raising awareness about it, entertaining a direct dialogue with their host States and regularly organizing events and workshops. Support relating to the Code of Conduct is normally provided through the politico-military structures of a field operation or the programmes and projects related to security sector governance and reform (SSG/R). Occasionally, support is provided by the human rights or democratization departments, or through the head of mission's office. Across all the OSCE regions, field operations have played a major role in raising awareness about the Code of Conduct, in building capacity for improved implementation and by training national stakeholders of the security sector.

Institutions

Among the institutions of the OSCE, the ODIHR plays a leading role as the main resource in the field of human rights of servicemen and servicewomen. In 2013 and 2014, the ODIHR has organized several thematic discussions for the FSC on the role of military ombuds institutions, access of female soldiers to combat positions, conditions of service and human rights of armed forces, as well as civil and political rights of armed forces personnel. In 2008, the ODIHR, together with the Geneva Centre for the Democratic Control of Armed Forces (DCAF), produced a *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*³. This document serves as a reference regarding this important issue across the OSCE region. Lastly, the ODIHR is also active in the field of gender and security, supported under a designated programme.⁴ A toolkit for gender training has been developed in co-operation with DCAF and the United Nations, as well as a new series of Guidance Notes that focus on integrating a gender perspective in security sector oversight.⁵

2 "The OSCE Conflict Prevention Centre", <http://www.osce.org/cpc/13717?download=true>

3 *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, <http://www.osce.org/odhr/31393>

4 "Human rights, gender and the security sector", <http://www.osce.org/odhr/44713>

5 "Gender and Security Sector Reform Toolkit", <http://www.osce.org/odhr/70294>

Similarly the High Commissioner on National Minorities and the Representative on Freedom of the Media have contributed within their mandates and scope of work to supporting the implementation of the Code of Conduct.

The OSCE Parliamentary Assembly (PA), although not considered an OSCE executive structure, also provides significant support to the Code of Conduct. Over the past decades, the PA has adopted several resolutions on the democratic and parliamentary control of the security sector.⁶ In February 2014, it held a special debate on the Code of Conduct within its General Committee on Political Affairs and Security⁷. Additionally, the PA's parliamentarians and Secretariat have contributed regularly to Code of Conduct events organized by the CPC. At its 2014 Annual Session in Baku, the Parliamentary Assembly reiterated its call and support towards a full implementation of the Code of Conduct by dedicating several paragraphs of the Baku Declaration to this matter.⁸

The Forum for Security Co-operation

A main decision-making body with reference to politico-military aspects of security

The FSC is the main OSCE body dealing with the Code of Conduct. Established at the 1992 Helsinki Summit of the then-Conference for Security and Co-operation in Europe (CSCE), the FSC today provides a unique platform for the 57 participating States to discuss topical security challenges. Together with the PC, the FSC is one of the two regular decision-making bodies of the OSCE. The FSC has its own Chairmanship, which rotates among the participating States in alphabetical order, with each State holding the FSC Chairmanship for four months.⁹ The FSC gathers diplomats and military advisers of all the OSCE participating States on a weekly basis, and the Code of Conduct is one of the standing items on its agenda.

6 See for example the PA resolution on the democratic control of the public and private security sectors, adopted in July 2014, <http://www.oscepa.org/meetings/annual-sessions/2014-baku-annual-session/2014-baku-final-declaration/1839-01>

7 2014 PA Winter Meeting Report, <http://www.oscepa.org/publications/all-documents/winter-meetings/2014-vienna/reports-7/2450-2014-winter-meeting-report>, 13–14 February 2014.

8 <http://www.oscepa.org/publications/all-documents/annual-sessions/2014-baku/declaration-2/2540-2014-baku-declaration-eng/file>

9 Factsheet, "What is the Forum for Security Co-operation", <http://www.osce.org/fsc/77535?download=true>

The FSC Co-ordinator on the Code of Conduct

In 2006, the position of the FSC Co-ordinator on the Code of Conduct was established with the mandate to “assist the FSC Chairperson on matters related to the Code of Conduct by collecting views, ideas and inputs from delegations of participating States in the preparatory work, as appropriate”.¹⁰ Since its establishment, the Co-ordinator has played a major role in gathering support among participating States and in leading negotiations to devise and shape today’s implementation tools. Since its inception, the position has been held by Switzerland (Dr. Pierre von Arx), Austria (Colonel Anton Eischer) and Germany (Lieutenant Colonel Detlef Hempel). The three participating States have also provided the strongest support in terms of financial resources and political leadership.

The Group of Friends on the Code of Conduct

In July 2013, the first meeting of the Group of Friends was held with 26 delegations attending. Until now, up to 38 OSCE delegations have taken part in meetings of the Group of Friends, representing two thirds of the participating States. The Group meets on an ad-hoc basis and is chaired by the FSC Co-ordinator for the Code of Conduct. The Group serves to discuss and exchange views on important elements related to the implementation and outreach of the Code of Conduct, and serves to inform all sides about upcoming events and opportunities for engagement. Over the short time span, the Group of Friends has managed to significantly enhance political support among participating States and to greatly increase the number of States contributing to Code of Conduct activities.

Implementation tools

The Code of Conduct states in article 38 that “Each participating State is responsible for implementation of this Code”¹¹. In order to live up to this responsibility, several implementation tools were devised. They include the Code of Conduct’s annual information exchange and the annual implementation discussion. In addition, the FSC holds special debates on issues of relevance to the Code of Conduct. Normally three

10 Chairperson’s Perception on the Co-ordinator for the Code of Conduct, FSC.DEL/73/06, 4 April 2006.

11 “Code of Conduct on Politico-Military Aspects of Security”, <http://www.osce.org/fsc/41355?download=true>

such FSC Security Dialogues are held each year, consisting of presentations by external guest speakers and a follow-up discussion within the FSC.

The Code of Conduct questionnaire and reference guide

Soon after the adoption of the Code of Conduct, the participating States discussed how best to implement the document. At the first follow-up conference in 1997, it was agreed to develop a questionnaire on which all States would provide detailed replies every year. One year later, in 1998, negotiations were concluded and the FSC adopted decision No. 4/98, including an agreed questionnaire. Since then, the information exchange has been taking place every year, based on this questionnaire. At the 2002 follow-up conference, which was marked by the 9/11 attacks, it was agreed to reform and expand the questionnaire to include questions related to the fight against terrorism. The FSC concluded negotiations in 2003 and adopted FSC decision No. 4/03 on this matter. In 2009, the questionnaire was updated for the third time with FSC decision No. 2/09 and the former seven questions were expanded to 24 questions, thereby covering more provisions of the Code.

This information exchange has been a success story in itself. The number of States providing replies has remained at a very high and stable level, with around 52 or 53 States having provided information over the last five years. It is also worth noting that more States now report on the specific role and competences of parliaments, ombuds institutions and intelligence services. Furthermore, the number of States providing additional voluntary information has constantly increased. In 2014, 36 participating States provided information related to women, peace and security (UNSCR 1325 (2000)), and seven reported on private military and security companies (PMSCs). This has also led a number of participating States to call for a further update of the questionnaire.

The information exchange has become quite voluminous. Several States have therefore called for it to be streamlined. In view of the increased complexity, the CPC commissioned an expert study, conducted using extrabudgetary contributions provided by Austria, Denmark, Finland, Germany, Switzerland and the United Kingdom. Two renowned experts, Ms. Didi Alayli (for the inter-State elements) and Dr. Alexandre Lambert (for the intra-State elements), reviewed the information exchange of 2010, which was the first to be based on the updated questionnaire of 2009.¹² In their study, the experts proposed a reference guide which could help orient participating States in

12 Study on the 2010 Information Exchange of the Code of Conduct, <http://www.osce.org/cpc/76191>, 13 September 2010.

providing their annual replies. In 2011, the reference guide was finalized and submitted as a food-for-thought paper (FSC.DEL/14/10) by Austria, Canada, Denmark, Finland, Germany, Hungary, Norway, Sweden, Switzerland and the United Kingdom. One year later, the FSC took note of this reference guide when adopting FSC decision No. 5/11. The reference guide today helps participating States to provide their answers to the questionnaire. To this end, the guide lists different elements which the answers should touch upon. The reference guide has been translated into all the official OSCE languages as well as Albanian.¹³

In addition to the reference guide, the FSC Co-ordinator on the Code of Conduct has presented a list of indicators to improve reporting.¹⁴ This document is voluntary and can help States to identify potential gaps in their replies and find room for improvement.

The Annual Implementation Discussion

A milestone in recent years was the establishment of the yearly Implementation Discussions. Although the term of a “review meeting” was avoided for political reasons, the participating States agreed on the practice of a meeting focussed on the implementation of the Code. Prior to the introduction of this practice, so-called follow-up conferences were organized in 1997, 1999 and 2002. In addition, special meetings of the FSC working groups were held in 2006 and 2007. These meetings demonstrated the interest of participating States in discussing and reviewing the Code of Conduct, which was also underlined by the active discussions and the considerable number of food-for-thought papers. The proposal to introduce a regular annual discussion meeting gained increased momentum. In 2011, by FSC decision No. 12/11, it was decided to “regularize a focused discussion on implementation of the Code of Conduct on Politico-Military Aspects of Security by devoting an annual special one-day meeting to the Code of Conduct”¹⁵. An issue in the preceding negotiations was the extent to which non-governmental organizations could attend and contribute to such a meeting. The FSC took a rather restrictive stance by stating that only representatives of “think tanks of international standing and security-related scientific institutes”¹⁶ could be invited. Furthermore, they are only allowed to attend the morning segments of the annual meeting, while the afternoon is restricted to participating States. Since 2012, renowned

13 Available under: <http://www.osce.org/fsc/100329>

14 Working Document on Possible and Non-Exhaustive Indicators to Improve Reporting on the OSCE Code of Conduct on Politico-Military Aspects of Security, FSC.DEL/61/14, 31 March 2014.

15 FSC decision No. 12 of 19 October 2011.

16 Ibid.

academic experts from DCAF, the Belgrade Centre for Security Policy (BCSP) or RACVIAC have been able to participate in the morning sessions of the annual implementation discussion. Through the above-mentioned decision, the FSC also tasked the CPC with providing a report on the implementation of the Code of Conduct, which is to be limited to the provision of statistical data. Several participating States have called for a more elaborate and detailed report, providing more than statistical data and information on common practices.

On 11 July 2012, the first Annual Implementation Discussion was organized in Vienna. Prior to this, the OSCE Ministerial Council held in Vilnius in December 2011 tasked the FSC “to intensify the discussion on the annual information exchange on the Code of Conduct on Politico-Military Aspects of Security and examine its application in the context of [the] existing political and military situation, in particular through a focused review during the first annual discussion on its implementation”.¹⁷ The first Annual Implementation Discussion provided an opportunity to discuss ways to promote and improve the implementation of the Code of Conduct, including its annual information exchange. Since then, three Annual Implementation Discussions have been held, in Vienna in July each year. The last Annual Implementation Discussion (on 9 July 2014) provided experts from delegations and capitals an opportunity to review the implementation of the Code in the context of the current political and military situation. A great number of suggestions were made touching on different aspects of the Code. For example, delegations called for a strengthening of the outreach of the Code of Conduct to the OSCE Partners for Co-operation. Several delegations also suggested widening the scope of the annual questionnaire to include private military and security companies (PMSCs) and issues related to women, peace and security (UNSCR 1325 (2000)). Other delegations also welcomed the development of a compilation of practical examples of the democratic control of armed and security forces.¹⁸ This compilation is intended to showcase the relevance and applicability of the Code of Conduct related to practical examples such as parliamentary control, training on international humanitarian law or the protection of human rights of armed forces personnel, thereby reflecting the level of good practices of democratic governance as an illustrative reference.¹⁹

17 Ministerial Council Decision No. 7/11 on Issues Relevant to the Forum for Security Co-operation, 7 December 2011, <http://www.osce.org/mc/86531>

18 Consolidated Report, FSC.GAL/96/14, 24 July 2014, <http://www.osce.org/fsc/121796>.

19 Food-for-Thought Paper on a Compilation of Practical Examples of the Democratic Control of Armed And Security Forces to Support Awareness Raising, Better Implementation and Outreach Activities, FSC.DEL/103/13, 11 April 2014.

Peer review: an additional implementation framework?

An additional framework for implementation could be peer review among States. Indeed, many national stakeholders are surprised to realize that only little is done with the annual information exchanges. Replies are sent to Vienna and are distributed to all the participating States. It is then, however, left to the participating States to assess individual replies and to draw their conclusions., but in practice, this is hardly done, as States lack the financial and human resources to assess the voluminous replies independently. At the same time, the CPC's mandate is limited to the provision of statistical data, excluding any assessment. Hence, a call for an improved model of implementation, complementing the annual information exchange, has been made. In particular, the countries of South-Eastern Europe have shown great leadership and interest in the model of peer review. In such a framework, States assess their compliance among themselves on an equal footing (as *peers*) and can ask directly for clarifications, provide comments or make suggestions for improvements. Such discussions and exchanges can be seen as an additional confidence-building measure. The RACVIAC Centre for Security Co-operation has played an important role in bringing together stakeholders of the region to improve the implementation of the Code.

From 30 September – 2 October 2014, RACVIAC, in co-operation with the CPC, organized a peer review conference for South Eastern Europe. This meeting constituted the first review meeting of this kind. The meeting brought together high-level representatives from the region responsible for the implementation of the Code of Conduct. The Conference provided the participants from parliaments, ombudsman institutions, ministries of foreign affairs, justice, defence and the interior and NGO representatives with an opportunity to present their experiences in implementing the Code of Conduct. A RACVIAC expert analysed each of the countries' submission and provided feedbacks and suggested possibilities for improvement. During the meeting, the participants displayed considerable openness and transparency and were ready and willing to engage into discussions on individual national submissions. The conference thus allowed for an unprecedented opportunity to improve reporting and to further strengthen confidence-building in the region with regards to the Code of Conduct implementation.

Awareness-raising, outreach and implementation support

The main activities of the OSCE executive structures in support of the Code of Conduct can be characterized as awareness-raising, outreach and implementation support. All are interdependent and not mutually exclusive.

Awareness-raising

Raising awareness among delegations, capitals, military stakeholders, academia and civil society is an ongoing endeavour. For over a decade, participating States have been taking on this role directly, conferring only a limited role on the OSCE Secretariat, consisting in the provision of institutional memory and support for the FSC. In particular, Switzerland and DCAF have been key supporters of the Code of Conduct, having organized several workshops to make the document better known to different stakeholders across the OSCE region.²⁰ These workshops have been regularly held in Switzerland. They have focussed on practical implementation challenges and have been attended mainly by military representatives.

The adoption of FSC decision No. 1 in 2008 represented a breakthrough for the OSCE. For the first time, the decision conferred a mandate on the OSCE Secretariat. It requests the Secretariat *“to organize, in co-operation with other international organizations or with participating States, as appropriate, and within available resources at least one specialized seminar or workshop a year in order to facilitate better implementation, to promote awareness and to support outreach of the CoC, and encourages participating States to contribute extra budgetary funds to enable such events”*.²¹ It was also decided to declassify the annual replies submitted by participating States and to make them publicly available on the OSCE website. Since then, all replies of participating States can be consulted online on the OSCE’s website.²² This has raised interest among civil society stakeholders and has allowed academic experts to independently assess and comment on the Code’s implementation.

Pursuant to this decision, the CPC has thus far organized seven regional seminars on the Code of Conduct: in Kazakhstan for Central Asia (2008), in Bosnia and Herzegovina for South-Eastern Europe (2009), in Belarus for Eastern Europe (2010), in Ukraine for the Black Sea region and South Caucasus (2011), in Latvia for the Baltic Sea region (2012),

20 See related Chapter.

21 Decision No. 1/08 on Awareness Raising and Outreach of the Code Of Conduct, FSC.DEC/1/08, 27 February 2008.

22 Answers to the Code of Conduct Questionnaire, <http://www.osce.org/fsc/86841>

in Malta for the Mediterranean region (2013), and in Serbia for the staff of OSCE executive structures (2014). The seminars enjoyed a high level of attendance by officials from the ministries of foreign affairs, defence and interior and the armed forces, as well as by members of national Parliaments, academia and civil society. These events were held with extrabudgetary contributions from Austria, Germany and Switzerland and were supported by a wide range of academic institutions.

Over time it was asked whether the format of regional conferences was the best way to implement FSC decision No. 1/08. All the OSCE regions, except for Western Europe, had been covered by 2012. Instead of continuing with a purely regional approach, a targeted outreach to different stakeholders in the Code of Conduct's implementation has been preferred since that time.

Outreach

While awareness-raising was generally understood to apply to OSCE participating States having adopted the Code of Conduct, outreach applies to external partners, i.e., States outside of the OSCE or other international organizations and actors. In particular, an increased outreach to the 11 OSCE Partners for Co-operation²³ has taken place. The highlight in this regard was the above-mentioned regional conference for the Mediterranean, held in September 2013 in Malta. The conference brought together Mediterranean Partners for Co-operation (Algeria, Egypt, Jordan, Morocco and Tunisia) and OSCE participating States bordering the Mediterranean Sea. It was hosted and opened by the Foreign Minister of Malta, Dr. George Vella, whose country was also chairing the FSC at that time.²⁴

In addition to regional conferences, the OSCE has also been active in reaching out to the Partners for Co-operation in Vienna. Thematic discussions were organized together with the Partners, for example, in March 2012 with the Ambassadors of the Mediterranean Partners or in July 2013 in a joint meeting with both the Mediterranean and the Asian Partners. These thematic discussions were highly valued by both sides, providing an opportunity for dialogue and discussion on this important document.

Based on the successful model of the Malta seminar, the CPC will hold a regional conference in March 2015 for Central Asian States and the Asian Partners for Co-operation (Afghanistan, Australia, Japan, the Republic of Korea and Thailand). The conference will be held in Mongolia, which will chair the FSC in spring 2015.

23 The Mediterranean Partners are: Algeria, Egypt, Israel, Jordan, Morocco and Tunisia. The Asian Partners are: Afghanistan, Australia, Japan, the Republic of Korea and Thailand.

24 <http://www.osce.org/secretariat/104792>

Furthermore, in terms of outreach, the OSCE Secretary General, Lamberto Zannier, has placed increased emphasis on the exchange with other regional organizations. In this regard, the CPC provided a presentation to the League of Arab States (LAS) in May 2013 on the contents, development and implementation of the Code of Conduct. An Arabic translation of the Code of Conduct²⁵ was also presented to the LAS. This translation, marking another stride in terms of outreach to other regions, was provided as an in-kind contribution by Germany and Switzerland, based on the request by the LAS Secretary General. Last but not least, the OSCE also shared its experiences with the Association of Southeast Asian States (ASEAN) and the Organization of American States (OAS).

Implementation support

The OSCE executive structures support interested participating States, at their request, in improving and strengthening their implementation of the Code. Executive structures suggest improvements in annual replies, provide training to national stakeholders and build national and regional capacities. On several occasions, the OSCE also assisted in building internal structures to better co-ordinate annual replies by participating States.

In terms of overall co-ordination across the OSCE family, the CPC plays a leading role. It has focussed increased attention on training staff of OSCE executive structures. In this context, the first OSCE-wide training workshop was organized in March 2014 in Serbia. The workshop brought together over 50 participants from OSCE field operations from all the OSCE regions and staff from all the Secretariat components, the ODIHR and the PA. The workshop looked into how to best promote and support the democratic control of armed and security forces, security sector governance and reform (SSG/R), defence reform, parliamentary oversight, the respect for international humanitarian law, the human rights of armed forces personnel and issues related to women, peace and security. It helped to cross-fertilize efforts within the OSCE family in a train-the-trainers approach.

25 Arabic translation available under: <http://www.osce.org/ar/fsc/99216>.

The importance of sustainable funding

Funding is critical for the implementation of the Code of Conduct. In fact, the overwhelming majority of activities related to the Code are conducted by means of extrabudgetary funds, since the financial means available from the unified budget of the OSCE are limited. Hardly any activity, training or capacity-building would have been possible without such extrabudgetary contributions. In particular, over the past years, Austria, Germany and Switzerland have contributed significant and reliable funding. This allowed the Secretariat to work with a budget horizon and to develop a long-term planning strategy. It also made possible the implementation of FSC decision No. 1/08, which requests the Secretariat to organize at least one specialized event on the Code of Conduct each year.

Lastly, it is also worth mentioning that, until recently, extrabudgetary funding for the Code of Conduct had to be tied to a specific project. Hence, funds could only be pledged when a concrete project was available, and remaining funds had to be sent back to the donor after completion of the project. This changed in March 2012, when a repository programme for the Code was created by the CPC. This repository programme serves as a “parking lot” where funds can be allocated before their future use in a concrete project. This mechanism made it possible to accumulate significant funding, thereby increasing the long-term planning horizon and providing donors with a means to solicit and steer projects in a more client-oriented fashion.

Conclusion

The Code of Conduct has developed over time into a set of complex, but very effective and far reaching mechanisms: The information exchange has become detailed and comprehensive; the commitments contained in the Code remain as diverse and potentially revolutionary as they were in 1994; and the outreach and awareness-raising activities have greatly increased in numbers and depth since 2011. To continue and extend this success, the Code of Conduct requires permanent dedication and commitment. National and international capacities have to be built, maintained and nurtured for the implementation to be successful. The role the OSCE executive structures play in this regard is critical and recognized by all the participating States. As a reliable partner, they provide hands-on training, support and policy advice. In view of their work, the OSCE's executive structures, and in particular, the CPC as one of the key players, are in no way less needed today to help States live up to the joint commitments that they assumed 20 years ago.

Chapter III

The Information Exchange on the OSCE Code of Conduct on Politico-Military Aspects of Security: A Key Tool for Implementation

an overview of reporting results for 2011–2013

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Introduction

Annually, OSCE member states exchange information on their implementation of the organisation's Code of Conduct on Politico- Military Aspects of Security (CoC). 2014 marks the twentieth anniversary of the CoC's existence. As part of its programme as OSCE President for the current year, Switzerland has commissioned studies on the role of the CoC and its implementation, which will appear in a commemorative volume. This paper is one of these studies.

The purpose of this paper is to review whether there has been any significant change in the way in which member countries have proceeded with their review during the period of 2010 to 2013 and, if there has, to describe such changes accordingly.

The final section will also offer some ideas on how member states might enhance the effectiveness of the CoC as a political tool and confidence-building measure in their future work.

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Methodology

The methodology used in this Twentieth Anniversary study will be as follows. The study will be comparative, juxtaposing the reporting results of various OSCE member states. It will be selective in the sense that it will review the results of a limited number of OSCE members: while a comprehensive review would be preferable, such an approach would be beyond the scope of this project. The approach will also be prescriptive in the sense that it will put forward some ideas on how the CoC might be better integrated in the work of the OSCE going forward.

A word on the selection of the countries for this study. The fifteen OSCE member states whose results have been reviewed represent roughly thirty-five percent of the OSCE's membership. An effort has been made to make the selection as representative as possible but there is bound to be an element of arbitrariness in the choice of countries. That said, the selection includes OSCE states that are UN Security Council members, two North American states, a Central Asian one, current and would-be EU and NATO members, current and possible Eurasian Union members, neutral states, a post-conflict country and a few that remain dangerously close to a renewal of conflict. The countries in the sample are the following: Armenia, Azerbaijan, Canada, France, Germany, Kazakhstan, Moldova, Poland, Russian Federation, Serbia, Spain, Switzerland, Turkey and the United States.

The questions on which the study will focus are those that figure in the Technical Update to the Questionnaire on the Code of Conduct on Politico-Military Aspects of Security that was agreed by the OSCE Forum for Security Cooperation (FSC) in 2009, hereafter referred to as the Questionnaire.² also take into account the indicative Reference Guide³ developed the following year by the OSCE Forum for Security Cooperation to provide guidance to member countries in preparing their replies.

Out of a total of forty-five possible replies to the questions figuring in the survey, the fifteen countries named above have responded to forty-three.⁴ All the countries whose reporting results have been monitored in this review have scrupulously followed the Questionnaire, with a few very minor exceptions. As far as I can judge, these exceptions – say, the failure to reply to one or the other sub-question – have

2 See FSC DECISION No. 2/09 , TECHNICAL UPDATE OF THE QUESTIONNAIRE ON THE CODE OF CONDUCT , Forum for Security Co-operation, 1 April 2009, <http://www.osce.org/fsc/36748>, accessed 15 August 2014.

3 See FSC DECISION No. 142/10, REFERENCE GUIDE ON THE QUESTIONNAIRE ON THE OSCE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY, 2 November 2010, available at <http://www.osce.org/fsc/100329>, accessed 9 August 2014.

4 All member countries' submissions in the information exchange can be found at, <http://www.osce.org/fsc/86841>, accessed 15 August 2014.

generally been prompted by a desire to organise the reported material in a way that differs (but only slightly) from the Questionnaire, or the sense that the reply has been duly provided in an answer to a preceding or subsequent section of the submission.

OSCE Member Country Comparisons

The results of this survey have been organised into the following table, whose structure follows that of the Questionnaire.

Section I: Inter-State Elements		
1. Account of measures to prevent and combat terrorism		
1.1 To which agreements and arrangements (universal, regional, sub-regional and bilateral) related to preventing and combating terrorism is your State a party?		
1.2 What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?		
1.3 What are the roles and missions of military, paramilitary and security forces and the police in preventing and combating terrorism in your State?		
1.4 Provide any additional relevant information on national efforts to prevent and combat terrorism.		
2. Stationing of armed forces on foreign territory		
2.1 Provide information on stationing of your States armed forces on the territory of other participating States in accordance with freely negotiated agreements as well as in accordance with international law.		
3. Implementation of other international commitments related to the Code of Conduct		
3.1 Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence and security building as an element of indivisible security are implemented in good faith.		
3.2 Provide information on how your State pursues arms control, disarmament and confidence- and security-building measures with a view to enhancing security and stability in the OSCE area.		
Have the questions been answered?	Have they been answered comprehensively	Is there a progression in the replies?
Yes.	Yes.	Yes, but only to a limit extent, there having been few significant changes in member states' approach to combating terrorism or developments in the area of arms control during the reporting period.

To be noted is that for most countries, roughly one-third of their entire submission has focussed on the issue of terrorism. In a few cases, this has been close to one-half of the entire submission.

Section II: Intra-State elements		
1. National planning and decision-making process		
1.1 What is the national planning and decision-making process in determining/ approving military posture and defence expenditures in your State?		
1.2 How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?		
2. Existing structures and processes		
2.1 What are the constitutionally established procedures for ensuring democratic political control of military, paramilitary and internal security forces, intelligence services and the police?		
2.2 How is the fulfilment of these procedures ensured, and which constitutionally established authorities /institutions are responsible for exercising these procedures? of military, paramilitary and security forces, and how does your State control that such forces act solely within the constitutional framework?		
3. Procedures related to different forces personnel		
3.1 What kind of procedures for recruitment and call-up of personnel for service in your military, paramilitary and internal security forces does your State have?		
3.2 What kind of exemptions or alternatives to military service does your State have?		
3.3 What are the legal and administrative procedures to protect the rights of all forces personnel as well as conscripts?		
4.0 Implementation of other political norms, principles, decisions and international humanitarian law		
4.1 How does your State ensure that international humanitarian law and law of war are made widely available, e.g., through military training programmes and regulations?		
4.2 What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?		
4.3 How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity? exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?		
4.5 How does your State ensure that its defence policy and doctrine are consistent with international law?		
Have the questions been answered?	Have they been answered comprehensively?	Is there a progression in the replies
Yes.	Yes, for the most part.	Yes, to a certain extent. Replies tend to reflect that member states are taking a more comprehensive approach to the range of actors that are addressed in their reporting and their oversight. That said, the pattern is not clear-cut (see below).

The responses to the Intra-State Elements of the CoC require some further elaboration.

Understanding of the Security Sector and its Oversight. What stands out here in the country responses in Section II is the variation in the understanding of the actors that should be subject to the reporting process. For some countries, the armed forces referred to in the CoC are restricted to the military. For others, these include the police and the intelligence services. Few countries in the sample have addressed the role of other forces that are not specifically mentioned in the CoC or the Questionnaire, such as border guards and custom officials. Apparently, for some the latter, while not explicitly mentioned in the CoC, are part of the complex referred to in this document as internal security actors. Only one country in the sample has addressed the issue of Private Military and Security Companies. That said, PSMCs have been of growing importance in the security sectors of most OSCE states and their activities raise huge issues that go to the very core of the CoC. See the sub-section on this issue below.

A second issue that emerges from a reading of the country submissions for this section is the unevenness on the oversight front. The tendency for several countries is to focus on the oversight of the military while ignoring the issue of oversight as it concerns other security actors, or dealing with it but in very little detail.

All the security forces – intelligence, police, border guards and the like – need to be subject to some form of effective democratic control. This goes to the very heart of the CoC. And it is an issue that affects all member states. In my native Canada, the issue of how various police forces working for different jurisdictions – municipal, provincial and national – are overseen is an issue of continuing concern. In the United States, in the wake of Edward Snowden’s revelations, the controversy over intelligence oversight – or rather the lack of it – has been making headlines around the world. I do not want to only point the finger at North Americans. It stands to reason, however, that if Canada and the United States have deficits in these areas, then many of their fellow OSCE member states do as well.

The picture is similar as concerns border guards and customs officials. Who has not been processed through an airport security control, feeling that these forces need to be much more closely scrutinised? This is a banal example. Border Guards in some countries are under the control of the national security services, are heavily armed and can play a significant role in inter-state relations. The same can be said of the paramilitary forces at the disposal of some Ministries of Interior. In this connection, reporting is also sometimes weak, notwithstanding the specific reference to such forces in Article 20 of the CoC.

International Humanitarian Law (IHL)

There is a striking similarity in the submissions of most member states on IHL. The vast majority of the countries monitored in this sample

- integrate courses on International Humanitarian Law (IHL) and Law on Armed Conflict (LOAC) into their basic training for military personnel
- distribute written material or CD-Roms on the subject or make it available via a Ministry of Defence website at various levels through the military hierarchy
- provide refresher courses for serving personnel
- ensure that advanced training on these issues is part of future officers' academic training
- offer the opportunity to serving personnel to attend the IHL and LOAC training sessions organised by other countries as well as a range of international organisations.
-

Some countries have also nurtured a dedicated cadre for training on IHL and LOAC, dedicating resources to the development of state-of-the-art training courses.

That said, there are two grey areas here. While some countries ensure that all deploying personnel in peace-keeping and peace support operations – whether uniformed or civilian, military or police – have IHL and LOAC training, the situation in this regard for other deploying countries is not always clear from their submissions.

Similarly, while the entries of some countries point to an effort having been made to incorporate state-of-the-art training methodologies in national approaches, the submissions of most countries monitored are unclear on this score. This may seem to be a minor point but it is important nonetheless. Adult learners can learn better when they are given an opportunity to experience “learning by doing” through interactive methodologies, such as case-studies, simulations and the like, as opposed to traditional techniques favouring top-down, ex-cathedra approaches.

Section III: Public access and contact information		
1.1 How is the public informed about the provisions of the Code of Conduct?		
1.2 What additional information related to the Code of Conduct, e.g., replies to the Questionnaire on the Code of Conduct, is made publicly available in your State?		
1.3 How does your State ensure public access to information related to your State's armed forces?		
2. Contact information		
2.1 Provide information on the national point of contact for the implementation of the Code of Conduct		
Have the questions been answered?	Have they been answered comprehensively	Is there a progression in the replies?
Yes, except in one case: 2.1.	Yes, with a few exceptions.	No, but note that this should not be expected as in many member states the provisions for securing public access have been in place for several years.

Most countries have taken the position in their submissions that the public has the right to demand access to information on CoC-related issues. In certain cases, this is embedded in the constitution; in others, it is subject to a special law.

Additional Observations

In addition to the comments made above, here are a few additional observations.

Technical issues

Volume

While submissions can vary in length by a factor of 6 to 1, this disparity in submissions is not necessarily significant. Some of the shorter submissions take a more comprehensive perspective than some of their longer counterparts.

Most countries' submissions have tended to increase in length, but only incrementally, from one year to the next. In some submissions, there has only been a marked increase as a country has decided to incorporate a new section in its reporting, i.e., on oversight mechanisms or on gender.

Transparency

One member country has adopted the practice of highlighting those sections of its annual submission that differ from those of the previous year. This facilitates an understanding of key trends. My recommendation is that this approach should be followed more widely. This will enhance both the efficiency and the credibility of the reporting process.

Substantial issues

Gender

Roughly half of the countries whose reporting results were monitored included a special section on gender issues, more often than not as of the 2012 reporting year.

Some countries framed their gender contributions as a function of UNSCR 1325, others addressed the issue of women in issues of peace and security more generally, in which efforts to meet the expectations of UNSCR 1325 played an integral part.

Those addressing gender took three different approaches: some dealt with it in an annex to their submission; some tabled their observations on gender as a fourth section in their submission; some handled the issue of gender as part of their submission on intra-state elements by adding a new sub-question.

Private Military and Security Companies

One country has included in its submissions for the reporting period information on Private Military and Security Companies or (PMSCs). This is in line with article 20 of the CoC as well as the Reference Guidance tabled in 2010. Moreover, it is a manifestation of the burgeoning trend towards security sector privatisation and the need for effective regulation of this process.

The submission covers the following elements

- the need for action to regulate the activities of PMSCs
- the conditions that PMSCs should have to fulfill in order to be licensed to operate domestically
- the necessity of ensuring compliance across sub-national jurisdictions
- the importance of regulating as well PMSCs licensed nationally and operating abroad
- the international initiatives undertaken to develop good governance norms for the private security sector that are accepted ever more widely, by both state- and non-state actors.

Conclusions

My assessment is that OSCE member states have largely met their commitments for the 2011–2013 reporting period.

The CoC is arguably one of the most important political and confidence-building tools that the OSCE has developed in its almost four decades of existence. OSCE member states have strived over the last decade or so to make the CoC more operational and more relevant to its member states and those they are meant to serve – namely, their populations. That said, there is much more that can be done.

I am quite conscious of the fact that nothing is going to happen under prevailing geopolitical circumstances. But these difficult times will pass, and when they do, new energies will be available to rethink the CoC and how it relates to its environment. The challenge for the “friends” of the CoC is to protect its *acquis* for the better times that will surely come. Here are some thoughts in anticipation of that time.

- The OSCE needs to expand its focus so that the security sector in its entirety is targeted by its reporting process. The security sector is an evolving concept. The CoC should have its totality as its focus.
- The OSCE needs to foster an approach to oversight that encompasses the range of actors with an oversight role over the security sector. The CoC was originally developed by OSCE member states’ governmental politico-military elites. It is clear, however, that a meaningful oversight role on the part of parliament, media and civil society is crucial if the CoC is to achieve its full potential.
- The CoC, owing *inter alia* to its section on inter-state relations, has an important regional dimension. That said, it needs to be much more fully developed. OSCE member state parliaments were not involved in the elaboration of the CoC but they could play a key role in developing the CoC as a regional mechanism of oversight and control. As a case in point, currently Western Balkan parliamentarians are engaged in a peer-to-peer review of their countries’ reporting on CoC implementation at a conference being held at RACVIAC, the Croatia-based organisation specialised in regional security governance. This is a promising step in the right direction.
- Over the years, there has been much discussion in some OSCE circles about the potential for the CoC to spawn the development of similar norm-setting initiatives in other regions. This has in effect had some sequels. Most notably, in 2011, the ECOWAS Council of Ministers approved a West African Code which, while inspired by the CoC, in certain respects is more encompassing. Of course, the prospects for similar such initiatives being launched in other regions will great-

ly depend on how effective the CoC is seen to be in enhancing security governance across the OSCE region.

At the end of the day, the CoC's fortunes will rise and fall with its capacity for projecting meaningful insights and lessons on security governance towards OSCE member states' decisionmakers and voters. In these troubled times in and around Ukraine, the norms embedded in the CoC are as important as when they were originally drafted two decades ago, if not more so.

Chapter IV

Awareness Raising, Knowledge Exchange and Regional Approach

Workshops and Seminars on the Code

Lt Col Thomas Schmidt

Swiss OSCE Chairmanship, International Relations, Swiss Armed Forces

Introduction

On 6 December 1994, the Budapest Summit Declaration¹ was adopted. It encompassed the “OSCE Code of Conduct on Politico-Military Aspects of Security” (the Code), a new and unique norm setting document *sui generis* in the OSCE area². It was the result of long and intensive debates which ensued the launching by France of the idea of a new *Pan European Security Treaty*. Rejected by the USA, being afraid of compromising the role of NATO and fearing the political and economic implications of an ever closer co-operation between the European Community and the Russian Federation, the Code represented the lowest common denominator among the OSCE participating States. Like all OSCE documents and decisions, its implementation lies in the hand of the participating States. Although the norms and principles enshrined in the Code may have been uncontested by all participating States at its final consensual adoption, for some of them its observation and implementation would mean a real challenge. The Code was and remains a revolutionary document in the area of cooperation in security-related areas in Europe aiming at increasing the transparency of defence policies. It deals with inter-state as well as intra-state norms on democratic control of the armed and security forces and with the implementation of International Humanitarian Law provisions reflecting the growing awareness of interdependency within a globalizing world and the indivisibility of security.

1 Budapest Document “Towards a Genuine Partnership in a New Era”, 21 December 1994

2 Code of Conduct on Politico-Military Aspects of Security, DOC.FSC/1/95, 3 December 1994

It was also the first multilateral instrument encompassing norms and principles to regulate and control, both, at internal and international levels, the armed forces and the Security Sector at large, central areas of sovereignty and state power.

Implementation basis

The implementation aspects of the Code of Conduct are shortly described in its chapters IX and X. Article 39 stipulates that *the provisions adopted in this Code of Conduct are politically binding*. Although this rather soft legal framework may not be of an adequate nature to encourage a full and timely implementation, it was most probably a prerequisite for the Code's adoption itself. Article 38 provides the general guidelines for implementation stating that *each participating State is responsible for implementation of this Code. If requested, a participating State will provide appropriate clarification regarding its implementation of the Code. Appropriate CSCE bodies, mechanisms and procedures will be used to assess, review and improve if necessary the implementation of this Code*. Hence, this article laid down the basis for the development of the annual information exchange on the Code of Conduct introduced in 1998³ and review activities having been held irregularly and in diverse formats throughout the years, formally institutionalized in 2011⁴ by FSC. DEC/12/11 as the *Annual Implementation Discussion on the Code of Conduct*.

Those formal aspects of implementation were completed by concrete calls on the participating States for substantial measures: Article 41 stipulates that *the participating States will seek to ensure that their relevant internal documents and procedures or, where appropriate, legal instruments reflect the commitments made in this Code*, while article 42 reminds the duty of participating States that *the text of the Code will be published in each participating State, which will disseminate it and make it known as widely as possible*.

Bearing in mind the broad spectrum of inter-state and intra-state aspects addressed in the Code and the implications of their implementation through the reform of the security sector in a large number of participating States recently emerged from the more or less peaceful disintegration of the USSR and Yugoslavia, a format for awareness rising, training, exchange of experiences and improving implementation had to be created and made available to the participating States.

3 FSC Journal No. 231, Agenda item 2, Decision No. 4/98 (FSC.DEC/4/98)

4 FSC Journal No. 666, Agenda item 3, Decision No. 12/11 (FSC.DEC/12/11)

Awareness rising and training: The Swiss workshops on the Code

Switzerland together with Germany launched such an initiative by inviting all participating States to Switzerland at Birmensdorf barracks near Zurich for a comprehensive *Swiss Pfp Workshop on the OSCE Code of Conduct* in 1997. The aim of the first workshop of its kind was an analysis of the structure and the content of the Code, thus determining the implementation-related needs for participating States as well as measures to be taken with a view to a full implementation of its provisions. Follow-up workshops were organized mainly in the civil protection facilities at Versoix near Geneva and in the GCSP premises in the years 1998, 1999, 2000, 2002, 2004 and 2006 with the intention to further support OSCE's implementation efforts by providing an ever more performant tool for awareness rising and training in the spirit of the Code's article 42 on dissemination. The Workshops were designed to sensitise military commanders and staff officers as well as diplomats and civil servants to political and operational aspects of the Code of Conduct. They dealt with practical aspects of implementation, the law of armed conflict and relevant training, as well as with issues of democratic control of armed forces. During the workshops, the participants thoroughly discussed the main elements of the Code's content. Participants exchanged views regarding the actual state of the Code's implementation and dealt with practical questions regarding the Law of Armed Conflict and democratic control of armed and security forces. Most of the work was done in small syndicate groups, in a staff exercise and by visiting and observing Swiss troops performing field exercises. In addition, the "national tables" format allowed participants to introduce among them national Code-related documents, manuals and teaching tools. The general participants' feedback over the years showed that the course provided an effective platform and enhanced their implementation-related capabilities. Some of them affirmed that they had used the knowledge acquired during the course for promoting the Code's content and its implementation requirements in their daily duties.

Dissemination and tailor made approach: the regional seminars on the Code

In 2007, based on a request by the recently independent Montenegro, a bilateral seminar on the Code was held for the members of the newly established Parliamentary Defence Committee of Montenegro under the OSCE umbrella. It aimed at fostering dialogue and co-operation between the country's parliamentarians, ministries and senior military personnel involved in oversight of the armed forces in order to promote

full implementation of commitments stemming from the Code of Conduct and assist Montenegro in fulfilling these commitments. The seminar covered issues relating to the effective guidance of armed forces and their accountability to constitutionally established authorities, with special emphasis on the role of the Parliaments.

It was also the first time that Switzerland co-operated with the Conflict Prevention Centre (CPC) of the OSCE in providing funds and experts for organising a seminar on the Code abroad, while simultaneously in Switzerland an internal process of conceptual overhaul regarding the Code of Conduct workshops took place. As a result, it was stated that the seven consecutive Swiss PfP workshops on the Code have been successful in raising the awareness on the Code of Conduct and disseminate its norms, principles and implementation aspects in the OSCE area. However, for better addressing the OSCE regions and their specific challenges, the Geneva-based workshop was abandoned in favour of going abroad towards a specific region with the objective to strengthen regional ownership by defining a host participating State willing to invite its neighbours for a regional promotion of the Code. Therefore, besides the regional impact, Code – related activities “on-site” were encouraged. On the conceptual side, a shift from the “one size fits all” approach of the first phase to the “tailor made approach” addressing an OSCE region was implemented. Through a tailor-made agenda, this allowed to formulate regional answers to regional challenges. On an organisational side, Switzerland handed over the lead to the OSCE, encouraged by the FSC Decision on *Awareness raising & outreach*⁵ which tasks the CPC to held at least one specialized seminar on the Code each year. Together with Austria and Germany, Switzerland started to co-sponsor these seminars on a yearly basis addressing – over a 5 year period – all major OSCE regions.

The seminar series started 2008 in Central Asia with Kazakhstan as a host, directed to governmental participants from the five Central Asian countries Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Since Kazakhstan had been confirmed as the 2010 CiO of the OSCE at the Ministerial Meeting 2008 in Madrid, Switzerland and its partners considered that holding a Seminar on the implementation of the Code for Central Asia in Almaty would be a substantial contribution towards Kazakhstan as a future CiO.

In 2009, the seminar addressed South-Eastern Europe being held in Bosnia & Herzegovina, a country which has reformed its Armed Forces tightly along the lines of the Code as a reference.

5 31st Joint Meeting of the FSC and the PC, FSC-PC Journal No. 18, Agenda item 3, Decision No.01/08 (FSC.DEC/1/08)

In 2010, the seminar was held in Belarus for Eastern Europe. Participants included representatives from Belarus, Hungary, Lithuania, Moldova, Poland, the Russian Federation and Ukraine. As called on by the special FSC Roundtable on the Code of Conduct in February, the seminar examined the Code in a holistic manner, covering both the inter- and intra- state elements of the Code. The seminar also helped to share national practices and experiences in the Code's implementation among EU and CIS Countries.

The 2011 seminar held in the black sea harbour Odessa, was directed to all participating States in the South Caucasus and the Black Sea region. Six of the invited countries attended the event, with representatives from Armenia, Azerbaijan, Bulgaria, Georgia, Romania and Ukraine. The first part of the seminar focused on the intra-state aspects of the Code, with emphasis on democratic control of the armed forces, while the second part of the event was dedicated to confidence and security building measures (CSBMs) and arms control. Among others, the role of CSBMs in conflict resolution and the possibility for sub-regional CSBMs in the South Caucasus and Black Sea region were discussed in a lively, constructive and open manner.

In 2012, the seminar took place in Riga, Latvia. The opening session was open to media and included the Latvian Defence Minister as high-level keynote speaker. It addressed the Baltic Sea region and gathered over 40 high-level participants from Estonia, Denmark Finland, Germany and Latvia, putting this year's emphasis on outreach aspects of the Code. In addition, the issues of related aspects of UNSCR 1325, the right of armed forces personnel, cyber security, as well as security and co-operation in the Baltic Sea region were included in the agenda.

The Malta seminar: a starting point of a normative outreach?

This outreach discussion was deepened in the aftermath of the seminar, leading to the 2013 seminar for the Mediterranean region. Still hosted by the participating State Malta, it widely opened the doors to explicitly welcome OSCE's Mediterranean partners for co-operation. The Conference brought together around 50 participants from the Mediterranean States Albania, Algeria, Bosnia & Herzegovina, Cyprus, Egypt, France, Greece, Italy, Jordan ;Malta, Montenegro, Morocco, Portugal, Slovenia, Spain, Tunisia and Turkey, as well as representatives from the League of Arab States and the Parliamentary Assembly of the Mediterranean. The Conference was opened by the Foreign Minister of Malta, and was addressed by several MFA Director-Generals,

Ambassadors, as well as high-ranking military officers from the participating countries. The general conclusion of the event was that while the Code of Conduct might not be transposable *in toto* to the Mediterranean partner countries, certain key elements of the Code can nevertheless be adjusted to regional dynamics and national needs, and thus serve as an inspiration for the region as a whole, sharing common values in an environment of indivisible security. As a courtesy to the Mediterranean Partners for Co-operation, Switzerland together with Germany provided the first translation of the Code of Conduct in Arabic.

Conclusive remarks

At the occasion of the 20th anniversary of the adoption of the Code of Conduct, the OSCE and the like minded participating States having supported the Code throughout the years can proudly look back on an intensive and substantial history of workshops and seminars. This long term investment was certainly meaningful and more than justified: thanks to the relentless awareness raising and training by numerous activities throughout the years, the Code remains in 2014 not only widely acknowledged as a still unique, normative cornerstone document of the OSCE, but the uncontested and convincing strength of its norms and principles led in the meanwhile to a high level of implementation within the OSCE area. It is worth to carefully preserve this valuable acquis. And our Europe of 2014 must remember that a Code of Conduct in any form is no panacea *per se*: The Code of Conduct does not have more courage than we, the OSCE participating States, have ourselves.

Chapter V

The OSCE Code of Conduct:

A buttress and support in raising awareness of the obligations to protect the Human Rights of Armed Forces Personnel.

Ombudsman Institutions for the Armed Forces-promulgating the implications and principles under-pinning the Code of Conduct – in a quest for standards of best practice and effectiveness: the dawn of transnational collaboration.

Paulyn Marrinan Quinn

Former Ombudsman for the Defence Forces, Ireland

I write about the Human Dimension of the Code of Conduct, as a cross dimensional normative reference, providing the necessary authority for the implementation of protections of the Human Rights and Fundamental Freedoms within Armed Forces, from my experience as the first Ombudsman for the Defence Forces in Ireland (2005–2012).

Tasked with giving effect to a new piece of ground-breaking legislation, the necessary affirmation and support, not so obvious to me on my first day in the job, was on the horizon.

It might be wise to say a few introductory words about the prevailing grievance procedures in the Irish Defence Forces in order to put the establishment of the Office of Ombudsman for the Defence Forces in 2005 (ODF) in some context.

Every member of the Armed Forces has a legal right to make a complaint, which is known as the 'Redress of Wrongs', set out in the 1954 Defence Act. As is customary with most hierarchical Institutions, the complaint-handling mechanism has traditionally involved the Complaint being processed up through the Chain-of-Command. Whereas there is a commitment to try to resolve the matter locally at Unit level, the Complainant

has a right, if s/he is not satisfied with the outcome, at this stage, to have the matter referred to a higher authority through the General Officer Commanding, and ultimately to the Chief of Staff who issues a written determination in relation to the grievance – described as a Considered Ruling. Prior to the introduction of an independent civilian Ombudsman, a dissatisfied Complainant could only appeal the matter to the Minister for Defence.

For many years the Military Representative Association of the enlisted personnel and other ranks (PDFORRA) had been campaigning for the establishment of an Office of Ombudsman for the Defence Forces. Whereas that campaign had gathered a degree of support, the necessary impetus occurred when, as a result of some indications of bullying in the Defence Forces, an Independent Review was commissioned by the Minister for Defence, which resulted in a recommendation from the Review Group that there was a troubling lack of trust in the complaint handling procedures and it was now time for an independent civilian Office of Ombudsman.

The Group considered that access to such an Office of independent appeal was a pre-requisite for effective change within the Defence Forces in Ireland and an integral part of the modernisation of an Army. The Ombudsman (Defence Forces) Act, 2004 was unanimously supported by all Parties during the Parliamentary debates on the Legislation which became legally effective from the end of 2005.

Thus, after winning a public competition, I was appointed by the President of Ireland as the first Ombudsman for the Defence Forces in September, 2005.

The legislation with which I was armed, when starting on this new professional journey, was described as 'ground-breaking' in that it provided wide powers of investigation and oversight. The Ombudsman was independent in the exercise of {her} functions (in the Ombudsman family, the term is accepted in its generic sense) and transparency was evidenced by an obligation to submit an Annual Report, no later than April, giving account of the work of the previous year, to both houses of Parliament.

Having worked as an Ombudsman previously, I knew that I would strive to ensure that the work of this new Office would be guided by the founding pillars of Ombudsmanship – independence, fairness, impartiality, and accountability – with independence arguably the single most important factor. I had soon formed the view that this strong legislation envisaged that I could review grievances and adjudicate cases through a much wider prism than that previously applied by the Military authorities in deciding whether a soldier had been wronged under the complaints handling system which was linked mainly to the Military compliance with the Defence

Forces Regulations (DFRs). I was therefore somewhat concerned about my standing in applying such wider tests in determining desirable administrative practices and fair procedures and knew that I needed affirmation, support, and reinforcement.

Then just a few months after I started to establish the Office, the necessary buttress was in view and I was to embark on an inspired seven years of work with the benefit of an transnational network of people working at the coal-face in this field and those committed people in the OSCE/ODIHR and DCAF.

In 2006, the first step on this journey began when I was invited to become a member of the Expert Group convened by (ODIHR), the Office of Democratic Institutions and Human Rights at the OSCE (Organisation for Security and Cooperation in Europe) and DCAF, the Geneva-based Centre for Democratic Control of Armed Forces, to draw up the first *'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel'*.

The Handbook¹ presents an overview of legislation, policies and mechanisms for ensuring the protection and enforcement of the Human Rights and Fundamental Freedoms of Armed Forces Personnel prevailing at that time. While recognizing that no single model can apply equally to every individual country, the Handbook presents examples, from across the OSCE region, of practices that have proved successful. It also contains recommendations of measures that participating States should take in order to ensure that policies and practices are in full compliance with international Human Rights standards and OSCE human dimension commitments.

In the preface to the Handbook it states, among other things, that the ODIHR-DCAF project to develop the Handbook was inspired by the OSCE Code of Conduct on Politico-Military Aspects of Security. It refers to the Code requiring States to *'reflect in their laws or other documents the rights and duties of Armed Forces personnel'* and to *'ensure that the military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms'*. It reminds us also that the Code of Conduct requires participating States to *'provide appropriate legal and administrative procedures to protect the rights of all its personnel'*.

So, there on page 29 of this Handbook, where the key Human Rights Features of the Code of Conduct are set out, stood the buttress, validation, and inspiration for the work I was to do.

1 OSCE/ODIHR/DCAF (2008) Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, OSCE Office for Democratic Institutions and Human Rights, Warsaw, Poland.

The Handbook references the fact that Armed Forces are an integral part of a democratic State and society and that by fulfilling their defence and national-security functions, the Armed Forces play a key role in enabling a security environment that allows us to enjoy the inalienable rights and freedoms to which we are all entitled as human beings.

By virtue of being citizens themselves, members of Armed Forces should enjoy the same Human Rights and Fundamental Freedoms as other citizens. In light of an increasing realisation of the necessity for participating States to ensure democratic control over their military forces and to review their military structures with the aim of making them consistent with international human rights obligations, the changes reflected a recognition that as '*citizens in uniform*' Armed Forces personnel – whether career service personnel or conscripts, are entitled to the same Human Rights and Fundamental Freedoms as other citizens. The welfare of members of Armed Forces contributes to a Military organisation that is firmly integrated in society.

The Expert Group, made up of representatives from Norway, the UK, EUROMIL, Universities of Bristol, Lancaster, and Regensburg, Human Rights Watch, US, Germany, Georgia, and Ireland met in the ODIHR offices in Warsaw on a cold December day in 2006 and brought to that table an abundance of experience – both practical and academic, that replaced the chill with a warm dynamic and enthusiasm.

From our lively and comprehensive discussions on the outreach, objectives and potential of the Handbook throughout the day, I flew back to Ireland that night convinced that respect for Human Rights in the Barracks serves to prevent a Military Force from being misused by a Government and turned against the civilian population. I also believed that respect for Human Rights in the Barracks would serve to protect members of Armed Forces against misuse and oppression by a Government or Army Commanders. Whereas it is acknowledged that modern day peace-keeping operations require Armed Forces Personnel to be mindful of Human Rights principles and training in their day-to-day operations, I was affirmed in my belief that they are better prepared to do so if they, themselves, operate in an environment that respects and protects those rights and requires them to internalise the values that underlie them. It was with these principles as a guiding force that the OSCE Expert Group looked at the range of protections available across a number of jurisdictions.

The Handbook was aimed at individuals who play a role in promoting, protecting and enforcing the Human Rights of Armed Forces personnel, such as Parliamentarians, Government Officials, Policy Makers, Military Personnel, Judges, Professional Military Representative Associations, and Non-Governmental Organisations.

It was hoped that the publication would encourage all interested parties to take the necessary measures to ensure that Armed Forces personnel are able to enjoy their full rights as citizens. I commend the Handbook as a significant step in offering a timely review and guidance on the basic and desired standards in providing meaningful protections for Armed Forces Personnel. It was my great honour to deliver the key-note address at the launch of the Handbook in Vienna in 2008 and I offered to share my experience of setting up an Office of Military Ombudsman with those States considering the pros and cons.

Depending on the Office's mandate or enabling legislation, an Ombudsman can provide an independent appeals mechanism for those not satisfied with the outcome of their complaints. The Ombudsman may also operate as an independent and autonomous Office of oversight and redress and, being complaint-focused, an Ombudsman is well placed to identify systemic issues which may arise in large organizations, particularly those with a hierarchical structure and a long-established culture which is rooted, for the most part, in secrecy. It is that very secrecy that can be fertile ground for the abuse of power.

The work of an independent Ombudsman in defining desirable administrative procedures, identifying maladministration, and in the protection of rights is correctly perceived to represent a championing of best practice within institutions over which an Ombudsman has jurisdiction. When an Ombudsman's Office is established it may bring about immediate visible reforms but, as time passes, on-going benefits accrue by virtue of the Office serving as a 'touch-stone' and barometer of standards. The presence of a *properly empowered* Office of independent oversight can influence how an Institution conducts the human resource management of its people and promotes acceptable standards in the treatment of its members. I emphasise *properly empowered* because to be effective, in real terms, the Ombudsman must be supported by sufficient powers to thoroughly investigate complaints and to do so requires a legal right of access to documents, installations and the power to require witnesses to attend to give information. The Comparative Study of Ombudsman Institutions for Armed Forces, conducted by DCAF in 2011, referred to below, provides insight into the variations in mandates and powers in fifteen countries reviewed in the Study.

An Ombudsman must be truly independent and, importantly, be perceived as independent if the Office is to win the necessary trust of the service personnel and key stakeholders it serves. The Ombudsman must put in place deftly crafted institutional arrangements to deal with the management of the complaints referred to the Office; the examination and investigation of cases and rigorous monitoring and follow-up of compliance with recommendations for reform and redress. It is also essential that no

member of the Forces has reason to fear recrimination or adverse actions if s/he pursues a complaint.

My involvement in the first ODIHR/DCAF Handbook proved to be a valuable resource in the tool-kit for doing my job.

The next wave of support was to come within a short time when, in May 2009, I was invited to speak at the inaugural International Conference of Ombudsman Institutions for the Armed Forces (ICOAF). The Conference was convened in Berlin, on the occasion of the 50th anniversary of the Office of the German Parliamentary Commissioner for the Armed Forces, with the aim of sharing information and experiences regarding democratic oversight of the Armed Forces. This timely gathering was initiated by the former Parliamentary Commissioner, Mr. Reinhold Robbe, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF). The Conference brought together Institutions responsible for varying forms of oversight or complaint-handling of the Armed Forces for the first time at international level to 'lay out their stalls', as it were, and explain the nature of their mandates and how they operated.

The Conference was attended, not only by representatives of Military Ombudsman Offices, where such existed (Austria, Canada, Norway, Germany, and Ireland) and their equivalents such as Inspectorates or Commissioners, but also by representatives from States who had expressed an interest in learning more about the Institution including the attendance of high level representatives, such as Dr. Nilda Garré, then the Argentine Minister for Defence.

At the conclusion of our discussions, it was decided to confirm the findings of our work in a Declaration: that the exercise of oversight of the Armed Forces in democratic States has an important function, creating transparency and fostering trust in the Armed Forces; that the principle of obedience to orders must be guided by internationally recognised Human Rights; that we intended to foster a common perspective which views service personnel not solely in terms of their obligation to obey orders; that we intended to continue in future to invite States which wished to establish democratic oversight of their Armed Forces to participate in the dialogue and, if desired, to give them advice and assistance regarding implementation; that we intended to continue this exchange of information and experience periodically in order to intensify future cooperation. By the end of the first day, it was recognized that we had only 'opened-up' the discussions and it would be valuable to convene again soon which we did in Vienna the following April 2010.

Thus the 2nd International Conference of Ombudsman Institutions for the Armed Forces, Hosted by Dr Anton Gaal Chairman of the Austrian Parliamentary Commission

for the Federal Armed Forces – was convened for an expansive discussion in Vienna, from 25 to 28 April 2010, and was seen as a progression of the cooperation process of these independent Institutions; as had been expressed in the 'Berlin Declaration', according to which the civilian democratic control of Armed Forces assumes an important role in States with a democratic constitution, by providing transparency and reinforcing confidence in the Armed Forces.

The Conference in Vienna concluded with a Memorandum whereby the Conferees agreed that the long-term goal was to strengthen the various legal and other framework conditions for the oversight Bodies, which then existed in various shapes, ranging from designated Military Ombudsman, Parliamentary Ombudsman Institutions, with inherent jurisdiction over Armed Forces personnel, to Military Inspectorates dealing with complaints. The Vienna Conference focused on the role of Ombudsman Institutions in promoting and protecting the Human Rights of soldiers in peacetime and during operations as well as their welfare after an operation. Against this background, the 'Vienna Memorandum' was to lay the basis for a successful international cooperation in the interests of and for the benefit of all soldiers. The Conferees agreed that the promotion and protection of the Human Rights of soldiers and veterans in peacetime and during operations is a central concern.

Particular attention was paid to the need for respectful handling of the diversity in Armed Forces with regard to gender, sexual orientation, ethnicity and religion. Increased attention was paid to the effects of possible post-traumatic stress disorder of soldiers. The support and the welfare of the families of members of Armed Forces were seen to be of great importance. The various legal and other framework conditions for Ombudsman Institutions for the Armed Forces were to be strengthened and supported with plans to be developed for research and a website on the structures of the Ombudsman Institutions in the respective States. It was considered that to facilitate cooperation between Ombudsman Institutions in order to support and protect Human Rights, fundamental freedoms and the welfare of soldiers in international military operations, the periodic continuation of this cooperation process be kept going and the discussions were to be continued in Serbia in 2011.

It was remarkable how this grouping of people, with a common interest, had responded to the inspired step taken in 2009 by Reinhold Robbe, then German Parliamentary Commissioner for Armed Forces. Mr. Robbe wisely recognised that it was timely and appropriate to focus on this area of work in order to stimulate discussions and promote an exchange of experiences which would assist the many Office holders in their work and provide an opportunity for those considering the merits and feasibility of such Offices to assess the strengths and weaknesses of the different structures and approaches.

It was interesting to note the different systems and, indeed, in listening to the various Ombudsman and Inspectors and Commissioners, who described their legislative structures, to gain further insights into the differences and attitudes to the subject pertaining in the respective Jurisdictions.

Having covered many headline topics in our first two Conferences, the Protector of Citizens of the Republic of Serbia – Sasa Jankovic, who was to host the third Conference in April 2011, with the support of DCAF, was concerned to avoid any dilution of our common objectives and avoid the possibility that the Conference would fall, as sometimes happens, into the mould of a 'talking shop', convened a core group of designated Military Ombudsman comprising Dr Anton Gaal mentioned above, Dr Kjell Arne Bratli, Parliamentary Commissioner of the Royal Norwegian Armed Forces, Hans Born, Senior Fellow from DCAF and myself to review our ICOAF discussions, so far, and devise a Programme that would 'drill down', as it were, to go to the heart of topics and take our discussions to the next stage of exploration and challenge.

We met in snow covered Belgrade, over two days in February, 2011 and, after much reflection, came up with a list of Agenda topics that included the relationship between External and Internal Military Complaint Handling Processes; Military Unions and Representative Associations; The role of the Ombudsman Institution in the Protection of Rights of Armed Forces Personnel in Multinational Missions; and we had a Report presented of the results of the First Regional Conference on the Protection of Human Rights in the Armed Forces (Sarajevo, February 2011) from the Adviser to the Joint Committee of Defence and Security of Bosnia and Herzegovina.

This proved to be a well judged step and resulted in a dynamic Conference headed: *'PROTECTING HUMAN RIGHTS OF ARMED FORCES PERSONNEL: OLD AND NEW CHALLENGES'* with an even larger attendance.

The Third International Conference of Ombudsman Institutions for Armed Forces, organized by the Protector of Citizens of the Republic of Serbia and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), with the support of the Ministry of Defence of the Republic of Serbia, was a most informative event.

In order to harvest the fruitful exchange of information and experience, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) had circulated a Questionnaire to all of the participants, in advance of the Conference, with a view to including the results of the survey in a new study of Military Ombudsman Institutions as well as creating an ICOAF website. Both projects would provide a

source of reference and information about the systems and arrangements in the wide range of States represented in the Conference.

The Memorandum of the Conference confirmed that The Belgrade Conference sought to progress the cooperation of the Independent Institutions represented at the First and Second International Conference of Ombudsman Institutions for Armed Forces. The Belgrade Conference specifically sought to effect and enhance the aspirations expressed in the 'Berlin Declaration' and the 'Vienna Memorandum' which had underlined the importance of the democratic control of Armed Forces in countries with a democratic constitution through transparency and focused on the many benefits which flow from this.

The Conferees at the Belgrade Conference confirmed the agreed objectives of the two previous Conferences and endorsed the relevance and usefulness of the periodic gatherings of the Ombudsman Institutions for Armed Forces Personnel. (ICOAF). Encouraged and inspired by the First and Second International Conferences of ICOAF, the Conferees duly acknowledged the contribution of these Conferences in not only raising the level of awareness of the need for external democratic civilian oversight of Armed Forces, but also of the criteria necessary to enable the Ombudsman Institutions to provide a truly independent review of and appeal from the internal Military Grievance Procedures. The Conferees were mindful of the diversity and the range of jurisdictional limits and mandates in the many participating States. They also confirmed the relevance of standards of best practice in this area of work in realizing rights for Armed Forces personnel as '*Citizens in Uniform*'.

The Conferees recognized the need to address the challenges in protecting the Human Rights and Fundamental Freedoms of Armed Forces personnel not only when at home but also when they are serving in multinational operations.

The Conference also addressed the topic of Unions and other forms of Professional Representative Associations of Armed Forces personnel with a view to understanding the potential of their role in protecting the working terms and conditions of employment of members. We heard from countries that had long-established rights to representation and how this formed part of a negotiating forum between the Military management side and the civilian side through the Departmental Secretariat Officials of the Department of Defence and recognized that not all countries had taken this step.

Respecting the differing Constitutional arrangements across States, the Conference acknowledged the right of Armed Forces personnel to Freedom of Association whether this is manifest through Unions or Representative Associations.

The Conference shared the experience, wisdom, and expertise of the participants in informing the discussion towards achieving comprehensive oversight and a rights-centered approach to providing remedy and redress for the complaints and grievances of members of Armed Forces.

Starting from the premise that 'Justice delayed is Justice denied', the Conferees confronted the risk posed by the over-arching jurisdictions of internal and external oversight bodies tasked with representing and protecting the rights and welfare of members of Armed Forces. The Conferees advocated an alignment of the roles and responsibilities in order to avoid ambiguity, to ensure that the members are not prejudiced by delays and to provide unfettered access to the Ombudsman Institution where such exists.

The Conferees acknowledged the need for coherence and consistency in the systems provided to ensure that the members of Armed Forces have confidence in the effectiveness of the oversight function of the Ombudsman Institution in identifying bad practices or highlighting systemic failures to implement good practices in the treatment of members. With due appreciation of the diverse legislative, regulatory and institutional measures prevailing in the participating States, the Conferees opened up for discussion topics which may assist in securing the essential elements, criteria, and norms necessary for meaningful oversight and effective intervention.

The Conference discussed the complexities of Ombudsman Institutions' role in multinational operations and recognized that this issue should be further discussed. It was reiterated that Ombudsman Institutions, as guardians of fairness, must have adequate powers of investigation with access to all necessary documentary information, witnesses, and military installations in the course of their enquiries.

The Conference acknowledged the benefit in inviting States that wished to establish democratic oversight of their Armed Forces to participate in the dialogue; to provide them with the benefit of the experiences from established Ombudsman Institutions, insight into the challenges to be overcome, and an appreciation of the positive outcomes. Participants stressed the importance of education on Human Rights among members of Armed Forces.

The Conferees agreed that large numbers of complaints submitted to internal complaint handling procedures and external oversight Offices indicate vitality and strength of the protection system and wide institutional commitment to respect for Human Rights, rather than a problem.

They also underlined that a member of Armed Forces who submits a complaint in good faith must not suffer any negative consequences or be subjected to punitive treatment for doing so.

In consideration of the shared objectives, through the exchange of information and experience regarding the challenges in exercising democratic oversight of Armed Forces, the Conferees supported further discussion on the core issues, findings, and recommendations of the Panels in Belgrade. The Conferees proposed that while defining the mission and mandate of the multinational operations, clear mechanisms for the protection of the Human Rights and Fundamental Freedoms of Armed Forces, personnel serving in these operations, should be understood and promulgated. The ethos of the Conference and the Memorandum was guided by the principles of the Universal Declaration of Human Rights.

This cycle of ICOAF Conferences should be recognized for the contribution the exchange of experience has made to developing standards of best practice. There can be no doubt that the interest in and support of this work by ODIHR and DCAF provided vital consolidation of progress by maintaining momentum through back-up research and studies.

It is important not to lose sight of the need to monitor the effectiveness of such oversight Offices; so, an Ombudsman should make it known that monitoring compliance with recommendations is part of the work of the Office. Policy changes, and compliance following recommendations for review or reform are core aspects of an Office of Military Ombudsman as identified in a timely international Study conducted by DCAF in 2011: *'A Comparative Perspective of Ombudsman Institutions for the Armed Forces'*. The Study provided, for the first time, an evidence-based international benchmark by which to judge the statutory and operational framework of such Offices.

The fourth ICOAF Conference was planned for Ottawa in 2012 by which time, sadly, I was no longer in Office. I understand from colleagues that the Conference, hosted by Pierre Daigle, Ombudsman for the Department of National Defence and the Canadian Forces, expanded themes through discussions about outreach and capacity-building. The fifth of these ICOAF Conferences was hosted, in October 2013, by Dr Kjell Arne Bratli, Parliamentary Commissioner of the Royal Norwegian Armed Forces, before his retirement in January this year. His Programme focused on the role of Ombudsman Institutions for the Armed Forces in dealing with Complaints related to veterans and gender. That Conference had old and new Institutions of over 30 States in attendance – testimony, if needed, of the important initiative ICOAF has proved to be. The sixth ICOAF meeting is

due to take place in Geneva, in October this year, and I look forward to hearing of further progress.

In my Annual Report for 2011, before I left Office, in September 2012, I recorded that I had made submissions to the Minister for Defence in respect of some amendments to my legislation – most important of which was the plea to include what is known in Ombudsman language as the right to initiate investigations on their 'own motion' without necessarily having received a formal complaint. This capacity is seen as an important element in the operational independence of an Ombudsman.

I also reported a 13% increase in the number of unique visitors to the ODF website with recorded visitors from 85 different countries. I had responded to growing overseas interest by translating the Highlights of my Annual Reports into four languages on the website. Receiving delegations from many countries, over those seven years, looking for information about the enabling legislation and the practicalities of how my Office worked, I was ever mindful of the benefits I had gained from the positive affirmation and support from that initial work on the ODIHR Handbook, referenced and linked, as it was, to the OSCE Code of Conduct's authoritative commitment specifically in relation to Participating States ensuring the provision of appropriate legal and administrative procedures to protect the rights of members of the Armed Forces. Our objectives were clearly defined with unwavering support, as back-up, that we were on the right track in our endeavours.

Chapter VI

The Code of Conduct and Security Sector Reform

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Security Sector Reform (SSR) is a relatively new concept which emerged over the past two decades in response to new challenges presented by the changing global security environment. It is driven by the understanding that a dysfunctional security sector, one that does not provide security to the state and its people in an effective and accountable way, represents a decisive obstacle to sustainable development, democratic consolidation, and domestic and international peacebuilding. SSR is generally defined in a normative way, based on the principles of good governance. Accordingly, SSR is the political and technical process of improving state and human security by making security providers more effective and more accountable, within a framework of democratic control, the rule of law and respect for human rights.

As Swiss Minister of Foreign Affairs, Didier Burkhalter, then freshly incumbent OSCE Chairman-in-Office, noted in July 2013, “[i]mproving governance in the security sector belongs to the core competencies of the OSCE”.¹ Indeed, as evidenced by a recent mapping study on the role of the OSCE in security sector governance and reform (SSG/R)², the OSCE possesses a wealth of normative as well as operational experience in the area of SSR, although it does not implement its activities as part of a common,

* The opinions expressed in this chapter are the sole responsibility of the author and do not necessarily represent the official position of his institutions of affiliation, nor of the OSCE.

1 Didier Burkhalter, “Creating a Security Community for the Benefit of Everyone – Priorities of the Swiss OSCE Chairmanship in 2014”, Special Permanent Council, Vienna, 2 July 2013, PC.DEL/575/13/Rev.1, p. 58, www.osce.org/pc/103262.

2 SSG/R is the informal term of choice within the OSCE. It was introduced by the “Chairmanship’s Perception Paper on OSCE Basic Norms and Principles in the Field of Security Sector Governance/Reform”, OSCE Ministerial Council, Madrid, 30 November 2007, MC.GAL/9/07, www.osce.org/mc/29386.

overarching strategy.³ The paramount example of the organization's rich normative framework for engaging in support of activities attributable to SSR is the OSCE Code of Conduct on Politico-Military Aspects of Security of 1994 (hereinafter "the Code"). The Code's sections on the democratic control and use of armed forces provide the basis for a range of SSR principles, such as a comprehensive approach to security beyond military perspectives, the need to design the security sector in an effective, efficient and transparent manner, and ensuring accountability through democratic governance.

Questions have been raised in recent years within the institutional home of the Code, the OSCE Forum for Security Cooperation, about the relationship between the SSR concept and the Code.⁴ These questions appear to echo concerns expressed by experts that the normative centrality of the Code regarding the democratic political control of armed forces could be weakened as a result of the emergence of new, broader concepts such as SSR.⁵ These concerns must be addressed because, as is already the case for other multilateral organizations, SSR is playing an increasingly important role in the agenda of the OSCE and, upon the initiative of the Swiss chairmanship in 2014, the Organization has embarked on a process of developing a more coherent approach to SSR.⁶

The purpose of this chapter is to discuss the relationship between the SSR concept and the Code's provisions for the democratic control and use of armed forces. It first introduces the SSR concept and its normative underpinnings. Second, it presents the Code's body of norms relevant for SSR and explores commonalities and differences between the SSR concept and the Code's provisions.⁷ The chapter concludes by emphasizing the mutually beneficial relationship between the SSR concept and the Code.

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- 3 "Mapping Study: The Role of the Organization for Security and Co-operation in Europe (OSCE) in Security Sector Governance and Reform. Final Report", Geneva, 20 December 2013. The study was prepared by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) at the request of the Swiss Federal Department of Foreign Affairs in preparation for Switzerland's chairmanship in 2014. It has been adopted as an official document of the Swiss OSCE Chairmanship on 27 January 2014 (CIO.GAL/18/14).
- 4 The topic of security sector governance and reform was an issue raised at the annual discussions on the implementation of the OSCE Code of Conduct on Politico-Military Aspects of Security in July 2012 (see <http://www.osce.org/fsc/100330>) and July 2013 (see <http://www.osce.org/fsc/104123>).
- 5 Victor-Yves Ghébal, "Recommendations on the further development of the OSCE Code of Conduct on Politico-Military Aspects of Security: The Development of the OSCE's Role in Security Sector Governance", Food-for-thought paper (April 2007), unpublished; David Law, "Security Sector Reform and the Future of the Code of Conduct", vol. 17, no. 2, (2006), pp. 160–174
- 6 In the course of 2014, Switzerland, together with other like-minded countries and the OSCE Secretariat, has initiated a series of measures to implement key recommendations of the mapping study aimed at enhancing the Organization's role in SSR. These include the establishment of a dedicated SSG/R position within the Secretariat, the creation of the OSCE-wide Network of Focal Points for SSG/R; the launch of a SSG/R guidance development process among the OSCE executive structures; the establishment of an informal OSCE Group of Friends of SSG/R, chaired by Slovakia, and, last but not least, the organization of a joint conference with the United Nations on their cooperation on SSR – as a means to learn from the advanced UN experience in supporting SSR and to improve coordination among multilateral organizations engaged in SSR support.
- 7 This chapter does not cover the annual exchange of information on the implementation of the Code in participating States, which in some cases may extend beyond the Code's provisions relevant for SSR. For a thorough analysis of the information exchange on the Code see Ghébal/Lambert 2005, part II.

The Concept of Security Sector Reform (SSR)⁸

Quite obviously, SSR is concerned with the provision of security, but what kind of security? This is an important question because security is essentially a contested concept, which can be interpreted in several ways. For much of the Cold War period, “security” was understood almost exclusively in conventional military terms as referring to the security of the state. The post-Cold War period, however, has been characterised by a substantive broadening of the concept of security in two ways, resulting in a shift from the traditional to the so-called new security agenda: first, a widening of the concept in terms of the policy dimensions covered, and, second, a deepening regarding the referent object, or the main beneficiaries of security. Accordingly, the new, broader understanding of security on which the SSR concept is based comprises both military and non-military dimensions of security (political, economic, societal, environmental) and is concerned with both national security (security of the state) and human security (security of individuals and groups).

The security sector

Our understanding of security also defines our vision of the security sector and how it should be reformed. The new definition of security tends to take a broader view of the security sector. Although the term “security sector” is now widely used, it is often understood in different ways, particularly as regards the scope of the sector, with different stakeholders embracing broader and narrower understandings. For instance, according to the United Nations, security sector ‘is a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country’.⁹ The security sector is divided into four areas:

1. Defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies.
2. Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force.
3. Actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups.
4. Other non-State actors, namely customary or informal authorities and private security services.¹⁰

8 This section heavily draws on a previous publication by the author: Heiner Hänggi, “Security Sector Reform – Concepts and Contexts” in *Transformation: A Security Sector Reform Reader* (Pasig City: INCITEGov, 2011), pp. 11–40.

9 United Nations General Assembly/Security Council, *Securing peace and development: the role of the United Nations in supporting security sector reform*, Report of the Secretary-General, 23 January 2008, A/62/659-S/2008/39, para. 14.

10 *Ibid.*

An alternative way to conceive the security sector is to apply a governance perspective, emphasising the plurality of actors by distinguishing between state and non-state actors, and, in a normative sense, focusing on good governance by making a distinction between security providing institutions and those responsible for management and oversight. This approach results in four distinct categories of possible security sector actors: a) state security (and justice) providers; b) non-state security (and justice) providers; c) state management and oversight institutions; and d) non-state oversight institutions (see table I).

Table I: The security sector from a governance perspective

	State actors	Non-state actors
Security (and justice) providing institutions	<ul style="list-style-type: none"> – Armed forces – Paramilitary forces – Police and gendarmerie – Intelligence services – Border/coast guards – Criminal courts, prisons – Other judicial institutions 	<ul style="list-style-type: none"> – Armed groups – Private military and security companies – Customary or informal justice providers – Foreign troops (e.g. peace operations)
Management and oversight institutions	<ul style="list-style-type: none"> – Executive bodies – Parliament – Judicial authorities – Independent oversight bodies 	<ul style="list-style-type: none"> – Civil society organisations – Media, academia, think tanks – Political parties – International authorities (e.g. transitional administrations)

Security sector governance

While the security sector has unique characteristics given its central role in guaranteeing the state's legitimate monopoly on the use of force, it nonetheless shares many common characteristics with other areas of public service delivery and should therefore – as former UN Secretary-General Kofi Annan described it – 'be subject to the same standards of efficiency, equity and accountability as any other [public] service'.¹¹ Consequently, good security sector governance means ensuring that the security sector is subject to the same standards of good governance as the wider public service, such

11 Annan, K., 'Peace and Development – One Struggle, Two Fronts', Address of the United Nations Secretary-General to World Bank Staff (19 October 1999), p. 5.

as accountability, transparency, the rule of law, participation, responsiveness, effectiveness and efficiency.

Even though no single model of security sector governance exists, according to the UN Secretary-General's first report on SSR, effective and accountable security sectors have a number of common features. These include:

- a) 'A legal and/or constitutional framework providing for the legitimate and accountable use of force in accordance with universally accepted human rights norms and standards, including sanctioning mechanisms for the use of force and setting out the roles and responsibilities of different actors;
- b) An institutionalised system of governance and management: mechanisms for the direction and oversight of security provided by authorities and institutions, including systems for financial management and review, as well as protection of human rights;
- c) Capacities: structures, personnel, equipment and resources to provide effective security;
- d) Mechanisms for interaction among security actors: establishing transparent modalities for coordination and cooperation among different actors based on their respective constitutional/legal roles and responsibilities;
- e) Culture of service: promoting unity, integrity, discipline, impartiality and respect for human rights among security actors and shaping the manner in which they carry out their duties.'¹²

There is a wide range of problems that typically afflict security sectors, undermining their functionality. Ultimately, a security sector is dysfunctional if it does not provide security to the state and its people in an efficient and effective way; or, worse, if a security sector itself is a source of insecurity (security deficit). Moreover, a security sector must be considered dysfunctional if it is deficient in civilian control and democratic accountability (governance deficit).

Security sector reform

SSR is meant to enhance security sector governance by turning a dysfunctional security sector into a functional one, where security (and justice) institutions efficiently and effectively fulfil their statutory function of delivering security (and justice) to the

12 United Nations General Assembly/Security Council, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary-General, 23 January 2008, A/62/659-S/2008/39, para. 15.

state and its people. Effectiveness and efficiency in security provision are necessary but not sufficient conditions for SSR. Security must also be provided in accordance with the principles of good governance, democratic norms, respect for the rule of law and human rights. Consequently, reforms aimed solely at increasing the capacity of security forces without ensuring their democratic accountability are not consistent with the SSR concept.

The dual objective of SSR – to provide security (for the state and its people) in a effective and accountable manner – constitutes the largely uncontested core of the SSR concept. The UN for instance describes SSR as ‘a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law’.¹³ Therefore, SSR can be seen as a political and technical process through which countries try to enhance security sector governance. Given the scope and complexity of the concept, the range of SSR activities that are recommended and implemented by the actors involved is quite extraordinary. However, two major categories of reform activities can be distinguished – each reflecting one of the two core objectives of SSR, namely efforts aimed at improving the provision of state and human security and those concerned with enhancing civilian management and democratic oversight of the security providers. Table II below further illustrates the various types of SSR activities.

Table II: Security sector reform activities

Improving the national security architecture (e.g. security sector reviews, development of SSR strategies, national security policies)		
Improving the provision of state and human security	Improving civilian management and democratic oversight	Linking with SSR-related peacebuilding activities
– Defence reform	– Executive bodies	– Disarmament,
– Intelligence reform	– Parliamentary	demobilization and
– Police reform	– Judicial authorities	reintegration (DDR)
– Justice reform	– Independent oversight	– Control of small arms
– Prison reform	bodies	– Mine action
– Other reform areas	– Civil society	– Transitional justice
		– Other SSR-related activities
Addressing cross-cutting issues (e.g. respect for human rights and international humanitarian law, gender equality)		

13 Ibid., para. 17.

Taking into account concerns about the broad scope of the concept, a holistic approach does not mean that SSR processes have to encompass all actors and dimensions of the security sector simultaneously. Specific SSR and SSR-related activities should, however, take into consideration, and ideally be coordinated with, activities in other areas of the security sector. They need to be designed and implemented in full awareness of the complex interdependencies that characterise SSR. In other words, sub-sectoral reforms such as defence, police or judicial reform should not be treated as entirely separate components of reform. For example, the success of police reform is often seen to be dependent on related progress in the area of criminal justice and corrections reform. Also, police reform is closely related to defence reform and vice-versa. Ideally, SSR processes begin with overarching activities such as periodic security reviews and the development of inclusive SSR strategies.

In sum, the concepts of security sector governance and SSR are based on both a broad notion of security (military *and* non-military dimensions; state *and* human security) and a broad understanding of a security sector (security providing institutions and management and oversight bodies; state and non-state actors). Security sector governance refers to both formal and informal structures and processes of security provision, management and oversight within a country. Understood in normative terms, it implies the principles of good governance. SSR seeks to enhance security sector governance within a country and thus covers all activities aimed at the effective and efficient provision of state and human security within a framework of good governance.

The Code of Conduct from a SSR Perspective

The Code of Conduct on Politico-Military Aspects of Security, adopted by the OSCE in December 1994, is one of the most innovative normative documents in the area of security. For the first time, a politically-binding multilateral instrument established a set of rules regulating the role and use of armed and other security forces both at the domestic and international levels, and both in peacetime and in times of conflict. The Code is unique in that it not only reaffirmed existing inter-state and intra-state norms, but established new ones. This is particularly true for its innovative sections VII and VIII, which regulate the democratic control and use of armed and other security forces. While in the field of interstate norms, the Code did not add much to the existing normative

framework of the OSCE. As noted by eminent experts, sections VII and VIII 'represent the real value added to the Code of Conduct'.¹⁴

Table III: The Code's provisions concerning the democratic control and use of armed and other security forces¹⁵

Who controls?	What is the subject of control?	How is control exercised?	Why is control important?
<ul style="list-style-type: none"> – Constitutionally established authorities vested with democratic legitimacy (§21) – Specific role of the legislative branch (§22) 	<ul style="list-style-type: none"> – Armed forces (§22, 23, 28, 30, 31, 34, 35, 36, 37) – Military forces (§20, 21, 27, 32) – Paramilitary forces (§20, 21, 26, 27, 32) – Internal security forces (§20, 21, 27, 32) – Intelligence services (§20) – Police (§20) 	<ol style="list-style-type: none"> 1. The primacy of democratic constitutional civilian power over military power (§21, 22, 23, 24, 25, 26) 2. The subjection of armed forces to the norms and prescriptions of international humanitarian law (§29, 30, 31, 34, 35) 3. Respect of the human rights and fundamental freedoms of the armed forces personnel (§23, 27, 28, 32, 33) 4. The regulation of the use of armed forces for internal security purposes (§ 36 and 37) 	<ol style="list-style-type: none"> 1. An indispensable element of security and stability (§20) 2. An important expression of democracy (§20).

Table III provides a structural overview on the Code's provisions concerning the democratic control and use of armed and other security forces. The first two questions – *Who controls?* and *What is the subject of control?* – concern the scope of the security sector as defined by the Code. The third question – *How is control exercised?* – refers to the key principles of good security sector governance as understood by the Code. The last question – *Why is control important?* – reflects on the purpose of subjecting armed and

14 Victor-Yves Ghébalı and Alexandre Lambert, *The OSCE Code of Conduct on Politico-Military Aspects of Security: Anatomy and Implementation* (Leiden/Boston: Martinus Nijhoff Publishers, 2005), p. 7.

15 This table is a slightly modified version of one that was developed by Victor-Yves Ghébalı. See Ghébalı/Lambert 2005, p. 8.

security forces to democratic political control, namely to secure stability and security in the context of democracy. Needless to say, the Code's notion of security is based on the OSCE's comprehensive concept of security, 'which relates the maintenance of peace to the respect for human rights and fundamental freedoms ... [and] ... links economic and environmental co-operation with peaceful inter-State relations' (§2 of the Code). In other words: While anchored in the politico-military dimension, the Code embraces a broad notion of security, one which covers at least two of the three dimensions of security as understood by the OSCE, namely the politico-military and the human dimensions.

The Code's conception of the security sector

The Code was developed half a decade before the SSR concept began to emerge. Yet, it already contains a number of features which are typical for the SSR concept. This includes a rather broad view of what actors are relevant for the provision of security in a democratic framework.

Regarding the security providing institutions, the Code refers to five categories (military forces, paramilitary forces, internal security forces, intelligence services and the police) without defining any of these categories and how they relate to each other. Additionally, it makes a clear distinction between military, paramilitary and internal security forces, on the one hand, and the intelligence services and the police on the other (§20). The subsequent provisions are in most cases related either to the first three categories (military, paramilitary, internal security forces) or just to the armed forces. There are no further references to, and hence no normative provisions for, intelligence services and the police. Further reflecting on the contested nature of the subject, the Code seems to oscillate between a broad and a narrow understanding of the "armed forces". Conceptually, as expressed by the introductory paragraph 20, the Code is understood to represent a broad notion of the armed forces so as to include military forces, paramilitary forces, internal security forces, intelligence services and the police.¹⁶ In terms of specific provisions, however, the Code follows a narrow understanding of the armed forces, as the term is exclusively used in the context of provisions related to defence and military matters.¹⁷ Thus, it is safe to say that the Code,

16 Ghébal/Lambert 2005, pp. 9, 60–61; 188–189. Furthermore, Lambert notes that the Code defines the concept of the armed forces in the broadest possible sense and refers to the fact that the coordinator's working paper issued in the final phase of the negotiations leading up to the Code proposed to explicitly define armed forces as to include all five categories mentioned in what eventually became paragraph 20.

See Alexandre Lambert, OSZE-Verhaltenskodex zu Politisch-Militärischen Aspekten der Sicherheit. Zur Rolle der Streitkräfte in Demokratischen Gesellschaften, (Zürich: Forschungsstelle für Sicherheitspolitik der ETH Zürich, 2004) p. 54, footnote 23.

17 Ghébal/Lambert 2005, pp. 9, 61, 189.

while covering both military and non-military security forces, is clearly focused on armed forces proper.

Regarding management and oversight institutions, the Code mentions “constitutionally established authorities vested with democratic legitimacy” (§21). The Code, however, refrains from further defining the authorities in question, apart from a very specific reference to the legislative branch of government in the context of defence expenditures (§22). Again, we are confronted with a certain ambiguity regarding the scope of the security sector. Conceptually, one would expect the Code to be based on a broad understanding of ‘constitutionally established authorities vested with democratic legitimacy’ in order to include all branches of government, including the judiciary. At the same time, the specific provisions of sections VII and VIII exclusively concern (at least implicitly) the executive branch of the government and do not make any reference to the other branches – with the sole exception of the reference to the legislative branch in the context of defence expenditures mentioned above.¹⁸ Thus, in terms of the scope of the security sector, the Code, while covering constitutionally established and democratically legitimized authorities, is clearly focused on the executive branch of government.

When it comes to non-state actors, the Code contains a reference to each of the roles of civil society and irregular armed groups. Accordingly, the integration of armed forces with civil society is viewed as an important expression of democracy (§20). Although not specified further, this provision acknowledges that civil society has a role to play in ensuring the democratic political control of armed forces. Furthermore, the Code contains a somewhat opaque reference to armed groups – in the language of the Code: ‘forces that are not accountable to or controlled by their constitutionally established authorities’ (§25).¹⁹ Accordingly, such forces must not be tolerated (within a participating State) or supported (outside a participating State) – a provision which got rather unexpected relevance in the context of the conflict in Ukraine in 2014.

In sum, the Code’s sections VII and VIII generally exhibit a rather broad understanding of the security sector as embodied in the SSR concept. At the same time, when it comes to specific provisions, it is clearly focused on the armed forces as being subject to democratic political control and on the executive branch of government as the principal provider of democratic political control of a country’s security forces.

18 Ghébal/Lambert 2005, p. 65;

19 Paragraph 25 was initially supposed to address the issue of “irregular armed forces”, however, given the lack of agreement on a definition this term was eventually dropped and replaced the notion of ‘forces that are not accountable to or controlled by their constitutionally established authorities’. Ghébal/Lambert 2005, p. 72.

The Code's principles relevant for security sector governance

The Code provides a framework for a regime of good governance of the security sector, which is based on four pillars: (1) the primacy of democratic constitutional civilian power over military power at all times (§21–26); (2) the subjection of armed forces to the norms and prescriptions of international humanitarian law (§29–31, 34–35); (3) the respect of human rights and fundamental freedoms of armed forces personnel (§23, 27–28, 32–33); and (4) the regulation of the use of armed forces for internal security purposes (§36–37).²⁰

The basic tenet of the Code's security sector governance regime is the primacy of democratic constitutional civilian power over military power. This is based on a number of principles. First and foremost, constitutionally established authorities vested with democratic legitimacy must provide for and maintain effective guidance to and control of its military, paramilitary and security forces at all times, both in times of peace and war.²¹ Also, it must be ensured that these democratic constitutional authorities fulfil their constitutional and legal responsibilities (§21). This is significant because it commits the participating States not only to establish a constitutional and legal framework for democratic political control of the security forces, but also to effectively use it – and thereby closing the all too often existing gap between constitutional theory and political practice. Second, defence expenditures must be subject to legislative approval (§22). Although only limited to the area of defence and to the budgetary power of parliaments, this provision is related to one of the cardinal principles of what is considered as good security sector governance, namely parliamentary control and oversight. Third, the roles and missions of armed and other security forces must be clearly defined, and such forces are obliged to act solely within the constitutional framework (§21). Related to this is the obligation of participating States to guard against accidental or unauthorized use of military means (§24) and to refrain from tolerating or supporting forces that are not accountable to or controlled by their constitutionally established authorities (§25). Fourth, armed forces must be politically neutral (§23), which means that they should refrain from intervening in politics, serving the interests of particular political groups or even usurping political control themselves.²² Again, the Code refers here to what has become one of the cardinal principles of good security sector governance. Finally, armed forces must be subject to transparency, which includes the obligation of the government to provide for public access to information related to the armed forces (§22). This provision of

20 Victor-Yves Ghébal, "Revisiting the OSCE Code of Conduct on Politico-Military Aspects of Security (1994)", in: Heiner Hänggi and Theodor H. Winkler (eds.), *Challenges of Security Sector Governance* (Münster: Lit, 2003), pp. 85–117 (90–103).

21 The reference to "maintain" means that such control must be sustained, and not just achieved. Ghébal 2003, p. 92.

22 Ghébal 2003, pp. 92–93

the Code pertains to the principle of public oversight and thus another key principle of good security sector governance.

A second pillar of the Code's conception of good security sector governance is the subjection of armed forces to the norms and prescriptions of international humanitarian law (§29–31, 34–35). This includes three basic aspects. First, states are obliged to ensure that their defence policy and doctrine are consistent with international law related to the use of armed forces (§35) and that their armed forces respect the body of international humanitarian law in peacetime and wartime (§34). Second, states must promote knowledge of international humanitarian law within their borders, both among the armed forces personnel and the civilian population at large (§29). Furthermore, armed forces personnel must be instructed in such law, as well as specific rules, conventions and commitments governing armed conflict, including the provision that they are individually accountable for their actions (§30).

While the second pillar concentrates on the obligations of armed forces personnel, the third pillar refers to the other side of the coin insofar as it comprises a set of provisions for the respect of the human rights and fundamental freedoms of the armed forces personnel (§23, 27–28, 32–33).²³ Accordingly, service members are entitled to exercise their civil rights (§23) and to enjoy the standard human rights and fundamental freedoms embodied in OSCE documents and international law (§32). Consequently, participating States are committed to reflect in legislative or other texts the rights and duties of armed forces personnel (§28) and to ensure the protection of these rights by means of legal and administrative procedures (§33). Moreover, the Code commits participating States to ensure that the recruitment or call-up of personnel for service in armed and other security forces is consistent with international human rights obligations (§27) and to consider introducing exemptions from alternatives to military service (§28).

The fourth pillar of the Code's framework for security sector governance concerns the use of "armed forces" for internal security purposes (§36–37). This is an important innovation in the area of international commitments which touches upon politically sensitive issues related to the domestic use of force. Not surprisingly, the provisions in question remain somewhat ambiguous, as it seems to be unclear whether they only refer to the use of the military in internal security emergencies (a narrow understanding of "armed forces") or include the police and other internal security forces (broad

23 For further information see Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, (Warsaw: OSCE/ODIHR, 2008).

understanding).²⁴ The Code spells out four conditions for the domestic use of armed forces: any decision to assign armed forces to internal security missions must be arrived at in conformity with constitutional procedures; these missions must be performed under the effective control of the civilian authorities and be subject to the rule of law; the use of force, if it cannot be avoided, must be commensurate with the needs of enforcement; and the armed forces must take due care to avoid excessive injury to civilians and their property (§36).²⁵ While armed forces may be used for internal security missions under these specific conditions, states are prohibited from using them for limiting the peaceful and lawful exercise of human and civil rights of their own population (§37).

Apart from these four pillars, the Code contains a number of further provisions relevant for security sector governance in a country. These include the right of each state to choose freely its own security arrangements (§10) and the obligation of states to maintain only such military capabilities commensurate with individual or collective security needs (§12); to determine their military capabilities through democratic procedures (§13); to exercise – ‘with due regard to national security requirements’ – restraint in their military expenditures (§22); and to subject their defence policy and doctrine to the obligation of international humanitarian law and the relevant commitments of the Code (§§34–35).

In sum, the Code’s sections VII and VIII on the democratic political control and use of armed forces are all relevant for, and thus provide the most elaborate normative foundations of the concept of security sector governance. At the same time, given the limitations of the Code’s conception of the security sector, the Code’s provisions for good security sector governance represent a necessary but not a sufficient condition, in the sense that security sector governance constitutes a broader, more holistic approach.

The Code’s relevance for SSR

If the Code’s body of norms related to the democratic political control of armed and other security forces is viewed as a core component of good security sector governance, the question is how the Code relates to the concept of SSR, which defines a reform process aimed at enhancing security sector governance rather than a body

24 According to Ghébali, “[d]espite its lack of precision, it can reasonably be assumed that it basically concerns the police and/or other internal security forces – and, in more exceptional circumstances, the paramilitary or even military forces’.

Ghébali/Lambert 2005, p. 88.

25 Ghébali 2003, pp. 99–101.

of multilaterally agreed norms. The answer to the question can be explored on two levels.

On the conceptual level, the SSR concept basically shares the Code's rationale for democratic political control, its comprehensive notion of security, broad understanding of the security sector and principles of good security sector governance.

- *Rationale*: While the Code considers the democratic political control of armed and other security forces as an indispensable element of stability and security (§20), the SSR concept, as understood by the United Nations, is aimed at the enhancement of effective and accountable security for the state and its people. In both cases, the provision of security is linked to the principles of good or democratic governance.
- *Security*: The Code and the SSR concept are based on a comprehensive notion of security, extending beyond a purely military perspective to include other dimensions as well, such as political, economic and human security. In both cases, the political security dimension is of particular importance, in the sense that a well governed security sector is viewed as a precondition for the effective and accountable delivery of security.
- *Security sector*: Each views the security sector as comprising both military and non-military security forces, as well as civilian democratic management and oversight authorities. There are, however, some noted differences. In its operative provisions, the Code clearly concentrates on the armed (military) forces and the executive branch of government, with only marginal references to the roles of the police, intelligence and internal security services as well as the parliament. Additionally, in contrast to the SSR concept, the Code does not acknowledge at all the judiciary, independent oversight institutions, border guards, penal institutions and non-state actors involved in the provision, management and oversight of security.
- *Security sector governance*: Given that the Code provides the most elaborate normative foundations of the concept of security sector governance and that SSR is aimed at enhancing security sector governance, the principles enounced by the Code are also applicable to SSR. In other words, the Code provides much of the normative basis for activities relevant, directly or indirectly, to SSR. However, the concept of security sector governance extends beyond the normative acquis of democratic political control of the armed forces as defined by the Code. The Code does not explicitly cover, or marginally at best, key aspects of SSR such as police reform, intelligence governance and border management, as well as parliamentary, judicial and civil society oversight of the security sector.

Therefore, while the basic tenets of SSR are clearly reflected in the Code, SSR draws on a broader normative framework. This is reflected, for instance, in the Chairmanship's Perception paper of 2007 which notes that the Code 'is less holistic than security sector reform; nevertheless, security sector reform/governance builds on the fundamentals of the Code and complements it.'²⁶

On the policy level, after the end of the Cold war and particularly in the early years of its existence, the Code has served as a reference tool for democratizing countries in their efforts aimed at establishing democratic control of armed forces as a precondition to meet in order to accede to other organizations in the Euro-Atlantic area such as the European Union and NATO. While not being a template for reform, the Code has helped to underpin SSR processes in many participating States and has thus made a significant contribution to peace and security, as well as strengthening the democratic institutions and practice in the OSCE region. As noted by the mapping study on the role of the OSCE in SSR mentioned above, a significant amount of SSR support is provided by the organization in the context of the Code, ranging from holding awareness-raising and outreach events on the principles and commitments contained in the Code to seminars for parliamentarians on how to use the Code as an entry point for better overseeing the security sector.²⁷ But, ultimately, the Code is intended to provide normative guidance to participating States on how to ensure democratic political control of the armed forces rather than operational guidance to the organization on how to support SSR processes in participating States. The Code, however, offers a unique opportunity to raise awareness on the importance of SSR. In this context, it would be worthwhile to explore the potential of the annual exchange of information on the implementation of the Code for further strengthening the normative underpinnings of SSR processes.

To conclude, the Code's sections VII and VIII are widely considered as the normative cornerstone for the democratic control of armed forces – providing the basis for many of the cardinal principles of security sector governance and thus SSR, such as the need to follow a comprehensive concept of security, to address the security sector in a broad and normative way, and to ensure an accountable, effective, efficient and transparent security sector through its democratic political control. These sections of the Code serve as a reference tool for democratizing countries and have the potential to provide normative guidance to the OSCE as it supports SSR in participating States. Although narrower in scope (focus on armed forces and executive control), the Code provides

26 "Chairmanship's Perception Paper on OSCE Basic Norms and Principles in the Field of Security Sector Governance/Reform", OSCE Ministerial Council, Madrid, 30 November 2007, MC.GAL/9/07, p. 9 (www.osce.org/mc/29386).

27 "Mapping Study: The Role of the Organization for Security and Co-operation in Europe (OSCE) in Security Sector Governance and Reform. Final Report", Geneva, 20 December 2013, pp. 14–15.

much of the normative foundations for reform processes in the security sector, while SSR, due to its holistic approach and international appeal, can be a vehicle to further strengthen the relevance and normative centrality of the Code with regard to the democratic control of armed forces and the good governance of the security sector more broadly. In short: the Code and the SSR concept should be viewed as being mutually reinforcing.

Chapter VII

Role and Opportunities of Parliamentarians in the Implementation of the Code

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Introduction

This chapter investigates into the possible involvement of the OSCE Parliamentary Assembly (PA) as well as the role of national delegations of PA members in the implementation of the OSCE Code of Conduct. The aim is to show the challenges to and limitations of parliamentary oversight while highlighting the importance of the promotion of the Code by Parliamentarians in strengthening its normative impact and by vesting its implementation and application with *democratic legitimacy*.¹ In fact, by definition under any constitutional *Rule of Law*, only the *legislative* branch of power (usually Parliament) may qualify a state authority – representing a democratic society – as 'legitimate'. And under effective *Checks & Balances*, only an (independent) Judiciary may qualify what is ultimately 'legal'.

At a first view, it may appear obvious that Parliaments would play a central role in the implementation of a document *half* of the provision of which (sections VII and VIII), either explicitly or implicitly, emphasize the need for *democratic civilian control* in the security sector. Furthermore, Parliamentarians should be considered 'key

¹ The normative provision of 'democratic legitimacy' is enshrined in §21 of the Code introducing the concept and notion of "... constitutionally established authorities vested with democratic legitimacy". Emphasis added (italic) by author. The central role of Parliament (even though implicitly) is referred to in §13 of the Code providing for the principle that each OSCE participating States "will determine its military capabilities on the basis of national democratic procedures..." (emphasis added by author) – the national defense budget being subject to parliamentary scrutiny in any established democracy.

stakeholders' in a landmark instrument linking international security and stability with *democracy*, or in other words: the politico-military with the human dimensions of security. According to §20, “democratic political control” of the security sector is not only considered ‘indispensable for stability and security’; this central normative paragraph of the Code further underscores that the *integration of the armed forces with civil society* is an “important expression of democracy”. In fact, Item 10 of the Budapest Summit Declaration unmistakably defines the *very rationale of the Code accordingly*:

*“Continuing the CSCE’s norm-setting role, we have established a ‘Code of Conduct on Politico-Military Aspects of Security’ that, inter alia, sets forth principles guiding the role of armed forces in democratic societies.”*²

Given that the (politically-binding) Code herewith intrudes into an area of state power and sovereignty hitherto considered a ‘taboo’, the armed forces, especially its sections VII – VIII on democratic control and use of armed forces “can be called *revolutionary* from the viewpoint of international law.”³ However, even a decade after the Code’s adoption in 1994, Victor-Yves Ghébal, in his commentary on §20 of the Code highlighted with regards to the second sentence of the paragraph (‘they will *further* the integration of their armed forces with civil society ...’) that this “seems to imply that a civil society already functions in all of the OSCE participating States – which was certainly not the case in 1994 and, to a large extent, even today (2004).”⁴ And even 20 years after the adoption of the Code, especially against the background of post-9/11 counter-terrorism agendas and laws with their tendency to reduce public spaces and restrict civil liberties, civil society and therewith democratic governance are still in no better shape.

This chapter is structured into 3 main sections. The first section elaborates upon the formal paradox of the Code being a politically binding document negotiated and followed-up largely *from* within the politico-military dimension of the Code – a circumstance that has significantly reduced the chances of raising awareness beyond the military establishments and the executive-driven pol-mil dimension of security,

2 CSCE Budapest Declaration: “Towards A Genuine Partnership In A New Era, DOC.RC/1/95 (21 December 1994), Item 10. Emphasis added (Italic) by author.

3 See for instance the article of Peter Koojmans, “The Code and International Law”, in: Gert de Nooy (ed.), *Cooperative Security, the OSCE, and its Code of Conduct*, De Hague/London/Boston (Kluwer Law International), 1996, pp. 33–44, p. 37. Koojmans specifies that the norms of sections VII and VIII (intra-state norms), in contrast to the previous sections (inter-state norms), are “rather precise and clear ... (and) ... no less precise than many provisions in ... human rights conventions, which are (legally) binding in international law. To a certain extent, moreover, these (politically binding obligations) are much easier to monitor than the commitments under the previous sections, since many of them are of an instrumental and/or institutional character.” Ibid.

4 Victor-Yves Ghebali and Alexandre Lambert, *The OSCE Code of Conduct on Politico-Military Aspects of Security: Anatomy and Implementation*, Leiden/Boston (Martinus Nijhoff), 2005, p. 64.

and in particular to engage key partners and stakeholders such as Parliamentarians with the Code's implementation process. The second section will further elaborate on related challenges such as the persistent democratic deficit in the OSCE region, especially in post-communist Eastern Europe, a region for which the provisions of the Code were primarily directed. This will *i.a.* illustrate why the Code, on the one hand, has remained on a low-profile public awareness level in established democracies, and on the other hand, remains poorly implemented in post-communist transition countries, short of empowered parliamentary oversight institutions. The 3rd section will lay out, in a pragmatic perspectives, some of the achievements of parliamentary involvements and concrete opportunities for an enhanced role of both national Parliamentarians and the OSCE Parliamentary Assembly (PA) in the Code's implementation process, including as regards dissemination, public awareness raising, and even outreach beyond the OSCE area.

Paradox of the Code's Implementation Process

This summer, at the occasion of OSCE PA Assembly in Baku, Azerbaijan, on 28 June – 2 July 2014, the Swiss Federal Parliamentarian and member of the Swiss Parliamentary Delegation to the OSCE PA, Ms. Ida Glanzmann, has taken the initiative to issue a draft resolution on the OSCE Code of Conduct. The resolution intended to raise awareness on the Code and help disseminate and better implement it, according to the draft resolution's sub-title. In particular, item 4 expresses some *concerns* "about implementation loopholes, on-going breaches of provisions of the Code by participating States and its deleterious effects on confidence-building and stability in the OSCE area."⁵ Consequently, the subsequent Item 5 underlines "the role and *responsibility* of parliamentarians and parliamentary security commissions on the oversight of the security sector in (OSCE) participating States."⁶ And Item 11 of the resolution further "encourages participating States to support awareness raising and dissemination of the Code in the whole OSCE area by periodically organizing workshops and seminars aiming at *national and international stakeholders* dealing with the Code and by taking advantage of such activities in including them in discussions for further development and better implementation of the Code."⁷

5 OSCE PA Assembly, Baku, 28 June – 2 July, Supplementary Item, DRAFT RESOLUTION: "OSCE Code of Conduct on Politico-Military Aspects of Security: Awareness raising, dissemination, better implementation and outreach", Principal Sponsor: Ms Ida Glanzmann, Switzerland.

6 Ibid. Emphasis added (Italic) by author.

7 Ibid. Emphasis added (Italic) by author.

The 'paradox' of the OSCE Code of Conduct has to do with the mismatch of perceived vs. real 'stakeholdership' regarding its implementation. While *a priori*, it may appear to be obvious that national Parliaments should play a key role in the implementation of a document emphasizing the *democratic* control of armed forces, the Code *strictu sensu* was *negotiated* and hitherto remains the *de facto ownership* of the politico-military dimension of the OSCE, represented by the Forum for Security Cooperation, a body restricted to participating States' *executive* branches of government (at the level of Ambassadors and military advisors). Procedurally, the Code follows the same statutory logic as the bulk of 3rd instruments adopted and monitored from within the OSCE's pol-mil dimension. Accordingly, the root of this paradox is the Code's *politically-binding* character, which means that it "is not eligible under Article 102 of the Charter of the United Nations."⁸

From the perspective of parliamentary oversight, this means concretely that the Code, once adopted by the heads of States and government at the Budapest Summit in December 1994 could enter into force as early as 1 January 1995⁹ without being subject to *parliamentary ratification*, which would be a precondition for the Code to become a *legally binding* treaty. Most presumably, the Code would never have adopted, let alone ratified throughout the OSCE area, as a *legally binding* document. But as a matter of fact, this Code, unlike any other pol-mil instrument, suffers from the *inherent paradox* between the ambition of being (implicitly) a cross-dimensional normative document, bridging the pol-mil with the human dimension of security, and the lack of ownership of key constitutional authorities in the human dimension of security, including the legislative branch of government, short: national Parliaments.

To further illustrate this situation, it is important to take a look at the Code itself. As a matter of fact, the drafters of the Code apparently avoided any *explicit* reference to words such as 'Parliament' or 'parliamentary'. Moreover, its single explicit *implementation* paragraph (first section of §38; within the isolated section IX), did avoid any explicit reference to the role of the *legislative* branch of government, let alone the *judiciary*. In fact, only the participating States themselves (which in this context implies: through the executive branch of government) are responsible for implementation, as any review process is referred to the OSCE itself.¹⁰ This is implied *i.a.* through the second and third sentences of §38: "If requested, a participating State will provide appropriate clarification regarding its implementation of the Code. *Appropriate CSCE* bodies, mechanisms and procedures will be used to assess, review and improve if

8 OSCE Code of Conduct, § 39.

9 *Ibid.*

10 OSCE Code of Conduct, § 38.

necessary the implementation of the Code.”¹¹ And the adjective ‘appropriate’ may actually refer to the Forum for Security Cooperation (FSC). And while §41 of the Code stipulates that “the participating States will seek to ensure that their relevant *internal documents and procedures* or, where appropriate, *legal instruments* reflect the commitments made in this Code”, it is possible (against the above-mentioned background of §§38–39) that national legislative and judiciary branches of government are herewith sidelined, within the implementation and follow-up process of the Code, to the benefit of appropriate *intra-OSCE/FSC* ‘oversight mechanisms’.

Of course, the Code reflects the least common denominator of consensus-based multilateral negotiation, and it was the delegations of executive branches of government who took part in and become the actual ‘owners’ of this process. Still, this very question of stakeholder- and ownership was indirectly contested during the negotiation process. For instance, in the context of the negotiation of the Code’s very last paragraph (§42), stating that “the text of the Code will be published in each participating State, which will disseminate it and make it known as widely as possible”, the draft proposal of “European Union plus” delegation had proposed that the Code of Conduct’s dissemination be aimed at “*the public as well as to national legislatures.*”¹² Given that the European Union had played a key role within the final phase of the Code’s negotiation, this provides for at least a ‘statutory rationale’, if not an actual ‘reason’, for any MP convinced and engaged in the enhancement of Parliamentary stakeholdership within the Code’s follow-up and implementation process. From a geopolitical point of view, the Union played a central role as a ‘critical mass’ laying at the politico-economic gravitation center of Euro-Atlantic integration, at the normative core of which both NATO and the EU defined the democratic control of armed forces as a *conditio sine qua non* of membership.

Challenge of Persistent Democracy-Deficit in the OSCE Area

At the occasion of the *Regional Seminar on the OSCE Code of Conduct for Parliamentarians* held in Konjic on 23–25 October 2013, the Head of the OSCE Mission in BiH, Ambassador Fletcher Burton recalled with implicit reference to §20 of the Code: “Democratic political control of *all* security services is an indispensable element of stability and security.”¹³ There are at least three reasons why the suffix ‘all’ is more than symbolic

11 Ibid. Emphasis added (Italic) by author.

12 Victor-Yves Ghebali and Alexandre Lambert, op. cit., p. 106. Emphasis added (Italic) by author.

13 “OSCE Code of Conduct important for governing role of armed forces in democratic societies, says Head of OSCE Mission in BiH”, OSCE Newsroom, 25 October 2013, <http://www.osce.org/bih/107506>.

when it comes to the Code of Conduct. First, with §20, the Code's provisions especially on democratic political control, refer not only to conventional military defense forces, but also to *paramilitary forces and internal security forces*, as well as *intelligences services* and the *police*. And in the specific historical circumstances of the post-Cold War era, against the background of the civil conflicts on the territories of the former Yugoslavia and former Soviet Union, it was often the paramilitary and internal security forces, far from effective national parliamentary scrutiny and international arms control mechanisms, who committed most of the human rights atrocities.¹⁴ Second, with the emerging post-9/11 global war on terror (GWOT), increasingly, intelligence and secret services have tended to intrude into ordinary citizens' private spheres for the sake of enhanced protection of national security against perceived 'new security threats'. The challenge that this tendency has posed to parliamentary oversight over the security sector has been summarized in the report to the Regional Parliamentary Conference on Defense and Security Committees, at RACVIAC, on 12–14 December 2012:

*“Effective parliamentary oversight has become crucial in ensuring that new responses to security threats are devised and implementation with full transparency and accountability. In its absence, there is a danger of security services misinterpreting their mission and acting like a state within the state, either placing heavy strains on scarce resources, of exerting excessive political and economic influence.”*¹⁵

The same report outlines some more 'specific problems and conditions', including 'unsolved legislative preconditions ... in the field of parliamentary oversight over the security sector': (cit.) "lack of necessary support from the executive branch, Ministries of Defence, Ministries of Interior and other institutions and agencies within the security sector on the national level".¹⁶ And despite some progress in the field of 'increased influence on drafting, accepting, and executing defence budgets' and some improvements in the field of public transparency, the report mentions as the 'most serious problems': "difficulties in the area of public procurement and corruption".¹⁷

Third, besides the urgency to address the proliferation of *private military and security companies* (not explicitly covered in the Code)¹⁸, the Statement of Ambassador Andreas

14 Alexandre Lambert, "OSZE-Verhaltenskodex zu Politisch-Militärischen Aspekten der Sicherheit: Zur Rolle der Streitkräfte in Demokratischen Gesellschaften", Zürcher Beiträge, Nr. 71, Zürich (ETH: Forschungsstelle für Sicherheitspolitik), 2004, p. 12; <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&ots627=fce62fe0-528d-4884-9cdf-283c282cf0b2&id=10434>.

15 "Defence and Security Committee: Regional Parliamentary Conference"; RACVIAC, DCAF, and Joint Committee on Defence and Security of Parliamentary Assembly of BiH, Raktije, Zagreb, Croatia, 12–14 December, Abstract.

16 *Ibid.*, p. 4.

17 *Ibid.*

18 This aspect was also referred to by the above-mentioned Draft Resolution by Ida Glanzmann. The Resolution i.a. suggested that the OSCE Code of Conduct Questionnaire use for the yearly information exchange on its implementation would be updated to take into account PMSCs, border guards and cyber security.

Nothelle, Special Representative on the OSCE Code of Conduct at the OSCE PA, on 6 November 2013, does not make any mistake about another challenge faced by national parliaments by the *extension of trans-national military and security institutions*:

*“And there is more to come: Military and other security actions are increasingly performed by multi-national coalitions or multi-lateral organizations. This has led to a discussion about whether the degree of parliamentary control that exists in some countries can be reconciled with efficient and rapid military actions. In this context, a reduction of parliamentary control has been offered as a possible solution. This of course would impact negatively on the implementation of our joint commitments. If national parliamentary control is to be reduced, the loss of parliamentary instruments on the national level needs to be complemented by an effective parliamentary oversight on a supranational level.”*¹⁹

Concretely, the consequence of such as ‘compensation’ of a decrease in national democratic governance could be that of the powers of respective regional parliamentary bodies could be extended, including the OSCE PA itself, but also of 3rd regional institutions such as the Parliamentary Assembly of the Council of Europe, the European Parliament, or even the NATO PA. However, it is unlikely that lead transnational institutions, including the OSCE Permanent Council, will have open ears vis-à-vis such (legitimate) claims coming from national Parliamentarians.

In any event, the challenges remain there and are clearly outlined and extensively elaborated in various Declarations of the OSCE PA, including the PA’s Declarations at Budapest (1992), Bukarest (2000), Washington (2005), Brussels (2006), Astana (2008), Belgrade (2011), Monaco (2012), and Istanbul (2013), as well as the most recent one at Baku (2014). With the exception of the 1992 Budapest Declaration, they do have in common that they all urge for an *improved/enhanced implementation* of the Code of Conduct, given *i.a.* its “significant contribution ... to reform ... the security sector”, as referred to for instance in the 2008 Astana Declaration (Item 1). At the same time, item 5 the same declaration *i.a.* regrets the “absence of a definition of armed forces in the Code.”

Significantly, there is a clear trend apparent in all declarations of the past decade to emphasize challenges of democratic/parliamentary oversight in the field of security forces other than conventional military forces, and in particular as regards *intelligence services* and *PMSCs*. In particular, the 2006 Brussels Declaration’s *Resolution on Strengthening*

19 OSCE PA, Statement by Ambassador Andreas Nothelle, OSCE Parliamentary Assembly Special Representative, on OSCE Code of Conduct, OSCE Forum for Security Cooperation Nr. 733, PA.GAL/7/13, 7 November 2013, p. 2. The same observation is also made by the OSCE PA Baku Declaration’s Resolution on the Democratic Control of the Public and Private Security Sectors, Item 9.

Effective Parliamentary Oversight of Security and Intelligence Agencies makes no mistake about the *deficit of democratic governance and Rule of Law* in the field of counter-terrorism.

As concerning the 2014 Baku Declaration, it contains a *Resolution on the Democratic Control of the Public and Private Security Sector*, building i.a. on the above-mentioned Brussels Resolution. It stresses the “importance of effective democratic, and in particular parliamentary, control over the public and private security sector” (Item 9), and this against the background of the OSCE PA’s ‘worries’ “... about the role played by militias, special forces, old and new intelligence agencies and former members thereof in several countries that struggle with the consolidation of democracies” (Item 13). It further urges for an increase in the effectiveness of democratic oversight of security and intelligence services, “expressing deep concern about revelations indicating that established mechanisms of control over intelligence communities in countries with long-standing democratic systems are insufficient and ineffective, and that these existing systems have – in part – been circumvented in the name of fighting terrorism (Item 15). To make this problem even more catchy, Item 16 with reference also to the Brussels Declaration’s Resolution adds: “Alarmed about instances of indefinite imprisonment of foreign citizens with due process, degrading treatment during interrogations, interception of private communications, informal extraditions to countries likely to employ the death penalty, torture or ill-treatment and detention and harassment on the grounds of political or religious activity ...”.

Opportunities for Parliamentarians to Contribute to the Implementation of the Code

Given the challenges outlined in chapter 2, the OSCE PA, according to the words of the above-mentioned Statement of Ambassador Andreas Nothelle, has “repeatedly – altogether 11 times – called upon participating States to implement the Code of Conduct”. Regarding the above-mentioned 2014 Baku Declaration of the OSCE PA, its Item 16 “stresses the high relevance of fundamental principles and norms of international law and human rights law, as enshrined in the Code ... which should govern inter-State relations as well as politico-military conduct within States, notably the democratic oversight of armed and security forces, in efforts to achieve greater transparency and trust within and beyond the OSCE area.”

In fact, the above-mentioned Regional Seminar on the Code of Conduct for Parliamentarians precisely laid the ‘accent’ on the “specific role of the Parliamentarians

in implementing the Code of Conduct related to extensive norms on civil and democratic control over security sector".²⁰ Concretely, the seminar took into account the regional exchange of information and good national practices and lessons learned in relation to intelligence oversight, human rights in the armed forces, legislation and parliamentary oversight of the security sector.²¹

- Procedurally, the Seminar put forward a couple of ideas that could bring the implementation process of the Code forward at the level of parliamentary oversight. These ideas include specific follow-up events, including:
 - 'thematic discussions' during PA meetings
 - adoption of a 'permanent Item on the Code' to be established on the Agenda of the PA's security committee
 - 'peer-to-peer review' of the Code of Conduct
 - Increased transparency and full access by national Parliaments to the yearly information exchange on the Code
 - Involvement of the OSCE PA in OSCE outreach activities related to the Code, specifically in the regional contexts of cooperation partner countries, including the Mediterranean and Asian regions

Finally, the final item (39) of the 2014 Baku Declaration's Resolution on the Democratic Control of the Public and Private Security Sectors underlines the opportunities of more balanced gender human resources policies in the framework of parliamentary institutions. It calls upon participating States "to promote the participation of women in parliamentary bodies so that any oversight mechanism of armed forces and intelligence services may benefit from a more comprehensive understanding."

Last but not least, both national MPs and the OSCE PA could take advantage of lobbying for enhanced participation and therefore stakeholder- and ownership in further developing the 'Reference Guide' attached to the Code of Conduct Questionnaire, especially those sections that related to democratic, and in particular parliamentary oversight.²²

20 OSCE Mission to BiH, „Final Project Self-Evaluation Report“, Regional Seminar on the Code of Conduct for Parliamentarians, Executive Summary, pp. 1–2.

21 Ibid, p. 2.

22 See the Reference Guide at: <http://www.osce.org/fsc/100329>. Its use and consultation by participating States is voluntary.

Conclusion

Regardless of whether or not either of those opportunities at outlined in chapter 3 will remain on mutual agreements with government executives and the OSCE/FSC, the very existence of the Code urges Parliamentarians to respond to their *implicit* responsibility to help implement the Code, according to both its letter and spirit. The least way this can be achieved is to scrutinize national governments regarding their implementation of this unique instrument urging for the integration of armed forces with civil society as an important expression of security. Both parliamentarians and civil society do have everything they need, not least through the OSCE website related to the FSC, and have access to all national replies to the Questionnaire since 2008. Thus, they can learn about good practices and lessons learned in 3rd countries, and herewith not only hold national governments accountable and promote more transparent security sectors, but also to constructively engage and collaborate as vital stakeholders towards a comprehensive and inclusive implementation of the Code's cross-dimensional norms, both in national legal frameworks, as well as in the context of trans- and multilateral security cooperation.

Chapter VII

The Code of Conduct in the Mediterranean Region

Building Confidence – promoting regional
Stability – Mediterranean Partner Outreach

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Introduction

The Middle East and North Africa (MENA) is arguably the region of the world which faces the most daunting challenges when it comes to the issue of security sector governance, which is at the heart of the OSCE Code of Conduct (CoC). For example, in many countries of the region, the military has traditionally played a key political role and controlled many important policy areas, in stark contrast to the principle of civilian and democratic control of armed forces enshrined in the CoC. Moreover, military and other security forces in the MENA region lack transparency and accountability, and human rights violations committed by security agencies have been widespread, again in contrast to the principles espoused by the CoC. Indeed, the recent popular uprisings in the region have at least in part been driven by broad dissatisfaction among citizens with repressive and abusive security forces.

There thus seems to be a clear need to promote the principles of the CoC, such as democratic control of the military or respect of human rights by security forces, among the countries of the southern and eastern shores of the Mediterranean. This chapter reviews the efforts which have thus far been undertaken to raise awareness of the CoC

in the MENA region and especially among the OSCE Mediterranean Partners for Co-operation. Particular reference will be made to the Conference held in Malta in 2013, which was the first ever conference on the CoC destined specifically for the Mediterranean region.

The OSCE Mediterranean Partners for Co-operation

While all of the littoral States of the Mediterranean on its northern shore are members of the OSCE, and thus subscribe to the OSCE body of commitments, this is not the case for the countries on the southern shore. However, the OSCE maintains privileged relations with six countries in the Mediterranean region, Algeria, Egypt, Israel, Jordan, Morocco and Tunisia. This relationship goes back to the Helsinki process of negotiations and the 1975 Helsinki Final Act, which included a Mediterranean chapter stating that security in Europe is closely linked with security in the Mediterranean as a whole. This inter-linkage has been underscored in various subsequent CSCE/OSCE documents.

Over the years, the OSCE has been able to share its experience with the Mediterranean Partners for Co-operation on a number of topics in all three dimensions of its work through ongoing dialogue and joint activities. Partner States are in this way encouraged to consider implementing elements of the OSCE commitments on a voluntary basis.

A number of regular meetings, conferences and special events provide a broad framework for regular contact. Following the 1994 Budapest Summit, the Contact Group with the Mediterranean Partners for Co-operation was established within the framework of the Permanent Council. It is an informal group that meets periodically to facilitate the exchange of information and the generation of ideas. The annual OSCE Mediterranean Seminars offer an opportunity to exchange views and contribute to further developments in the relationship between the OSCE and the Mediterranean Partners for Co-operation. The seminars are also attended by international organizations, parliamentarians, academics and NGOs. Significantly, Mediterranean Partners for Co-operation are regularly invited as observers in Permanent Council and Forum for Security Co-operation meetings, as well as Ministerial Council and Summit meetings, and actively participate in annual events and review conferences. The OSCE Parliamentary Assembly and OSCE Institutions have also established a variety of formats for close co-operation with the Mediterranean Partners.

The Contact Group with the Mediterranean Partners was chaired in 2013 by Switzerland, which in 2014 holds the Chairmanship of the Organization. In both of

these capacities, Switzerland has emphasized the importance of a comprehensive approach to security, in particular the politico-military aspects of security. The Swiss programme focuses on inter alia the CoC: 'Switzerland's commitment is focused on the Vienna Document with its confidence and security-building measures, on the stockpile management of small arms and ammunition, and on the OSCE Code of Conduct on Politico-Military Aspects of Security. The goal is to create a culture of transparency and predictability, and to build confidence and stability in order to generate an added-value and benefit for Switzerland. The idea is to build on the achievements registered to date.'¹

In particular, the Swiss government has recognized the relevance of the OSCE's Code of Conduct for the dialogue with the Mediterranean Partners for Co-operation, and has, together with Germany, provided funds for a translation of the document into the Arabic language with the intention to make it more accessible to the OSCE's Mediterranean Partners.² The translation of the document has been requested by the Secretary General of the League of Arab States H.E. Mr Nabil Elaraby in a letter to the OSCE Secretary General. Switzerland has also co-sponsored and co-organized a regional conference for the Mediterranean on the Code of Conduct, held in Malta, and intends to support further outreach activities with Mediterranean Partner States.

It is worth mentioning that the Mediterranean Partner States are generally aware of the Code of Conduct and the work participating States undertake to implement it, as they participate as observers in the deliberations of the Forum for Security Co-operation of the OSCE. Indeed, Malta, at the end of their FSC Chairmanship in early 2014 noted that 'we did not shy away from raising topics on which we knew in advance that are sensitive or even contentious, at least at this point in time, such as the Security Sector Reform. We should not refrain from seeding new ideas and concepts beyond the current traditional agenda, in hope of stretching our objectives for future discussion in this Forum.'³ Partners also attend the OSCE Annual Discussions on the Implementation of the Code of Conduct. As the Code of Conduct questionnaire which participating States answer as part of the review process on an annual basis and their answers are made public on the OSCE website, Mediterranean Partners also have access to these documents.

1 Swiss Federal Department of Foreign Affairs, 'Politico-military dimension', 20.12.2013. <http://www.eda.admin.ch/eda/en/home/topics/intorg/osce/osze2.html>.

2 <http://www.osce.org/ar/fsc/99216>.

3 CLOSING STATEMENT, Ambassador Keith Azzopardi, Chairperson of the Forum for Security Co-operation, at the 752nd meeting of the FSC. <http://www.foreign.gov.mt/Library/PDF/CLOSING%20STATEMENT%20-%20Final%20Version.pdf>].

The Malta Conference: Objectives and Outcomes⁴

From 11–13 September 2013, the Organization for Security and Co-operation in Europe (OSCE) Conflict Prevention Centre, in partnership with the Mediterranean Academy of Diplomatic Studies in Malta (MEDAC), organized a conference on the OSCE Code of Conduct on Politico-Military Aspects of Security (CoC)⁵. The conference was hosted by the Government of Malta and co-sponsored by the OSCE participating States Austria, Germany and Switzerland. The conference was the sixth regional seminar on the Code of Conduct mandated by the OSCE's Forum for Security Co-operation, with previous seminars being held in Kazakhstan (2008), Bosnia and Herzegovina (2009), Belarus (2010), Ukraine (2011) and Latvia (2012).

The Malta Conference was the first ever conference on the Code of Conduct destined specifically for the Mediterranean region and involving regional OSCE participating States as well as the OSCE's Mediterranean Partners for Co-operation. The main objective of the conference was to discuss the implementation of the CoC among the OSCE participating States of the Mediterranean region, by sharing practical examples and experiences, as well as to raise awareness of the norms and principles enshrined in the CoC among the OSCE Mediterranean Partners for Co-operation. Furthermore, a practical part with national presentations and exhibitions, as well as interactive debates in working groups, fostered discussions of the implementation and application of International Humanitarian Law and Law of Armed Conflicts training within the armed and security forces of their respective countries. The conference was attended by around 50 participants from 20 countries of the Mediterranean region and beyond.

Relevance of the CoC

It was generally agreed among the participants of the conference that while the CoC emerged in response to the challenges of the post-Cold War era, it remained relevant and functional, and that it could be of interest to other regions, in particular the Mediterranean. The importance parliamentarians attach to the democratic control of the military and the role they play in ensuring that the security sector is part of the democratic system was also underlined. The active role of the OSCE Parliamentary Assembly (PA) in working with the CoC was referred to, and participating States were called upon to better implement the CoC, by organizing discussions and events on security sector governance and by emphasizing the role national parliaments should

4 For a full summary of the event, see Dr. Derek Lutterbeck and Dr. Monika Wohlfeld, 'OSCE Code of Conduct: Regional Conference for the Mediterranean'. MedAgenda – Special Issue, MEDAC, Malta, January 2014.

5 <http://www.osce.org/fsc/44574>.

play in this area. Beyond the OSCE PA, there are other inter-parliamentary bodies which are also working on the issue. Co-operation between them has taken place, but it needs to be further strengthened.

The significant role that civil society should play in ensuring proper governance of the security sector is a further point which was highlighted at the conference. The OSCE ODIHR publication on the rights to armed forces personnel entitled 'The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel' was presented to the seminar participants.⁶ Abuses such as bullying and hazing in the armed forces should be addressed, also because they undermine the credibility and image of the armed forces. Military justice issues were also discussed, in particular the role of civil society in the monitoring process. Gender is another important issue to consider in the context of security sector reform.

A number of speakers emphasized that the CoC was not only a significant document for the participating States, but also an 'export product'. The OSCE CoC partly served as a model for developing similar norms and provisions in regions beyond the OSCE. Indeed, while the OSCE Mediterranean Partners are not subject to the OSCE acquis, they may benefit from experiences of OSCE participating States in applying the provisions of the CoC. However, speakers also emphasized that it was necessary to take into account the different security conditions and different legal systems of the countries concerned. 'One size does not fit all', as one speaker stated.

Experiences in implementing the CoC

During the seminar, participants from OSCE participating States and Partner States presented their national experiences in applying the CoC. It was evident that even within the European Union and the western hemisphere more generally, different political systems result in different solutions to specific aspects of the provisions of the CoC. Moreover, the CoC is only one of several sources used in debates on security sector governance. For example constitutional provisions on individual responsibility of members of the armed forces adopted in Germany following the Second World War correspond with the CoC spirit and letter, but evidently were not implemented in response to it. On the other hand, in states having undergone post-cold war reforms or a post-conflict reconstruction in the OSCE area, the CoC has in some cases played a significant role in guiding the efforts to conceptualize the role and place of the security

6 <http://www.dcaf.ch/Publications/Handbook-on-Human-Rights-and-Fundamental-Freedoms-of-Armed-Forces-Personnel>.

sector. The case study of Bosnia and Herzegovina was particularly interesting in this respect, as it highlighted the direct role of the OSCE and the CoC, but also the challenges that emerged in implementing the provisions with regard to the far reaching defence reforms.

OSCE Mediterranean Partners and the CoC

It was generally agreed among participants of the conference that military and other security forces would continue to play a key role in the political evolution of most Arab countries. However, it would be mistaken to adopt a uniform approach to issues of security sector governance. Rather the specific situation of each individual country needed to be taken into account.

Nevertheless, speakers from the Mediterranean Partners suggested that the 'Arab Spring' was *inter alia* an outcry against abuses committed against Arab citizens for which security forces also bore a responsibility. Thus, civil-military relations should be reconsidered, whereby each country should come up with its own approach. Speakers from the southern Mediterranean did, however, emphasise that democratic control of the armed forces was inevitable and desirable and highlighted that 'civilian control of the military' was a 'cornerstone of the democratisation process'. However, each state had its own dynamic and security challenges which should be respected.

Evidently, where such a re-configuration of civil-military relations will take place, it needs to be understood that this is not an easy process, due to lack of experience and know-how. In this respect, international partners' practical support would be invaluable. Apart from the OSCE Mediterranean dialogue, the role of Geneva-based DCAF⁷, the EU and the UN in this respect was underlined. A number of speakers pointed to the useful 5+5 regional co-operation on security matters.

It was also underlined that any assistance to Partner States should be guided by the principle of Partner States' ownership, and should accept sensitivities and specificities of the region. The approach should be constructive and not paternalist. This also implies a need to share experiences through the provision of training, including of high level policy-makers. Emphasis in this context should be placed on structural training (train the trainers, training of officers and NCOs as well as staff colleges training), and awareness raising campaigns. Dissemination of information was also emphasized, while the suggestion was made to use a variety of regional fora including the 5+5 and NATO's

7 <http://www.dcaf.ch/>.

Mediterranean Dialogue. Moreover, one Mediterranean Partner for Co-operation called on the OSCE and its participating States to provide seminars and training and declared its readiness to host such events and activities.

Conclusions and Recommendations of the Conference

In sum, conference participants overall agreed that the OSCE Code of Conduct remained a relevant and valuable document in the current security and political environment. The broad and high level representation of practically all Mediterranean countries at the conference in itself testifies to the continued relevance of the CoC in setting guidelines for civil-military relations in and beyond the OSCE area. Even though it was agreed that the Code of Conduct cannot and should not be transposed in toto to the Mediterranean Partners for Co-operation, it was concluded that some of its elements, adjusted to national needs and regional dynamics, can serve as an inspiration for shaping and reforming civil-military relations in the Mediterranean region. The experiences made by ECOWAS and the African Union having adopted similar instruments were also stressed in this regard.

The main recommendations emanating from the conferences were as follows:

- Any assistance to the Mediterranean Partners for Co-operation should be guided by the principle of Mediterranean Partners' ownership and priorities, and should take into account sensitivities and specificities of the region. The approach should be constructive and not paternalist.
- The Code of Conduct can serve as a useful inspiration to guide national and regional processes of security sector reform and governance. With its comprehensive approach, it constitutes a unique document to govern the role of armed forces in democratic societies, which is a critical issue in the current regional context of the Mediterranean.
- Sharing experiences through the provision of training, including for high level policy-makers is needed. Emphasis in this context should be placed on structural training (train the trainers, training of officers and NCOs as well as staff colleges training).
- Awareness raising campaigns and better dissemination of information is necessary. Practical examples of application should be made available to Partner States. Regional events and seminars should continue taking place.
- The Arabic version of the Code of Conduct, produced by Germany and Switzerland, was stressed as a very useful tool for outreach. The potential for institutional dialogue with the League of Arab States was underlined.

- A variety of other regional fora including the 5+5 and NATO’s Mediterranean Dialogue could be involved in the effort of sharing experience with Mediterranean Partner States.

Follow-up to the conference

Both Switzerland and Germany emphasized the need for follow-up events focused on the Mediterranean region and involving Mediterranean Partners for Co-operation.⁸ In the words of the German Ambassador Rüdiger Lüdeking, “we are looking forward to follow-up events providing opportunities to have detailed discussions on the issues dealt with in the Code of Conduct. ... I would also welcome events to take place in military schools or other appropriate establishments in Arab countries. We would certainly consider providing the financial contributions to make such events possible. We also stand ready to send experts to explain and discuss the Code. I am looking forward to continuing and intensifying the discussion on this matter with our Mediterranean Partners.”⁹ The intention is to bring such outreach activities to the Mediterranean Partner States, starting with one of them, in order to reach appropriate constituencies and create a multiplier effect. It needs to be acknowledged however that developments and events in Partner States make it occasionally difficult to organize activities due to the security situation on the ground, the prevalent focus on domestic issues in those countries.

OSCE participating States will have a role to play in providing expertise and best practices, funding, and political weight. They can also provide link to regional organizations in which Mediterranean Partners for Co-operation are members. In this respect, it will have to be explored whether in addition to outreach activities with and in individual Partner States, dialogue with regional organizations, for example the League of Arab States, would prove value-added. According to the OSCE Secretary General, ‘the Code of Conduct has inspired other regional organizations, such as the Economic Community of West African States (ECOWAS) or the African Union (AU), to adopt similar instruments, duly reflecting their cultural and socio-economic background as well as security needs and environment. The Code is also part of the package of OSCE tools we intend to share with the League of Arab States through an expert-to-expert

8 However, since the Malta conference somewhat less emphasis has been placed on the CoC within the OSCE Mediterranean Dialogue. In 2014 (under the Chairmanship of Serbia), the main focus has been on Small Arms and Light Weapons.

9 Speech by Ambassador Rüdiger Lüdeking at the OSCE on 1 March 2013. http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Reden/2013/130301-BoL%C3%BCdeking_OSZE.html?nn=388210.

briefing that we plan to organize in the near future.’¹⁰ Indeed, under the right circumstances, such dialogue could be useful in the process of outreach on the Code of Conduct.

Conclusion: Building Confidence and promoting regional stability across the mediterranean

The Mediterranean basin is currently experiencing a major upheaval. Popular uprisings have overthrown long-standing autocrats in several MENA countries, amidst profound geopolitical shifts with changing alliances and new players which are becoming involved in the region. Some countries along the southern and eastern shores of the Mediterranean have descended into large-scale internal turmoil, requiring attention not only by neighbouring states but also countries further afield. Transnational challenges – irregular migration, trafficking in human beings and SALW or terrorism, to name just a few – have proliferated without being adequately addressed. Within this tumultuous landscape, the challenges of (political) transition will, for the foreseeable future, remain a defining feature for a number, if not all, of the countries of the MENA region.

Military and other security forces are playing a key role in this transition process, which at times has been positive while at other times a more negative one. In some countries of the region, security forces have played an important role in stabilising the transition process, for example, by ensuring the well-functioning of elections and of internal stability more generally. In other MENA countries, however, security agencies have been used as instruments of repression of popular dissent and have themselves sought to grab the reins of political power. Nevertheless, despite these different scenarios, it is commonly agreed that the reform of civil-military relations is a key challenge in the MENA region, and that any successful transition towards more democratic rule will also require to subject military and other security forces to control by civilian and democratically elected authorities.

Although it is sometimes argued that the Central and Eastern European transition experience is not fully, or not at all, relevant for the countries of the MENA region, the OSCE can provide important examples and expertise, if used in a context-appropriate

¹⁰ Remarks of H.E. Mr. Lamberto Zannier, OSCE Secretary General, on the Arabic translation of the OSCE Code of Conduct on Politico-Military Aspects of Security, at the Contact Group Meeting with Mediterranean Partners for Co-operation, Vienna, 1 March 2013. SEC.GAL/46/13, 8 March 2013.

way, which could contribute to building confidence and regional stability in the Mediterranean. The Malta seminar on the Code of Conduct has shown that in the Mediterranean region there is indeed both a need for and an interest in the OSCE's Code of Conduct and the experiences of OSCE participating States in addressing the issue of security sector governance. At the same time, the discussions during the conference have highlighted that whilst know-how and expertise are needed in Arab countries, it is also necessary to adopt a situation-specific and non-paternalistic approach to the issue of security sector governance.

Chapter IX

Improving the Code without opening Pandora's box

The role of the like-minded participating States in the FSC – Recalling the evolutionary milestones and negotiations, step by step development, review process, special FSC meetings

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Introduction

The Code of Conduct on Politico-Military Aspects of Security (the Code) entered into force on 1 January 1995 as a politically binding document and has been ever since one of the most outstanding normative achievements of the OSCE. It is directly linked to the Helsinki Decalogue, taking up the principles set therein by restating and detailing the rules of inter-State relations. With regard to the intra-State topic, the Code anticipated already in 1995, with its sections VII and VIII, what is presently called “Security Sector Governance” (SSG) or “Security Sector Reform” (SSR). Even if the Code has never been opened since its adoption 20 years ago, it has not lost its relevance as a unique norm-setting framework document.

Knowing that the ambitious political objectives of the Code have to be constantly measured against their implementation, participating States continue to create and to apply concepts to put the abstract provisions of the Code into practice. This, of course, depends on the political disposition of each addressee of the Code. Besides other OSCE tools and regimes, such as the Vienna Document, the Code tends to lack visibility. However, with the suspension of the CFE Treaty by one participating State and the difficulties to find consensus for modernizing and up-dating the Vienna Document due to the recent crisis in Ukraine, the Code remains a very solid reference of the common values of the participating States of the OSCE.

Since the early years of the Code, Austria, Germany and Switzerland have supported its promotion and implementation in a tireless manner. They traditionally form the core group among the like-minded participating States active in favour of the Code. Recently, this circle of friends has widened to a real group of friends of the Code, composed of a growing number of participating States. Nevertheless, some of them temper their ambition with regard to the Code as they fear in the actual period of financial challenges subsequently higher cost and an increase of the workload, mainly in terms of reporting obligations.

Looking at development tendencies two streams appear: (I) a shift from the implementation support for OSCE participating States (“in-reach”) to the promotion of the prescriptions of the Code beyond participating States (“outreach” towards partners for co-operation). (II) the annual implementation discussions of the Code regularly conclude by asking, amongst other remarks, that the results of the annual information exchange should not only be analysed in a purely “quantitative” but also in a “qualitative”, content oriented manner in order to allow a more effective learning- and development process.

Improving the Code of Conduct

The Codes’ real value unfolds with the implementation of its prescriptions. As the Code is a politically binding normative framework document, the dispositions of the different participating States to adapt their national laws and rules in accordance with it needs even more effort than for the implementation of a legally binding treaty. Constant initiatives to raise awareness by addressing parliamentarians, competent ministers and the hierarchy of armed and security forces have been made with success during the past 20 years. Different approaches and formats have been chosen to optimize

the positive effect of seminars and workshops: thematic approaches, regional formats and recently a “peer-review” that brought together representatives of various participating States to debate and exchange their views and practices. Such platforms served regularly as learning opportunities in order to improve the national and regional implementation of the Code.

Even if the Code is only binding for the participating States, efforts are made to bring this great document also to the knowledge of OSCE Partners for Co-operation. Such an outreach initiative was brought to a new level in Malta with the Mediterranean Partners for Co-operation. The translation of the Code in Arabic is a very helpful tool for outreach. Of course, follow-up events must be organized to enhance and deepen the knowledge and understanding of the prescription of the Code. Most fruitful for the mutual learning process are the realistic illustrations of national practices, for example, of educational material to teach the Law of the Armed Conflict and International Humanitarian Law to service personnel of armed and security forces. For the near future it is planned to widen the outreach efforts also to the Asian Partners for Co-operation. Looking further ahead, a more stake-holder oriented approach, where parliamentarians, ombudspersons and military trainers are targeted, could be envisaged.

As it is presently difficult to re-open the Code in order to up-date and modernize it, other tactics have to be chosen to remain relevant. The information exchange is, with growing commitment by participating States, completed – on a voluntary basis – with additional content to catch-up with actual developments. Exchanged content concerning taken measures to implement UNSCR 1325 and to handle PMSCs are good examples in this context. Further information can be added if needed. This raises the level of confidence and security in the OSCE region and will certainly serve as anticipation of an up-date and modernization of the Code once the situation allows so.

Potential dangers of a re-opening of the Code

The prescriptions of the Code touch the central areas of sovereignty and the monopoly of power of participating States in a far reaching way. The consensus for the unmatched quality of the Code was attained from the geopolitical “window of opportunity” following the break-down of the Berlin Wall and the subsequent end of the “Cold-War”-period.

The Code can now look back on 20 years of successful implementation. It has since its adoption 1994 never been re-opened for being up-dated and modernized. It is therefore fair to ask whether the provisions of the Code are still current and relevant in our fast changing world. The political agendas have changed since 1994 making stakeholder's fear that such a re-opening of the Code to update and modernize it would be at the cost of putting its invaluable assets in danger. The promoters of the Code prefer therefore to keep the Code for the moment "closed" and to find other means to create the best possible effect with this unmatched tool. Once the geopolitical situation should change in favour of a possible consensus for a real up-dating of the Code, the participating States would without delay start the necessary work. In the field of implementation of the Code, innovation has taken place. Indeed the questionnaire on which the annual information exchange is based on has been updated several times in order to expand or streamline the different questions. Also, a reference guide has been developed which was recently enriched by a working document containing indicators of good practices. These efforts have helped to greatly improve the quality of the information exchange.

The role of the like-minded participating States

The like-minded participating States, mainly Austria, Germany and Switzerland, have regularly and significantly contributed with financial means for extra-budgetary organized events and by sending experts facilitate steady improvement of this implementation of the Code. Together with the CPC, ODIHR, academic institutions like DCAF and CORE and civil society organizations awareness rising-, outreach- and implementation activities are conducted on a regular basis. The key role of the like-minded is on the one hand to maintain the momentum and on the other hand to observe closely the political developments with regard to the Code.

Important efforts were made by the traditional like-minded, Austria, Germany and Switzerland, to enlarge the circle and create an informal "Group of Friends" of the Code. Since 2013 meetings of this informal group are held periodically and attract regularly representatives of between 20 and 30 participating States. This enlarged circle of like-minded participating States allows now to launch initiatives in favour of the Code with much more political weight. It is so far still the task of the core-members of this group, Austria, Germany and Switzerland, to keep the movement going as some participating States remain critical towards too far reaching initiatives. An essential role is played by the FSC Coordinator for the Code, which was since its creation – with

the exception of Turkey – assumed by a representative of Austria, Germany or Switzerland. Furthermore, the support of the CPC is an invaluable asset for every performance in support of the Code.

The Code is a constant agenda point of the Working Group “A” of the weekly FSC. It is encouraging to observe that more and more participating States utilize this platform to announce and show their commitment for the Code (recently Malta, Armenia and Mongolia). It is, however, still up to the core-members of the friends of the Code, Austria, Germany and Switzerland and the FSC Coordinator for the Code to sustain the momentum, as this agenda points is one of the late ones in the WG “A” agenda of the FSC.

Conclusion

A re-opening of the Code today would probably put its unique assets in danger as the actual geopolitical situation does not allow a fruitful process to modernize and update it. Moreover the like-minded States have over the past 20 years learned to improve the awareness, outreach and implementation of the Code by other means. As it is a document with a great normative potential, which, at the time of its adoption, already anticipated future developments in the security sector, the efforts of the like-minded states are today focussed on awareness raising, outreach and improving its implementation. This requires tireless dedication and commitment. In order to create a sustainable momentum of the implementation of the Code's prescriptions, creative approaches are required. The SSR/SSG concepts are examples of helpful “transmission belts” for the prescriptions of the Code in an intra-state framework while the Code provides a unique normative foundation for the promotion of SSR/SSG. The Code has lost nothing of its relevance and necessity in an inter-state scenario as the recent crisis in the Ukraine and the protracted conflicts within the OSCE area show. To raise the awareness of parliamentarians, civil servants, officers and NCOs of security institutions, including those responsible for doctrine and education, representatives of other regional and international organizations and representatives of the civil society requires continued efforts of the like-minded friends of the Code whose critical role has not changed since the adoption of the Code.

Chapter X

OSCE Partners for Co-operation

Outreach and Awareness raising on Core Values and Principles of the Code

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History of Co-operation with Partners

The co-operation with partners outside the OSCE dates back as early as 1975, when participating States affirmed in the Helsinki Final Act their conviction that the security of each participating State and security in Europe as a whole is to be considered in the broader context of world security and is closely linked with security in the Mediterranean area. Accordingly, the process of improving security should not be confined to Europe but should extend to other parts of the world, and in particular to the Mediterranean area.¹

A number of specific meetings were held on Mediterranean issues mostly relating to the economic, social, environmental, scientific, and cultural fields, to which the Mediterranean States were invited to participate in Valletta (1979), Venice (1984), Palma de Mallorca (1990) and again Valletta (1993). The concept of a shared and indivisible security promoted by the Conference on Security and Co-operation (CSCE) led to a special relationship with the six Mediterranean Partners for Co-operation: Algeria, Egypt, Israel, Jordan, Morocco and Tunisia. Over the years, this sharing of experience has grown into intensive co-operation in the fields of anti-terrorism, border security, water management, environmental security challenges, migration management and tolerance and non-discrimination. In 1990 at the Paris CSCE Summit, the participating States confirmed that they “*will continue efforts to*

1 Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1 August 1975, pages 13 and 36.

strengthen security and co-operation in the Mediterranean as an important factor for stability in Europe.”²

A significant development in CSCE’s Mediterranean Partnership took place upon the adoption of a decision on the Mediterranean at the 1994 Budapest Summit which states inter alia that *“an informal, open-ended contact group, at the level of experts, will be established within the framework of the Permanent Council in Vienna. This group will meet periodically to conduct a dialogue with these non-participating Mediterranean States in order to facilitate the interchange of information of mutual interest and the generation of ideas.”³*

Starting from the early 1990s, formal relations were also initiated with the Asian countries Japan (1992) and South Korea (1994), which have been formally acknowledged and welcomed at the 1996 Lisbon Summit: *“We are committed to further developing the dialogue with our Mediterranean partners for co-operation, Japan, and the Republic of Korea. In this context, strengthening security and co-operation in the Mediterranean is important for stability in the OSCE region. We welcome the continued interest displayed by [them] in the OSCE, and the deepening of dialogue and co-operation with them. We invite them to participate in our activities, including meetings as appropriate.”⁴* Later, they were followed by Thailand (2000), Afghanistan (2003) and Australia (2009).

Shortly after Lisbon, the 1997 Copenhagen Ministerial Council adopted guidelines on the “OSCE Document-Charter on European Security” as follows: *“Recognizing the indivisibility of security, they affirm that strengthened security and co-operation in adjacent areas, in particular the Mediterranean, is an important factor for stability in the OSCE area. They will consider closer co-operation with all partners for co-operation in order to promote the norms and values shared by the OSCE participating States, and to encourage them to draw on OSCE expertise.”⁵*

Furthermore, the 1999 Istanbul Summit emphasized the following elements: *“Implementing and building on the Helsinki Document 1992 and the Budapest Document 1994, we will work more closely with the Partners for Co-operation to promote OSCE norms and principles. We welcome their wish to promote the realization of the Organization’s norms and principles, including the fundamental principle of resolving conflicts through peaceful means.”⁶*

At the 2001 Bucharest Ministerial Council, the “Decision on Combatting Terrorism” stipulated that participating States and the OSCE Secretariat were tasked to “[...] strengthen

2 Charter of Paris for a New Europe, 21 November 1990, page 11.

3 Budapest Document 1994 «Towards a Genuine Partnership in a New Era», Chapter X: Mediterranean, 21 December 1994, page 44.

4 Lisbon Document 1996, 2 December 1996, pages 8–9.

5 Sixth Meeting of the Ministerial Council, Decision on Guidelines on an OSCE Document-Charter on European Security (MC(6).Dec/5), Copenhagen, 19 December 1997, pages 20–21.

6 Istanbul Document 1999, Charter for European Security, Chapter V: “Our Partners for Co-operation”, 19 November 1999, page 12.

co-operation and information exchanges, both formally and informally, with other relevant groups, organizations, and institutions involved in combating terrorism.” Furthermore, they had to “[...] broaden dialogue with partners outside the OSCE area, such as the Mediterranean Partners for Co-operation and Partners for Co-operation in Asia, the Shanghai Co-operation Organization, the Conference on Interaction and Confidence Building Measures in Asia, the Organization of the Islamic Conference, the Arab League, the African Union, and those States bordering on the OSCE area to exchange best practices and lessons learned in counter-terrorism efforts for application within the OSCE area.”⁷

In 2003, the OSCE Permanent Council decided *“to identify additional fields of co-operation and interaction with the OSCE Mediterranean and Asian Partners for Co-operation for the purpose of enhancing mutual security, to encourage Partners for Co-operation to voluntarily implement OSCE norms, principles and commitments, including as a means to further interaction with the OSCE as well as to explore the scope for wider sharing of OSCE norms, principles and commitments with adjacent areas.”⁸*

With regard to implementation, participating States during the 2003 Maastricht Ministerial Council called upon the Mediterranean and Asian Partners for Co-operation to *“voluntarily implement the principles and commitments of the OSCE”* and encouraged them to *“co-operate with them in this as appropriate”⁹*, which implicitly includes the norms, principles, commitments and values of the OSCE Code of Conduct (the Code).

This call to the OSCE Partners for Co-operation didn’t remain unheard: Partners for Co-operation were systematically invited to workshops and seminars on the OSCE Code of Conduct in Switzerland and in the OSCE sub-regions with the number of states participating gradually increasing.

Outreach to the Mediterranean Region

In December 2010, the Jasmine Revolution in Tunisia induced the so called “Arab Spring” with demonstrations and protests all over North Africa and the Middle East. They culminated shortly after in riots and civil wars leading to significant political and

7 Ninth Meeting of the Ministerial Council, Decision on Combatting Terrorism (MC(9).DEC/1) and The Bucharest Plan of Action for Combatting Terrorism (Annex to MC(9).DEC/1), Bucharest, 3 December 2001, pages 12–13.

8 Permanent Council Decision on Further Dialogue with the Partners for Co-operation and Exploring the Scope for Wider Sharing of OSCE Norms with Others (PC.DEC/571/Corr.1), 2 December 2003, page 2.

9 Eleventh Meeting of the Ministerial Council, OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, Maastricht, 2 December 2003, page 4.

societal changes. By December 2013, several rulers had been ousted and replaced by transitional governments. All OSCE Mediterranean Partners for Co-operation were affected to a certain extent: In Tunisia and Egypt rulers had been forced from power, while Algeria, Morocco, Jordan and Israel witnessed protests and public unrest. In their immediate neighbourhood, Libya collapsed after the removal of the Gadhafi regime, sending waves of disruption to neighbouring countries. Weapon flows and foreign fighters from Libya even destabilised Mali, another spill-over effect of the “Arab Spring”.

These current security challenges and the need of the new Governments to establish sustainable security sector governance led to a deepening of constructive exchanges between the OSCE and its Partners for Co-operation. With the aim of supporting them during this transition period, Switzerland together with Germany decided in 2013 to provide them with a translation of the Code into Arabic as a first step of outreach and dissemination of the core values and principles enshrined in the Code in the Arabic speaking world.

When Switzerland and Serbia submitted the *Joint Work Plan* for their consecutive OSCE Chairmanships in 2014 and 2015, respectively, they also included the Code as one of their priorities in the framework of security sector governance as follows: “*Strengthen the OSCE Code of Conduct on Politico Military Aspects of Security and enhance both its implementation and outreach.*”¹⁰ This also includes the promotion of the Code and the outreach of its norms and principles to the regions of the OSCE Partners for Co-operation. They are explicitly addressed in the Joint Work Plan along these lines: “*Interaction with the partners should become more concrete and project-oriented*” and that “[...] *the dialogue and co-operation with the Mediterranean / Asian Partners*” should be deepened.¹¹

The promising feedbacks and initiatives after the publication of the Arabic translation of the Code showed the interest of OSCE Partners for Co-operation and the League of Arab States for dialogue and sharing of experiences. This led to a Swiss initiative in the OSCE Forum for Security Co-operation launched as “Food for Thought Paper on a Compilation of Practical Examples for the Democratic Control of Armed and Security Forces”¹² on 11 February 2014. This initiative is co-sponsored by Germany, Austria, Ireland, Slovakia, Liechtenstein and Malta. Currently, Switzerland and the Co-sponsors are collaborating closely with the academia and interested participating States in order to research and formulate this compilation of practical examples,

10 Joint Work Plan of Switzerland and Serbia for their subsequent OSCE Chairmanships in 2014 and 2015, Chapter 2: Politico Military Dimension, page 2.

11 Ibid., page 5.

12 Food for Thought Paper on a Compilation of Practical Examples of the Democratic Control of Armed and Security Forces, FSC.DEL/103/13/Rev.1, 11 February 2014.

which should reflect the level of good practices of democratic governance in the security sector as an illustrative reference. The compilation is intended to be a further and useful toolkit for facilitating implementation and outreach efforts. It will be topical, practical and easy to adopt. It is planned that the final version will also be translated into Arabic.

As already mentioned earlier in this publication, a seminar for the Mediterranean region was organised in Malta in fall 2013, which was cosponsored by Germany and Switzerland, the latter then holding the Chairmanship of the Contact Group of the OSCE Mediterranean Partners for Co-operation. The main objective of the Malta seminar was to discuss the application and perspectives of a voluntary implementation of the Code among the OSCE participating States and Partners for Co-operation of the Mediterranean region. They had the opportunity to share practical examples and experiences, to discuss the role of the security sector in the state and the society and to raise awareness of the norms and principles enshrined in the OSCE Code of Conduct. Furthermore, a practical part included national presentations and exhibitions of tools for International Humanitarian Law and Law of Armed Conflicts training within the armed and security forces. This was followed by working group discussions, encouraging the representatives to openly evaluate needs and opportunities for application of the Code's norms and principles in their respective countries.

Participants from the Mediterranean Partners for Co-operation also highlighted constitutional reforms in their countries with regard to the security sector. Some put emphasis on challenges linked to the effect of refugees and armed fighters coming in from states such as Libya and Mali. It was stressed that any assistance to Partner States should be guided by the principle of national ownership and should accept the particular sensitivities and specificities of the region. This also implied a need to share experiences through the provision of training, including for high-level decision-makers, and opening the annual implementation reports to Mediterranean Partners. Emphasis in this context should be placed on structural and progressive training as well as awareness raising campaigns. The OSCE and its participating States were further called on to provide seminars and training on the OSCE Code of Conduct and its applicability of its core values, norms and principles in the wider Mediterranean area.

During the concluding panel discussion of the Malta seminar, the author, having the honour to be one of the moderators of the working groups, summarised the outcome as follows: *"I have good news and bad news. The bad news is that, bearing in mind the current geopolitical situation, the Code was never so urgently needed in the region of the Mediterranean Partners for Co-operation. The good news is that all partners present agreed on the core values*

and principles stipulated in the Code.” Furthermore, Tunisia subsequently proposed to organise a follow-up seminar and to be the first Mediterranean Partner for Co-operation hosting an event on the Code.

In late July 2014, preliminary talks and exchange of ideas took place in Tunis between Tunisian stakeholders and a delegation from the Swiss Department of Defence and from the Mediterranean Academy of Diplomatic Studies (MEDAC), the latter being also a co-organiser of the Malta seminar. The Tunisian side was represented by the Ministry of Foreign Affairs, Ministry of Defence and Ministry of Interior. The discussions were completed in a very constructive atmosphere. The partners agreed on a workshop or seminar organised by Tunisia and cosponsored by Germany and Switzerland. This event is planned to be held in the first half of 2015 and will focus on the specific situation and the challenges of “Post Arab Spring”.

On the one hand, this implies a clear emphasis on the reform and good governance of the security sector, the application of the principle of democratic control of the armed forces, as well as the observance of established inter-state behaviour. On the other hand, the unstable and volatile security situation in certain Mediterranean Partner States requires a robust answer tackling the ubiquitous terrorist threat and, especially in the wake of the Libyan civil war, the rising dangers from accumulation and proliferation of arms and ammunition by radicalised and criminal groups. Consequently, there is a common interest that anti-terrorists, anti-crime and border monitoring operations and counter-measures take into consideration the norms and principles of International Humanitarian Law and the Law of Armed Conflicts. With the prospects of Libya to become the latest OSCE Mediterranean Partner for Co-operation at the Ministerial Council 2014 in Basel, Switzerland, and with the opportunity to address current challenges emerging from its territory in the framework of the Code, the outreach of the Code to the Mediterranean region is about to take its next significant step.

Outreach to the Asian Region

The geopolitical reshuffling of Central Asia after the collapse of the Soviet Union was addressed at the 2008 Regional Code of Conduct Workshop in Almaty. With Mongolia, the first OSCE Partner for Co-operation to join the OSCE as a full-fledged member in 2011 and assuming the Chairmanship of the Forum for Security Co-operation in the first trimester of 2015, the normative inter- and intra-state elements of the Code will reach further out to Asia.

The Asian Partners for Co-operation of the OSCE, comprising Afghanistan, Australia, Japan, Republic of Korea and Thailand, are much more heterogeneous than the Mediterranean ones: not only in terms of their geographical positions or their internal political organisation, but also regarding the different challenges due to their geopolitical exposure and their distinct mutual cultural and historical relations. Mongolia, having recently accessed the OSCE as its youngest participating State, shows its readiness to build up and support the outreach activities towards the Asian Partners for Co-operation.

Indeed, many countries of the central Asian region are not only participating States of the OSCE, but are active members of organisations and initiatives such as the “Heart of Asia – Istanbul Process”¹³ or the “Conference on Interaction and Confidence Building Measures in Asia (CICA)”¹⁴. Being at the crossroads of Eurasian security and stability, they are to play an increasing role with regard to conflict prevention and conflict management in the region. Further initiatives are already under discussion: According to Kazakh government, Asian countries need to foster dialogue and elaborate comprehensive measures, in order to confront the problems of multifaceted security. They have to promote a security outlook on the basis of mutual trust and equality. Coordination efforts should include securing the peaceful use of nuclear energy, creating transportation corridors for economic activities, effective food programs and monetary regulations. The latter implicitly emphasises the economic dimension of security.

Therefore Kazakhstan proposed at the CICA Shanghai Summit in May 2014 a new initiative of creating an effective international body, the “Organization for Security and Development in Asia (OSDA)”¹⁵ based on CICA. The new organisation would ideally promote a favourable environment for creating economic and social development models which would be built upon Oriental traditions and values. The OSDA should seek to be a solid partner of the West, which cannot undergo sustainable development without co-operation and mutual understanding with the East. As the Kazakh government puts it, global crisis gradually conquers one sphere after another: finances, economy, politics, and maybe even culture which would embrace the entire civilisation. And that is why the Asian countries would need to engage in peace building and development. Accordingly, the OSDA could become a key instrument in that process.

13 www.heartofasia-istanbulprocess.af.

14 www.s-cica.org.

15 Nurbek Almashov. “CICA Summit in Shanghai Focuses on New Goals for Security Forum”. In: The Astana Times, 22 May 2014, Eurasia & World, www.astanatimes.com/2014/05/cica-summit-shanghai-focuses-new-goals-security-forum/.

This OSDA, a kind of OSCE for Asia, or – in absolutely positive terms – an enlargement of the OSCE concept of indivisible security and cooperative approach into Asia, could be an unprecedented opportunity to blend the Oriental traditions and values with widely accepted, uncontested norms and principles of rule of law, fundamental rights and confidence and security building. The OSCE, which counts all major Central Asian countries among its members and even more Asian countries including Australia as partners for co-operation, could be the ideal partner for identifying common Eurasian values and norms, while the OSCE Code of Conduct could be the ideal standard setting and dissemination tool for achieving these objectives.

As a first step in this line of thought, a Code of Conduct workshop is planned in Mongolia in March 2015. This event is supported by the strong local ownership of Mongolia, being the Chair of the Forum of Security Co-operation in the first trimester of 2015, and will be co-sponsored by Germany and Switzerland, the latter then holding the Chairmanship of the Contact Group of the OSCE Asian Partners for Co-operation in 2015. Germany, if selected for the OSCE Chairmanship 2016 at the Basel Ministerial Council 2014, would then hold the Chairmanship of the Contact Group of the OSCE Mediterranean Partners for Co-operation.

Never before has the Code enjoyed such a broad interest within and beyond the OSCE as a norm and standard setting document promoting the rule of law in the security sector. The Code can also be seen as a vector ensuring agreed values such as the need for democratic control of armed and security forces as well as the application of International Humanitarian Law and the Law of Armed Conflict.

Outreach beyond the regions of the partners for co-operation

The OSCE Code of Conduct was incontestably the first multilateral instrument encompassing norms and principles to regulate and control, at both the internal and international levels the armed forces and the Security Sector at large, central areas of sovereignty and state power.

In the recent past, it already had inspired other regions to better organise, reform and control their security sectors. The “Code of Conduct for Armed Forces and Security Services of ECOWAS”¹⁶ is an effort based on a partnership between the Geneva Centre

16 www.dcaf.ch/Project/Code-of-Conduct-for-Armed-Forces-and-Security-Services-in-West-Africa.

for the Democratic Control of Armed Forces (DCAF) and the Economic Community of West African States (ECOWAS), to provide specific confidence-building measures and minimal behavioural requirements for the armed and security forces in ECOWAS member states.

This ECOWAS initiative borrowed the OSCE Code as an inspirational normative source for drafting a tailor-made Code adapted to the ECOWAS specificities and challenges. This could be a good example of transporting agreed and undisputed universal norms and principles to a region by blending them with local values and cultural aspects, thus anchoring and strengthening values and universal norms.

Thematic Outreach

The Code calls upon participating States to ensure democratic oversight of their armed, internal, paramilitary, intelligence and police forces but does not explicitly take into account their cultural, historical, religious and social specificities. This is, however, an imperative prerequisite for a successful outreach. The Code also addresses key principles of relations between participating States. Nevertheless, the Code has not been amended since its coming into force in 1995 and could therefore not take into account every evolution in security matters of the last 20 years. This deficit had to be compensated and patched permanently through the improvement of the Code's implementation, by regularly developing, adapting and reviewing its instruments and tools. Alternatively, voluntary measures may be introduced, calling participating States for transparency and openness beyond the letter of the agreed measures. As of today, the Code does not address and regulate the following aspects and issues of the geopolitical and politico-military realities of the 21st century:

- Domestic use of enforcement instruments are not operationalised in the Code to the same extent as the provisions applicable to assign armed and security forces to internal security missions (paragraphs 36 and 37).
- Non-State actors, such as armed militia and foreign fighters, although paragraph 25 implicitly addresses this issue. This also applies irregular combatants without uniform and private security and military companies.
- Application of the Code in areas where a State has no monopoly of power or lost territorial control.

Most of those ambiguities are the result of our globalised, interdependent and multi-layered societies. This goes along with a breathtaking technical progress challenging the competences and abilities of politicians and administrations to fully and timely understand and consequently regulate at national and international levels challenges of global significance. Tackling the aforementioned ambiguities requires therefore the awareness and the will for improvement of all concerned actors. Also leadership qualities are needed for carrying out an integrative multi-stakeholder approach including state administrations, Parliaments, non-governmental organisations, civil society and the private sector (see for instance the Montreux Process as a prominent example). At the OSCE Parliamentary Assembly, it is planned to launch a resolution calling for such a comprehensive and multi-stakeholder approach in order to achieve a more holistic implementation.

Conclusion

In the year of its twentieth anniversary, the Code of Conduct has gained, once again, an ambiguous actuality due to the ongoing crisis in Ukraine. In the past years, the emphasis was rather put on the intra-state aspects. The last months have now shown a growing need to refocus on inter-state aspects such as the right of participating States to freely choose their own security arrangements, the respect for each other's sovereign equality and individuality and the organisation of mutual security relations among participating States upon a co-operative approach.

Our globalised and interdependent world does remind us that a crisis or a security issue is not confined to national borders and that even conventional security arrangements or organisations might quickly be overstretched. Like in the past, confidence and security building remain a key prerequisite for preventing, dealing with and resolving of conflicts. Although being a rather static document, not a single line of the Code has lost its relevance in the past twenty years. Quite the contrary, it forms today an indispensable and undisputed part of the OSCE confidence and security building measures.

With regard to the Code, a lot has been achieved during the last twenty years, but this is by far not enough. Let us therefore, in a forward-oriented way, further raise awareness and develop innovative implementation and outreach activities within and beyond the OSCE in the spirit of building a security community for the benefit of everyone.

Conclusive Remarks

Twenty years after its adoption, the Code of Conduct is still an unparalleled normative reference document in the field of politico-military affairs, and all of its provisions remain of the same relevance and importance in international security affairs as they were when the Code was negotiated in the post-Cold War era.

With the current geopolitical challenges in the areas of the OSCE participating States and the Partners of Co-operation, the core values and principles of the Code will experience an endurance test. It may also be an opportunity to update and adapt the Code to the politico-military realities of the twenty-first century, taking into account new actors, new technologies, new forms of engagement and further areas of application. At the same time there is a need for some refocus on inter-state aspects and on better implementation of the existing provisions of the Code rather than reopening and adapting it.

With the present collective volume, for the first time, the Code is introduced in a multi-stakeholder perspective. It herewith transcends its two-decades-old label of being a 'hidden jewel' and enters the realm of the international public sphere and attention.

Addressed to a general public, including citizens, non-governmental organizations, and the media, it is likely that this volume will also contribute to improved awareness raising on the Code as a reflection of the stipulation in §20 considering the armed forces' integrated with civil society as an important expression of democracy.

Looking forward, the Code has already become a 'toolkit of soft security' and will continue outreaching to geographic areas beyond the OSCE. Its recent translation into Arabic has been the cornerstone for its outreach to the Mediterranean Partners of Co-operation, and the next stage of outreach will be towards the Asian Partners of Co-operation.

Switzerland is honored to present this commemorative publication, and the Swiss Federal President and OSCE Chairperson-in-office, Didier Burkhalter, is happy to officially submit this commemorative study to the OSCE at the occasion of the Ministerial Council in Basel, on 5 December 2014.

List of Acronyms and Abbreviations

ASEAN	Association of South-Eastern Asian States
AU	African Union
BCSP	Belgrade Center for Security Policy
CFE	Conventional Forces in Europe (Treaty on)
CFSP	Common Foreign and Security Policy (of the EU)
CICA	Conference on Interaction and Confidence Building Measures in Asia
CiO	Chairperson-in-Office
CORE	Centre for OSCE Research (Hamburg)
CPC	OSCE Conflict Prevention Center
CSBMs	Confidence- and Security Building Measures
CSCE	Conference for Security and Cooperation in Europe (predecessor of the OSCE)
DCAF	Democratic Control of Armed Forces (Geneva Center for the)
DDR	Disarmament, Demobilization, and Reintegration
DFRs	Defense Forces Regulations
EAPC	Euro-Atlantic Partnership Council
ECOWAS	Economic Community of West African States
EU	European Union
EUROMIL	European Organization of Military Associations
FSC	OSCE Forum for Security Cooperation
GCSP	Geneva Center for Security Policy
GWOT	Global War on Terror
HCNM	High Commissioner on National Minorities
HDR	Human Development Report (of UNDP)
ICOAF	International Conference of Ombudsman Institutions for the Armed Forces
IHL	International Humanitarian Law
LAS	League of Arab States
LoAC	Law on Armed Conflict
MEDAC	Mediterranean Academy of Diplomatic Studies
MENA	Middle East and North Africa
MP	Member of Parliament

NATO	North-Atlantic Treaty Organization
NCOs	Non-Commissioned Officers
NGO	Non-Governmental Organization
OAS	Organization of American States
ODF	Ombudsman for Defense Forces
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization of Security and Cooperation in Europe
OSDA	Organization for Security and Development in Asia
PAP-DIB	Partnership Program – Defense Institution Building (of NATO)
PA	Parliamentary Assembly
PC	Permanent Council
PDFORRA	Military Representative Association of the enlisted personnel and other ranks
PfP	Partnership for Peace (program of EAPC / NATO)
PMSCs	Private Military and Security Companies
RACVIAC	Center for Security Cooperation (Zagreb)
RFOM	Representative on Freedom of the Media
SALW	Small Arms and Light Weapons
SEEGROUP	South East Europe Security Cooperation Steering Group (NATO)
SSR / SSG	Security Sector Reform / Security Sector Governance
TNTD	Transnational Threats Department
U.N.	United Nations
UNDP	United Nations Development Program
UNSCR	United Nations Security Council Resolution
USSR	Union of Soviet Socialist Republics
WEU	Western European Union

Further Readings

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Annex 1: OSCE Code of Conduct



Organization for Security and Co-operation in Europe

CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY

3 December 1994

Programme for Immediate Action Series, No. 7

Note: This document was adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994 (see FSC/Journal No. 94).

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3 December 1994
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21 December 1994

**CODE OF CONDUCT
ON POLITICO-MILITARY ASPECTS OF SECURITY**

PREAMBLE

The participating States of the Conference on Security and Co-operation in Europe (CSCE),

Recognizing the need to enhance security co-operation, including through the further encouragement of norms of responsible and co-operative behaviour in the field of security,

Confirming that nothing in this Code diminishes the validity and applicability of the purposes and principles of the Charter of the United Nations or of other provisions of international law,

Reaffirming the undiminished validity of the guiding principles and common values of the Helsinki Final Act, the Charter of Paris and the Helsinki Document 1992, embodying responsibilities of States towards each other and of governments towards their people, as well as the validity of other CSCE commitments,

Have adopted the following Code of Conduct on politico-military aspects of security:

I

1. The participating States emphasize that the full respect for all CSCE principles embodied in the Helsinki Final Act and the implementation in good faith of all commitments undertaken in the CSCE are of fundamental importance for stability and security, and consequently constitute a matter of direct and legitimate concern to all of them.
2. The participating States confirm the continuing validity of their comprehensive concept of security, as initiated in the Final Act, which relates the maintenance of peace to the respect for human rights and fundamental freedoms. It links economic and environmental co-operation with peaceful inter-State relations.
3. They remain convinced that security is indivisible and that the security of each of them is inseparably linked to the security of all others. They will not strengthen their security at the expense of the security of other States. They will pursue their own security interests in conformity with the common effort to strengthen security and stability in the CSCE area and beyond.
4. Reaffirming their respect for each other's sovereign equality and individuality as well as the rights inherent in and encompassed by its sovereignty, the participating States will base their mutual security relations upon a co-operative approach. They emphasize in this regard the key role of the CSCE. They will continue to develop complementary and mutually reinforcing institutions that include European and transatlantic organizations, multilateral and bilateral undertakings and various forms of regional and subregional co-operation. The participating

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States will co-operate in ensuring that all such security arrangements are in harmony with CSCE principles and commitments under this Code.

5. They are determined to act in solidarity if CSCE norms and commitments are violated and to facilitate concerted responses to security challenges that they may face as a result. They will consult promptly, in conformity with their CSCE responsibilities, with a participating State seeking assistance in realizing its individual or collective self-defence. They will consider jointly the nature of the threat and actions that may be required in defence of their common values.

II

6. The participating States will not support terrorist acts in any way and will take appropriate measures to prevent and combat terrorism in all its forms. They will co-operate fully in combating the threat of terrorist activities through implementation of international instruments and commitments they agree upon in this respect. They will, in particular, take steps to fulfil the requirements of international agreements by which they are bound to prosecute or extradite terrorists.

III

7. The participating States recall that the principles of the Helsinki Final Act are all of primary significance and, accordingly, that they will be equally and unreservedly applied, each of them being interpreted taking into account the others.

8. The participating States will not provide assistance to or support States that are in violation of their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Charter of the United Nations and with the Declaration on Principles Guiding Relations between Participating States contained in the Helsinki Final Act.

IV

9. The participating States reaffirm the inherent right, as recognized in the Charter of the United Nations, of individual and collective self-defence.

10. Each participating State, bearing in mind the legitimate security concerns of other States, is free to determine its security interests itself on the basis of sovereign equality and has the right freely to choose its own security arrangements, in accordance with international law and with commitments to CSCE principles and objectives.

11. The participating States each have the sovereign right to belong or not to belong to international organizations, and to be or not to be a party to bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality. Each has the right to change its status in this respect, subject to relevant agreements and procedures. Each will respect the rights of all others in this regard.

12. Each participating State will maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law.

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13. Each participating State will determine its military capabilities on the basis of national democratic procedures, bearing in mind the legitimate security concerns of other States as well as the need to contribute to international security and stability. No participating State will attempt to impose military domination over any other participating State.

14. A participating State may station its armed forces on the territory of another participating State in accordance with their freely negotiated agreement as well as in accordance with international law.

V

15. The participating States will implement in good faith each of their commitments in the field of arms control, disarmament and confidence- and security-building as an important element of their indivisible security.

16. With a view to enhancing security and stability in the CSCE area, the participating States reaffirm their commitment to pursue arms control, disarmament and confidence- and security-building measures.

VI

17. The participating States commit themselves to co-operate, including through development of sound economic and environmental conditions, to counter tensions that may lead to conflict. The sources of such tensions include violations of human rights and fundamental freedoms and of other commitments in the human dimension; manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism also endanger peace and security.

18. The participating States stress the importance both of early identification of potential conflicts and of their joint efforts in the field of conflict prevention, crisis management and peaceful settlement of disputes.

19. In the event of armed conflict, they will seek to facilitate the effective cessation of hostilities and seek to create conditions favourable to the political solution of the conflict. They will co-operate in support of humanitarian assistance to alleviate suffering among the civilian population, including facilitating the movement of personnel and resources dedicated to such tasks.

VII

20. The participating States consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. They will further the integration of their armed forces with civil society as an important expression of democracy.

21. Each participating State will at all times provide for and maintain effective guidance and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly

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define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

22. Each participating State will provide for its legislative approval of defence expenditures. Each participating State will, with due regard to national security requirements, exercise restraint in its military expenditures and provide for transparency and public access to information related to the armed forces.

23. Each participating State, while providing for the individual service member's exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral.

24. Each participating State will provide and maintain measures to guard against accidental or unauthorized use of military means.

25. The participating States will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities. If a participating State is unable to exercise its authority over such forces, it may seek consultations within the CSCE to consider steps to be taken.

26. Each participating State will ensure that in accordance with its international commitments its paramilitary forces refrain from the acquisition of combat mission capabilities in excess of those for which they were established.

27. Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms.

28. The participating States will reflect in their laws or other relevant documents the rights and duties of armed forces personnel. They will consider introducing exemptions from or alternatives to military service.

29. The participating States will make widely available in their respective countries the international humanitarian law of war. They will reflect, in accordance with national practice, their commitments in this field in their military training programmes and regulations.

30. Each participating State will instruct its armed forces personnel in international humanitarian law, rules, conventions and commitments governing armed conflict and will ensure that such personnel are aware that they are individually accountable under national and international law for their actions.

31. The participating States will ensure that armed forces personnel vested with command authority exercise it in accordance with relevant national as well as international law and are made aware that they can be held individually accountable under those laws for the unlawful exercise of such authority and that orders contrary to national and international law must not be given. The responsibility of superiors does not exempt subordinates from any of their individual responsibilities.

32. Each participating State will ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as

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reflected in CSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service.

33. Each participating State will provide appropriate legal and administrative procedures to protect the rights of all its forces personnel.

VIII

34. Each participating State will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict, including as applicable the Hague Conventions of 1907 and 1954, the Geneva Conventions of 1949 and the 1977 Protocols Additional thereto, as well as the 1980 Convention on the Use of Certain Conventional Weapons.

35. Each participating State will ensure that its defence policy and doctrine are consistent with international law related to the use of armed forces, including in armed conflict, and the relevant commitments of this Code.

36. Each participating State will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law. If recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs for enforcement. The armed forces will take due care to avoid injury to civilians or their property.

37. The participating States will not use armed forces to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.

IX

38. Each participating State is responsible for implementation of this Code. If requested, a participating State will provide appropriate clarification regarding its implementation of the Code. Appropriate CSCE bodies, mechanisms and procedures will be used to assess, review and improve if necessary the implementation of this Code.

X

39. The provisions adopted in this Code of Conduct are politically binding. Accordingly, this Code is not eligible for registration under Article 102 of the Charter of the United Nations. This Code will come into effect on 1 January 1995.

40. Nothing in this Code alters the nature and content of the commitments undertaken in other CSCE documents.

41. The participating States will seek to ensure that their relevant internal documents and procedures or, where appropriate, legal instruments reflect the commitments made in this Code.

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42. The text of the Code will be published in each participating State, which will disseminate it and make it known as widely as possible.

For additional information on the
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Co-operation in Europe and its activities:

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Annex 2: Questionnaire



**Organization for Security and Co-operation in Europe
Forum for Security Co-operation**

FSC.DEC/2/09
1 April 2009

Original: ENGLISH

575th Plenary Meeting
FSC Journal No. 581, Agenda item 3

DECISION No. 2/09 TECHNICAL UPDATE OF THE QUESTIONNAIRE ON THE CODE OF CONDUCT

The Forum for Security Co-operation (FSC),

Remaining committed to the Code of Conduct on Politico-Military Aspects of Security (CoC) and its full and effective implementation,

Confirming the continuing validity of the comprehensive concept of security, as initiated in the Helsinki Final Act, which, *inter alia*, relates the maintenance of peace to the respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Remaining convinced that security is indivisible and that the security of each of the participating States is inseparably linked to the security of all others,

Recalling Ministerial Council Decision No. 3/07 on issues relevant to the FSC where participating States expressed their determination to continue enhancing the implementation of the CoC,

Recognizing that the annual information exchange on national implementation of the CoC demonstrates participating States' commitment to transparency and thus contributes to the implementation of the CoC,

- Decides that participating States will provide each other, and the Conflict Prevention Centre (CPC), relevant information on the implementation of the CoC, in accordance with the questionnaire attached to this decision by 15 April of each year;
- Decides that the information exchange based on this decision will be carried out not later than 15 April 2010;
- Encourages participating States to highlight major changes or updates in their replies to the questionnaire, as appropriate;
- Encourages participating States on a voluntary basis to organize or host national and international symposiums, workshops and seminars to promote the CoC and to raise

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awareness, and to provide information on the aim, content and participation of these activities to other participating States and the CPC;

- This decision will supersede FSC Decision No. 4/03.

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1 April 2009
Annex

QUESTIONNAIRE ON THE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY*

Section I: Inter-State elements

1. Account of measures to prevent and combat terrorism

- 1.1 To which agreements and arrangements (universal, regional, subregional and bilateral) related to preventing and combating terrorism is your State a party?
- 1.2 What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?
- 1.3 What are the roles and missions of military, paramilitary and security forces and the police in preventing and combating terrorism in your State?
- 1.4 Provide any additional relevant information on national efforts to prevent and combat terrorism, e.g., those pertaining *inter alia* to:
 - Financing of terrorism;
 - Border controls;
 - Travel document security;
 - Container and supply chain security;
 - Security of radioactive sources;
 - Use of the Internet and other information networks for terrorist purposes;
 - Legal co-operation including extradition;
 - Safe havens and shelter to terrorists and terrorist organizations.

2. Stationing of armed forces on foreign territory

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

* Participating States are encouraged to highlight major changes or updates in their replies to the questionnaire, as appropriate.

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

- 3.1 Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence- and security-building as an element of indivisible security are implemented in good faith.
- 3.2 Provide information on how your State pursues arms control, disarmament and confidence- and security-building measures with a view to enhancing security and stability in the OSCE area.

Section II: Intra-State elements

1. National planning and decision-making process

- 1.1 What is the national planning and decision-making process in determining/approving military posture and defence expenditures in your State?
- 1.2 How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?

2. Existing structures and processes

- 2.1 What are the constitutionally established procedures for ensuring democratic political control of military, paramilitary and internal security forces, intelligence services and the police?
- 2.2 How is the fulfilment of these procedures ensured, and which constitutionally established authorities/institutions are responsible for exercising these procedures?
- 2.3 What are the roles and missions of military, paramilitary and security forces, and how does your State control that such forces act solely within the constitutional framework?

3. Procedures related to different forces personnel

- 3.1 What kind of procedures for recruitment and call-up of personnel for service in your military, paramilitary and internal security forces does your State have?
- 3.2 What kind of exemptions or alternatives to military service does your State have?
- 3.3 What are the legal and administrative procedures to protect the rights of all forces personnel as well as conscripts?

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

- 4.1 How does your State ensure that International Humanitarian Law and Law of War are made widely available, e.g., through military training programmes and regulations?
- 4.2 What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?
- 4.3 How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity?
- 4.4 What has been done to provide for the individual service member's exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?
- 4.5 How does your State ensure that its defence policy and doctrine are consistent with international law?

Section III: Public access and contact information**1. Public access**

- 1.1 How is the public informed about the provisions of the Code of Conduct?
- 1.2 What additional information related to the Code of Conduct, e.g., replies to the Questionnaire on the Code of Conduct, is made publicly available in your State?
- 1.3 How does your State ensure public access to information related to your State's armed forces?

2. Contact information

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

FSC.DEC/2/09
1 April 2009
Attachment 1

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of Denmark (also on behalf of Germany, Canada, Estonia, Finland, the United Kingdom, Ireland, Iceland, Latvia, Lithuania, Norway, the Netherlands, Portugal, Slovakia, Sweden, Switzerland and the Czech Republic):

“Mr. Chairperson,

Denmark, also on behalf of Sweden, Finland, Norway, Iceland, Republic of Estonia, Republic of Lithuania, Republic of Latvia, United Kingdom, Slovakia, the Netherlands, Portugal, Ireland, the Czech Republic, Germany, Switzerland and Canada, wish to make the following interpretative statement in relation to the decision just made:

We strongly support the update of the Questionnaire on the Code of Conduct that we believe will further improve the implementation of the Code of Conduct.

Emphasizing the importance of the Helsinki Final Act, as recognized in the preamble of the decision on the update of the Questionnaire, we believe that respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion should be interpreted in a broad sense.

Therefore, we find that the Questionnaire should also have reflected the 2004 OSCE Action Plan for the Promotion of Gender Equality in accordance with ministerial decision No. 14/04; as well as ministerial decision No. 14/05 on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation — aiming at enhancing the implementation of the UN Security Council resolution 1325 (2000).

Consequently, we intend to expand the scope of our replies to the Questionnaire, by following the guidelines expressed in the two ministerial decisions, to include information on women, peace and security.

The issue of gender constitutes an integral part of human rights and we encourage all participating states to include this issue in their responses to the Questionnaire.

Thank you, Mr. Chairperson.

I kindly ask you to attach this interpretative statement to the decision just made.”

FSC.DEC/2/09
1 April 2009
Attachment 2

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of Germany (also on behalf of Austria, the United Kingdom, Luxembourg and Switzerland):

“Mr. Chairperson,

The delegations of Germany, Austria, the United Kingdom, Luxembourg and Switzerland welcome the Forum for Security Co-operation’s decision on a technical update of the questionnaire on the Code of Conduct on Politico-Military Aspects of Security.

We believe that this update provides a major step forward toward a better implementation of the Code’s provisions through its improved structure and clarity. This will enhance transparency and also update the questionnaire to a significant extent to take account of developments in the politico-military area.

While many questions are oriented toward the constitutional and political control of military, paramilitary and internal security forces, intelligence services and the police, the questionnaire does not take into account the role of private military and security companies. These companies play an increasing role of taking tasks, in particular during operations, which in the past have exclusively been taken up by the above-mentioned forces. Ensuring, that these companies are under proper democratic political control and that they act solely within their State’s constitutional framework is an important task of national authorities.

Recognizing that there is no question in the questionnaire dedicated to the democratic, political control of private military and security companies, we call on participating States to include statements on the democratic political control of private military and security companies in their replies to the questionnaire.

Mr. Chairperson, we would request this statement to be duly registered by the Secretariat as an interpretative statement and circulated to the participating States.”

FSC.DEC/2/09
1 April 2009
Attachment 3

ENGLISH
Original: RUSSIAN

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of the Russian Federation:

“The Russian Federation takes the position that OSCE participating States are at liberty to provide answers to question 1.4 of the updated Questionnaire on the Code of Conduct but are not required to do so. In this same connection, the form, structure and content of the answers, in the event they are provided, remain entirely at the discretion of the OSCE participating States.

Mr. Chairperson,

I would ask that this statement be attached to the journal of today’s plenary meeting of the Forum for Security Co-operation.”

