



**Geneva Centre for the Democratic Control of
Armed Forces (DCAF)**

Occasional Paper - № 11

**Implementation of Democratic Control of Armed Forces
in the OSCE Region: Lessons Learned from the OSCE
Code of Conduct on Politico-Military Aspects of Security**

Alexandre Lambert

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Alexandre Lambert

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Table of Contents

1. Introduction.....	1
2. DCAF and Post-Cold War Regional Integration in Europe: The Norm-Setting Function of the OSCE Code of Conduct.....	4
2.1 The Relevance of Democratic Civilian Control in Post-Cold War Security Sector Reform	4
2.2 The Overlapping Functions of the OSCE, NATO, and the European Union.....	5
2.3 Going Beyond the OSCE Region.....	10
3. Main Results of Official Conferences and Workshops Held on the Code (2003-2005).....	12
3.1 Democratic Civilian Control as an Inter-State Confidence-Building Measure	13
3.2 Addressing External and Internal Roles and Missions of Military and Security Forces	14
3.3 The Need to Foster Parliamentary Control and Oversight.....	14
3.4 Enhanced International Cooperation in the Fight Against Terrorism.....	15
3.5 The Code as a Ground to Further Implement IHL.....	15
3.6 Prevention and Combat of Terrorism: The Common European Response	16
3.7 Lessons Learned from the First Decade of Implementation	16
3.8 Possible Ways of Improving and Revisiting the Code	18
3.9 Need for Reviewing the Code's Implementation Process.....	22
4. Main Trends and New Elements of the Information Exchange on the Code (2003-2005).....	23
4.1 The Evolution of the Information Exchange Since 1997	24
4.2 New Element 1 of the Questionnaire: Roles and Missions of Armed Forces in Preventing and Combating Terrorism.....	27
4.3 New Element II of the Questionnaire: National Planning- and Decision-making Process for the Determination and Approval of Defence Expenditures.....	36
5. Possible Ways to Improve DCAF in the OSCE Region: Lessons from the Code.....	40
5.1 The Major Loophole of the DCAF-Regime Applicable to the OSCE Area.....	40
5.2 Lessons Learned from the 1st Pillar of the OSCE's DCAF Regime (Supremacy of Democratic Constitutional Civilian Power over Military Power)	43
5.3 Lessons Learned from the 2nd Pillar of the OSCE's DCAF Regime (Subjection of Armed Forces to the Norms and Prescriptions of International Humanitarian Law)	43
5.4 Lessons Learned from the 3rd Pillar of the OSCE's DCAF Regime (Respect of Human Rights and Fundamental Freedoms of the Armed Forces' Personnel).....	44
5.5 Complementary Lessons Learned: Fight against Terrorism and Stationing of Armed Forces on Foreign Soil.....	44
6. Conclusion.....	45
Annex 1. Code of Conduct (CoC) on Politico-Military Aspects of Security (1994).....	48
Annex 2. Information Exchange on the CoC on Politico-Military Aspects of Security	51
Annex 3. Information Exchange on the CoC on Politico-Military Aspects of Security	53
Bibliography.....	55

List of Acronyms

AIAM	Annual Implementation Assessment Meeting (OSCE/FSC-)
ATCU	Anti-terrorism Coordination Unit
CBMs	Confidence-building Measures
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy (EU-)
CIS	Commonwealth of Independent States
CPC	Conflict Prevention Centre (OSCE-)
CSBMs	Confidence- and Security-Building Measures
CSCE	Conference for Security and Cooperation in Europe
DCAF	Democratic Control of Armed Forces (Geneva Centre for the)
DCF	Democratic Control of Forces and Defence Structures
EU	European Union
EUROPOL	European Police Force
FSC	Forum for Security Cooperation (OSCE-)
GCSP	Geneva Centre for Security Policy
GNP	Gross National Product
HEI	<i>Hautes Etudes Internationales</i> (Graduate Institute of International Studies, Geneva)
IHL	International Humanitarian Law
INTERPOL	International Police Force
LoAC	Law of Armed Conflict
MIAU	Mobile Immediate Action Units
MoD	Ministry of Defence
MPL	Military Procurement Law
NDSC	National Defence Strategy Concept
NACC	North Atlantic Cooperation Council
NATO	North Atlantic Treaty Organisation
ODIHR	Office for Democratic Institutions and Human Rights (OSCE-)
OECD	Organisation for Economic Cooperation and Development
OSCE	Organization of Security and Co-operation in Europe
PfP	Partnership for Peace (NATO-)
PSIO	Program for the Study of International Organization(s)
RACVIAC	Regional Arms Control Verification and Implementation Assistance Centre
SALW	Small Arms and Light Weapons
SAS	Special Anti-terrorist Squads
SOFA	Stationing of Forces Agreement
UN	United Nations
US	United States of America

Implementation of Democratic Control of Armed Forces in the OSCE Region: Lessons Learned from the OSCE Code of Conduct on Politico-Military Aspects of Security¹

Alexandre Lambert

1. Introduction

The *Code of Conduct on Politico-Military Aspects of Security (1994)*² is still the most important normative instrument adopted by the Organization for Security and Co-operation in Europe (OSCE) in the post-Cold War era. Moreover, since the Code's sections VII and VIII currently provide the most comprehensive and detailed set of provisions on democratic control of armed forces ever adopted in a multilateral framework, the document is also recognised as a major reference tool in regions beyond the OSCE. After more than a decade of the Code's coming into effect (1 January 1995), the present study therefore evaluates relevant implementation lessons.

This is not without significance in Pan-European affairs. In the post-Cold War era, the safeguard of democratic and civilian control of armed forces has become a *conditio sine qua non* of NATO-, as well as EU-membership and therefore plays an important role within their enlargement processes. Especially, NATO has been promoting democratic control of defence forces in post-communist Central and Eastern Europe (CEE) and has even made that principle one of the constitutive pillars of its Partnership for Peace programme (PfP). The Code therefore provides an important norm-setting function within the evolving political and security architecture in Europe.

Coincidentally, within the OSCE participating States' exchange of information on the Code's implementation (carried out on a yearly basis since 1999), the aspect of democratic control of armed forces has been occupying a central place. This in turn represents an unprecedented and most innovative event in international relations. Moreover, and since the Code is itself unparalleled in any other international (security) organisation, it can actually be considered a potential OSCE export product. In any case, while the question regarding the Code's applicability to other regions remains open, the assessment of the information exchange is indeed of high significance for examining the *état-des-lieux* of democratic civilian control of armed forces in the OSCE region itself.

¹ The present study provides an update of the practical handbook on the OSCE Code of Conduct (Ghebali, Victor-Yves & Lambert, Alexander, *The OSCE Code of Conduct on Politico-Military Aspects of Security: Anatomy and Implementation*, Leiden/Boston (Martinus Nijhoff), 2004) jointly realised by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Graduate Institute of International Studies, Geneva, within its Program for the Study of International Organizations (PSIO). We would like to thank Serena Selkin from the PSIO for her technical assistance, as well as DCAF for reviewing the present study in its final stage.

² *OSCE Code of Conduct on Politico-Military Aspects of Security*, 3 December 1994, DOC.FSC/1/95, www.osce.org/documents/sg/1994/12/702_2n.pdf

It has been mentioned above that the present study does provide an update of the *practical handbook on the Code of Conduct*, especially of its Part II.³ That part of the handbook, written by the author of the present study, provided an in-depth assessment of the yearly exchange of information on the Code and mainly focused on the reporting period of 1999-2002. The present study therefore focuses on the subsequent reporting period with a special focus on the exchanges of 2003-2005.⁴

Until 2002, the information exchange on the Code took place on the basis of a first official Questionnaire adopted by the Forum for Security Co-operation (FSC) in 1998.⁵ In 2003, the Questionnaire was technically updated.⁶ One of the major amendments made to the Questionnaire was the broadening of the terrorism item.⁷ Due to the international impact of the terrorist attacks of 11 September 2001 in the US, there has been a certain shift within the reporting on the Code of Conduct. Accordingly, prior to these attacks, aspects of democratic control of armed forces were clearly the main concern of implementation of the Code.⁸

In the aftermath of 11 September, the participating States considerably broadened the reporting on their (international cooperation in the) fight against terrorism as required in item 1 of the Questionnaire. However, while the exchange of information on terrorism considerably increased, this new trend clearly goes beyond the Code's original intention. Counter-terrorism never represented a major concern of the Code. Moreover, the few provisions on terrorism within the document do not add value to already existing international instruments, while the OSCE participating States already exchange information on the issue within the framework of the United Nations. It is therefore essential for the purpose of the present study to address this particular aspect of the Code's implementation and review process. This in turn requires a discussion of relevant technical aspects of the Questionnaire.

Assessing the information exchange on the Code is not an easy task. Every year, the participating States submit their reports in the six OSCE official languages. While a majority of national replies are written in English, hardly any courtesy translations are currently available of those reports written in the five remaining languages (French, German, Italian, Russian, and Spanish). Moreover, national replies address issues of high complexity that reach far beyond the competencies and responsibilities of ministries of defence (which are usually in charge to gather

³ Ghebali and Lambert, op. cit., pp. 181-387.

⁴ It does not take into account the exchange of information of 2006, since at the time of the drafting of this report, no national replies for that year were available for assessment.

⁵ *Questionnaire on the Code of Conduct (First official version, 1998)*: "Decision: Information Exchange on the Code of Conduct on Politico-Military Aspects of Security", FSC.DEC/4/98.

⁶ *Questionnaire on the Code of Conduct (Technically updated version, 2003)*. This technically updated Questionnaire is included in: FSC.DEC/4/03, 9 April 2003, Annex.

⁷ Next to the information on DCAF-issues, the participating States also exchange information on their contribution to the international prevention and combat of terrorism, as well as the stationing of armed forces on foreign soil.

⁸ About 80% of the above-mentioned Questionnaire (1998) referred to provisions of section VII of the Code which is the section of the Code concerning democratic control of armed forces in peacetime. Lambert, Alexandre, "Towards and Enhanced Implementation of the OSCE Code of Conduct: Some Considerations and Suggestions in the Perspective of the 3rd Follow-up Conference", Presentation held at the OSCE Forum for Security Cooperation, Vienna, 11 September 2002, FSC.DEL/494/02, 13 September 2003.

that information and submit the national reports to the other participating States). Information on democratic control of armed forces is a particular challenge, since it does not represent a conventional political-military issue only. Democratic political control of armed forces also touches upon the competencies and responsibilities of extra-defence departments and governmental institutions. These include national ministries of foreign affairs, interior, as well as relevant parliamentary commissions, just to mention the most important ones. After all, the cross-dimensional Code, in its unique sections VII and VIII (paragraphs 20-37) on democratic political control of armed forces, has established a (normative) bridge between the politico-military and human dimension of the OSCE's comprehensive security concept. This implicitly requires that the OSCE's internal monitoring and review of the Code actually involves relevant OSCE institutions such as, for instance, the Parliamentary Assembly or the Office for Democratic Institutions and Human Rights (ODIHR).

When assessing success and failure of the Code's implementation, it is therefore appropriate to take into account that this instrument indeed breaks new ground in international affairs. This in turn requires the development of new implementation procedures, while the OSCE just started to gain first experience in this regard. Relevant aspects were discussed at international conferences and workshops, which have been the main review instruments next to the information exchange. The present analysis therefore evaluates relevant international review events on the Code. The present study provides a preliminary answer to at least three tentative items that could be part of a next follow-up conference on the Code⁹:

- Assessment and review of replies to the information exchange for the Code of Conduct Questionnaire;
- Exploration of practical suggestions to reinforce the effectiveness of the Code of Conduct and to improve its implementation; and
- Testing of the contribution of the Code of Conduct for combating terrorism.

As regards the aspect of the international fight against terrorism, it is not only possible to review the Code's contribution thereto.¹⁰ The Code actually offers a unique opportunity also to address the international fight against terrorism in connection with democratic civilian control. The OSCE could indeed go beyond the Code and further elaborate norms and provisions regarding the roles and missions of military and security forces in preventing and combating terrorism.¹¹

⁹ These tentative items are in accordance with some of those mentioned in: *Dates and Venue of the Fourth Follow-up Conference on the Code of Conduct on Politico-Military Aspects of Security* (Draft Decision), FSC.DEL/473/05/Rev.1, 23 November 2005, Annex. The 4th Follow-up Conference is preliminarily scheduled to be held in Vienna, on 26-27 September 2006. Ibid.

¹⁰ The OSCE participating State's implementation of paragraph 6 on terrorism, reflected in item 1 of the Questionnaire on the Code, has already been assessed in the above-mentioned handbook on the Code. See: Ghebali and Lambert, op. cit., chapter 3.2.1, pp. 359-364.

¹¹ The question concerning the possible bridge between democratic civilian control and the international fight against terrorism has also been discussed in: Lambert, Alexandre: "The OSCE Code of Conduct on Politico-Military Aspects of Security: Some Reflections on the Changes in the 1990s and Background for Further

One option would be to adopt a separate questionnaire or even a code of conduct on counter-terrorist activities of the participating States. The eventual elaboration of a code of conduct related to the roles and missions of armed and security forces in the fight against terrorism would have the advantage of being unparalleled in any other international (security) organisation, including the framework of the United Nations itself – as is the case with the present Code.

The present study is structured as follows. There are three main sections which are further split into thematic chapters. More than ten years after its entry into force as a political document, the Code widely suffers from a lack of awareness about it within and beyond the OSCE community. This is astonishing insofar as the Code has been recognised as one of the world's most innovative international instruments to promote democratic control of armed forces. The first (framework) section therefore highlights some of the most relevant political aspects of the Code in a historical survey. Section two evaluates official conferences and workshops organised on the Code with a special focus on the past three years. Section three assesses major trends and technical challenges of the exchange of information with a special focus on the new elements of the reporting period of 2003-2005 compared with the preliminary one of 1999-2002. The study will conclude with a stock-taking of relevant implementation trends and challenges of democratic control of armed forces in the OSCE region and considered from the perspective of the Code's lessons learned.

2. DCAF and Post-Cold War Regional Integration in Europe: The Norm-Setting Function of the OSCE Code of Conduct

The present section is conceived as a framework introducing the OSCE Code of Conduct from a historical perspective and in the broader context of its role overlapping with other continental organisations like NATO and the EU. Emphasising the central norm-setting function of the Code in Europe and the fact that it is still unparalleled in any other regional or world-wide security organisation, this section also emphasises the potential of the Code as a model for other world regions.

2.1 The Relevance of Democratic Civilian Control in Post-Cold War Security Sector Reform

Since the end of the Cold War, the democratic control of armed forces has been at the heart of security sector reform, especially in the Euro-Atlantic area.¹² The transition countries were provided with practical advice and technical assistance in their efforts to reform their respective security sectors and to promote and

Developments”, Paper submitted at the OSCE PA/CPC Conference: *Parliamentary Oversight of Armed Forces, Police and Security Forces and the Evolving Security Environment in the OSCE Area*, Vienna, 24-25 May 2004.

¹² Ghebali, Victor-Yves, “Revisiting the OSCE Code of Conduct on Politico-Military Aspects of Security (1994)”, Hänggi, Heiner, and Winkler, Theodor (eds), *Challenges of Security Sector Governance*, Münster (LIT), 2003, pp. 85-117, p. 85.

facilitate the structuring of civil-military relations in accordance with fundamental democratic principles.¹³ Reform and transformation, as well as good and democratic governance of security sector institutions were considered as an ‘integral part of the transition from one-party to pluralist political systems, from centrally planned to market economies, and from armed conflict to peace.’¹⁴ In other words, DCAF is a growing concern of international assistance.¹⁵

As Dietrich Genschel pointed out: ‘The establishment of democratic structures and the pursuance of democratic overseeing of the state’s armed services are at the centre of security sector reform efforts in transforming countries’.¹⁶ The post-Cold War security environment required adequate answers based on new conceptual ideas that went beyond those that had guided conventional defence reform efforts and agendas that were developed during the Cold War period.¹⁷ The new approaches to link security with governance have been increasingly visible in the thinking of the OSCE, the European Union, and NATO. Special emphasis has been put on the overlapping functions of nation-building, national and regional stability, increasing the democratic style of government, and assistance in the integration process throughout the continent.¹⁸ Although there is still no shared definition of democracy in international relations, one of the key elements towards the consolidation of democracy is a ‘well-governed security sector, which comprises the civil, political and security institutions responsible for protecting the state and the communities within it’.¹⁹

2.2 The Overlapping Functions of the OSCE, NATO, and the European Union

The Organization for Security and Co-operation in Europe (OSCE) has been playing a leading role to set norms of security sector governance in Europe. With the adoption of its Code of Conduct on Politico-Military Aspects of Security in 1994, the OSCE and its participating States have further codified the role of armed forces in democratic societies and set norms of security sector reform for individual participating States, as well as the OSCE region as a whole. The implementation of democratic oversight of the military thus became a political

¹³ Germann, Wilhelm, “General Principles of the Code of Conduct on Politico-Military Aspects of Security and its Role in Developing Democratic Institutions in the OSCE Participating States”, Presentation made at the OSCE/CPC Workshop: *Implementation of the Code of Conduct and the Confidence-Building Measures*, Bishkek, (25-26 November)/Almaty (28-29 November) 2002, p. 1.

¹⁴ Hendrickson, Dylan, and Karkoszka, Andrzej, “The Challenges of Security Sector Reform”, SIPRI *Yearbook 2002: Armaments, Disarmament and International Security*, Stockholm, 2002, pp. 175-201, p. 175.

¹⁵ Ibid.

¹⁶ Genschel, Dietrich, “Principles and Prerequisites of the Democratic Control of Armed Forces : Best Practices in Established Democracies”, Germann, Wilhelm, and Edmunds, Timothy (eds), *Towards Security Sector Reform in Post Cold War Europe*, Baden-Baden (Nomos), 2003, pp. 101-116, p. 101.

¹⁷ Germann, Wilhelm, “Security Sector Reform in the Euro-Atlantic Area : Choice or Imperative?”, Germann, Wilhelm, and Edmunds, Timothy (eds), *Towards Security Sector Reform in Post Cold War Europe*, Baden-Baden (Nomos), 2003, pp. 31-52, p. 31.

¹⁸ Karkoszka, Andrzej, “Security Sector Reform - Concept, Its Political Usefulness and Growing Importance: A Summary of the DCAF Tracks at the 5th ISF”, Bryden, Alan, and Fluri, Philipp (eds), *Security Sector Reform: Institutions, Society and Good Governance*, Baden-Baden (Nomos), 2003, pp. 313-321, p. 321.

¹⁹ Hendrickson/ Karkoszka, op. cit., p. 175.

obligation for the participating States that had a mandate to implement relevant adjustments in their internal legal norms, regulations and procedures.²⁰

As pointed out by Heinz Vetschera, the principle of democratic control of armed forces thus ‘transcends the area of domestic politics and becomes an element of international security policy’.²¹ The emerging links between security and governance within today’s international politics is increasingly relevant from a perspective of democratisation, development, and disarmament. As regards the disarmament community, it has started to discuss security sector governance and democratic civilian control as a new generation of inter-state confidence-building measures (CBMs). According to Heiner Hänggi, the OSCE Code of Conduct ‘is of particular interest because it locates the concept of (national) democratic political control of the security forces in the context of (international) confidence-building measures’.²²

The OSCE Code of Conduct of 1994 has become the main normative reference document regarding democratic reform and good governance of security-sector institutions in Europe. This is particularly relevant in the context of the post-Cold War continental integration process and the transforming security structure on the continent. In the 1990s, the principle of democratic control of armed forces became an implicit condition for membership in the North Atlantic Treaty Organisation (NATO) and the European Union (EU).²³ It therefore plays an important part in the enlargement processes of both NATO and the EU. Since the dissolution of the Soviet Union and the Warsaw Treaty, many of the countries, mainly from former communist Central and Eastern Europe (CEE) have been seeking membership in both the Alliance and the Union.²⁴

Accordingly, the OSCE participating States were most concerned with safeguarding the democratic governance of the security sector. By adopting the Code, they considered 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’.²⁵ In the early 1990s, the democratic control of armed forces was indeed a key element in reforming communist-era armed forces and civil-military relations especially in the CEE region. Cottey, Edmunds and Forster therefore underline: ‘The ability of post-communist elites to secure democratic control of armed forces, or at least the

²⁰ Ibid., p. 186.

²¹ Vetschera, Heinz, “Security Policy and Democratic Control”, Bebler, Anton (ed.), *Civil-Military Relations in Post-Communist States: Central and Eastern Europe in Transition*, Westport/London (Preager), 1997, pp. 115-21, p. 16.

²² 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 Centre for the Democratic Control of Armed Forces, Working Paper No. 107, Geneva, January 2003, pp. 7-12, p. 10.

²³ Ghebali (2003), op. cit., p. 85.

²⁴ Paragraph 10 of the Code of Conduct reaffirms the legitimate security concerns of each participating State, including the freedom to determine its security interests itself on the basis of sovereign equality and has the right “freely to choose its own security arrangements”.

²⁵ *OSCE Code of Conduct*, paragraph 20.

acquiescence of the military to the democratic transition, would have a significant impact on the prospects for democratization as a whole'.²⁶

The Code, under section VII, not only provides innovative norms of 'democratic political control of armed forces' in peacetime, but also introduces in section VIII provisions with regards to the 'democratic use of armed forces',²⁷ including in the event of the armed forces' assignment for internal security missions. The Conference for Security and Cooperation in Europe (CSCE),²⁸ as early as the end of the Cold War in 1990/1991, started to set norms regulating the role and use of armed forces in democratic societies. The safeguard of civilian and democratic control of military and security forces became a key element and was first reflected in relevant CSCE documents on the human dimension of security. Article 5.6 of the 1990 Copenhagen Document provides for the 'control of military forces and the police' and emphasises their 'accountability to civil authorities.'

One year later, paragraph 25 of the 1991 Moscow Document further specified this central concern of democratic civil-military relations. With the paragraph's main provision, the participating States must 'ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities'.²⁹ Paragraph 25 of the Moscow Document therefore anticipated what was later included in the above-mentioned paragraph 20 of the Code of Conduct. Two specific elements were thus introduced in 1991. First, with the listing of five specific armed force categories, the conventional notion of armed forces was further defined and broadened in order to more adequately reflect external and internal security missions. Paragraph 25 of the 1991 Moscow Document, as well as paragraph 20 of the 1994 Code of Conduct offer a possible definition of the (armed) security sector.³⁰ Further, the Moscow Document establishes an explicit distinction between executive and legislative control.³¹ For this, the drafters of the document took into account a proposal made at the Moscow Meeting jointly by Hungary and the United States of America.³²

As pointed out by Jonathan Dean: 'As with many CSCE projects of the early post-cold war period (e.g., the Human Dimension Mechanism and the Copenhagen Document), the overriding motivation of the Code of Conduct on

²⁶ Cottey, Andrew, Edmunds, Timothy, and Forster, Anthony, "Introduction: The Challenge of Democratic Control of Armed Forces in Postcommunist Europe", Cottey, Andrew, Edmunds, Timothy, and Forster, Anthony (eds), *Democratic Control of the Military in Postcommunist Europe*, London/New York (Palgrave), 2002, pp. 1-17, p. 1.

²⁷ A distinction between democratic civilian control in times of peace and times of war has been made *i.a.* by Professor Victor-Yves Ghebali; in a speech held at the OSCE/FSC; see: *The OSCE Code of Conduct on Political-Military Aspects of Security*, Presentation made by Professor Victor-Yves Ghebali, Graduate Institute of International Studies (Geneva), at the 205th Meeting of Working Group "A" of the Forum for Security Cooperation on 23 January 2002, FSC.DEL/56/02, 31 January 2002, p. 2.

²⁸ In 1994, at the same summit in Budapest where the Code of Conduct was adopted, the CSCE was transformed into an organisation (Organization for Security and Co-operation in Europe).

²⁹ *OSCE Moscow Document on the Human Dimension (1991)*, paragraph 25(1).

³⁰ The category of border guards could be subsumed within the category of state paramilitary forces.

³¹ *Ibid.*, paragraphs 25(2) and 25(3).

³² CSCE 1991 Moscow Meeting on the Human Dimension, *Proposal submitted by the delegations of Hungary and the United States of America concerning civilian control over military and security forces*, CSCE/CHDM.43, Moscow, 26 September 1991.

Politico-Military Aspects of Security is to prevent repetition of the abuses of the Nazi and Soviet regimes, in this case, their use of national armed forces to intimidate and dominate other European states and their own populations'.³³

As regards NATO, its strategic reorientation in 1991 was a preliminary step to deal with the new challenges and opportunities in the Euro-Atlantic region. The new strategy of the Alliance essentially added the dimension of "cooperation" to the dimensions of "confrontation" and "dialogue" vis-à-vis Eastern Europe.³⁴ A first institutional manifestation of the new continental policy was the creation of the North Atlantic Cooperation Council (NACC) in 1991. This offered the Alliance an opportunity for unprecedented security cooperation with CEE countries. Quite early, however, it became evident to the Alliance that the safeguard of democratic control of armed forces was one of the major concerns in post-communist Europe. Within NATO's Partnership for Peace programme (PfP) launched in 1994, making sure the democratic control of armed forces became one of the main pillars of cooperation with partner countries.³⁵ PfP also helped trigger post-Cold War enlargement and outreach of the Alliance towards CEE. The Study on NATO Enlargement of 1995 considered post-Cold War enlargement to be a contribution to 'enhanced stability and security for all countries in the Euro-Atlantic area' and stressed its own 'encouragement and support for democratic reforms, including civilian and democratic control over the military'.³⁶ When the first post-Cold War enlargement took place in 1999 with the Czech Republic, Hungary, and Poland becoming the first ex-communist countries to join the Alliance, chapter I of the Membership Action Plan (MAP) concerning political and economic issues also underlined the need for membership candidate countries to 'establish appropriate democratic and civilian control of their armed forces'.³⁷

However, in the frame of the post-Cold War enlargement process, NATO refused to consider democratic civilian control to be a formal/explicit condition of membership. Moreover, experiences from Cold War enlargements shows that substantive progress in the area of democratic reforms and governance could be achieved only if new NATO members became also new member States of the European Union.³⁸ Fortunately, all NATO and PfP partner countries are also participating States to members of the OSCE and thus bound by sections VII and VIII of the Code of Conduct. It is interesting to note that almost no NATO

³³ Dean, Jonothan, "The OSCE 'Code of Conduct on Politico-Military Aspects of Security': A Good Idea, Imperfectly Executed, Weakly Followed-up", *OSCE Year Book 1995/1996*, Institute for Peace Research and Security Policy at the University of Hamburg, IFSH (Ed.), Baden-Baden (Nomos), 1995/1996, pp. 291-297, p. 291.

³⁴ Kreiswetter, Allen, "The Partnership for Peace and Civil-Military Relations in a Democracy", Bebler, Anton (ed.), *Civil-Military Relations in Post-Communist States: Central and Eastern Europe in Transition*, Westport/London (Praeger), 1997, pp. 3-7, p. 3.

³⁵ *NATO Partnership Framework Document*, item 3, Ministerial Meeting of the North Atlantic Council/North Atlantic Cooperation Council, NATO Headquarters, Brussels, 10-11 January 1994.

³⁶ *Study on NATO Enlargement*, Chapter 1: Purposes and Principles of Enlargement/A. Purposes of Enlargement, item 3, September 1995, NATO Basic Texts, www.nato.int/docu/basicxt/enl-9502.htm

³⁷ *NATO Membership Action Plan (MAP)*, I. Political and Economic Issues/Item 2(d), NATO Press Release NAC-5(99)66, 24 April 1999.

³⁸ The relevance of democratisation within NATO enlargement was discussed i.a. by Dan Reiter; see: Reiter, Dan, "Why NATO Enlargement Does Not Spread Democracy", *International Security*, Vol. 25, No. 4, spring 2001, pp. 41-67.

document refers to the Code. However, some passing reference is included in section 6 of the Partnership Work Programme for 2000-2001 on 'democratic control of forces and defence structures (DCF)'. The section reminds the partner countries to 'discuss progress in the implementation of the OSCE Code of Conduct'.³⁹

In the case of the European Union (EU), the picture is almost reversed when compared with NATO's approach to democratic civilian control. There is hardly any document of the Union addressing democratic control of armed forces or security sector reform as such. In contrast, within the EU's own enlargement process, the promotion of democratic institutions, the rule of law, as well as minority rights plays a central role. As opposed to NATO, the Union has set explicit membership criteria. These have been adopted, in 1993, by the Copenhagen European Council and are also called the 'Copenhagen Criteria of Democracy'.⁴⁰

Although the EU has not yet adopted its own normative provisions on democratic civilian control or security sector reform agenda, it indeed played a most active role in the negotiation of the OSCE Code of Conduct. While the US, during the negotiations, lacked any substantial proposals and was instead much more involved in firmly opposing French claims to develop a European Security Charter,⁴¹ the EU indeed became the decisive actor for the adoption of the Code. Moreover, following the 1991-1992 Maastricht decisions and the launch of the Common Foreign and Security Policy, the Union sent its own delegation to the negotiations of the Code in Vienna in 1992-1994, independently from NATO. Those negotiations also represented the very first occasion for the Union to develop its own expertise on security-related matters. Beforehand, security-related proposals coming from EU Member States used to be submitted through NATO channels.⁴²

We would therefore like to stress that the OSCE, NATO, and the EU (and also the Council of Europe) do indeed constitute a framework of effective complementary incentives for the new democracies in Europe to make progress in implementing democratic civilian control in security sector reform programmes. This trend is even reinforced by the EU's new security and defence policy. Since the late 1990s and the evolution of the new European Security and Defence Policy, the EU is becoming more and more involved in security sector reform

³⁹ *Partnership Work Document for 2000-2001*, NATO-Partnership for Peace, Documents, www.nato.int/pfp/docu/d990616a.htm

⁴⁰ *EU Accession Criteria*, EU official homepage, "EU-Enlargement - A Historical Opportunity", <http://europa.eu.int/comm/enlargement/intro/criteria.htm>

⁴¹ Terpstra, Rienk, "The OSCE Code of Conduct Setting New Standards in the Politico-Military Field?", *Helsinki Monitor*, Volume 1 (1996), No. 1, web edition: www.spn.ethz.ch/static/osce/h_monit/hel96_1/terpstra.htm, p. 1. The US, within the negotiation process of the OSCE Code of Conduct, actually advocated focusing the document on the aspect of democratic control of armed forces.

⁴² Hain-Cole, Crispin, "Negotiating the Code: A British View", De Nooy, Gert (ed.), *Cooperative Security, the OSCE, and its Code of Conduct*, The Hague: Kluwer Law International, 1996, pp. 33-40.

programmes.⁴³ Although this is still a progress in work,⁴⁴ it is first of all in the interest of the Union to promote the effectiveness and efficiency of its evolving internal security regime. This involves the support of police and customs reforms, including in neighbouring States and areas close to the EU's external borders. Hänggi and Tanner therefore emphasised: 'Yet in view of the fact that the EU has become an international actor in its own right, it will increasingly be faced with the needs and pressures to engage in the promotion of security sector governance'.⁴⁵ According to Gérard Stoudmann, countries aspiring to EU membership should therefore not rely exclusively on NATO when evaluating progress they made in security sector reforms and argues that the EU is becoming increasingly relevant in this field.⁴⁶

2.3 Going Beyond the OSCE Region

Beyond Europe, the principle of democratic and civilian control of security sector institutions has been subject to regional security arrangements in Africa and the Americas. The so-called "OSCE-regime on democratic control of armed forces" established in sections VII and VIII of the Code⁴⁷ partly served as a model in developing similar norms and provisions in regions beyond the OSCE area.

Concerning Pan-African affairs, the adoption of the *Draft Code of Conduct on Armed and Security Forces in Africa*, in Lomé, Togo in 2002,⁴⁸ represents a first step in this respect – even though the drafters of the African Code of Conduct had to take into account the special needs and realities of sub-Saharan security relations.⁴⁹ Although the Draft African Code provides an impressive array of possible norms applicable to the security environment specific in particular in sub-Saharan Africa, the main objective of the new cooperative approach to security sector governance

⁴³ The EU's own contribution to security sector reform was recently reflected in: Caparini, Marina, "Security Sector Reform and NATO and EU Enlargement", *Challenges of Security Sector Governance*, Geneva Centre for the Democratic Control of Armed Forces, Münster (LIT), 2003, pp. 55-84.

⁴⁴ While the European Council emphasises the importance of security sector reform in the context of the ESDP, the European Commission tends to highlight its relevance in the framework of the Union's development approach. The EU's security strategy of 2003 called for a wider range of missions in the areas of security and development, including security sector reform. Moreover, it emphasised security sector reform not only in the Western Balkans but also in its strategy for Africa by launching its first security sector reform mission ever to the Democratic Republic of Congo in June 2005. See: European Union Presidency Seminar on Security Sector Reform (SSR) in the Western Balkans, Vienna, 13-14 February 2006, *Food for Thought Paper*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), www.dcaf.ch/news/ev_vienna_061302_paper.pdf

⁴⁵ Hänggi, Heiner and Tanner, Fred, "Promoting Security Sector Governance in the EU's neighbourhood", *Chaillot Paper*, No. 80, EU Institute for Security Studies (ISS), Paris, July 2005, pp. 8-9.

⁴⁶ Stoudmann, Gérard, "European Integration and its Impact on the Security Sector of the Applicant States", Bryden, Allan, Fluri, Philipp (eds), *Security Sector Reform: Institutions, Society and Good Governance*, Baden-Baden (Nomos), 2003, pp. 61-65, p. 63.

⁴⁷ The OSCE's DCAF 'regime' established in sections VII and VIII of the Code of Conduct is outlined in: Ghebali and Lambert (2004), *op. cit.*, pp. 7-10.

⁴⁸ United Nations Centre for Peace and Disarmament in Africa, *Experts Workshop on Validating the Code of Conduct for Armed and Security Forces in Africa*, Lomé, Togo, 27-29 May 2002. The African Draft Code is annexed to this report.

⁴⁹ The *Draft Code of Conduct on Armed and Security Forces in Africa (2002)* has been discussed in: Ebo, Adedeji, "Towards a Code of Conduct for Armed and Security Forces in Africa: Opportunities and Challenges", Geneva Centre for the Democratic Control of Armed Forces, Policy Paper Series, Geneva, March 2005, www.dcaf.ch/_docs/pp05_towards-code.pdf

in Africa is to prevent unconstitutional change of government.⁵⁰ With their *Declaration on Framework for a OAU Response to Unconstitutional Changes* (of government), African leaders actually adopted, in 2000, a specific continental normative framework on this particular aspect of security sector governance.⁵¹ Finally, emphasis on good governance in the area of the security sector has been manifested by the New Partnership for African Development (NEPAD). Complementary to the new African continental approaches, sub-regional security initiatives including aspects of security sector governance are manifest in the framework of the Economic Commission of West African States (ECOWAS), the Southern African Development Community (SADC), as well as the Intergovernmental Authority of Development (IGAD) that has been contributing to the stabilisation of Africa's North-eastern part.

Concerning the Western Hemisphere, the Quebec City Action Plan, adopted in 2001 at the Summit of the Americas, reaffirms the hemispheric approach to democratic security and does include relevant provisions in the area of democratic and civilian control of the military.⁵² Within the post-conflict peace and democratisation process in Central America, innovative sub-regional instruments were adopted. For instance, the Framework Treaty on Democratic Security in Central America of 1995 calls for the fostering encourages the promotion of regional cooperation and integration, including in the area of democratic civilian control.⁵³ Moreover, the civilian control of the military is among the four constitutive pillars of the Central American Democratic Security Model of 2003.⁵⁴ Last but not least, at the Guatemalan domestic level, the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society⁵⁵ still represents a unique instrument worldwide to promote democratic civilian control in the framework of a post-conflict peace and national reconciliation process.

Compared to the new regional approaches to security sector reform and governance in the Americas and to a lesser extent also in Africa, the Asian-Pacific and the Middle East regions have not yet really addressed multilateral approaches to security sector governance as understood as a confidence-building measure.⁵⁶ In both regions, the principle of non-interference with domestic affairs still

⁵⁰ The continental approach to security sector governance in Africa has recently been addressed by: Ball, Nicole, and Fayemi, Kayode (eds), *Security Sector Governance in Africa: A Handbook*, Centre for Democratic Development, Lagos, 2004.

⁵¹ *Declaration on Framework for OAU Response to Unconstitutional Changes*, Organization of African Unity (OAU), www.africanreview.org/docs/govern/govchange.pdf

⁵² *Quebec City Action Plan*, Organization of American States (OAS), Summit of Quebec City, Canada, 2001, www.iin.oea.org/plan_de_accion_ingles.htm

⁵³ *Framework Treaty on Democratic Security in Central America*, Organization of American States (OAS), Permanent Council, OEA/Ser.G, CP/INF.2893/96, 13 February 1996, www.summit-americas.org/Hemispheric%20Security/Framework3893-96.htm

⁵⁴ *Central American Democratic Security Model*, Organization of American States (OAS), Declaration, OEA/Ser. K/XXXVII, CES/DEC. 2/03, 28 October 2003.

⁵⁵ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society* (Guatemala Peace Accords), www.minagua.guate.net/ACUERDOSDEPAZ/ACUERDOSINGLES/STRENGTHENING%20CIVIL%20POWER.htm

⁵⁶ The Organisation for Economic Cooperation and Development (OECD) recently came forward with its own report on security sector governance in major world regions; see: OECD, "DAC Reference Document": *Security Sector Reform and Governance*, DAC Guidelines and Reference Series, Paris, 2005.

predominates, while most security sectors continue to be shrouded in secrecy. However, if the current security sector transformation process in Afghanistan and Iraq (towards democracy and good governance) would be implemented properly and in a coordinated way between local and external actors, this could in turn also trigger new regional approaches to civilian control and security sector governance.⁵⁷ Also, the Mediterranean and the Asian partner countries to the OSCE could profit from their status to be introduced into Code of Conduct-related issues and thus help to initiate common approaches to security cooperation and security sector reforms in Asia and the Arab Middle East.⁵⁸

We would like to emphasise that the OSCE Code of Conduct is still the most coherent regional instrument to promote democratic civilian control in a multilateral regional framework. The OSCE approach can therefore serve as model for other world regions, although all of them have distinct security environments and needs compared with Europe. The project of the African Code – despite the fact that it is still far away from being a genuine multilateral project – shows that it is possible to develop relevant norms and provisions based on local requirements, while at the same time building on the experiences made in Pan-European relations. More than ten years after the Code's adoption, one should consider with fresh interest this unique document within and beyond the OSCE region. Moreover, the Code should also be brought more actively to the attention of the United Nations.

3. Main Results of Official Conferences and Workshops Held on the Code (2003-2005)

The present section provides an overview on relevant conferences, workshops and seminars on the Code since 2003 and summarises some of the main lessons learned from the Code's most recent implementation process. There is growing recognition of good governance of the security sector as a confidence-building measure, based on the new concerns to link security with governance in regions like Europe, the Americas, or even Africa. As seen in the previous section, security sector governance – at the core of which lays the principle of democratic control of armed forces – is currently evolving as a new generation of CBMs. These new trends have also been reflected within the Code's recent implementation process. The conferences and workshops evaluated hereinafter do essentially take into account the official OSCE events. However, there have been other events that took into account the special role of the Code, including those organised by the Regional Arms Control Verification and Implementation

⁵⁷ Several contributions have been addressing security sector reform and governance in the Middle East; see *i.a.*: Slocombe, Walter, "Iraq's Special Challenge: Security Sector Reform 'Under Fire'", Bryden, Alan, and Hänggi, Heiner (eds), *Reform and Reconstruction of the Security Sector*, Münster (Lit Verlag), 2004, pp. 231-255; or: Luethold, Arnold, "Security Sector Reform in the Arab Middle East: A Nascent Debate", Bryden, Alan, and Hänggi, Heiner (eds), *Reform and Reconstruction of the Security Sector*, Münster (Lit Verlag), 2004, pp. 93-118; or: Karawan, Ibrahim, "Security Sector Reform and Retrenchment in the Middle East", Hänggi, Heiner, and Winkler, Theodor (eds), *Challenges of Security Sector Governance*, Münster (Lit Verlag), 2003, pp. 247-275.

⁵⁸ For instance, in 1997, the US delegation suggested that the Mediterranean Partners for Cooperation, as well as Japan and the Republic of Korea would be invited to observe the Follow-up Conference on the OSCE Code of Conduct, REF.FSC/318/97, 2 July 1997.

Assistance Center (RACVIAC), which provides training for civilian and military officials under the Stability Pact for South Eastern Europe.⁵⁹

3.1 Democratic Civilian Control as an Inter-State Confidence-Building Measure

In order to promote awareness on the Code and to address important aspects of its implementation, the OSCE Conflict Prevention Centre (CPC) was commissioned by the OSCE Forum for Security Cooperation (FSC) to hold sub-regional workshops in the South Caucasus (Armenia, Azerbaijan, Georgia) and Central Asia (Kazakhstan, Kyrgyzstan) that jointly addressed relevant aspects of the Code in connection with the OSCE regime of confidence- and security-building measures (CSBMs). For instance, the Workshops dealing with the implementation of the Code of Conduct and CSBMs in Almaty and Bishkek (25-29 November 2002) were intended to provide an opportunity for different government officials to exchange views and discuss practical issues related to implementation.⁶⁰ National representatives, as well as key speakers from Finland, Germany, Ukraine, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the Geneva Centre for Security Policy (GCSP), and the Geneva Graduate Institute of International Studies (HEI), contributed to the two workshops. These workshops revealed that national legislations on armed forces had been much improved in both Central Asian countries. However, there is also a persistent ‘general lack of knowledge about the Code of Conduct’ as such and as a major norm-setting instrument among government officials and parliamentarians.⁶¹ It was emphasised in this regard that the role of the Code’s sections VII and VIII is to extend the range of international transparency by adding the dimension of “internal transparency” within the body of inter-state confidence-building measures. According to Yurii Kryvonos, internal transparency essentially means the provision of national parliaments that are appropriately informed in order to effectively oversee and control defence budgets, the determination of military, police and other security structures’ postures, as well as to define their roles and missions. Public information on these issues is also indispensable in order to assess to what extent a State’s military capabilities are commensurate with its individual or collective legitimate security needs.⁶²

⁵⁹ For instance, on 21-23 October 2002, RACVIAC organized a Seminar on *The DCAF to Strengthen Stability and Security in South-Eastern Europe*, which i.a. took into account the role played by the OSCE Code of Conduct.

⁶⁰ SEC.GAL/3/03, 6 January 2003.

⁶¹ *Ibid.*, p. 2.

⁶² Kryvonos, Yurii, “OSCE Mechanisms of Transparency and Exchange of Information Related to the Democratic Control of Armed Forces, Police and Security Forces”, Speech held at the CPC Workshops in Almaty and Bishkek (25-29 November 2002) on “Implementation of the Code of Conduct on Politico-Military Aspects of Security and the Confidence-and Security Building Measures”, p. 3.

3.2 Addressing External and Internal Roles and Missions of Military and Security Forces

In May 2003, two additional workshops on the same topic were held in Dushanbe and Tashkent. The special situation in Tajikistan reveals that the country is still in the process of overcoming the consequences of the recent civil war. In the context of post-conflict rehabilitation, the prevailing tasks of the government seem to be the prevention of and fight against terrorism. Although the situation in Tajikistan is specific due to the recent instability, the issues raised at the workshop could also be meaningful for other CIS countries: On the one hand, there are manifold state structures, including military and non-military, but it is militarised formations that are responsible for preventing and combating terrorism. On the other hand, speaking about democratic civilian control, relevant activities are currently regulated only by a special presidential decree. That's why the Head of the Parliamentary Defence Committee in agreement with representatives from the General Staff emphasised that national legislation on democratic civilian control should further be developed.⁶³ At the second workshop in Uzbekistan, which is (like many other CIS countries) a country in transition, it was emphasised that the implementation of security sector governance needed to take into account not only the parliament and the ministry of defence, but also the ministry of the interior and relevant internal security forces.⁶⁴ However, it must be emphasised that in the case of the events of Andijan, where the Code of Conduct was clearly violated, both the FSC and the OSCE participating States have been standing out by their lack of action.

These lessons could further promote dialogue within the OSCE on possible amendments to the Code's Questionnaire that specifically take into account the roles and missions of military and security forces for internal security – an issue which has not yet been subject to regular information exchange. The technically updated Questionnaire of April 2003 introduced a considerably amended item 1 within which the participating States supply relevant information on their prevention and combat of terrorism. Interestingly, with the new sub-item 1(e), the participating States do also exchange information regarding more specifically the roles and missions of armed and security forces in preventing and combating terrorism (see also chapter 2.4, as well a chapter 3.2 of the present article).⁶⁵

3.3 The Need to Foster Parliamentary Control and Oversight

At yet another Seminar held on the OSCE Code of Conduct in Kiev in June 2003, which was jointly organised by the CPC and the OSCE Parliamentary Assembly, it was stressed that further progress should be made in implementing the Code's provisions on the parliamentary control and oversight of the armed forces. In many CIS countries, only limited progress has been achieved in this respect. More

⁶³ SEC.GAL/103/03, 10 June 2003.

⁶⁴ Ibid.

⁶⁵ FSC.DEC/4/03, 9 April 2003.

effective implementation of democratic political control is relevant, not only on armed and security forces, but also on intelligence services. The need for legislative approval of defence expenditures and their compliance with defence policies and military doctrines were pointed out. Finally, the event also highlighted the need to adopt further legislation regarding the rights and duties of the armed forces personnel. Two separate roundtable discussions further dealt with parliamentary oversight in the event of the assignment of armed and security forces to combat new security risks and relevant new tasks and functions in this respect. It was underlined that the legislative and executive branches of government should further coordinate their activities. One of the more general suggestions regarding implementation was that the main provisions of the Code should be made known more widely and further clarified.⁶⁶

3.4 Enhanced International Cooperation in the Fight Against Terrorism

The shocking terrorist attacks of the 11 September 2001 on the territory of the US also had a considerable impact on the implementation process of the Code. It has been mentioned above that in 2003, the former Questionnaire of 1998 was amended. The most essential amendment made to the Questionnaire is to add no less than five sub-items to item 1 on terrorism. In September 2003, the CPC issued an overview of responses to the amended item 1.⁶⁷ One of the main observations made by the CPC was that most of the amendments made to item 1 actually duplicate the UN anti-terrorism questionnaire. However, and this is interesting if compared with other implementation aspects raised in the present report, the CPC concluded that in fact the (already mentioned) sub-item 1 (e) was adding some value if compared with the UN Questionnaire.⁶⁸ This sub-item requests information regarding the roles and missions of armed and security forces in preventing and combating terrorism. Since it represents one of the new elements not found previously in other inter-state information exchanges, it will be subject to systematic assessment (see chapter 3.2 below) in this article.

3.5 The Code as a Ground to Further Implement IHL

In September 2004, Switzerland organised another 'Partnership for Peace Workshops on the OSCE Code of Conduct' in Geneva/Versoix. Doing this for the sixth time, Switzerland therefore continued one of its special contributions to hosting military commanders, staff officers, as well as diplomats and civil servants for a one-week training event to deal with specific aspects of the Code's implementation. The workshop was particularly concerned about the Code's implementation aspects relating to the Law of Armed Conflict (LoAC), but also took into account aspects of democratic control of armed forces (DCAF).⁶⁹ The

⁶⁶ FSC.GAL/84/03, 1 July 2003.

⁶⁷ FSC.GAL/113/03, 16 September 2003.

⁶⁸ Ibid., "conclusions", p. 10.

⁶⁹ FSC.DEL/76/04, 10 March 2004.

workshop also commemorated the tenth anniversary of the Code (in December 1994).⁷⁰ It also dealt with the Geneva Conventions on international humanitarian law (IHL) and distributed an educational CD-ROM on the law of war, which provides comprehensive instructions in 12 international languages. The CD-ROM is available to the public and is broadly disseminated by the Swiss government.

3.6 Prevention and Combat of Terrorism: The Common European Response

The European Union has been the decisive force behind the negotiation and adoption of the Code. Therefore, it is therefore not surprising that the Union closely observes the implementation processes of the Code within its Common Foreign and Security Policy (CFSP). In its Declaration on Combating Terrorism of March 2004, the European Council expressed its deep shock about the terrorist attacks of Madrid and its sympathy and solidarity to the victims, their families and the Spanish people. The declaration also reminded about the threat posed by terrorism to ‘our society’.⁷¹

The EU, on 13 July 2004, also submitted a ‘Common EU response to question 1 of the OSCE Code of Conduct Questionnaire’ (OVSE/0511/04) to the FSC on behalf of the Delegation of the Netherlands.⁷² The initiative of the Union was also viewed as an additional contribution to the FSC Road Map on combating terrorism. Under sub-item 1(e) regarding the roles and missions of armed and security forces in preventing and combating terrorism, (which is also subject to assessment in chapter 3.2), the EU common report emphasised the role of the ESDP, the protection of civilian populations, as well as civil-military cooperation to more effectively fight against terrorism:

The EU will elaborate a conceptual framework identifying the main elements of the European Security and Defence Policy dimension of the fight against terrorism, including preventive aspects. As part of the work on the development of military capabilities for EU crisis management operations, the terrorist threat will be included in illustrative but nevertheless realistic scenarios covering i.e. the protection of the civilian population. To improve civil protection, the interoperability between equipments and procedures in the military and civilian fields will be promoted. The military database of assets for protection of civilian populations against CBRN attacks will be improved and its contents made available to the European Community Civil Protection mechanism.⁷³

3.7 Lessons Learned from the First Decade of Implementation

In early November 2004, the Delegation of Austria to the FSC submitted a food for thought paper, in which it welcomed the initiative taken by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) to organise a workshop at

⁷⁰ FSC.DEL/148/04, 26 April 2004.

⁷¹ SN 86/04, Brussels, 25 March 2004.

⁷² FSC.DEL/330/04, 14 July 2004.

⁷³ Ibid., p. 2.

the occasion of the 10th anniversary of the Code to be held end of January 2005 at the Diplomatic Academy in Vienna.

The Austrian Ambassador Ehrlich underlined the need to assure the Code's continued effectiveness as a fundamental guideline for the use and for the democratic control of armed forces in the new security environment and to promote the application of its principles by other countries.⁷⁴ Moreover, ten years after the Code's adoption and the fact that it still remains a living and unique document, it is important to review the role of the Code in the new security environment. It is also relevant to consider possible ways of spreading its application to countries outside the OSCE.⁷⁵

On 9 December 2004, The Swiss Delegation to the OSCE submitted a formal invitation on behalf of the director of DCAF to all OSCE participating States to take part in the workshop.⁷⁶ In his invitation, the director of DCAF, Ambassador Winkler, called the OSCE Code of Conduct 'an extremely valuable document that has set important standards for the oversight and operations of the defence and security sectors in the Euro-Atlantic and Euro-Asian area'.⁷⁷ The Geneva-based Centre thus invited the OSCE community to commemorate one of the most innovative instruments of the post-Cold War era. Moreover, in December 2004, it had come forward with the above-mentioned practical manual on the Code (see also the foreword). The Code's handbook provides a paragraph-by-paragraph commentary, as well as an in-depth assessment of the information exchange on the Code since 1999.⁷⁸ The agenda of the workshop addressed three main issues:

- The Code's implementation throughout the first decade;
- New security challenges and security sector reform; and
- The relevance of the Code concerning cooperation within the OSCE and with other countries (outreach aspects).⁷⁹

The workshop also took into account the special link established, in section VII and VIII of the Code, between the OSCE's politico-military and human dimension of security. This was illustrated by the invitation of Ambassador Strohal, the director of the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR). Ambassador Strohal gave a speech on the relevance of the Code's implementation from a rule of law perspective. He reaffirmed that the Code indeed contains a number of points common to both the politico-military and human dimension of security. For instance, the Code points out that the sources of conflict often include violations of human rights and fundamental freedoms. It also stresses that manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism endanger peace and security: 'These

⁷⁴ FSC.DEL/456/04, 3 November 2004.

⁷⁵ Ibid.

⁷⁶ FSC.DEL/507/04, 9 December 2004.

⁷⁷ Ibid., letter from the DCAF director annexed to the Swiss delegations cover letter.

⁷⁸ Ghebali and Lambert (2004), op. cit..

⁷⁹ FSC.DEL/507/04, draft program of the workshop annexed to the DCAF director's letter.

are all issues that are extensively covered by the human dimension commitments and are at the core of the mandate and work of the ODIHR'.⁸⁰

The Code directly establishes a bridge between the human and the politico-military dimension in paragraph 20, which can be regarded one of the key paragraphs of the document:

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.

On the occasion of the Code's 10th Anniversary, ODIHR elaborated an Overview of the Code's information exchange regarding the protection of the armed forces personnel's human rights (item 5 of the 2003 questionnaire) and IHL (item 6 of the 2003 questionnaire). This background study was presented to participating States at the DCAF Workshop on 28 January 2005.⁸¹ The report referred also to technical obstacles inherent to the information exchange on the Code and observed that there has been a 'divergence in the quality of the submissions'.⁸² In this way it confirms one of the technical observations made in the above-mentioned practical handbook on the Code and its assessment of the instrument's 'regime efficiency'.⁸³

3.8 Possible Ways of Improving and Revisiting the Code

In the aftermath of the DCAF workshop of January 2005 on the 10th anniversary of the Code of Conduct, Switzerland suggested to review the document's follow-up process and to further discuss relevant recommendations on possible improvements for the implementation of the Code. The Swiss Delegation to the OSCE emphasised:

The discussions focused on the politically binding rules to govern the use of armed forces internally and externally and, in particular, the democratic control of armed forces. Rules of this kind are still by no means provided for in the constitutions, laws or parliamentary practice of all participating States. For this reason, a Code-based dialogue between diplomats, parliamentarians and academics is of the greatest importance because it is precisely this kind of dialogue that can create a greater awareness that armed forces and security forces must operate within the rule of law'.⁸⁴

With a view to the follow-up work, Switzerland also referred to the ODIHR overview and further proposed to use the analytical paper submitted and presented by Professor Victor-Yves Ghebali at the DCAF workshop.⁸⁵ This was confirmed by a similar statement made by the Austrian Delegation some days later. Given that a review of the Code will require substantive preparations, it has

⁸⁰ ODIHR.GAL/7/05, 2 February 2005.

⁸¹ ODIHR.GAL/6/05, 27 January 2005.

⁸² *Ibid.*, p. 2.

⁸³ See: Ghebali and Lambert, *op. cit.*, Part II, Chapter 3: "The Code's Regime Evaluation".

⁸⁴ FSC.DEL/23/05, 2 February 2005, p. 1.

⁸⁵ *Ibid.* p. 2.

been of especially valuable that DCAF took the imitative to organise the above-mentioned workshop on the Code.⁸⁶ In his presentation held at the DCAF workshop, Professor Ghebali identified a number of shortcomings of the regime on the democratic control of armed forces established in sections VII and VIII of the Code.⁸⁷ Possible improvements within the Code's implementation could be achieved in the following areas:

a) *Need to address the use of armed and security forces for internal security missions.* One of the most direct shortcomings of the ongoing implementation process of the Code has to do with the fact that the Questionnaire's items regarding democratic control of armed forces exclusively refer to provisions under section VII regarding conduct in times of peace. Although section VII has been considered to be the most innovative part of the Code, essential problems in the OSCE area also relate to provisions under section VIII regarding democratic control and politico-military conduct in times of (internal) crisis – a section which has also been called “democratic use of armed forces” (DUAF). Four related challenges of the Code are highlighted by Professor Ghebali: First, the category of paramilitary forces (which is a priori one of the main categories of forces used by States for internal security missions) is not adequately addressed in the Code. We have the same shortcoming with the other categories listed in paragraph 20 of the Code as distinct elements of the security sector distinct from conventional military and defence forces: internal security forces, intelligence services, and the police. Professor Ghebali underlined that the Code does not include ‘any operative portions whatsoever of these categories relevant for the management of internal security’. Furthermore, and as indicated above, participating States are not obliged to provide information on the domestic use of force, nor are they requested to submit information regarding the use of armed forces during a state of public emergency. Neither does The Code establish specific provisions to prevent the usurpation of political control by armed forces. Although relevant issues were addressed from within normative instruments of the human dimension of security, notably the 1991 Moscow Document, they have not been subject to codification within the politico-military dimension itself. Professor Ghebali also mentioned that the Code of Conduct was ‘blatantly violated in two major cases where disproportionate and indiscriminate use of force has taken place’.⁸⁸ Especially, paragraph 36 of the Code has been violated.⁸⁹

⁸⁶ FSC.DEL/34/05, 16 February 2005.

⁸⁷ *Ibid.*, annex, pp. 2-3. The Code's regime on democratic control of armed forces is systematically outlined also in: Ghebali and Lambert, *op. cit.*, pp. 7-11.

⁸⁸ FSC.DEL/34/05, annex, p. 3. Presumably, reference is made with regard to Russian intervention in Chechnya, as well as Croatian conduct in Krajina.

⁸⁹ Within section VIII of the Code (intra-state conduct in times of crisis/democratic use of armed forces), paragraphs 36 and 37 are of particular interest when taking into account the links between the politico-military with the human dimension of security. Moreover, paragraph 36 directly deals with the *assignment of armed forces to internal security missions*: “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.” As regards paragraph 37, it adds relevant provisions regarding the protection of the civilian populations in the context of internal security missions: “The participating States will not use armed forces to

b) *Need to establish references to the regime of CSBMs.* Unfortunately, the Code does not establish an explicit link to the Vienna Document on CSBMs – although such a link is implicitly established with paragraph 22 on defence expenditures and paragraph 35 on defence policies and doctrines. In this context, Professor Ghebali pointed out two major aspects. First, both the Code and the Vienna Document on CSBMs establish a reference point for the formulation of defence policy, and a sound and transparent information on defence planning process represents an ‘indicator of the effectiveness of the democratic control of armed forces’.⁹⁰ Second, while the Code, in paragraph 25, includes a provision on the accidental use of military force, this issue is also addressed in the 1999 Vienna Document under its section on ‘Co-operation as regards hazardous incidents of a military nature’.⁹¹ This aspect of the Code’s implementation is also relevant because the technically updated questionnaire of 2003 actually introduced a new sub-item regarding democratic control with respect to defence expenditures: The new sub-item 2(b) requests the participating States to submit information regarding the description of the national planning- and decision-making process (including the role of the Parliament and relevant Ministries) for the determination and approval of defence expenditures. This aspect of the Code’s implementation is also subject to further discussion later in this article (see chapter 3.3).

c) *Specific need to address issues relating to border security.* Since the Code does not encompass the category of customs and border guards, we could be considered to address this issue within the forthcoming follow-up conference. However, this could go hand in hand with the provision of basic guidelines concerning major security sector institutions and bodies. For instance, the information exchange on the Code reveals that some of the participating States officially categorise their border and coast guard forces as paramilitary forces. In the same way, military police, and especially the gendarmerie are considered by some of the States as their regular paramilitary forces.

d) *Add the dimension of judicial control.* The Code omits to introduce the dimension of the judiciary branch of government while codifying the principles of democratic control of armed forces. It is relevant, however, that the third constitutional power be involved when considering and dealing with the conformity of the use of armed forces with the rule of law.

e) *Further codifying the rights and duties of armed forces personnel.* Although the Code addresses the issue, the follow-up work could profit from an eventual listing of relevant basic human rights and fundamental freedoms of the security personnel on the basis of best practices in established democracies and in compliance with international law. In this context, Professor Ghebali also considered that the Code could encourage the participating States to establish a Military Ombudsman.⁹²

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.”

⁹⁰ FSC.DEL/34/05, annex, p. 5.

⁹¹ Ibid.

⁹² FSC.DEL/34/05, annex, p. 4.

f) *Extending the section on IHL.* Professor Ghebali also stresses that the Code's provisions relating to the laws of armed conflicts are much weaker than those provided by the Geneva Conventions. One must mention nevertheless that sections VII and VIII of the Code also partly add value to international humanitarian law (IHL), as well as the international law of human rights.⁹³

g) *Stationing of armed forces on foreign soil.* Since the Code has been invoked in relation to the unlawful stationing of foreign armed forces,⁹⁴ the implementation process of the Code could profit from dealing more systematically with this aspect of its implementation. Moreover, there is the advantage that the issue is subject to regular information exchange since 1999 (item 3 of the 1998 Questionnaire, as well as item 4 of the 2003 Questionnaire).

h) *Reporting on the fight against terrorism.* As explained above, the technically updated Questionnaire of 2003 has created a certain imbalance between the aspect of democratic control of armed forces on the one hand and the prevention and combat of terrorism on the other hand. Professor Ghebali therefore suggested to isolate the issue by establishing a specific questionnaire on terrorism. As an option he mentioned the elaboration of a distinct Code of Conduct or even the provision of a compendium of best practices of armed forces in preventing and combating terrorism.⁹⁵

i) *The privatisation of security.* Since there is a clear trend in many OSCE countries to adopt new legislations to allow private companies to provide defence and security support services, the current implementation process of the Code should also start addressing this specific issue.⁹⁶

Professor Ghebali also referred to some of the technical challenges within the implementation process of the Code. First, the document suffers from a relatively weak follow-up monitoring arrangement. Brief assessment is made in the framework of the yearly sessions of the Annual Assessment Implementation Meeting (AIAM). It is argued that given the ad hoc nature of the review conferences on the Code (so far in: 1997, 1999, 2002), the AIAM is probably not the right place to assess the Code's implementation. Second, the regular reporting taking place since 1999 shows a wide range of technical shortcomings. The responses to the questionnaire are so heterogeneous they are hardly comparable to each other. Another major shortcoming is the uneven degree of precision of information requested by the Questionnaire in its various sections.⁹⁷ A systematic overview of major shortcomings of the reporting technique is also included in the above-mentioned practical handbook on the Code.⁹⁸ Interestingly, a comparison

⁹³ Raič, David, 'The Code, Humanitarian Law, and Human Rights', Gert de Nooy (ed.), *Cooperative Security, the OSCE, and its Code of Conduct*, De Hague (Kluwer Law International) 1996, pp. 41-56.

⁹⁴ FSC.DEL/34/05, annex, p. 3. According to paragraph 14 of the Code, OSCE participating States may station their armed forces "... on the territory of another participating State in accordance with their freely negotiated agreement as well as in accordance with international law."

⁹⁵ FSC.DEL/34/05, annex, p. 4.

⁹⁶ Ibid., p. 5.

⁹⁷ Ibid., p. 3.

⁹⁸ Ghebali and Lambert, op. cit., chapter 3.2: "The Reporting Technique", pp. 358-370.

made with technical observations of the CPC overview of 30 June 2001 regarding the participating States' information exchange on the Document on Small Arms and Light Weapons (SALW)⁹⁹ reveals that the reporting on the Code suffers from the same types of technical problems as the reporting to the SALW Document.¹⁰⁰ Technical aspects of the Code's implementation process will also be discussed later in this article (see chapters 3.2 and 3.3).

In conclusion, Professor Ghebali reaffirmed the general perception that people need to be more aware of the Code. Enhancement of awareness on the Code should encompass four specific levels: the countries, the OSCE, Partners for Cooperation, as well as the United Nations.¹⁰¹ It is expected that the forthcoming DCAF workshop on 'The OSCE Code of Conduct on Politico-Military Aspects of Security Revisited' (Geneva, 3 July 2006) will provide new insight on past and current implementation trends and lessons learned.

3.9 Need for Reviewing the Code's Implementation Process

Given that the last ad hoc follow-up conference on the Code dates back to 2002 (with two preliminary review conference held in 1999 and 1997), the Delegation of Austria to the OSCE, in November 2005, came forward at the FSC with a food for thought paper, in which it recalled the need to set an agenda for a new follow-up conference on the Code to be held in 2006. The Austrian proposal included an annex containing i.a. a tentative draft agenda for such an event and suggesting:

- To underline the great interest of the participating States in the Code of Conduct and in its comprehensive implementation;
- To assess and review the implementation of the Code of Conduct in order to confirm its continuing importance in the OSCE area;
- To assess and review replies to Questionnaire of the information exchange on the Code of Conduct;
- To explore practical suggestions to reinforce the effectiveness of the Code of Conduct and to improve its implementation; and
- To examine the contribution of the Code of Conduct to combating terrorism.

However, in contrast to the perception of a number of participating States that there should be another follow-up conference, other national Delegations have expressed their doubts as to the usefulness of such a next step. As an option, the Belgian delegation suggested to consider a Code of Conduct review conference. But even this option is unlikely to be realised in 2006. Instead, it seems that a number of smaller steps are currently gain broader support in the FSC. For

⁹⁹ FSC.GAL/9/02, 23 January 2002.

¹⁰⁰ Ghebali and Lambert, *op. cit.*, pp. 358-359. See also the comparative table on p. 359.

¹⁰¹ FSC.DEL/34/05, annex, p. 5.

instance, in January 2006, the United States' Delegation proposed that the FSC shall hold yearly special sessions on the Code. According to the US-proposal, these FSC annual review meetings would be specifically dedicated to the Code's implementation and could also be open to the OSCE Partners for Cooperation, special OSCE offices such as ODIHR, as well as the OSCE field presences.

While the US thus initiated further discussion, Switzerland insisted that a compromise should be found on the modalities of the Code's review process. So far, these discussions have culminated in the Bosnian FSC Chairmanship's perception that a Special FSC Meeting shall be held in Vienna on 27 September 2006. The FSC is currently in the process of setting up an agenda for this event. Although the question regarding the prospects for a review/follow-up conference remains open, this intermediary result is promising insofar as there has not been any concrete or substantial step towards the Code's review for years.

Another promising element is the nomination of a Special Coordinator for the Code of Conduct in the FSC that will probably help trigger a more structured approach to the Code (Colonel Pierre von Arx from the Swiss Delegation was recently appointed as special coordinator). After all, more than a decade after the Code was negotiated, the issue of the national delegations' awareness on this still unique instrument must be readdressed. The special coordinator and the special FSC meeting may contribute a significant part thereto throughout the forthcoming months. Only if the participating States will re-familiarise themselves with the Code and gain new consent on its past, current and future relevance can there be new decisions regarding the modalities of eventual review or follow-up conferences.

4. Main Trends and New Elements of the Information Exchange on the Code (2003-2005)

The present section, although largely focusing on the most recent implementation trends since 2003, also takes into account the preliminary reporting period of 1997/1998. This initial and voluntary information exchange was based on a first tentative Questionnaire (1997). It is interesting insofar as it included aspects relating to the Code's section VIII provisions regarding the use of armed forces, especially in the context of internal security missions (which is not the case with the 1998 and 2003 Questionnaires). The disregard of this aspect of the Code within the official information exchange has been one of the major shortcomings of implementation, since the majority of armed conflicts and related security risks and missions in the post-Cold War era have been of an intra-state character.

As indicated within the introduction, this paper does not provide a systematic assessment of the entire information submitted by the participating States within the reporting period 2003-2005. Such an overall assessment has been carried out in the above-mentioned practical handbook on the Code for the preliminary reporting period of 1999-2002 and related 1998 Questionnaire. Instead, this

analysis focuses on the new elements and innovative aspects of the exchange of information on the basis of the updated (2003) Questionnaire and if compared also with other exchanges of information, including within the UN.

Furthermore, the author strictly follows the same evaluation policy as has been applied in the practical handbook on the Code. Since the information exchange on the Code is still of a restricted nature, this analysis will not make reference to any individual national report and thus cannot provide for comparative assessment (the only authority that could currently carry out such an assessment is the CPC, if mandated by the FSC). We in turn show major new trends and tendencies and also highlight relevant technical challenges faced by a Questionnaire that still lacks any detailed guidelines and definitions of basic concepts and terms. In addition, we discuss the current imbalances created by the new Questionnaire of 2003 between the aspects of democratic control of armed forces on the one hand and the fight against terrorism on the other hand.

4.1 The Evolution of the Information Exchange Since 1997

In 1997, more systematic implementation and review arrangements were developed with the organisation of the first ad hoc follow-up conference and the adoption by the FSC of a first tentative questionnaire, on the basis of which some of the participating States submitted voluntary national reports regarding their implementation of the Code.¹⁰² The main difference of this 1997 tentative Questionnaire, which was also more extensive than the official Questionnaires later adopted in 1998 and 2003, was that it took into account provisions of the Code under sections VIII (democratic use of armed forces), including the significant issue of the assignment of armed forces for internal security missions.

The 1997 Questionnaire's item 15, referring to paragraph 35 of the Code,¹⁰³ requested information regarding the question also of how the relevant commitments of the Code of Conduct are reflected in defence policy or military doctrine as regards the use of armed forces, including in armed conflict. In addition, with item 16 referring to paragraph 36 of the Code,¹⁰⁴ the participating States also exchanged information regarding the constitutional procedures governing the assignment of armed forces to internal security missions. However, even within the 1997 Questionnaire there was no reporting concerning to the provisions of paragraph 37 according to which the armed forces shall not be used to restrict the human rights and fundamental freedoms of civilian populations. This is clearly an issue which should be further addressed within the Code's coming review conference.

¹⁰² FSC.DD/2/97, 1 October 1997.

¹⁰³ Paragraph 35 of the Code stipulates: "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".

¹⁰⁴ As seen above, paragraph 36 of the Code contains relevant provisions regarding the assignment of armed forces for internal security missions.

The official Questionnaire adopted by the FSC in 1998 did considerably reduce the number of items compared with the 1997 tentative Questionnaire and essentially focused on section VII of the Code regarding democratic control of armed forces in peacetime. Also, only two items of the 1998 Questionnaire referred to inter-state aspects of the Code: item 1 on the fight against terrorism and item 3 on the stationing of armed forces in foreign territory. The advantage of the 1998 Questionnaire was that it institutionalised regular and compulsory yearly information exchange on the Code. Following the FSC Decision 10/98, the OSCE Conflict Prevention Centre (CPC), on February 17, officially announced the deadline for the first compulsory information exchange on the Code (15 April 1999). Mid-April was also the deadline for the exchanges of information on the following years. As indicated in the foreword and the introduction, assessment of the information exchanged on the basis of this first official Questionnaire (1999-2002) has been the subject of Part II of the practical handbook on the Code.¹⁰⁵ In 1999, the OSCE also held the second ad hoc follow-up conference on the Code.

A first substantial amendment to the official Questionnaire was made in November 2002, based on the background of the new concerns to foster international cooperation to prevent and combat terrorism. At its 375th Plenary Meeting, the Forum for Security Cooperation (FSC) decided to expand item 1 on terrorism.¹⁰⁶ The Forum's Decision also acknowledged the importance of the FSC Roadmap for Implementation of the Bucharest Plan of Action for Combating Terrorism.¹⁰⁷ Item 1 of the Questionnaire (appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end), refers to paragraph 6 of the Code,¹⁰⁸ and was amended, in 2002 by the following five sub-items:

- List of international agreements, including all United Nations' conventions and protocols related to terrorism, to which the participating States are party;
- Accession to and participation in other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities;
- National measures, including pertinent legislation, taken to implement the international agreements, conventions and protocols cited above;
- Information on national efforts to prevent and combat terrorism, including appropriate information on legislation beyond the United Nations' conventions and protocols (e.g. pertaining to financing of terrorist groups); and

¹⁰⁵ Ghebali and Lambert, *op. cit.*, pp. 181-397.

¹⁰⁶ FSC.DEC/16/02, 27 November 2002.

¹⁰⁷ FSC.DEC/5/02, 20 March 2002.

¹⁰⁸ Paragraph 6 of the Code stipulates: "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."

- Roles and missions of armed and security forces in preventing and combating terrorism.

The amendments come into effect on the date of their adoption.¹⁰⁹ This means that the participating States took it into account within their reporting in 2003. On 4 April 2003, the Albanian Chairmanship of the FSC came forward with a draft decision on the technical update of the Questionnaire, which brought back to mind the determination (expressed at the third follow-up conference on the Code on 23-24 September 2002) to ‘strengthen the important role of the exchange of information on the Code of Conduct’, and recalled the Forum’s Decision to expand item 1 of the Questionnaire.¹¹⁰ At the FSC’s 388th Plenary Meeting, it was formally decided to technically update the Questionnaire, and it annexed the new and restructured 2003 Questionnaire to its formal decision.¹¹¹

The FSC’s decision also enclosed a number of relevant suggestions designed to render the implementation of the Code more efficient and transparent. First, the participating States were encouraged to consider providing copies of relevant national legislation concerning questions 2, 3, and 5 of the CPC. This is quite relevant since these items are those of the Questionnaire relating to the democratic control of armed forces. Second, the FSC tasked the CPC not only with maintaining a record of the information exchange and its annexed documents, but announced at the same time that this will be accessible on the OSCE Delegates’ Website, (which is the restricted part of the OSCE’s official website). Third, because of the fact that the information exchange showed a broad variety in terms of reporting substance and technique, the FSC decided to consider developing model answers to the Questionnaire ‘as a means to facilitate the implementation of the information exchange and to encourage dialogue on matters related to the questionnaire among participating States’.¹¹² However, no model answer was formally adopted so far.

Compared to the former Questionnaire of 1998, the new and technically updated Questionnaire of April 2003 shows both structural improvements and substantial amendments. Concerning structural improvements, the items of the 1998 Questionnaire relating to democratic control of armed forces have been conceptually integrated in order to more systematically address relevant aspects. Items 2, 3 and 5 of the new 2003 Questionnaire thus distinguish three major areas of concern:

- National defence planning and decision-making process (item 2);
- Roles and missions of armed and security forces (item 3); and
- Rights and duties of the armed forces’ personnel (item 5).

¹⁰⁹ FSC.DEC/16/02.

¹¹⁰ FSC.DD/4/03, 4 April 2003.

¹¹¹ FSC.DEC/4/03, 9 April 2003.

¹¹² *Ibid.*, pp. 1-2.

About the amendments to the Questionnaire, our analysis will focus on two new specific elements: Within item 1 (see the complete amendments above) we will assess sub-item 1(e) regarding the roles and missions of armed and security forces in preventing and combating terrorism (see chapter 3.2). This is an interesting aspect since it is not taken into account in the UN anti-terrorism questionnaire.¹¹³ The second aspect of evaluation is the new sub-item 2(b) on defence expenditures, which adds a new DCAF-element to the Questionnaire (see chapter 3.3).

4.2 New Element 1 of the Questionnaire: Roles and Missions of Armed Forces in Preventing and Combating Terrorism

4.2.1 General Remarks

Although the reporting of OSCE participating States' under item 1 of the Questionnaire on terrorism literally exploded after 11 September 2001, a gradual shift towards enhanced information exchange on terrorism can be observed since the very start of the regular information exchange in 1999. This chapter shall focus on that aspect of the Questionnaire's item on terrorism that represents an added value compared with the UN counter-terrorism questionnaire. This added value is the new sub-item 1(e) requesting information regarding the roles and missions of armed and security forces in preventing and combating terrorism. The chapter will also highlight some of the technical shortcomings of the reporting to the new Questionnaire of 2003.

The reporting of participating States' under sub-item 1(e) shows a broad variety in terms of contents and method. However, since a couple of states still submit their reports on the basis of the 1998 Questionnaire, not all countries provide explicit answers on issues referred at by the new sub-item 1(e). Some of the States also preferred to submit one-off reports on item 1 with no specific distinction made as proposed by the five new sub-items (a)-(e) of the 2003 Questionnaire. Furthermore, there are individual States that replied to the four first sub-items but did not respond to the fifth sub-item.

It is understandable that the OSCE had to react, after 11 September 2001, to the broader demand of the international community to increase inter-state cooperation in order to address more efficiently the global facets of terrorism. However, in the absence of major amendments to the Code of Conduct itself, or of relevant changes within the implementation instruments like the Questionnaire, the current focus on terrorism from within the Code does not really make sense. The main focus of the Code has with no doubt been the democratic control of armed forces (DCAF). We therefore must check whether it is possible to argue that sub-item 1(e) has been included with a DCAF-perspective or intention.

¹¹³ FSC.GAL/113/03, 16 September 2003, p. 10.

4.2.2 Is There a “DCAF-intention” Inherent to New Sub-Item 1(e) of the Questionnaire?

Item 1 of the Questionnaire requests the OSCE participating States to submit relevant information regarding their ‘Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end’ (relating to paragraph 6 of the 1994 Code of Conduct).¹¹⁴

As seen above, item 1 has been amended in the new 2003 Questionnaire (see Annex 2) and now includes no less than 5 different sub-items. Under sub-item 1(e) of the technically updated Questionnaire of 2003, the OSCE participating States currently exchange information on the ‘Roles and missions of armed and security forces in preventing and combating terrorism’.

It has already been argued that only this sub-item (1e) provides an added value compared with the UN anti-terrorism questionnaire. This sub-item establishes a possible link between the international fight against terrorism on the one hand and the democratic control of armed forces on the other.¹¹⁵

This can be illustrated when analysing the wording of sub-item 1(e), which obviously follows item 5 of the former 1998 Questionnaire. Former item 5 requested information regarding the roles and missions of military, paramilitary and security forces, including controls to ensure that they act solely within the constitutional framework.¹¹⁶ Former item 5, together with the new sub-item 3(c), which is an identical reproduction of the former, refers to paragraphs 20, 21, and 22 of the Code. These paragraphs represent the Code’s core provisions on democratic control of armed forces in peacetime. Since the aspect of DCAF has been the main concern of the Code’s implementation process, paragraph 21 of the Code is indeed relevant when interpreting sub-item 1(e). This shall be demonstrated by the following quotation of the paragraph that highlights the final clause, which obviously served as a basis for the drafting of the sub-item:

Each participating State will at all times provide for and maintain effective guidance to 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 define the roles and

¹¹⁴ With paragraph 6 of the Code, the OSCE participating States oblige themselves (cit.) “... not to 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 treat 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.”

¹¹⁵ For a discussion on the possible relationship between democratic civilian control and the combat of terrorism within the Code, see also: Lambert, Alexandre: “The OSCE Code of Conduct on Politico-Military Aspects of Security: Some Reflections on the Changes in the 1990s and Background for Further Developments”, Paper submitted at the OSCE PA/CPC Conference: *Parliamentary Oversight of Armed Forces, Police and Security Forces and the Evolving Security Environment in the OSCE Area*, Vienna, 24-25 May 2004.

¹¹⁶ FSC.DEC/4/98.

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

So, there is evidence that sub-item 1(e) refers to DCAF in perspective and intention. Disappointingly, however, only a minority of national reports interpret it this way and instead responded to the sub-item with no clear or direct reference made with regards to DCAF.

4.2.3 The Fight Against Terrorism and the OSCE Code of Conduct

The introduction to the present article already indicated one of the main purposes of a possible follow-up event on the Code of Conduct, which is the: “Examination of the contribution of the Code of Conduct to combating terrorism”.

Prior to 11 September 2001, the contribution of the OSCE to the international fight against terrorism had not been substantial.¹¹⁷ With the adoption of the Code’s paragraph 6, this could change in the future. However, one is not on really solid ground to address the issue from within the OSCE Code of Conduct. At least three arguments contribute to this assertion. Firstly, during the negotiations on the Code, paragraph 6 on terrorism has been included only because of severe pressure by Turkey on the European Union.¹¹⁸ Secondly, even if other delegations basically welcomed the introduction of the terrorism-article into the Code, it remains isolated within the document’s structure: paragraph 6 represents the one and only paragraph of section II of the Code. Thirdly, the provisions of paragraph 6 do not introduce any new element compared with conventional customary law. As is the case with the majority of other inter-state provisions of Code under its sections I-VI, paragraph 6 essentially reconfirms already existing international norms and cooperative arrangements in the fight against terrorism.

In contrast, sections VII and VIII of the Code are both innovative and as such add value to the body of international law, including in the area of international humanitarian law (IHL), as well as the international law on human rights.¹¹⁹ Moreover, the entire section VII on democratic control of armed forces (in peacetime) is even regarded as revolutionary from an international law perspective.¹²⁰

The new emphasis on terrorism within the Code’s implementation process therefore shows a structural imbalance, which is illustrated by the following amendments of the terrorism item. One of the suggestions made at the 3rd follow-

¹¹⁷ Lambert, Alexandre, ‘The Contribution of the OSCE to the International Fight Against Terrorism’, Victor-Yves Ghebali and Daniel Warner (eds), *New Security Threats and Challenges Within the OSCE Region*, PSIO Occasional Paper, No. 1 (2003), Graduate Institute of International Studies, Geneva, 2003, pp. 111-124.

¹¹⁸ Ghebali, Victor-Yves, ‘Introducing the Code’, Gert de Nooy (ed.), *Cooperative Security, the OSCE, and its Code of Conduct*, The Hague (Kluwer Law International), 1996, pp. 5-14.

¹¹⁹ Raič, op. cit.

¹²⁰ Kooijmans, Peter, ‘The Code and International Law’, Gert de Nooy (ed.), *Cooperative Security, the OSCE, and its Code of Conduct*, De Hague (Kluwer Law International) 1996, pp. 33-40.

up conference on the Code in 2002 was therefore to revisit the normative framework of the Code in order to take into account the new security environment. However, no formal decisions were reached by the participating States to reopen and renegotiate the Code. A majority of States in turn preferred to further amend the Questionnaire without reopening the Code itself.

At the DCAF workshop on the Code's 10th anniversary on 28 January 2005, Professor Victor-Yves Ghebali made a couple of suggestions on how to deal with this paradoxical situation (see also the previous section of this article). As a first option, he argued that the terrorism-issue should eventually be isolated from the Code: Either the OSCE could negotiate a separate Code of Conduct on terrorism, or the FSC could adopt a separate Questionnaire on terrorism. A second option would be to elaborate best practices of the armed and security forces in preventing and combating terrorism in the framework of the existing Code.¹²¹

4.2.4 The CPC Overview of the Exchange of Information on Item 1 in 2003

Let us now take a look at the participating States' information exchange on the above-mentioned sub-item 1(e) of the 2003 Questionnaire requesting information on the roles and missions of armed and security forces in preventing and combating terrorism. The CPC's overview over the information exchange on item 1 in 2003 confirmed that the participating States addressed the issue relatively clearly. However, the information exchange also reveals that there is apparently 'no exact determination of what the concept of "security forces" might include'.¹²²

For instance, only 10 States reported that the combat against terrorism is a primary responsibility of police forces. Five States referred to the Ministry of the Interior, instead of the police, as the main actor at State-level in combating terrorism. Another group of seven States referred to inter-ministerial bodies or state security committees that coordinate tasks and responsibilities. One may add that while the above-mentioned paragraph 21 clearly lists the three categories of military, paramilitary and security forces, the sub-item does not include the category of paramilitary forces. However, the high probability that the participating States actually use their paramilitary or internal security forces in the fight against terrorism also contrasts with the fact that States still lack a shared definition of the category of paramilitary forces. One participating State, when responding to the question, indeed noted that sub-item 1(e) only concerned the armed forces since that particular country 'does not have paramilitary or security forces'. This type of information is also illustrative of similar reporting by a majority of other States.

The CPC overview further emphasises that the status, tasks, and resources of the quoted inter-departmental bodies were not always clearly elaborated. We would like to point out in this context that paragraph 21 of the Code indeed stipulates that the roles and missions of armed and security forces shall be clearly defined

¹²¹ FSC.DEL/34/05, 16 February 2005, Annex, p. 4.

¹²² FSC.GAL/113/03, 16 September 2003, p. 8.

and that they must act solely within the constitutional framework. It is interesting to see that according to the 2003 reporting, less than 24 reports provided information specifying who bears the overall responsibility for combating terrorism. According to 22 national reports, the armed forces had at least some function in the fight against terrorism. Finally, four participating States reported about the role of different governmental forces or agencies in combating terrorism, ‘although, the role of security forces, rather than the armed forces, was largely ignored’.¹²³ Five other States did not even mention the armed forces at all, but instead referred to the Ministry of Defence.

However, in many cases, the role of the armed forces was defined as complementary or subsidiary to internal security forces and the police. The armed forces can support, or are permitted to be used, or may be called upon to assist other state authorities. According to the 2003 reporting, this support role of the armed forces may include six major functions: protection of territorial integrity, installations, military sites, persons, events, weapons, stockpiles; monitoring the land and sea territory and air surveillance; sharing intelligence and exchanging information, including at the international level; maintaining the capacity to respond to terrorist attacks; maintaining law, order and public safety; and investigation and elimination of terrorist structures, facilities and bases. Some national replies also mentioned that the armed forces do take part in the planning and implementing of counter-terrorism measures, but did not clarify what specific tasks they might perform and at what level.

Since in many cases, the armed forces have a supportive function in the prevention and combat of terrorism, many reports stated that the use of armed forces supporting civil authorities is always a matter of request from another administrative body or a matter of governmental decision. Some countries also state that the role and use of armed forces in the field of combating terrorism “may well be extended.”¹²⁴ As a general rule, while the domestic fight against terrorism tends to remain primarily a police responsibility; many national reports declare that their countries extend their efforts in combating terrorism by means of their contributions in Afghanistan and Iraq.

4.2.5 Evaluation of the Reporting in 2004 and 2005

It is relevant to highlight some of the technical shortcomings relating to the information exchange on the 2003 Questionnaire. An essential part of these shortcomings indeed relates to sub-item 1(e). Many national reports gave remarkably short replies to the sub-item. For instance, one State simply noted that the issue is not applicable since the country does not have armed forces of its own. Since that country does have security forces, this implicitly means that the country’s security forces apparently do not have any roles or missions in the fight against terrorism and that accordingly the police deal with it alone. The height of

¹²³ Ibid.

¹²⁴ Ibid.

briefness and straightforwardness, however, was topped by another State just noting: ‘Afghanistan; Iraq’. If taking into account that many States submitted several pages of information on sub-items 1(a)-(d) only, this is quite astonishing – although it is true that many countries indeed referred, under sub-item 1(e), to new missions in those two countries.

The average answer to sub-item 1(e) has not exceeded one paragraph in length. However, some of the short answers have sometimes been much clearer compared with those few national responses that were fairly long. For instance, one of the established democracies (and NATO member State) – although submitting relatively little information – answered clearly if compared to the average response. The country underlined that the fight against terrorism is not the business of the armed forces and that the country does not have security forces. Furthermore, and since the task of preventing and combating terrorism is primarily the responsibility of the police, the armed forces may be called upon to assist the police in the event of a major terrorist attack being carried out or a highly credible threat thereof.

There have been considerable differences in explaining the role of the armed forces in the fight against terrorism. While a majority of established democracies emphasised that the primary responsibility lies with the police, one of the new NATO members and EU membership candidate country emphasised that it is employing significant efforts to educate and train its armed forces’ members, especially in the terrorism area. A NATO and EU membership candidate country even stated: ‘In the Doctrine of the Armed Forces it is clearly defined that protection of sovereignty and territorial integrity of our country is carried out through the fight against terrorism’. A new NATO and EU member State even noted that its National Armed Forces have a number of functions in combating terrorism, including the protection and security of the buildings of the State President and the Parliament – a task which in most established democracies is a police responsibility.

One of the established democracies (and EU member State) explained (in its 2004 report) that the prevention and combat of terrorism within the country is indeed a police responsibility. However, the question of ‘whether the armed forces should be given a role in the event of large-scale terrorist attacks is being analyzed within the Government’s Office.’ While the report did not provide any further precision, there was a slight change in that country’s reporting in 2005, which was modified to: ‘Whether the Armed Forces should be given a role in assisting the police in the event of large-scale terrorist attacks is being analyzed by a Committee of Inquiry appointed by the Government’.

Another established democracy which is neither EU nor NATO member specified that the federal law empowers the armed forces to support State authorities in a subsidiary way if the assets and capabilities of responsible national and local authorities are insufficient in terms of personnel, material or time. In such a situation, the armed forces can contribute to internal security regarding

to the protection of persons, installations, conferences and international events, and may support the border guards. Moreover, the armed forces may also be involved in the defence against serious threats to internal security. The report finally mentions that the armed forces protect the country's air sovereignty and enforce the internationally defined air laws.

Yet another established democracy and EU member State that has had some problems with domestic terrorism for quite some time, reported that its (State) paramilitary force is the 'primary agent responsible for law enforcement ... including counter-terrorism' and that this force also 'conducts intelligence-gathering functions associated with the prevention and investigation of crime including terrorism'. Interestingly, the report adds that the force is 'operationally independent but subject to the general law-enforcement policies set by the government'.

Another EU member State mentioned that legislative amendments are currently underway to allow increased military support to the police in situations involving terrorism. However, it also added that there is no plan to revise the Defence Forces' essential tasks, since a 'substantial part of preventing and combating terrorism per se falls to the mandate of the Police, legal and other authorities'. The country does not apparently maintain forces belonging to the category of security forces.

One of the NATO member States dealing with domestic terrorism for quite some time emphasised that it was providing training courses to NATO Partnership for Peace countries (with an apparently special focus on the Balkans, the Caucasus and Central Asia) in order to further help in bolstering international efforts to combat terrorism. The training assistance includes homeland security and border security, as well as aspects relating to (illegal) trafficking.

Some of the ex-communist countries noted that they maintained specialised security and special operations forces to combat terrorism. For instance, one of the CIS countries reported that according to a Presidential Order of 2003, a counter-terrorist department had to be established within a specific 'State Security structure'. Moreover, the President also ordered to establish a Centre of Special Operations for ensuring (cit.) 'the implementation of operative activity of the [defence?] Ministry' (for combating terrorism). Quite common to many of the CIS reports is the reference to the obvious need to implement operational readiness within the MoD and the armed forces in general.

One of the ex-communist countries and current NATO and EU membership candidate country stated that there is increased awareness of the risk posed by terrorism and brought this aspect directly in connection with an acceleration of the restructuring of the armed forces. In fact, the country's armed forces are increasingly involved in the fight against human trafficking while parts of the Navy are being transformed into coast guard services. The country also referred to the role played by its Ministry of Public Order and the need to increase regional

cooperation in the fight against terrorism. Finally, it mentioned that a Leadership and Civic Education Branch have been established in the MoD and Ministry of Public Order in order to 'strengthen the links between police forces and the people'. This formulation is probably drawn from the wording of one of the provisions of paragraph 20 of the Code according to which the integration of the armed forces with civil society is considered to be an important expression of democracy.

A number of other countries of Central and Eastern Europe reported on the strengthening of homeland security as an increasing contribution of the armed forces to the fight against terrorism within the territory of the State and to foster public safety more generally. States also mentioned the establishment of new capabilities (apparently of a militarised nature) within the Police, like for instance Police Rapid Response Teams or Police Anti-terrorist Operations Teams. In addition, so-called Special Anti-terrorist Squads (SAS) and Mobile Immediate Action Units (MIAU) are specially trained to meet emergency situations, including in the event of terrorist acts. It is a common trend of one category of reports that they mention the fight against terrorism in connection with a (potential) state of emergency or in the context of regulations under martial law. These countries are mainly located in Central and Eastern Europe, though not exclusively.

One State reported that the National Security Police bear direct responsibility in preventing and combating terrorism. This is presented in association with the responsibility of the intelligence services to gather and collect information. In contrast, relatively few countries emphasised the need to exchange intelligence information with other State authorities as well as with the intelligence services of other States. The report also mentioned the adoption of new legislation, like for instance the National Surveillance Act or the National Authorities Act. This shall provide enough powers to relevant authorities to prosecute persons in the fight against terrorism. In order to increase the effectiveness and contribution of the border guards in the fight against terrorism, border services are supplied with lists of relevant persons. Bilateral arrangements finally provide for the introduction of modern radiation detection technology put at the disposition of border and customs services.

One NATO country reported about the adoption, in the aftermath of 11 September 2001, of the so-called (new) National Defence Strategy Concept, NDSC:

Adjusting to new threats and changes in the world since 2001, the new concept considers the combat against weapons of mass destruction, terrorist threats and organized crime to be one of the main missions of the armed forces. Although these missions are new to the military, they are able to carry out these tasks given the necessary means. Following the adoption of the new NDSC, the government proposed to the Parliament the Military Procurement Law (MPL) which establishes the priorities for major equipment acquisition, and it was accepted in its generality.

According to the same national report, the National Military Security Force develops some missions and is a member of the Anti-Terrorism Co-ordination Unit (ATCU). Both the Fiscal Brigade – working together with the Criminal

Police and the Ministry of Finance – and the criminal investigation teams have a major role in combating financial and economic organised crime. The Special Operations Group is a special tactical unit within the Public Security police. It was created by Decree and it is exclusively in charge of carrying out anti-terrorist actions. It is called into action if any terrorist or tactical incident takes place, such as high-jacking or kidnapping.

Another NATO country reported on its immediate actions after 11 September 2001:

The military phase of the War Against Terrorism began on 7 October 2001 ... Coalition forces have liberated the Afghan people from the repressive and violent Taliban regime ... Rapid conclusions of SOFAs and bilateral Cooperation and base access agreements necessary to provide ... forces with the ground facilities needed to carry out tactical operations ..., assistance to allies in securing similar agreements for their forces ..., and governmental coordination of military and humanitarian tasks in Afghanistan.

One NATO and EU membership candidate country stated that its national constitution provides for the use of the armed forces on the territory of the country. Moreover, a law adopted in 1998 on the stationing of armed forces outside state borders admits the use of armed forces abroad.

4.2.6 Major Implementation Trends

The information exchange on the Code of Conduct reveals that many NATO Partnership for Peace countries actually contribute to the global war on terror led by the US by contributing relevant contingents and other support activities in Afghanistan and Iraq. One particular group of countries from Central and Eastern Europe especially underlined their contributions to those missions. Some NATO members, among established democracies, also stress the importance of their missions, especially in Afghanistan, under sub-item 1(e). One of the established democracies, which recently faced considerable domestic opposition to a possible mission of its armed forces in Iraq, argued that it 'regards the fight against terrorism primarily as a political task and therefore sees Operation Enduring Freedom as the military component of an overall strategy'. Another report mentioned about Afghanistan that besides the military component it also expands its cooperation through the involvement of civilian actors, including a diplomat and two police experts to be sent to one of the reconstruction teams in Afghanistan.

Another trend of the reporting relates to the obvious need for enhanced international police cooperation. For instance, some of the new NATO and especially the new EU members or membership candidate countries highlighted their commitments to more effectively cooperate with INTERPOL and EUROPOL.

4.3 New Element II of the Questionnaire: National Planning- and Decision-making Process for the Determination and Approval of Defence Expenditures

4.3.1 General Remarks

With sub-item 1(b) of the 2003 Questionnaire, the participating States have been requested to ‘describe the national planning- and decision-making process (including the role of the Parliament and Ministries) for the determination/adoption of defence expenditures.’ Under sub-item 2(a) of the Questionnaire, they are requested to submit the same type of information, however with regard to the military posture. Item 2 of the new 2003 Questionnaire refers to paragraphs 13 and 22 of the Code. Since they contain relevant provisions concerning legislative control of the armed forces, we quote them here:

‘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. (Paragraph 13 of the Code)

Although paragraph 13 is part of the inter-state sections of the Code (section IV), it indeed contains an implicit provision regarding parliamentary oversight of the armed forces. By stipulating that military capabilities shall be determined ‘on the basis of national democratic procedures’, it also anticipates relevant paragraphs of section VII of the Code. One of those is paragraph 22 stipulating:

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.

4.3.2 The Relevance of Democratic and Civilian Oversight of Security and Defence Policy

When combined, paragraphs 13 and 22 of the Code set out many of the tasks which are within the core competencies and authorities of national parliaments, including its security and defence committees, as well as the ministry of defence which is usually referred to in democracies as a major instrument of executive civilian control. The determination of military capabilities is usually a task of the MoD, but needs to be approved by parliament. The same is true about defence expenditures. While the need to exercise restraint in military expenditures is a task usually shared by the MoD and parliament, the MoD, like any other governmental department or administrative body, is obliged to develop both effective and efficient (defence) policy, which in the post-Cold War era requires the introduction of modern defence management methods and skills. Institutional civilian control of the armed forces therefore corresponds to the (civilian) minister of defence’s accountability to parliament on behalf of the Cabinet and executive

branch of government. Within the minister's democratic accountability duties, the accountability on defence expenditures represents a central aspect within the authority of parliamentary oversight of defence policy.

In the post-Cold War era, as well as within the new continental integration process in Europe, the introduction of effective and efficient management of defence policy is indeed one of the major challenges to security sector reform and transformation. This is particularly true for the countries of Central and Eastern Europe (CEE) transiting from the former communist planning economies to modern free-market economies. In order to establish sound democratic civil-military relations and modernised and transformed security and defence management and oversight, both ministries and parliament need access to relevant information. Furthermore, civilian security and defence expertise capacities must be increased, which essentially means skilled and experienced civil servants (civilian experts who work in high administrative positions within the decision-making processes in ministerial and parliamentary bodies). Finally, there is also a need to further implement overall defence reforms and to develop and increase military professionalism.

Accordingly, it is only with the empowerment of civilian expertise in security and defence matters that the implementation of democratic civilian control of the armed forces will succeed. It will fail if the military remain the exclusive security advisors to the government. In many of the CEE countries, the establishment of democratic, effective and efficient defence policy and management therefore required two major reform measures: the demilitarisation of defence and interior ministries; as well as giving authority for security and defence capacities to parliamentary committees, including appropriate public access to relevant information on security and defence.

According to Andrew Cottey, although in post-communist Europe the military's role in domestic politics has become less salient with a relative decline of military domestic interference, the democratic management of defence policy must continue to evolve. Throughout the 1990s there has been a shift from the so-called "first generation" towards the "second generation" of DCAF implementation measures. However, Cottey also emphasises that much of the academic literature on civil-military relations has focused on the first dimension of DCAF implementation measures, which is the military's role in domestic politics. Conceptual studies on defence management have until now received less attention.¹²⁵

The national planning- and decision-making process to determine and approve defence expenditures is therefore clearly a second-generation issue within the DCAF implementation process. Significantly, information exchange under sub-

¹²⁵ Cottey, Andrew, "Democracy and the Military in Postcommunist Europe", Paper presented at the 2003 International Biennial Conference of the Inter-University Seminar on Armed Forces and Society (IUS), Chicago, 24-26 October 2003, pp. 5-6.

item 1(b) does indeed reveal that there is still much work to be done in this aspect of defence policy.

4.3.3 Technical Challenges to the Reporting under New Sub-Item 2(b)

As has been the case with the reporting to sub-item 1e (see also chapter 3.2), the exchange of information on sub-item 2(b) lacks homogeneity and the shortness of national answers stands out. Information on defence expenditures is extremely scarce if compared with the information submitted within other items and sub-items of the Questionnaire. Most striking is the fact that, while only very few countries answered in detail to the question, many countries simply noted the amount of money spent within the past fiscal year – which is obviously not the information requested.¹²⁶

The considerable loopholes and shortcomings within the reporting on sub-item 2(b) are clearly visible: a majority of reports have only one paragraph. The following example shows that even many of the established democracies (including EU member States) are not exceptions. The national report concerned is 40 pages long and the following paragraph is all that has been devoted to sub-item 2(b):

In addition to general budgetary provisions on the Federation's medium-term financial plan, neither specific departmental nor other specific rules apply to the defence budget. Just like any other individual plan within the Federal budget, it is drawn up by the Federal Ministry of Finance within the framework of the draft budget act. The volume of the defence budget is ultimately determined by the Federation's expected revenue, taking into consideration the borrowing requirement which, in turn, is subject to constitutional limits – at most the sum of investments – as well as the stability criteria for the Euro.

It is astonishing to see that a country taking into account the stability criteria of the Euro when determining the national defence budget does not find it necessary to provide any further information about the role of the MoD and Parliament as required by item 2. For comparison: the same report devoted more than half of the information (23 pages) to its reporting on item 1 on terrorism! And yet, within those 23 pages, roughly 1 page only is dealing with sub-item 1(e) – and this is the usual picture when assessing the added value of the technically updated 2003 Questionnaire.

To be fair, reporting on the Code is not a (yet) logical or truly systematic undertaking since neither the Code nor the Questionnaire provide technical guidelines on basic concepts or standard practices for reporting. This is different with other instruments of the OSCE's politico-military dimension of security, like for instance the 1999 Vienna Document on CSBMs. To further illustrate the asymmetric picture within the information exchange on the Code, it must be said that the country taken as example above did submit comprehensive reports on the Code since the very beginning of the reporting period. For instance, it submitted

¹²⁶ Ghebali and Lambert, *op. cit.*, p. 376.

outstanding model reports within the voluntary information exchange on the 1997 tentative Questionnaire, while a majority of participating States did not even submit a single page on it during that period.

4.3.4 Main Results and Trends of the Reporting

As has been the case with the general trends of the reporting under sub-item 1(e), the substance of reporting here illustrates the new continental integration process, in the context of which relatively strong incentives are established for countries mainly from the CEE region to progress towards NATO and EU standards. However, the quality of reporting also reveals that there is much work to be done and that many of the countries are apparently not aware of even basic DCAF requirements. For instance, one of the countries, which already acceded to the European Union on its enlargement of 2002, informed under sub-item 2(b): ‘The ministry of defence in cooperation with the National Guard compiles the annual defence budget and submits it to the House of Representatives for approval. The approval thereof takes place after detailed study of each item concerning the Defence Planning. Thus the House of Representatives exercise immediate control over the financial issues of the National Guard’.

If this would reflect the current practice in the country concerned, it would be evident that the country did apparently not adhere to basic DCAF standards before entering the Union. Otherwise it would at least distinguish and explain the special roles played by the MoD vis-à-vis the National Guard, and what precisely means to exercise parliamentary ‘immediate control over the financial issues’ of the National Guard. The same type of confusing information exemplified in this national report has also been too often characteristic of the information submitted under sub-item 2(a) regarding the military posture. Similar shortcomings of the reporting were already inherent to the 1999-2002 reporting period. The Questionnaire should therefore be amended with guidelines on key concepts and model reports.

Another new EU member State from CEE, which became a NATO member as early as 1999, simply noted the amount of money allocated to the national defence budget and stressed that this amount represents an increase compared to the previous fiscal year. Yet another new EU member State and former Soviet Union member State mentioned that its national parliament adopted the State Defence Financing Law provided that the allocation of money for defence expenditures did not exceed to 2% of the GNP – which actually corresponds to a suggested limit in democratic societies. Another new NATO member State which will probably soon join the Union, reported within the roughly five lines devoted under the Questionnaire’s sub-item, that defence expenditures ‘are being controlled by the Parliament and other bodies vested with power by law’. It is interesting to see that a country seeking to join the EU can indeed allow itself to submit this kind of information vis-à-vis other member States of the Union which was the decisive force behind the negotiation and adoption of the Code! Many other such

examples may be added. Unfortunately, almost none of the national reports answer systematically to the question posed under sub-item 2(b). It would be relevant therefore to put the issue on the agenda of the forthcoming 4th Follow-up Conference on the Code and to discuss whether the sub-item may further be clarified and developed in order to provide more detailed guidelines for the reporting.

Most countries submitted information of a very general nature without providing relevant details as to the relationship between governmental bodies and their respective authorities and competencies, as well as constitutional and legal responsibilities. However, the relatively brief information of one of the established democracies which is neither NATO nor EU member nor candidate country, could actually serve as a possible basis to develop a model answer to the sub-item:

As part of the federal budget, expenditures for the armed forces have to be approved by the Federal Assembly annually. Two chambers of the Federal Assembly decide by simple majority on the annual federal budget that also includes military expenditures. The budget proposal submitted by the Federal Council is first discussed in the respective parliamentary commissions of both chambers (in the case of the defence budget by the Finance and the Security Policy Commissions) before being presented to the plenary. Moreover, the two chambers of the Federal Assembly vote separately on proposals by the Federal Council on procurement programs for the armed forces (including arms and ammunition) and military construction programs (both drafted by the department of defence) on the basis of annual requests.

5. Possible Ways to Improve DCAF in the OSCE Region: Lessons from the Code

Since the OSCE Code of Conduct has got a central norm-setting function in promoting DCAF in Pan-European relations, the results of its implementation process also allow us to assess major DCAF implementation trends in the OSCE region. The present section aims at identifying those aspects of implementation which are still problematic. The evaluation is made on the basis of a systematic DCAF regime which has been established in section VII and VIII of the Code. This systematic assessment framework has been developed in the above-mentioned handbook on the Code. Its main elements shall be reproduced in the following chapter.

5.1 The Major Loophole of the DCAF-Regime Applicable to the OSCE Area

Professor Victor-Yves Ghebali, in Part I of the practical handbook on the Code, has argued that the Code's provisions under Sections VII (§§ 20-33) and VIII (§§ 34-37) – constituting the document's innovative parts – establish the OSCE regime for the democratic control and use of armed forces. Furthermore, he explained that this regime can be presented in two different ways, and according to four questions. The first way is to consider that the Code represents a global answer to the following question: 'Who must control What, How and Why'. The table below summarises the provisions of the Code that reply to the four

questions separately and reproduces the table already established by Professor Ghebali in the mentioned handbook:¹²⁷

Who	Constitutionally established authorities vested with democratic legitimacy (§ 21). Specific role of the legislative branch (§ 22).
What	Military forces, paramilitary forces, internal security forces, intelligence services and the police (§ 20). First three categories only (§§ 21, 27, 32). Paramilitary forces (§ 26). Irregular forces (§ 25). Armed forces (§§ 22, 23, 28, 30, 31, 34, 35, 36, 37).
How	Primacy of constitutional civilian power over military power (§§ 21, 22, 23, 24, 25, 26). Subjection of armed forces to international humanitarian law (§§ 29, 30, 31, 34, 35). Respect of the human rights of servicemen (§§ 23, 27, 28, 32, 33). Commensurability of the domestic use of force with the needs for enforcement (§ 36) and prohibition of a use of force aimed at restricting the peaceful and lawful exercise of human rights or at depriving people of their individual or collective identity (§ 37).
Why	‘An indispensable element of stability and security’, as well as ‘an important expression of democracy’ (§ 20).

When further splitting-up the “How” question, it is possible, according to Professor Ghebali, to identify the so-called “4 DCAF pillars” of the DCAF regime. The following table illustrates that all relevant provisions of the Code making up those pillars are included in sections VII and VIII of the Code:

DCAF Pillar 1	Supremacy of democratic constitutional civilian power over military power	CoC §§: 21; 22; 23; 24; 25; 26
DCAF Pillar 2	Subjection of armed forces to the norms and prescriptions of International Humanitarian Law	CoC §§: 29; 30; 31; 34; 35
DCAF Pillar 3	Respect of the human rights and fundamental freedoms of the armed forces personnel	CoC §§: 23; 27; 28; 32; 33
DCAF Pillar 4	Regulation of the use of armed forces for internal security purposes	CoC §§: 36; 37

When taking stock of DCAF implementation trends, using the information exchange on the Code, it is important to note that only pillars 1 to 3 have been addressed by the official Questionnaire. On the contrary, pillar 4, regarding the regulation of the use of armed forces for internal security purposes, has not been subject to the regular and compulsory information exchange that started in 1999 and was carried out on the Questionnaires of 1998 and 2003. It has already been pointed out that the 1997 tentative Questionnaire had indeed included aspects of pillar 4 as well. However, the exchange of information on the 1997 Questionnaire was carried out on a voluntary basis only and does therefore not allow general conclusions. Since pillars 1 to 3 (in the 1998 and 2003 Questionnaires) exclusively deal with the provisions of section VII of the Code on DCAF in peacetime, no

¹²⁷ Ghebali and Lambert, op. cit., p. 8.

systematic assessment can be made today about pillar 4 and what provisions are made about it in section VIII of the Code.

The OSCE participating States could apparently not come to an agreement to include pillar 4 aspects into the Questionnaire. Recent conferences, workshops and seminars on the Code reveal that pillar 4 does indeed represent one of the major loopholes of the DCAF regime. It follows that democratic civilian control in the OSCE region has (again) become particularly sensitive in the context of increased use of armed forces for internal security missions. This new trend does not only intend to increase the protection of the State against new security risks. A gradual militarization and securitization of domestic agendas may also represent a burden for the safeguard of human rights and fundamental freedoms of mainly the (civilian) population.

This is also true for the new types of constabulary missions like those in the Balkans, or even the new types of overseas interventions like those in Afghanistan and Iraq. On the one hand, relevant operations are not typical internal security missions, since they are obviously not carried out on the national territory of intervening powers. They are external and foreign missions in nature and can therefore be classified within conventional defence concepts. On the other hand, the new types of (foreign) missions like those in Bosnia, Kosovo, or Afghanistan and Iraq have nothing to do with conventional inter-state warfare, since they are essentially carried out within the territory of a foreign country and aim at establishing peace. Even more important is the fact that the armed forces assume an ever larger amount of roles and missions which are untypical of conventional military combat but are essentially a function for police and security forces. It is significant that the maintenance of public order is the central concern of those missions. So, it is likely to put them under the regulation of DCAF pillar 4 issues and the provisions under paragraphs 36 and 37 of the Code. The main objective of these paragraphs is to prevent the abuse by armed and security forces and their curtailing of the basic rights and fundamental freedoms of the civilian population.

The next three chapters will now focus on those DCAF pillars which have been subject to regular information exchange on the Code of Conduct since 1999. The final chapter also deals with those aspects of information exchange to address inter-state provisions of the Code (international fight against terrorism, stationing of armed forces on foreign soil). By taking into account relevant implementation difficulties that are systematically identified in the Code of Conduct handbook, these chapters are designed to provide an overview over the main lessons learned regarding the implementation of the OSCE-DCAF regime.

5.2 Lessons Learned from the 1st Pillar of the OSCE's DCAF Regime (Supremacy of Democratic Constitutional Civilian Power over Military Power)¹²⁸

- The aspect of public access to information should be extended further from its present focus on the armed forces and should also include paramilitary and internal security forces, as well as the intelligence services and the police.
- The OSCE should provide relevant guidelines regarding the basic structure and possible definitions of the individual components of the armed security sector, including military, paramilitary and internal security forces, as well as intelligence services and the police, including their respective roles and missions.
- The information exchange should take into account politico-military behaviour in times of crisis or armed conflict and further extend the area of democratic control of armed forces to peacetime.
- The implementation process of the Code of Conduct should generally provide more transparency concerning to the roles of non-military security forces and institutions in the determination of the defence budget, as well as concerning the military's own roles and missions in the context of internal security missions.

5.3 Lessons Learned from the 2nd Pillar of the OSCE's DCAF Regime (Subjection of Armed Forces to the Norms and Prescriptions of International Humanitarian Law)¹²⁹

- Training of non-military forces in IHL should be increased, including in the area of paramilitary and security forces, as well as police forces.
- Broadening awareness and instruction in IHL beyond State institutions to include non-state actors, as well as non-statutory military forces and irregular armed forces.
- The implementation of IHL as well as the international law of human rights also show that the non-official, non-governmental defence community as well as relevant civil society actors could be more actively involved in the implementation of the Code of Conduct.

¹²⁸ See also : Ghebali and Lambert, *op. cit.*, pp. 339-340.

¹²⁹ *Ibid.*, pp. 343-344.

5.4 Lessons Learned from the 3rd Pillar of the OSCE's DCAF Regime (Respect of Human Rights and Fundamental Freedoms of the Armed Forces' Personnel)¹³⁰

- More transparency is needed about the safeguarding of constitutional rights and duties of the armed forces personnel regarding recruitment and call-up of conscripts, especially concerning paramilitary and security forces; The OSCE could consider listing the human rights of armed forces personnel according to best practices in established democracies.
- Improvements could be made to broaden legal exemptions to compulsory military service and to introduce appropriate and legitimate alternative civilian service.
- Increase of awareness on the rights and duties as well as best practices in the area of conscientious objection to compulsory military service.
- Many OSCE countries may consider introducing the institution of military ombudspersons.

5.5. Complementary Lessons Learned: Fight against Terrorism and Stationing of Armed Forces on Foreign Soil

Although the OSCE regime on DCAF basically addresses the intra-state provisions under sections VII and VIII of the Code, the OSCE-participating States did also exchange information on the fight against terrorism, as well as on the stationing of armed forces on foreign soil. Since some of the national reports also raised questions about the democratic control of armed forces in the context of these two issues, relevant lessons learned could included this way:¹³¹

- The OSCE could adopt separate Codes concerning first: the roles and missions of military and security forces in preventing and combating terrorism; and second: respect to domestic and international provisions to safeguard legality and legitimacy of the stationing of armed forces on foreign territory/hosting foreign armed forces on one's own national territory.
- As pointed out above, the FSC could also elaborate a separate Questionnaire on terrorism and related security threats.
- Counter-terrorist activities should also be addressed in the context of the assignment of armed and security for internal security missions.

¹³⁰ Ibid., pp. 350-351.

¹³¹ Ibid., pp. 356-358.

6. Conclusion

Implementing democratic control of armed forces in the OSCE region remains a major challenge in Central and Eastern Europe, and especially the countries of the Commonwealth of Independent States (CIS). This can be explained by the fact that most of the CIS countries have not been aspiring to NATO membership. Since the democratic control of armed forces has been a condition for NATO membership, its implementation has been an effective incentive for membership candidate countries to make progress in this respect, while the issue tended to be neglected by non-candidate countries.

A recent study, however, reveals that the literature on the subject has given little attention to the role of the OSCE in promoting democratic control of armed forces in CIS countries. In the Euro-Asian sub-region, the OSCE has been one of the major platforms contributing to the domestic legal implementation of democratic control of armed forces. Moreover, the OSCE has been regarded not as a teacher or nanny in this regard, but as a “school of norms”. According to Isao Miyaoka, the OSCE has therefore contributed its constructivist function to rebuild the democratic state at the international level by introducing the element of democratic control of armed forces and then literally restructuring the legal constitutions of the former communist countries. Through its main instrument, the 1994 Code of Conduct, the OSCE thus helped promoting domestic legislations in the fields of defence law, state of emergency, military mobilisation and service, including alternative service, as well as the armed forces personnel’s legal status.¹³²

Differences remain, however, between the CIS countries and other former Soviet Union member States of East-Central Europe. The Ministry of Defence of the Republic of Latvia has established a homepage on democratic control of armed forces, which publicly informs on the country’s governmental policy, including relevant legislation regarding that subject.¹³³ In his article on the democratic control of armed forces and the relevance of the OSCE Code of Conduct in Latvia, Janis Karlsbergs emphasises that democracy is promoted through the organisation of free elections, respect of human rights, self-determination, the rule of law, as it has been provided in the Helsinki Final Act (1975) and the Paris Charter (1990). He goes on to say that these measures are necessary but not sufficient to address contemporary democratisation challenges (for instance, it would be necessary to address also national minority issues). In any case, with the Code of Conduct in mind, States must also open themselves up to communicate about ‘domestic jurisdiction relating to matters of security and defence’. One of the structural problems related to the implementation of democratic control of armed forces is the fact that the role of armed forces, especially in relation with

¹³² Miyaoka, Isao, *The OSCE as a School of Norms : Legalization of Democratic Control of Armed Forces in the Former Soviet States*, Kokusai Seiji (International Relations), Vol. 144 (March), Tokyo 2006.

¹³³ “Democratic Control of Armed Forces”, Ministry of Defence, Latvia, www.mod.lv/english/01ministrija/06demokratiska.php

civil society, does not often appear in the headlines of newspapers, even less in times of crisis.¹³⁴

The main purpose of the Code is to establish norms on the role of armed forces in democratic societies, as stipulated in article 10 of the 1994 Budapest Document. In fact, paragraph 20 of the Code runs on the same lines as Karlsbergs' argument stipulating that the armed forces' integration with civil society is an important expression of democracy. If there is anything about the Code that links the word with the spirit of this innovative document, it is this particular provision. Without effective democratic civilian control and governance of security sector institutions, in many countries in and beyond the OSCE there will be no substantial progress, including with regards to economic and human development. With the Code of Conduct, democratic control of armed forces is not reinvented. The real merit of the Code is to transcend the limits of democratic control of armed forces from its former limits to domestic politics and to become a genuine concern also of international security policy. Democratic civilian control of armed forces is therefore accepted as a new tool of conflict prevention and international confidence-building. The Code also reflects the OSCE's comprehensive security approach. Yuri Kryvonos emphasises:

In fact, the attitude of the participating States towards the principles set out in the Code reflects their understanding that military threats inside and outside being removed or at least significantly reduced is the precondition for stable socio-economic development.¹³⁵

The Code therefore fosters the idea that there should be a more integrated approach to security sector governance and international peace and stability on the one hand, and democratisation and economic development on the other hand.

However, the implementation process of the Code of Conduct reveals that nowhere is the implementation and application of democratic control as challenging as in the context of the assignment of military and security forces for internal security missions. This has also been illustrated by the fact that the participating States apparently could not reach agreement to include this issue within the information exchange on the Code. However, the need to institutionally address the issue goes back to the very first years after the coming into effect of the Code in the mid-1990s. As pointed out in the present study, the tentative Questionnaire of 1997 already did address the issue but the item later disappeared. The OSCE should therefore revisit the Code in order to more adequately address contemporary security risks. For instance, this could be done by taking into account more systematically the roles and missions of all categories of forces mentioned in the Code: military, paramilitary and internal security forces, as well as intelligence services and the police. Most uneasy appears the implementation of democratic oversight and management in the area of secret and intelligence services, although they gained new relevance in the post-11 September security environment.

¹³⁴ Karlsberg, Janis, "Democratic Control of Armed Forces, the OSCE Code of Conduct, and the Case of Latvia", *The Quarterly Journal*, No. 4 (December 2002), pp. 17-27, p. 17.

¹³⁵ Kryvonos, *op. cit.*, p. 2.

With 10 years in experience of implementing the Code, the OSCE could be an appropriate platform to further promote Pan-European dialogue on the division of labour between the armed forces, the gendarmerie and the police.¹³⁶ This is of increasing relevance not only with homeland security, but also in the context of international peacekeeping, as well as with overseas security missions. Finally, the role of the armed and security forces and their democratic and civilian control is of increasing importance, both for the emerging and established democracies in their fight against terrorism.¹³⁷ In their increasing efforts to prevent and combat terrorism, States must not only strengthen international cooperation. With the Code, the OSCE participating States are implicitly bound to insure that the fight against terrorism – like any other security mission – does not undermine basic principles and standards of democratic coexistence. It is true that both the fight against terrorism and the democratic control of armed forces are matters of increasing concern for the international community.

10 years after its adoption, the Code of Conduct remains both a unique and a living document. With the lessons learned about the Code's implementation, the OSCE would be well-positioned to further include its evolving security agenda into the cross-dimensional body of norms and according to the comprehensive security concept. While it is understandable that States are increasingly concerned about the threats stemming from international terrorism and trans-national criminality, there are in turn only few international instruments that regulate the (new) roles and missions assigned to armed and security forces. The Code, if adequately revisited and amended, could contribute an essential part to further codify politico-military conduct in the context of new security missions. If, however, there is no agreement on the reopening of the Code of Conduct (which appears to be the case), the OSCE could indeed consider the elaboration of a new code of conduct on terrorism.

As an (intermediary) option, the FSC could consider adopting a separate Code of Conduct Questionnaire on terrorism only. Ideally, such a project would also take into account the normative framework set by sections VII and VIII of the Code, for instance by further amending sub-item 1(e) of the new (2003) Questionnaire regarding the roles and missions of armed and security forces in preventing and combating terrorism. With introducing this special aspect of the fight against terrorism, the OSCE already added value to already existing international information exchanges and if compared in particular to the UN counter-terrorist questionnaire. This aspect also agrees with the word and spirit of the OSCE regime on democratic control of armed forces as set by sections VII and VIII of the Code of Conduct. Its future efficiency will depend on the success and failure to further develop the democratic civilian control agenda, including the one of related issues like for instance small arms and light weapons (SALW), and without these agendas being high-jacked by the new counter-terrorism agenda.

¹³⁶ A conceptual analysis of military, paramilitary and police forces has also been provided by: Faupin, Alain, "Providing Security. The Division of Labour. Armed Forces, Gendarmerie, Police", DCAF Working Paper, No. 156.

¹³⁷ Williams, Nicholas, "September 11 - New Challenges and Problems for Democratic Oversight", DCAF Working Paper, No. 89.

Annex 1

Code of Conduct on Politico-Military Aspects of Security (1994)¹³⁸

Sections VII & VIII (related to the democratic control of armed forces)

Section VII

Paragraph 20

The participating States consider the democratic political control of military, paramilitary, and internal security forces, as well as 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.

Paragraph 21

Each participating State will at all times provide for and maintain effective guidance to 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 define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

Paragraph 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.

Paragraph 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.

Paragraph 24

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

Paragraph 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 with the CSCE to consider steps to be taken.

¹³⁸ The OSCE Code of Conduct is also available at: http://www.osce.org/documents/sg/1994/12/702_en.pdf

Paragraph 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.

Paragraph 27

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

Paragraph 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.

Paragraph 29

The participating States will make widely available in their respective countries the international humanitarian law of war. They will consider introducing exemptions from or alternatives to military service.

Paragraph 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.

Paragraph 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.

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

Paragraph 33

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

Section VIII

Paragraph 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.

Paragraph 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.

Paragraph 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.

Paragraph 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.

Annex 2

Information Exchange on the Code of Conduct on Politico-Military Aspects of Security

Current and Technically Updated Questionnaire (2003)¹³⁹

(OSCE) Participating States will supply relevant information (including documents where appropriate) on the following items:

1. **Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end:**
 - (a) List of international agreements, including all United Nations conventions and protocols related to terrorism, to which the participating States is a party;
 - (b) Accession to and participation on other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities;
 - (c) National measures, to include pertinent legislation, taken to implement the international agreements, conventions and protocols cited above;
 - (d) Information on national efforts to prevent and combat terrorism, including appropriate information on legislation beyond United Nations conventions and protocols (e.g., pertaining to financing of terrorist groups);
 - (e) Roles and missions of armed and security forces in preventing and combating terrorism.

(Paragraph 6 of the OSCE Code of Conduct)¹⁴⁰

2. **Description of the national planning- and decision-making process - including the role of the Parliament and Ministries - for the determination / approval of:**
 - (a) The military posture;
 - (b) Defence expenditures.

(Paragraphs 13¹⁴¹, 22¹⁴² of the OSCE Code of Conduct)

¹³⁹ According to: FSC.DD/4/03, ANNEX; This document is also available at http://www.osce.org/documents/fsc/2003/04/825_en.pdf

¹⁴⁰ Paragraph 6 of the OSCE Code of Conduct (cit.): "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."

¹⁴¹ Paragraph 13 of the OSCE Code of Conduct (cit.): "Each (OSCE) 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."

¹⁴² See: Annex 1.

3. Description of:

- (a) constitutionally established procedures ensuring effective democratic control of the military, paramilitary, and internal security forces, as well as intelligence services, and the police;
- (b) Constitutionally established authorities/institutions responsible for the democratic control of military, paramilitary and security forces;
- (c) Roles and missions of the military, paramilitary and security forces as well as controls to ensure that they act solely within the constitutional framework;
- (d) Public access to information related to the armed forces.

(Paragraphs 20, 21, 22 of the OSCE Code of Conduct)¹⁴³

4. Stationing of armed forces on the territory of another participating State in accordance with their freely negotiated agreements as well as in accordance with international law;

(Paragraph 14 of the OSCE Code of Conduct)¹⁴⁴

5. Description of:

- (a) Procedures for the recruitment or call-up of personnel for service in the military, paramilitary, or security forces, if applicable;
- (b) Exemptions or alternatives to compulsory military service, if applicable;
- (c) Legal and administrative procedures protecting the rights of all forces personnel.

(Paragraphs 27, 28, 33 of the OSCE Code of Conduct)¹⁴⁵

6. Instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict including in military training programmes and regulations;

(Paragraph 29, 30 of the OSCE Code of Conduct)¹⁴⁶

7. Any other information.

¹⁴³ See: Annex 1.

¹⁴⁴ Paragraph 14 of the OSCE Code of Conduct (cit.): “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.”

¹⁴⁵ See: Annex 1.

¹⁴⁶ See: Annex 1.

Annex 3

Information Exchange on the Code of Conduct on Politico-Military Aspects of Security

Former and First Official Questionnaire (1998)¹⁴⁷

1. **Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end.**

(Paragraph 6 of the OSCE Code of Conduct)

2. **National planning and decision-making process for the determination of the military posture, including:**

- (a) the role of Parliament and Ministries;
- (b) public access to information related to the armed forces

(Paragraphs 13, 22 of the OSCE Code of Conduct)

3. **Stationing of armed forces on the territory of another participating State in accordance with their freely negotiated agreement as well as in accordance with international law.**

(Paragraph 14 of the OSCE Code of Conduct)

4. **Constitutionally established authorities and procedures to ensure effective democratic political control of:**

- (a) armed forces;
- (b) paramilitary forces;
- (c) internal security forces;
- (d) Intelligence services;
- (e) police.

(Paragraphs 20, 21 of the OSCE Code of Conduct)

5. **Roles and missions of the following types of forces as well as controls to ensure that they act solely within the constitutional framework:**

- (a) military;
- (b) paramilitary;
- (c) security forces.

(Paragraph 21 of the OSCE Code of Conduct)

¹⁴⁷ According to: FSC.DEC/4/98, ANNEX.

6. **Procedures for the recruitment or call-up of personnel for service in the:**
 - (a) military;
 - (b) paramilitary;
 - (c) security forces.

(Paragraph 27 of the OSCE Code of Conduct)

7. **Where applicable, legislation or other relevant documents governing exemptions from, or alternatives to compulsory military service.**

(Paragraph 28 of the OSCE Code of Conduct)

8. **Instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict included in military training programmes and regulations.**

(Paragraphs 29, 30 of the OSCE Code of Conduct)

9. **Legal and administrative procedures protecting the rights of all forces personnel.**

(Paragraph 33 of the OSCE Code of Conduct)

10. **Any other information.**

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¹⁴⁸ A number of additional (and essentially OSCE) documents used in the present analysis are not reproduced in the bibliography. They are, however, referred to within relevant footnotes.

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