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Agenda item 1: Security dialogue: The OSCE Code of Conduct on Politico-Military Aspects of Security

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“The OSCE Code of Conduct on Politico-Military Aspects of Security and Security Sector Governance and Reform”

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Madam Chair, Excellencies, Distinguished Participants.

It is a great honor for me to have been invited to speak at this Security Dialogue on the Code of Conduct on Politico-Military Aspects of Security and Security Sector Governance and Reform (SSG/R). As you may know, the Code, and in particular its sections VII and VIII, inspired the creation of my institution of affiliation, the Geneva Centre for the Democratic Control of Armed Forces (DCAF). DCAF has since been committed to cooperating closely with the OSCE on issues related to the Code and beyond, most recently in the framework of the initiative of the Swiss Chairmanship in 2014 related to the development of a more coherent OSCE approach to SSG/R. Given that SSG/R is playing an increasingly important role in the agenda of the OSCE and that questions have been raised in recent years about the relationship between the Code and the concept of SSG/R, the topic of this Security Dialogue is indeed a very timely one.

In my remarks today, I would like to touch on the following themes:

- The nature of the Code and the SSG/R concept
- Commonalities between the Code and SSG/R
- Differences between the Code and SSG/R

1. The nature of the Code and the SSG/R concept

The OSCE Code of Conduct on Politico-Military Aspects of Security is one of the most innovative normative documents in the area of security. For the first time, a multilateral instrument established politically-binding commitments regarding 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 inter-state norms the Code simply complemented the existing normative framework of the OSCE, sections VII and VIII represent, in the words of Victor-Yves Ghébal and Alexandre Lambert, ‘the real value added to the Code of Conduct’.

It has been widely acknowledged that the Code and particularly its sections VII and VIII constitute the most elaborate normative foundation of security sector governance (SSG) and security sector reform (SSR) – both relatively new concepts which have emerged over the past two decades in response to new challenges presented by the changing global security environment. Although the term “security sector” is now widely used, it is often understood in different ways, particularly as regards the scope of the sector. For instance, according to the United Nations’ definition, the 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’. SSG stands for the principle that the military, police and other security forces provide comprehensive security for the state and its people, effectively and efficiently, and within a framework of democratic civilian control, the rule of law, and respect for human rights. SSR is a political and technical process through which a country seeks to enhance the effectiveness and accountability of its security forces – in other words: to strengthen SSG. In this process, many countries draw on external support provided by international actors such as intergovernmental organizations, including the OSCE.

For the OSCE, evidence shows that the use of the concepts of SSG and SSR – in short: SSG/R – has been widely established practice for years. As shown by the mapping study carried out by DCAF in 2013 under a Swiss mandate and with the support of the Secretary-General, the OSCE Secretariat and Institutions as well as the Field Operations have accumulated a wealth of experience in supporting participating States in processes that are part of SSG/R, cutting across all three dimensions of security: the politico-military, economic and environmental as well as the human dimensions. A significant amount of SSG/R support is provided by the OSCE in the context of the Code. This support ranges from holding awareness-raising and outreach events on the principles and commitments contained in sections VII and VIII to seminars for parliamentarians on how to use the Code as an entry point for better overseeing the security sector. Thus, the Code has become an important reference tool of the SSG/R concept, and it has helped to underpin SSG/R processes in many participating States.

2. Commonalities between the Code and SSG/R

Therefore, it does not come as a surprise that the links between the Code and the SSG/R concept are paramount. The SSG/R concept basically shares the Code’s comprehensive notion of security as well as its rationale for and key principles of democratic political control of armed and security forces.

The Code and the SSG/R concept are based on a comprehensive understanding of security, extending beyond a purely military perspective to include other dimensions as well, such as political, economic, societal and environmental 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.

The Code considers the democratic political control of armed and other security forces as an indispensable element of stability and security (§20). The SSG/R

concept, as generally understood, is aimed at the enhancement of effective and accountable security for the state and its people. Thus, while the SSG/R concept with its emphasis on human security goes beyond the Code's focus on comprehensive state and inter-state security, in both cases, the provision of security is linked to the principles of good or democratic governance.

Most notably, the Code provides the normative framework for a range of principles required for a regime of good governance of the security sector. While principles relevant for SSG/R are to be found across the Code, the provisions on the democratic political control of armed forces as contained in paragraphs 20-26 are some of the most illustrative. These include:

- 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. 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 governance of the security sector, 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. Again, the Code refers here to what has become one of the basic principles of SSG.
- Finally, armed forces must be subject to transparency, which includes the obligation of the government to provide public access to information related to the armed forces (§22). This provision of the Code pertains to the principle of public oversight and thus another key principle of SSG.

In sum, the Code's sections VII and VIII and particularly its provisions related to the democratic political control of armed forces are all relevant for, and thus provide the most elaborate normative foundations of the concept of SSG/R.

3. Differences between the Code and the SSG/R

Even though the basic tenets of SSG/R are clearly reflected in the Code, the Code and the SSG/R concept should not be confused. The Code represents a politically binding commitment between participating States, while SSG/R constitutes an area of activity in which the OSCE is increasingly engaged and in which - as set out in the mapping study - it would profit to develop a more coherent approach to its existing efforts. Also, the Code is not a template for reform but is intended to provide normative guidance to participating States on how to ensure democratic political control of the armed forces, whereas developing an OSCE approach to SSG/R would provide internal operational guidance to the organization on how to support SSG/R processes in participating States. Finally, as already noted in the Chairmanship's Perception paper of 2007, the Code 'is less holistic than security sector reform; nevertheless, security sector reform/governance builds on the fundamentals of the Code and complements it.' This difference in scope is mainly due to the Code's narrower understanding of the security sector.

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 demonstrating 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. In terms of specific provisions, though, 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. Consequently, it is safe to say that the Code, while covering both military and non-military security forces, is clearly focused on armed forces proper. The SSG/R concept, however, embraces all military and non-military security forces, including police, intelligence, border guards and penal institutions and even extends to the justice sector.

Regarding management and oversight institutions, the Code mentions "constitutionally established authorities vested with democratic legitimacy" (§21). Nevertheless, the Code 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, which also pertains to 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. Consequently, the Code is clearly focused on the executive branch of government, whereas the SSG/R concept takes a broader approach to oversight in that it includes Parliament, judicial authorities and independent oversight bodies.

When it comes to non-state actors, the Code contains a reference each regarding 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). Accordingly, such forces must not be tolerated (within a participating State) or supported (outside a participating State). The SSG/R concept, however, follows a broader understanding of the security sector, which includes civil society groups, but also customary and informal authorities as well as private security services.

In sum, the Code’s sections VII and VIII generally exhibit a rather broad understanding of the security sector as embodied in the SSG/R concept. At the same time, when it comes to specific provisions, the Code 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).

Conclusion

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 SSG 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 control. These sections of the Code have the potential to provide normative guidance to the OSCE executive structures as they support SSG/R in participating States. Although narrower in scope, the Code provides much of the normative foundations for reform processes in the security sector, while SSG/R, due to its holistic approach and international appeal, can be a vehicle for further strengthening 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 SSG/R concept should be viewed as being mutually reinforcing.

Thank you very much, Madam Chair.