



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

DCAF DOCUMENT - NO. 3

**THE OSCE CODE OF CONDUCT ON POLITICO-
MILITARY ASPECTS OF SECURITY
(3 DECEMBER 1994)
A PARAGRAPH-BY-PARAGRAPH COMMENTARY**

Professor Victor-Yves Ghébal
Graduate Institute of International Studies, Geneva

Geneva, February 2003

**GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)**

DCAF DOCUMENT - NO. 3

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

(3 DECEMBER 1994)

A PARAGRAPH-BY-PARAGRAPH COMMENTARY

Professor Victor-Yves Ghébal

Graduate Institute of International Studies, Geneva

Geneva, February 2003

EDITORIAL NOTE

The end of the Cold War, the resulting uncertainties of the security environment and the subsequent development of comprehensive security policies led to a broadening of the concept of confidence-building measures (CBM) to include, inter alia, the role of the security forces in the society. The development of post-Cold War CBMs in the Euro-Atlantic area resulted in a quantum leap from traditional military CBMs to so-called norm- and standard-setting measures, which include a wide variety of politico-military measures designed to enhance regional security – and could be termed ‘fourth generation CBMs’. In this regard, the OSCE Code of Conduct on Politico-Military Aspects of Security, which was adopted in 1994, is of particular interest because it places the concept of (national) democratic political control of the security forces in the context of (international) confidence-building measures. This holds particularly true for the sections VII and VIII of the Code which detail the principle of democratic control and use of armed forces. Since the end of the Cold War, the democratic control and use of armed forces has become one of the preconditions that emerging democracies have to meet in order to accede to European and Euro-Atlantic organizations. Indeed, European and Euro-Atlantic organizations other than the OSCE are using the OSCE Code of Conduct as a reference tool when it comes to defining the principle of democratic control and use of armed forces.

It is against this background that the Geneva Centre for the Democratic Control of Armed Forces (DCAF) has commissioned the OSCE Cluster of Competence at the Graduate Institute of International Studies, Geneva, to carry out a project on the OSCE Code of Conduct. In the framework of this project, Professor Victor-Yves Ghébal, one of the foremost experts on the OSCE, has drafted the first-ever paragraph-by-paragraph commentary on the Code of Conduct, and this will soon be published together with an analysis on the information exchange on the Code. Given the Code’s relevance for the discussion of issues related to the democratic control of armed forces, DCAF decided to publish the commentary in a separate document. We thereby hope to contribute to the discourse on, and the practice of, the principle of democratic control of armed forces in the Euro-Atlantic Area and beyond.

*Heiner Hänggi**

* Dr. Heiner Hänggi is Assistant Director and Head of Think Tank at the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

CONTENTS

Introduction to the <i>Commentary</i>	1
Summary Contents of the Code of Conduct on Politico-Military Aspects of Security.....	17
Title : "Code of Conduct on Politico-Military Aspects of Security"	19
Preamble	20
<i>Paragraph 1</i> : Parties to the Code of Conduct	20
<i>Paragraph 2</i> : The Code of Conduct's rationale	20
<i>Paragraph 3</i> : Undiminished status of existing international law principles.....	22
<i>Paragraph 4</i> : Undiminished status of existing OSCE commitments.....	23
<i>Paragraph 5</i> : Adoption of the Code of Conduct	24
Section I. Reaffirmation of comprehensive security and cooperative security, and enunciation of the solidarity principle	25
<i>Paragraph 1</i> : Wholesale confirmation of OSCE commitments.....	25
<i>Paragraph 2</i> : Reaffirmation of the comprehensive security concept	26
<i>Paragraph 3</i> : Reaffirmation of the indivisibility of security in the OSCE area and beyond.....	27
<i>Paragraph 4</i> : Reaffirmation of the cooperative security approach	29
<i>Paragraph 5</i> : Enunciation of the solidarity principle	33
Section II. Reaffirmation of the commitment to cooperate against terrorism	36
<i>Paragraph 6</i> : Reaffirmation of the commitment to take appropriate measures to prevent and combat terrorism in all its forms.....	36

Section III. Reaffirmation of the equal value of the Helsinki Final Act's principles and of the commitment of non-assistance to aggressor states	40
<i>Paragraph 7</i> : Reaffirmation of the equal value of the Helsinki Final Act's Principles.....	40
<i>Paragraph 8</i> : Reaffirmation of the commitment of non-assistance or support to an aggressor state.....	41
Section IV. Security Rights and obligations of OSCE participating states	42
<i>Paragraph 9</i> : Reaffirmation of the right to self-defence	42
<i>Paragraph 10</i> : Reaffirmation of the right to freely choose security arrangements.....	43
<i>Paragraph 11</i> : Reaffirmation of the right to belong to alliances and the right to neutrality.....	44
<i>Paragraph 12</i> : Obligation to maintain only such military capabilities commensurate with individual or collective security needs.....	46
<i>Paragraph 13</i> : Obligation to determine military capabilities through national democratic procedures. Renunciation of military domination in the OSCE area.....	48
<i>Paragraph 14</i> : Authorisation to station armed forces on the territory of another participating state in accordance with freely negotiated agreements as well as international law	49
Section V. Confirmation of the importance of the process of arms control, disarmament and CSBM	53
<i>Paragraph 15</i> : Importance of implementation in good faith of arms control, disarmament and CSBM commitments	55
<i>Paragraph 16</i> : Reaffirmation of the commitment to pursue arms control, disarmament and CSBM measures in the OSCE area	56
Section VI. Reaffirmation of commitments to cooperate for conflict prevention and crisis management	57
<i>Paragraph 17</i> : Cooperation to counter economic/environmental and human dimension tensions conducive to conflicts	57
<i>Paragraph 18</i> : Reaffirmation of the equal importance of cooperation at the various phases of the conflict management cycle	58

<i>Paragraph 19</i> : Cooperation for peaceful resolution and humanitarian assistance support in armed conflicts	60
Section VII. Democratic control of armed forces	61
<i>Paragraph 20</i> : Rationale for the democratic control of armed forces	63
<i>Paragraph 21</i> : Primacy of the constitutionally established authorities vested with democratic legitimacy over military power	68
<i>Paragraph 22</i> : Legislative approval of, as well as restraint in, transparency of and public access to military defence expenditures	71
<i>Paragraph 23</i> : Political neutrality of armed forces and civil rights of their individual members.....	72
<i>Paragraph 24</i> : Safeguards against military incidents due to accident or error	74
<i>Paragraph 25</i> : Inadmissibility of forces that are not accountable to or controlled by their constitutionally established authorities	75
<i>Paragraph 26</i> : Prohibition of acquisition by paramilitary forces of combat mission capabilities in excess of those for which they were established.....	76
<i>Paragraph 27</i> : Consistency with human rights of recruitment or call-up of armed (military, paramilitary and security) forces	77
<i>Paragraph 28</i> : Rights and duties of armed forces personnel, including possibility of exemption from or alternatives to military service	78
<i>Paragraph 29</i> : Promotion of the knowledge of international humanitarian law and reflection of its commitments in military training programmes and regulations	82
<i>Paragraph 30</i> : Instruction of armed forces personnel in international humanitarian law, including awareness of individual accountability at domestic and international level	83
<i>Paragraph 31</i> : Individual accountability of commanders and rank and file servicemen of armed forces under national and international law	84
<i>Paragraph 32</i> : Exercise of their human rights by the personnel of military, paramilitary and security forces	86
<i>Paragraph 33</i> : Legal and administrative national procedures for the protection of the rights of all forces personnel	87

Section VIII. Democratic use of armed forces	89
<i>Paragraph 34</i> : Consistency of the commandment, manning, training and equipment of armed forces with international humanitarian law	84
<i>Paragraph 35</i> : Consistency of defence policy and doctrine with international humanitarian law and the Code of Conduct.....	91
<i>Paragraph 36</i> : Subjection of the domestic use of force to the rule of law and commensurability of such use with the needs for enforcement	92
<i>Paragraph 37</i> : Prohibition of a domestic use of force aimed at restricting the peaceful and lawful exercise of human and civil rights or at depriving people of their individual or collective identity.....	98
Section IX. Implementation arrangements	100
<i>Paragraph 38</i> : Accountability for implementation	100
Section X. Final clauses	110
<i>Paragraph 39</i> : Politically binding nature of the Code and date of its coming into force.....	110
<i>Paragraph 40</i> : Undiminished value of existing OSCE commitments.....	112
<i>Paragraph 41</i> : Reflection of the Code's commitments in relevant national internal documents, procedures or legal instruments	113
<i>Paragraph 42</i> : Publication and widespread dissemination of the Code at national level.....	113
Bibliography	115
Annexes	122
<i>Annex 1</i> : Proposal submitted by Hungary and the United states, at the Moscow Conference on the human dimension, concerning "Civilian control over military and security forces" (CSCE/CHDM/.43 of 26 September 1991).....	122
<i>Annex 2</i> : Proposal submitted by France, Germany and other participating states, at the 1992 Helsinki Follow-up Meeting, concerning a "CSCE Code of Conduct on security relationships among participating states" (CSCE/HM/WG2/1 of 19 May 1992)	123

<i>Annex 3 :</i>	Proposal submitted by Poland on a "CSCE Code of Conduct in the field of security" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992).....	124
<i>Annex 4 :</i>	Proposal submitted by the member states of the European Community, Iceland and Norway on a "CSCE Code of Conduct governing mutual relations between participating states in the field of security" (CSCE/FSC/SC.21 of 30 June 1993)	134
<i>Annex 5 :</i>	Proposal submitted by Austria and Hungary on a "CSCE Code of Conduct governing the behaviour of the participating states towards each other and of governments towards their citizens" (CSCE/FSC/SC.22 of 15 September 1993)	146
<i>Annex 6 :</i>	Proposal submitted by Turkey on a "Code of Conduct governing the mutual relations of the CSCE participating states in the field of security" (CSCE/FSC/SC.8 of 16 December 1992).....	160
<i>Annex 7 :</i>	Proposal on implementation provisions for a Code of Conduct" (CSCE/FSC/SC.17 of 5 May 1993)	167
<i>Annex 8 :</i>	Proposal submitted by Hungary on the "democratic control of the armed forces and their use" (CSCE/FSC/SC.25 of 23 February 1994).....	169
<i>Annex 9 :</i>	Working document submitted by France regarding the structure of a Code of Conduct (CSCE/FSC/SC/B.2 of 3 June 1993).....	173
<i>Annex 10 :</i>	United Nations "Code of Conduct for Law Enforcement Officials", adopted by the United Nations General Assembly (Resolution 34/169 of 17 December 1979).....	176
<i>Annex 11 :</i>	Declaration on the Police adopted by the Parliamentary Assembly of the Council of Europe (Resolution 690 of 8 May 1979).....	182
<i>Annex 12 :</i>	Recommendation on "Control of internal security services in Council of Europe member states" adopted by the Parliamentary Assembly of the Council of Europe (Recommendation 1402 of 26 April 1999).....	186
Index		190

THE CODE OF CONDUCT ON POLITICO - MILITARY ASPECTS OF SECURITY (3 DECEMBER 1994). A PARAGRAPH-BY-PARAGRAPH COMMENTARY¹

Victor-Yves Ghébal

Introduction to the *Commentary*

1. The "Code of Conduct on Politico-Military Aspects of Security" (1994) is the most important normative document adopted by the OSCE participating states since the 1975 Helsinki Final Act. It occupies, among the body of commitments developed within the politico-military dimension of the OSCE, a fundamental place for at least two basic reasons. First, it represents an instrument which has **no real counterpart in any other international organisation**; indeed, it can hardly be compared either to the *United Nations Code of Conduct for Law Enforcement Officials* (adopted by the United Nations General Assembly through Resolution 34/169 of 17 December 1979), or to some texts emanating from the Parliamentary Assembly of the Council of Europe such as Resolution 690 on a "Declaration on the Police" (8 May 1979) and Recommendation 1402 on "Control of internal security services in Council of Europe member states" (26 April 1999). Second, it intrudes into an area of state power which has hitherto been normally considered taboo: armed forces; from this perspective, it fills a normative gap since it offers a series of provisions regulating **the role and use of armed forces** (at domestic as well as external level) in the context of states where the rule of law prevails.

2. The Code of Conduct is the offspring of a proposal put forward by France with a view to a **pan-European security treaty** codifying the OSCE's existing security norms and spelling out fresh additional commitments aimed at responding to the security vacuum concerns expressed by the former Warsaw Pact states and the

¹ The Code of Conduct on Politico-Military Aspects of Security has been adopted in the framework of the Conference of Security and Cooperation in Europe (CSCE) – re-baptised, as from 1st January 1995 with retrospective effect, Organisation for Security and Cooperation in Europe (OSCE). *In the present commentary, the acronym "OSCE" will currently be used – except for official quotations which refer to the "CSCE". Likewise, the present commentary will normally refer to the "European Union" which, at the time, was performing as the "European Community".*

independent states coming from the dissolution of the USSR ². Unsurprisingly, the French project was dismissed by the United States and the other Western Allies (with the sole exception of Germany) on the grounds that an instrument of that kind could, sooner or later, jeopardise NATO's political future.

3. Given that the principle of post-Cold War security norms of behaviour was meeting a favourable echo, Germany advocated the alternative idea of a politically binding instrument. Accordingly, France and Germany hammered out a proposal on a "**Code of Conduct on security relationships among participating states**". Officially submitted to the 1992 Helsinki Follow-up Meeting with the co-sponsorship of 11 other participating states³, the text proposed that such an instrument include three main building blocks:

- provisions reaffirming existing OSCE commitments related to the politico-military aspects of security (in particular the commitment to refrain from the threat or use of force) and developing them in the form of "concrete rules of behaviour";
- provisions defining new rules reflecting "the growing interaction between the domestic behaviour of states and their mutual relations"; and
- provisions aiming at strengthening "the decision-making and execution capabilities" of the OSCE⁴.

France and Germany also suggested that a thorough and open dialogue be conducted within the *Forum for Security Cooperation* (the OSCE specialised body for politico-military issues) under the following terms of reference: "the participating

² During the second OSCE Ministerial Council Meeting, held in Prague in January 1992, France tabled a non-paper on the relevance of a pan-European security treaty. For general indications on the substance of the French proposal, see *The Helsinki Follow-Up Meeting of the Conference on Security and Cooperation in Europe (March 24 - July 8, 1992). A Report Prepared by the Staff of the Commission on Security and Cooperation in Europe*. Washington, Commission on Security and Cooperation in Europe, [1992], p. 32 – and also Jonathan Dean: "The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed Up", *OSCE Yearbook*, Volume 1-2, 1995-1996, p. 292.

³ The official co-sponsors were some European Union members – Belgium, Greece, Ireland and Spain – the Russian Federation, Bulgaria, Estonia, Malta, Poland and Romania (CSCE/HM/WG2/1 of 19 May 1992), as well as Kyrgyzstan (CSCE/HM/WG.2/1/Add. 1 of 16 June 1992). The full text of the proposal is reproduced in Annex 2 of the present *Commentary*.

⁴ CSCE/HM/WG2/1 of 19 May 1992 : paragraph 2.

states will undertake consultations with a view to strengthening the role of the CSCE, by establishing a code of conduct governing their mutual relations in the field of security, *which could, in time, be further developed into a CSCE security treaty*⁵. Stripped of any reference to a possible security treaty, that directive was inserted in item 12 ("Security enhancement consultations") of the Forum for Security Cooperation's "Programme for Immediate Action"⁶.

4. The negotiation of the Code of Conduct proceeded on the basis of four comprehensive draft texts.

First, a **Polish proposal** formulating guidelines for inter-state and intra-state relations. From the first angle, it contained provisions building upon and amplifying the principle of the non-use of force, as well as ensuring its full and effective implementation through a formal "solidarity principle". From the second angle, it offered a number of prescriptions concerning the democratic control and use of armed forces. The Polish text probably represented the most ambitious of all other proposals tabled⁷.

Second, a **"European Union plus" proposal** largely similar, in its spirit and letter, to the Polish proposal – that is to say a paper focused on the politico-military aspects of security as well as on the democratic control and use of armed forces. Submitted *independently from NATO* by Denmark on behalf of the European Union as well as Canada, Iceland and Norway, it represented one of the early expressions of the Common Foreign and Defence Policy (CFSP) of what was then the "European Community". It also reflected the common position of all NATO members except the United States and Turkey. Actually, discussions on the Code of Conduct were initiated within NATO in the autumn of 1992, but they stopped when the Europeans decided to treat the issue as an CFSP project⁸. For that reason, the "European Union

⁵ CSCE/HM/WG2/1 of 19 May 1992 : paragraph 3 (author's italics). The *1992 Helsinki Summit Declaration* also commits the OSCE participating states "to consider new steps to further strengthen norms of behaviour on politico-military aspects of security" (third sentence of paragraph 22).

⁶ The "Programme for Immediate Action" represents the appendix to Chapter V of the *Helsinki Decisions 1992*.

⁷ Jonathan Dean: "The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed Up", *OSCE Yearbook*, Volume 1-2, 1995-1996, p. 292.

⁸ Crispin Hain-Cole: "Negotiating the Code: A British View", *Cooperative Security, the OSCE and its Code of Conduct*, Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, pp. 29 and 31.

plus" proposal, whose effect was to sideline NATO, generated American unease and displeasure throughout the whole drafting process.

Third, a **joint Austro-Hungarian proposal** which, while reflecting practically all the basic elements of the Polish and the "European Union plus" proposals, offered additional commitments with respect to the human dimension (in particular, a detailed section on the rights of national minorities), as well as the economic and environmental dimension. The text illustrated a much broader security approach than the two other set of proposals.

Fourth, a **Turkish proposal** visibly tabled to counterbalance (if not neutralise) the "European Union plus" text seen by Ankara as implying unwelcome duties vis-à-vis its Kurdish population⁹. Basically, it contained provisions of a general nature on "conditions for promoting peace, stability, security and cooperation", "norms of conduct with direct effect on mutual relations" and "cooperation with regard to crisis situations". It also included provisions of the same kind related to the human dimension, the environment, migrant workers, terrorism, illicit arms- and drugs-trafficking – as well as rare and timid elements concerning the democratic control and use of armed forces.

Besides, specialised proposals were jointly tabled by Austria, Hungary and Poland on **implementation arrangements of the Code of Conduct** and by Hungary alone on the issue of the **democratic control and use of armed forces**. France also submitted a working document recalling – for practical methodological purposes – the structure of the European Union's proposal.

The complete list of official draft proposals presents as follows :

⁹ Dean, *op. cit.*, p. 293. See also Adam Kobieracki : "Negotiating the Code: A Polish View", *Cooperative Security, the OSCE and its Code of Conduct*. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, p. 16.

AUTHOR (s)	TITLE	REFERENCE
Poland	CSCE Code of Conduct in the Field of Security.	CSCE/FSC/SC.5/Rev.1 of 18 November 1992 (1 st version: CSCE/FSC/SC.5 of 11 November 1992)
European Union, Canada, Iceland and Norway ("European Union plus").	CSCE Code of Conduct Governing Mutual Relations Between Participating states in the Field of Security.	CSCE/FSC/SC.21 of 30 June 1993 (1 st version entitled "Elements for a CSCE Code of Conduct Governing Mutual Relations Between Participating states in the Field of Security : CSCE/FSC/SC.7 of 16 December 1992).
Turkey	Code of Conduct Governing the Mutual Relations of the CSCE Participating states in the Field of Security.	CSCE/FSC/SC.8 of 16 December 1992.
France	Working Document Regarding [the Structure of the European Union's Proposal for] a Code of Conduct.	CSCE/FSC/SC/B.2 of 3 June 1993.
Austria and Hungary	CSCE Code of Conduct Governing the Behaviour of the Participating states Towards Each Other and of Governments Towards Their Citizens.	CSCE/FSC/SC.22 of 15 September 1993.
Austria, Hungary and Poland	Implementation Provisions for a Code of Conduct.	CSCE/FSC/SC.17 of 5 May 1993.

Hungary	Democratic Control of Armed Forces and their Use.	CSCE/FSC/SC.25 of 23 February 1994.
---------	---	--

Remarkably enough, no formal comprehensive draft proposal originated from either the Russians or the Americans. At the time, the **Russian Federation** lacked a clearly formulated security strategy and was preoccupied by different security issues¹⁰. As to the **United states**, its attitude reflected the displeasure of having being sidelined by the European Union¹¹. The main American concern throughout the drafting process was to arrive at a substantial text focused on the democratic control of armed forces and to avoid anything leading towards some sort of a pan-European security system liable to encourage a diminution of NATO's or the United states' role in European affairs¹². The coordination of the drafting process was, nevertheless, devolved to an American diplomat: James E. Hinds.

5. The Code of Conduct was negotiated within the Vienna Forum for Security Cooperation, from November 1992 to late 1994. The three most **controversial issues** encountered during the drafting process concerned **the Code's conceptual scope** (comprehensive security vs. politico-military aspects of security), the interface of the OSCE with the other European security organisations (the so-called issue of "**interlocking institutions**") and the question of the **stationing of armed forces on the territory of other participating states**¹³. The Forum for Security Cooperation, exceptionally sitting in Budapest, adopted the last version of the text on 3 December 1994¹⁴. The latter was then transmitted to the delegations of the Budapest Review Meeting which completed it at the last moment and handed it over to the heads of

¹⁰ Kobieracki, *op. cit.*, p. 20. However, the Russian Federation jointly tabled with Poland, on 23 March 1993, an informal (unnumbered) food for thought paper concerning the "Possible Structure of the Code of Conduct".

¹¹ As stressed by Jonathan Dean, the members of the European Union were for the first time in the history of the pan-European process "caucusing separately from NATO members [and] wanted a text that defined norms of European security" (*op. cit.*, p. 292).

¹² Kobieracki, *op. cit.*, pp. 15-16. See also Hain-Cole, *op. cit.*, p. 31 and Dean, *op. cit.*, pp. 292 and 293.

¹³ These issues are addressed in the commentary on the Code of Conduct 's title, and on paragraphs 4 and 14.

¹⁴ FSC/Journal No 94 of 3 December 1994.

states or governments gathered at the Budapest Summit. Finally, the Code of Conduct was included, as Chapter IV, in the *Budapest Decisions 1994*¹⁵.

6. Opened by a short preamble, the operative text of the Code of Conduct consists of 42 provisions structured into 10 untitled sections which actually group three sets of provisions respectively related to **inter-state norms** (Sections I-VI, paragraphs 1-19), **intra-state norms** (Sections VII-VIII, paragraphs 20-37) and **implementation arrangements and final clauses** (Sections IX-X, paragraphs 38-42).

7. In the field of **inter-state norms**, the Code of Conduct does not add much to the *Helsinki Final Act's Decalogue* (1975) and the *Charter of Paris for a New Europe* (1990). It can even be said that its added value is marginal. Indeed, the paragraphs constituting Sections I to VI are overwhelmingly made up of restatements of existing OSCE principles, norms or commitments – what the diplomats call in their jargon "**the OSCE acquis**". The Code of Conduct reaffirms or confirms the wholesale OSCE commitments (paragraph 1), the concept of comprehensive security (paragraph 2), the indivisibility of security in the OSCE area and beyond (paragraph 3), the cooperative security approach (paragraph 4), the commitment to take appropriate measures to prevent and combat terrorism in all its forms (paragraph 6), the equal value of the Helsinki Final Act's Principles (paragraph 7), the commitment of non-assistance or support to an aggressor state (paragraph 8), the right to self-defence (paragraph 9), the right to free choice of security arrangements (paragraph 10), the good faith implementation of arms control, disarmament and CSBM commitments (paragraph 15), the need to pursue arms control, disarmament and CSBM measures (paragraph 16), the countering of economic/environmental and human dimension tensions conducive to conflicts (paragraph 17), the equal importance of cooperation at the various phases of the conflict management cycle (paragraph 18) and, finally, the relevance of cooperation for the peaceful resolution of and humanitarian assistance support in armed conflicts (paragraph 19).

8. Only a handful of provisions related to inter-state norms bring **more or less innovation** in the OSCE context. These provisions concern the solidarity principle

¹⁵ The *1994 Budapest Summit Declaration* confirmed that "continuing the CSCE's norm-setting role", the participating states have established a Code of Conduct "that, *inter alia*, set forth principles guiding the role of the armed forces in democratic societies" (paragraph 10).

(paragraph 5), the maintenance of only those military capabilities commensurate with individual or collective security needs (paragraph 12), the determination of military capabilities through national democratic procedures (paragraph 13), the renunciation of military domination in the OSCE area (paragraph 13) and the authorisation to station armed forces on the territory of another participating state in accordance with freely-negotiated agreements as well as international law (paragraph 14).

9. By contrast, as regards **intra-state relations**, the Code of Conduct breaks real new ground. Sections VII-VIII, which are related to the **democratic control and use of armed forces**, represent the real added value to the Code of Conduct. The latter can claim to be the first multilateral instrument embodying rules regulating, at both internal and international levels, a central area of political power: armed forces. The provisions concerning the democratic control and use of armed forces can be summarised by means of a comprehensive question – **"Who must control what, how and why?"**:

Who ?	What ?	How ?	Why ?
<p>Constitutionally established authorities vested with democratic legitimacy (§ 21). Specific role of the legislative branch: (§ 22).</p>	<p>Military forces, paramilitary forces, internal security forces, intelligence services and the police (§ 20).</p> <p>First three categories only (§§ 21, 27, 32) .</p> <p>Paramilitary forces (§ 26).</p> <p>Irregular forces (§ 25).</p> <p>"Armed forces" (§§ 22, 23, 28, 30, 31, 34, 35, 36, 37).</p>	<p>Primacy of constitutional civilian power over military power (§§ 21, 22, 23, 24, 25, 26).</p> <p>Subjection of armed forces to international humanitarian law (§§ 29, 30, 31, 34, 35).</p> <p>Respect of the human rights of servicemen (§§ 23, 27, 28, 32, 33).</p> <p>Commensurability of the domestic use of force with the needs for enforcement (§ 36) and prohibition of use</p>	<p>"An indispensable element of stability and security" as well as "an important expression of democracy" (§ 20).</p>

		of force aimed at restricting the peaceful and lawful exercise of human rights or at depriving people of their individual or collective identity (§ 37).	
--	--	--	--

10. The "**Who**" element refers to "**constitutionally established authorities**". However, this necessary condition is not sufficient: such authorities must also be "**vested with democratic legitimacy**" (paragraph 21), that is to say representing the true will of the people. The competent authorities are the executive branch and the legislative branch of government operating in the context of a system of true separation of powers and, more broadly, of the rule of law. The provisions developed in Sections VII and VIII of the Code of Conduct concern (without explicitly mentioning it) the **executive branch**. Only one provision, that of paragraph 22 related to defence expenditures, refers to the **legislative branch**.

11. The "**What**" element concerns the "**armed forces**", a concept that the Code of Conduct does not define in any way because of the diversity of national traditions and practices in the OSCE area. Nevertheless, the concept is illustrated in paragraph 20 by five (equally undefined) categories: **military forces, paramilitary forces, internal security forces, intelligence services** and the **police**. The subsequent paragraphs of Section VII and Section VIII mention either the first three categories only (thus excluding intelligence services and the police) or just the "armed forces" - a general expression logically applicable to the regular forces of a national army. Besides, special provisions are devoted to paramilitary forces (paragraph 26) and "forces that are not accountable or controlled by (...) constitutionally established authorities" (paragraph 25) – a phrase obliquely referring to *irregular forces*.

12. The "**How**" element is related to four core aspects which actually represent, as seen from the OSCE, the pillars of the democratic control and use of armed forces :

a) The primacy of democratic constitutional civilian power over military power.
The Code of Conduct commits the OSCE participating states to ensure that, at all times, their constitutionally established authorities vested with democratic legitimacy

provide for and maintain effective guidance to and control of their military, paramilitary and security forces (paragraph 21) and that its military establishment is "politically neutral" (paragraph 23). It also commits them to provide for legislative approval military defence expenditures, as well as restraint in, transparency of and public access to those of expenditures (paragraph 22). Finally, it formulates specific prescriptions concerning "accidental or unauthorised use of force" (paragraph 24), irregular forces (paragraph 25) and paramilitary forces (paragraph 26).

b) The subjection of armed forces to the norms and prescriptions of international humanitarian law. The Code of Conduct confirms three specific legally binding obligations of international humanitarian law. The first emphasises the obligation of states to respect the corpus of international humanitarian law which must govern armed forces at the level of command, manning, training and equipment in time of peace as in wartime (paragraphs 29, 34 and 35). The second is related to the obligation to promote knowledge of that corpus within the military establishment and the entire population (paragraphs 29 and 30). The third has to do with the obligation to hold all military persons responsible for serious violations, whether commanders or subordinates, accountable for their action under national and international law (paragraphs 30 and 31).

c) Respect of the human rights and fundamental freedoms of the armed forces personnel. While unequivocally implying that the armed forces "as such" (that is to say the military as a collective entity) cannot pretend to be above the law, the Code of Conduct admits that human rights do not stop at the barracks. In other terms, individual servicemen are citizens and, as such, entitled to the *exercise of civil rights* (paragraph 23). Therefore, it prescribes that each OSCE participating state ensure that its military, paramilitary and security forces personnel are able to enjoy and exercise their human rights and fundamental freedoms in conformity with international law and CSCE commitments (paragraph 32) – in particular that the *recruitment or call-up* of servicemen is consistent with the obligations and commitments concerning human rights and fundamental freedoms (paragraph 27). The OSCE participating states are also committed to reflect in their *laws* or other relevant documents the rights and duties of armed forces personnel (paragraph 28), as well as to provide appropriate legal and administrative *procedures* to protect those rights (paragraph 33).

d) The regulation of the use of armed forces for internal security purposes. The Code of Conduct establishes that the domestic use of armed forces must remain subject to the rule of law and that international law and international humanitarian law provisions must be observed in the course of such use of force, as in the case of inter-state armed conflicts. It spells out four conditions regulating the domestic use of force: a constitutionally lawful decision, respect of the rule of law during operational performance, commensurability with the needs for enforcement and care to avoid excessive injury to civilians and their property (paragraph 36). Going a step further, it prohibits a domestic use of force aimed at restricting human and civil rights when peacefully and lawfully exercised or at depriving people of their individual or collective identity (paragraph 37).

13. Finally, the "**Why**" element is expressed through a provision specifying that the democratic control of armed forces represents "**an indispensable element of stability and security**" as well as "**an important expression of democracy**" (paragraph 20). The democratic control of armed forces is certainly, to quote one of the negotiators of the Code of Conduct, "a way to guarantee the internal stability of the state, its responsible behaviour towards its own citizens and other states, and as an instrument aimed at increasing the predictability of the state's actions"¹⁶. Indeed, as put by another negotiator, it brings an important contribution to internal and international stability because democratically-controlled armed forces "pose a considerably smaller risk of threatening international posturing and of internal abuse"¹⁷. Furthermore, the democratic control of armed forces represents, admittedly, a key element in the transition from authoritarian to democratic political systems: the building and strengthening of democratic structures can only succeed if armed forces enjoying true legitimacy and respectability are part of them¹⁸. In a mature rule-of-law state, no important political issue should be allowed to escape effective democratic control. The ultimate aim of Sections VII and VIII taken as a whole is to promote an ethics, let alone a "conscience", of the rule of law, human rights and international humanitarian law in the military establishments of the OSCE participating states.

¹⁶ Kobieracki, *op. cit.*, p. 19.

¹⁷ Peter von Butler: "Negotiating the Code : A German View", *Cooperative Security, the OSCE and its Code of Conduct*. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, p.26.

¹⁸ Ortwin Hennig: "The Code of Conduct on Politico-Military Aspects of Security", *OSCE Yearbook*, Volume 1-2, 1995-1996, pp.273-289).

14. Given the diversity of national traditions and practices in the OSCE area, Sections VII and VIII do not propose a detailed or a specific type of model for the democratic control of armed forces¹⁹. They only spell out major general guidelines. Actually, a number of **shortcomings or gaps** can be accounted for in the Code of Conduct's regime:

First, the latter provides only for executive and legislative control – thus omitting the **judicial** branch²⁰.

Second, while committing the OSCE participating states to "reflect in their laws or other relevant documents" the **rights and duties of armed forces personnel** (paragraph 28), it does not offer any listing, even of a general type, of these rights and duties and does not develop the concept of "citizen in uniform".

Third, it fails to establish that in case of **usurpation of political control by armed forces** in any participating state, the other governments will consider such an action as "a source of concern" and take urgently some appropriate action including at least (in the spirit of the 1991 *Moscow Document on the Human Dimension*) the non-recognition of the legitimacy of a usurper government²¹.

Fourth, although some of its provisions are related to defence expenditure (paragraph 22) and defence policies and doctrines (paragraph 35), there is no conceptual linkage between the Code of Conduct and the **Vienna Document on CSBM**.

¹⁹ For an overview of the existing literature see Hans Born's contribution "Democratic Control of Armed Forces. Issues, Problems and Agenda" in the forthcoming *Handbook of the Sociology of the Military*. Edited by Giuseppe Caforio. New York, Kluwer Academic, 2003.

²⁰ However, paragraph 36 prescribes that internal security missions have to be performed under the effective control of constitutionally established authorities and "subject to the rule of law" – which actually implies performance under the effective control of judicial as well as political civilian authorities.

²¹ Provisions of that kind were envisaged during the drafting process: see commentary of paragraphs 21 and 23. In the *Moscow Document on the Human Dimension* (1991), which was adopted in the aftermath of the failed coup against Mikhail Gorbachev, the OSCE participating states committed themselves to "support vigorously", in case of the overthrow or attempted overthrow of a legitimately elected government of a participating state by undemocratic means, "the legitimate organs of that state upholding human rights, democracy and the rule of law..." (paragraph 17.2).

Fifth, its single explicit provision on the category of **paramilitary forces** is weak: it does not even commit the OSCE participating states (as had been suggested during the drafting process) not to use paramilitary organisations to circumvent limitations related to the use and size of their armed forces under arms control agreements²².

Sixth, its provisions dealing with **international humanitarian law**, especially those referring to the individual accountability of the command and rank and file personnel of armed forces are much weaker than those of the 1949 Geneva Conventions which commit the Contracting Parties to enact penal legislation directed against persons responsible for grave breaches, as well as to search for and bring such persons (regardless of their nationality), before national or even foreign courts²³.

Seventh, it does not contain provisions expressly regulating the use of armed forces during a **state of public emergency** – a situation nevertheless partially addressed in the *Moscow Document on the Human Dimension* (1991)²⁴.

Eighth, it does not oblige the OSCE participating states to provide **information on domestic use of force** – such as the size, organisation, role, objectives and activities of armed forces involved²⁵.

Finally, and as already mentioned above, while the Code of Conduct formally refers to five categories of armed forces (military forces, paramilitary forces, internal security forces, intelligence services and the police), it does not contain any operative

²² See commentary of paragraph 26.

²³ See commentary of paragraph 31.

²⁴ See commentary of paragraph 36. In the *Moscow Document on the Human Dimension* (1991), the OSCE participating states affirmed that "a state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognised human rights and fundamental freedoms" (second sentence of paragraph 28.1). They also agreed that if a state of public emergency may be proclaimed by a constitutionally lawful body duly empowered to do so, subject to approval in the shortest possible time or control by the legislature (paragraph 28.2), it will have to be lifted as soon as possible in order not to remain in force longer than strictly required by the exigencies of the situation (paragraph 28.3). More significantly, they decided that in case a state of public emergency is declared or lifted, the government concerned will immediately inform the OSCE of this decision, as well as any derogation from its international human rights obligations (paragraph 28.10).

²⁵ See commentary on paragraph 36.

provision whatsoever on **intelligence services or the police**²⁶. In addition, it ignores another important element of the so-called security sector: *border guards*²⁷.

15. The Code of Conduct has been referred to in situations related to **disproportionate and indiscriminate use of force** in Croatia (1995) and, especially, in Chechnya since 1995 – as well as **undue stationing of foreign armed forces** in Moldova²⁸. Although some of its basic provisions (in particular paragraphs 14 and 36) are currently still being violated in the OSCE area, the continuing relevance of the Code of Conduct could not be doubted: as put by Jonathan Dean, Europe is better off with a violated Code of Conduct than with no such instrument²⁹.

Furthermore, since the collapse of Communism, the democratic control of armed forces, which is at the heart of the security sector reform, has become one of the preconditions that emerging democracies have to meet in order to accede to European and transatlantic organisations.

The **European Union** adopted accession criteria (referred to as the "Copenhagen Criteria") in 1993 – that is to say before the adoption of the OSCE Code of Conduct which took place in late 1994; these criteria set up a number of economic and political conditions, among which are the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of national minorities.

NATO has expressed even greater concern over the issue. Under the Partnership for Peace's Framework Document (January 1994), the subscribing states undertook to cooperate with NATO in the pursuit of several objectives, *inter alia* that of "ensuring democratic control of defence forces"³⁰. Consequently, and building upon the OSCE

²⁶ See commentary on paragraph 20.

²⁷ On the issue of border guards, see Alice Hills: *Consolidating Democracy. Professionalism, Democratic Principles and Border Services* (14 p.) and *Border Control Services and Security Sector Reform*. (32 p.). Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, Working Papers No 27 and No 37.

²⁸ And also (by Russia and Belarus) concerning NATO's military intervention in Kosovo: see commentary on paragraph 38.

²⁹ Jonathan Dean: "The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed Up", *OSCE Yearbook*, Volume 1-2, 1995-1996, p. 297. Indeed, "every norm raises the moral cost of its own violation" (Hennig, *op.cit.*, p. 284).

³⁰ Partnership for Peace's Framework Document: paragraph 3 b.

measures on defence planning, they agreed to "exchange information on the steps that have been taken or are being taken to promote transparency in defence planning and budgeting and to ensure the democratic control of armed forces"³¹. The "Framework Document" did not mention the Code of Conduct for the bare reason that the latter was still, at the time, under negotiation within the Forum for Security Cooperation. References to the Code of Conduct appeared in subsequent texts such as the Partnership for Peace's Work Programme for 2000-2001 whose item 6 (defining the scope and objectives of activities to be pursued in the area of "democratic control of forces and defence structures") includes discussions on "progress in the implementation of the OSCE Code of Conduct". However, in the 1999 "Membership Action Plan" (MAP), a document designed to put in place a programme of activities to assist aspiring countries in their preparations for possible future membership in NATO, there is no explicit mention of the Code of Conduct: in its Section I, the MAP expects aspiring countries to settle ethnic or external territorial disputes by peaceful means "according to OSCE principles" (paragraph c) as well as "to establish appropriate democratic and civilian control" of their armed forces (paragraph d).

Once a state has been admitted to NATO and/or the European Union there are apparently few incentives to ensure continuous and sustainable long-term improvements in the democratic control of its armed forces. Fortunately, it happens that all former and potential candidates belong to the OSCE. Being OSCE participating states, they are bound by the provisions of its Code of Conduct and their compliance record is subject to scrutiny.

16. The present paragraph-by-paragraph *Commentary* of the Code of Conduct is based on two main sets of primary sources. The first one consists of the **official draft proposals** on the basis of which the negotiation of the Code of Conduct was undertaken ³². The second set includes the numerous **papers issued by the Coordinator of the drafting process**, James E. Hinds. This set is made up of "perception papers" and "drafting suggestions" either of a comprehensive scope or offering compilations on special topics such as arms control and disarmament, democratic control of armed forces, etc. While being of a basically informal nature, a

³¹ *Ibid*: penultimate "tick" of paragraph 6.

³² All of them are reproduced as Annexes 3 to 9 in this *Commentary*.

number of them have been issued under an official serial classification number ("DOC").³³

17. The *Commentary* provides a comprehensive *handbook* whose aim is to contribute to a better understanding of the Code of Conduct within and outside the OSCE community of states, as well as to facilitate its implementation.³⁴

³³ The author expresses his deep gratitude for the documentary assistance provided to him by Ms. Alice Nemcova and the staff of the OSCE Prague Office.

³⁴ It is to be recalled that during the 2nd Follow-up Conference on the Code of Conduct the Netherlands underscored the need for a "*manual*" on the Code of Conduct aimed at facilitating the latter's implementation (FSC.GAL/84/99/Rev.1 of 19 July 1999).

SUMMARY CONTENTS OF THE CODE OF CONDUCT ON POLITICO- MILITARY ASPECTS OF SECURITY

Preamble: Parties to the Code (1st paragraph). The Code of Conduct's rationale (2nd paragraph). Undiminished status of international law principles (3rd paragraph). Undiminished status of OSCE commitments (4th paragraph). Adoption of the Code of Conduct (5th paragraph).

I. Reaffirmation of comprehensive security and cooperative security, and enunciation of the principle of solidarity: Wholesale reaffirmation of OSCE commitments (§ 1). Reaffirmation of the comprehensive security concept (§ 2). Reaffirmation of indivisibility of security in the OSCE area and beyond (§ 3). Reaffirmation of the cooperative security approach (§ 4). Enunciation of the solidarity principle (§ 5).

II. Reaffirmation of the commitment to cooperate against terrorism: Reaffirmation of the commitment to take appropriate measures to prevent and combat terrorism in all its forms (§ 6).

III. Reaffirmation of the equal value of the Helsinki Final Act's Principles and of the commitment of non-assistance to aggressor states: Reaffirmation of the equal value of the Helsinki Final Act's Principles (§ 7). Reaffirmation of the commitment of non-assistance or support to an aggressor state (§ 8).

IV. Security rights and obligations of OSCE participating states: Reaffirmation of the right to self-defence (§ 9). Reaffirmation of the right to freely choose security arrangements (§ 10). Reaffirmation of the right to belong to alliances and the right to neutrality (§ 11). Obligation to maintain only such military capabilities commensurate with individual or collective security needs (§ 12). Obligation to determine military capabilities through national democratic procedures; renunciation of military domination in the OSCE area (§ 13). Authorisation to station armed forces on the territory of another participating state in accordance with freely negotiated agreement as well as international law (§ 14).

V. Confirmation of the importance of the process of arms control, disarmament and CSBM: Importance of a good faith implementation of arms control, disarmament and CSBM commitments (§ 15). Reaffirmation of the commitment to pursue arms control, disarmament and CSBM measures in the OSCE area (§ 16).

VI. Reaffirmation of commitments to cooperate in conflict prevention and crisis management:

Cooperation to counter economic/environmental and human dimension tensions conducive to possible conflicts (§ 17). Reaffirmation of the equal importance of cooperation at the various phases of the conflict management cycle (§ 18). Cooperation for peaceful resolution and humanitarian assistance support in armed conflicts (§ 19).

VII. Democratic control of armed forces:

Rationale for the democratic control of armed forces (§ 20). Primacy of the constitutionally established authorities vested with democratic legitimacy over military power (§ 21). Legislative approval of, as well as restraint in, transparency of and public access to, military defence expenditures (§ 22). Political neutrality of armed forces and respect of civil rights of their individual members (§ 23). Safeguards against military incidents due to accident or error (§ 24). Inadmissibility of forces that are not accountable to or controlled by their constitutionally established authorities (§ 25). Prohibition of acquisition by paramilitary forces of combat mission capabilities in excess of those for which they were established (§ 26). Consistency with human rights of recruitment or call-up of military, paramilitary and security forces (§ 27). Rights and duties of armed forces personnel, including possibility of exemptions from or alternatives to military service (§ 28). Promotion of the knowledge of international humanitarian law and reflection of its commitments in military training programmes and regulations (§ 29). Instruction of armed forces personnel in international humanitarian law, including awareness of individual accountability at domestic and international level (§ 30). Individual accountability of commanders and subordinates of armed forces under national and international law (§ 31). Exercise of their human rights by the personnel of military, paramilitary and security forces (§ 32). Legal and administrative national procedures for the protection of the rights of all forces personnel (§ 33).

VIII. Democratic use of armed forces:

Consistency of the command, manning, training and equipment of armed forces with international humanitarian law (§ 34). Consistency of defence policy and doctrine with international humanitarian law with the Code of Conduct (§ 35). Subjection of the domestic use of force to the rule of law and commensurability of such use with the needs for enforcement (§ 36). Non use of force to limit either the peaceful and lawful exercise of human and civil rights or to deprive people of their identity (§ 37).

IX. Implementation arrangements: Accountability for implementation (§ 38).

X. Final clauses:

Politically binding nature of the Code of Conduct and date of its coming into force (§ 39). Undiminished value of existing OSCE commitments (§ 40). Reflection of the Code's commitments in relevant national internal documents, procedures or legal instruments (§ 41). Publication and widespread dissemination of the Code at national level (§ 42).

THE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY (3 DECEMBER 1994)

"Code of Conduct on Politico-Military Aspects of Security"

During the drafting process, four different titles were envisaged: "Code of Conduct *in the field of security*" (Poland), "Code of Conduct *governing mutual relations between participating states in the field of security*" ("European Union plus" group of states), "Code of Conduct *governing the mutual relations of the CSCE participating states in the field of security*", (Turkey) and "Code of Conduct *governing the behaviour of the participating states towards each other and of governments towards their citizens*" (Austria and Hungary)³⁵. Until the very last moment, the scope of the concept of "security" constituted a bone of contention: should the Code of Conduct enunciate norms limited to the politico-military dimension or (as advocated by Austria and Hungary) extend to the human and economic/environmental dimensions³⁶? As its title clearly suggests, the Code of Conduct is a text related to the politico-military dimension of the OSCE, that is to say to a dimension encompassing conflict prevention, crisis management and peaceful settlement of disputes (political component), as well as arms control, disarmament and CSBM (military component). Although explicitly conceived in the spirit of the comprehensive security concept (paragraph 2) and occasionally referring to the human and economic/environmental dimensions (paragraph 17), the Code definitely belongs to the politico-military dimension of which it represents a major instrument – along with the *Vienna Document 1999 on CSBM* and the *Document on small arms and light weapons* (2000).

³⁵ *Poland* : CSCE/FSC/SC.5/Rev.1 of 18 November 1992; *"European Union plus"* : CSCE/FSC/SC.21 of 30 June 1993; *Turkey* : CSCE/FSC/SC.8 of 16 December 1992; *Austria and Hungary* : CSCE/FSC/SC.22 of 15 September 1993.

³⁶ CSCE/FSC/SC.22 of 15 September 1993, pp. 10-14 and 15-17. In the course of the drafting process, the Coordinator tabled a paper expressing his "desperation (...) on endless discussion concerning the scope of the Code of Conduct" (DOC. 715/94 of 14 September 1994). See also Jonathan Dean : "The OSCE Code of Conduct on Politico-Military Aspects of Security : A Good Idea, Imperfectly Executed, Weakly Followed Up", *OSCE Yearbook*, Volume 1-2, 1995-1996, p. 293.

PREAMBLE

Summary contents of Preamble: Parties to the Code (1st paragraph). The Code of Conduct's rationale (2nd paragraph). Undiminished status of international law principles (3rd paragraph). Undiminished status of OSCE commitments (4th paragraph). Adoption of the Code of Conduct (5th paragraph).

The preamble of the Code of Conduct contains a set of five unnumbered paragraphs whose main provisions spell out the rationale for such an instrument (2nd paragraph) and stress that the latter is not meant to diminish the validity of either the legally-binding principles of international law (3rd paragraph) or the politically binding commitments of the OSCE (4th paragraph).

Paragraph 1

Parties to the Code of Conduct

The participating states of the Conference on Security and Cooperation in Europe (CSCE),

This standard formula is the one which regularly introduces OSCE basic texts since the Helsinki Final Act (1975). It refers to the "participating states" (and not to the "contracting parties") because the Code is, as expressly specified in paragraph 39 and like all OSCE normative texts, a document of a *politically binding* nature.

Paragraph 2

The Code of Conduct's rationale

Recognising the need to enhance security cooperation, including through the further encouragement of norms of responsible cooperative behaviour in the field of security,

This paragraph indicates, in general and elliptic terms, the basic reason for which the OSCE Code of Conduct was established. The expressed motivation ("to enhance security cooperation, including through the further encouragement of norms of

responsible cooperative behaviour in the field of security") is a quasi integral reproduction of the first sentence of item 12 of the "Programme for Immediate Action" devolved to the Forum for Security Cooperation by the *Helsinki Decisions 1992*. It does not refer to the second sentence of item 12 which formally commits the OSCE participating states to "undertake consultations with a view to strengthening the role of the CSCE, by establishing a code of conduct governing their mutual relations in the field of security"³⁷. Anyhow, it fails to mention that the Code of Conduct is the first multilateral instrument embodying rules regulating, in a central area of political power, the deployment of armed forces, both internally and externally.

Initially, the OSCE participating states envisaged justifying the Code of Conduct by much more illuminating considerations:

– *Poland's proposal* referred to the need "to give expression to the cooperative approach to security characterising the qualitatively new type of relations with the CSCE community of states" and "to facilitate a concerted response to the security problems and challenges on the basis of a common assessment of each other's intentions, policies and behaviour in the security field"³⁸;

– The "*European Union plus*" proposal argued that the emergence of a new political environment in Europe based upon a common and cooperative approach to security, the necessity of devising new means to promote stability in the whole OSCE area within regions and within states, as well as the strengthening of the pluralistic and democratic nature of the political system of the participating states required expression in a Code of Conduct spelling out international norms for behaviour of states towards one another, for control and use of armed forces, and for the internal behaviour of governments³⁹;

– The proposal jointly tabled by *Austria and Hungary* reflected almost all of the Polish and the European Union's considerations⁴⁰.

³⁷ The text of the "Programme for Immediate Action" constitutes the appendix to Chapter V of the *Helsinki Decisions 1992*. Item 12 of the Programme is entitled "Security enhancement consultations".

³⁸ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 1.

³⁹ CSCE/FSC/SC.21 of 30 June 1993, p.1.

⁴⁰ CSCE/FSC/SC.22 of 15 September 1993, pp.1-2.

– In its own draft proposal, *Turkey* justified the elaboration of the Code of Conduct mainly by the need to give further expression to the cooperative approach to security⁴¹.

In the *Helsinki Decisions 1992*, the OSCE participating states pledged to establish "new security relations based upon a common and cooperative approach to security"⁴². As a matter of fact, a justificatory preamble's provision should have mentioned that the Code of Conduct was grounded on the concept of comprehensive security and the cooperative security approach. These twin pillars are, however, referred to in section I of the Code of Conduct⁴³.

Paragraph 3

Undiminished status of existing international law principles

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

The OSCE participating states agreed from the outset that the Code of Conduct would build upon and complement existing internationally recognised principles and commitments. Accordingly, this paragraph amounts to a sort of "non-diminution clause" in regard to existing international law. It confirms that the Code of Conduct's provisions are not meant to modify the contents or prejudice the applicability of any existing principles and norms of international law and, in particular, those enshrined in Chapter I ("Purposes and Principles") of the United Nations Charter. It is worth recalling here that the "Principles" enumerated in Article 2 of the Charter include the sovereign equality of states, the fulfilling in good faith of the Charter's commitments, the peaceful settlement of disputes, the refraining from the threat or use of force and

⁴¹ CSCE/FSC/SC.8 of 16 December 1992, pp. 1-2.

⁴² *Helsinki Decisions 1992* (1992): paragraph 15 of Chapter V. Paragraph 2 of the same chapter acknowledges "the opportunities for new cooperative approaches to strengthening security offered by the historic changes and by the process of consolidation of democracy in the CSCE community of states".

⁴³ In the operative part of the Code of Conduct, the OSCE participating states did confirm the validity of their comprehensive security concept (paragraph 2) and the relevance of their cooperative security approach (paragraph 4).

the duty to give assistance to the United Nations in case of collective action: except for the last one, all of them represent individual items of the 1975 Helsinki Final Act's Decalogue⁴⁴.

Paragraph 4

Undiminished status of existing OSCE commitments

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

As OSCE commitments are of politically-binding nature and could not be covered by the provision of the preceding paragraph, the participating states deemed it appropriate to insert a non-diminution clause also as regards existing OSCE norms.

Accordingly, the present paragraph means that the Code of Conduct's provisions do not modify the contents or prejudice the applicability of the principles and values enshrined in such fundamental OSCE documents as the Helsinki Final Act (1975), the Charter of Paris for a New Europe (1990) and the Helsinki Document 1992⁴⁵.

The expression "*the validity of other CSCE commitments*", included upon Germany's insistence, gives to the non-diminution clause an open-ended scope. In any case, this idea is reiterated in paragraph 40 in the following terms: "Nothing in this Code alters the nature and content of the commitments undertaken in other OSCE documents".

As to the expression "*responsibilities of states towards each other and of governments towards their people*", it relevantly recalls that OSCE commitments concern *intra-state* as well as inter-state relations. As expressed in the *Istanbul*

⁴⁴ They respectively represent *Principle I* ("Sovereign equality; respect for the rights inherent in sovereignty"), *Principle X* ("The fulfilling in good faith of obligations under international law"), *Principle V* ("Peaceful settlement of disputes") and *Principle II* ("Refraining from the threat or use of force").

⁴⁵ The *Helsinki Document 1992* (sub-titled "*The Challenges of Change*") consists of the *Helsinki Decisions 1992* and the *1992 Helsinki Summit Declaration*.

Charter for European Security (1999), the OSCE fundamental texts have established "standards for participating states' treatment of each other and of all individuals within their territories", which also means that "participating states are accountable to their citizens and responsible to each other for their implementation of their OSCE commitments"⁴⁶. In the framework of the OSCE, "security and peace must be enhanced through an approach which combines two basic elements": "[the building of] confidence among people within states and [the strengthening of] cooperation between states"⁴⁷.

Paragraph 5

Adoption of the Code of Conduct

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

When they are not (exceptionally) signed, the OSCE basic texts are simply "adopted" as is the case of standard international organisations' Declarations and resolutions. The term "adopted" also reflects the politically-binding nature of the Code of Conduct which is specifically confirmed in paragraph 39.

Some participating states were of the opinion that the Code of Conduct should, given its outstanding importance, have been open to signature – as was the case for the *Helsinki Final Act* (1975) and the *Charter of Paris for a New Europe* (1990)⁴⁸. Due to objections from the United States, this did not materialise. Finally, the Code of Conduct was just included (as Chapter IV) in the *Budapest Decisions 1994*⁴⁹.

⁴⁶ *Istanbul Charter for European Security* (1999): paragraph 7. This provision is a restatement of paragraph 5 of the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st century* (1996).

⁴⁷ *Istanbul Charter for European Security* (1999): paragraph 3.

⁴⁸ The closing provision of the draft Polish proposal clearly mentioned "the *undersigned* High representatives of the participating states..." (CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 14; author's italics). Since 1990, only the *Istanbul Charter for European Security* (1999) enjoyed the privilege of formal signature.

⁴⁹ The *Budapest Document 1994* (sub-titled "*Towards a Genuine Partnership in a New Era*") consists of the *Budapest Decisions 1994* and the *1994 Budapest Summit Declaration* – as well as a Declaration on the 50th anniversary of the termination of WWII and a Declaration on Baltic issues.

SECTION I

REAFFIRMATION OF COMPREHENSIVE SECURITY AND COOPERATIVE SECURITY, AND ENUNCIATION OF THE SOLIDARITY PRINCIPLE

Summary contents of Section I: Wholesale reaffirmation of OSCE commitments (§ 1). Reaffirmation of the comprehensive security concept (§ 2). Reaffirmation of indivisibility of security in the OSCE area and beyond (§ 3). Reaffirmation of the cooperative security approach (§ 4). Enunciation of the solidarity principle (§ 5).

Section I of the Code of Conduct comprehends five paragraphs most of which represent, in line with the "non-diminution clause" of the 4th provision of the preamble, reaffirmations of the validity of existing OSCE principles (paragraphs 1, 2, 3 and 4) – what diplomats call, in their jargon, the "OSCE *acquis*". Only paragraph 5, which enunciates the principle of "solidarity", is to some extent innovative.

Paragraph 1

Wholesale confirmation of OSCE commitments

The participating states emphasize that the full respect for all CSCE principles embodied in the Helsinki Final Act and the implementation in good faith of all commitments undertaken in the CSCE are of fundamental importance for stability and security, and consequently constitute a matter of direct and legitimate concern to all of them.

This paragraph reaffirms in general terms the validity of the principles enshrined in the 1975 Helsinki Final Act and of all other commitments subscribed to by the participating states ever since in the framework of the OSCE. It also emphasises that these principles and commitments must be fully respected and implemented in *good faith* – as prescribed by Principle X of the Helsinki Decalogue.

More importantly, it recalls that OSCE principles and commitments represent "a matter of direct and legitimate concern" to all participating states which are accountable to each other for complying fully with them through what might be called

a right of friendly interference. The *Geneva Report on National Minorities* (19 July 1991) formally established such a right in stating that "issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective state"⁵⁰. Through the *Moscow Document on the Human Dimension* (3 October 1991), the participating states broadened the scope of the same right in recognising "categorically and irrevocably" that the commitments undertaken in the field of the human dimension (those related to human rights, fundamental freedoms, democracy and the rule of law) are "matters of direct and legitimate concern to all participating states and do not belong exclusively to the internal affairs of the state concerned"⁵¹. The Code of Conduct goes further since it extends the right of friendly interference to "all commitments" undertaken in the OSCE, across all the three dimensions of the latter.

Paragraph 2

Reaffirmation of the comprehensive security concept

The participating states confirm the continuing validity of their comprehensive concept of security, as initiated in the Final Act, which relates the maintenance of peace to the respect for human rights and fundamental freedoms. It links economic and environmental cooperation with peaceful inter-state relations.

In this paragraph, whose language restates paragraph 21 of the *1992 Helsinki Summit Declaration*, the participating states formally reaffirm the validity of the OSCE's concept of *comprehensive security*. They recall that the concept intertwines the politico-military aspects of security (disarmament, arms control, CSBM, conflict prevention and conflict management), economic and environmental cooperation and the human dimension – all matters constituting the "three dimensions" (formerly "baskets") of the OSCE. The concept of comprehensive security is also reflected in paragraph 17 of the Code of Conduct.

⁵⁰ *Geneva Report on National Minorities* (1991) : 3rd unnumbered paragraph of Section II.

⁵¹ *Moscow Document on the Human Dimension* (1991): 9th unnumbered paragraph of the preamble (author's italics). In its paragraph 8, the *1992 Helsinki Summit Declaration* confirmed the Moscow statement.

A more recent reconfirmation of the continuing validity of the concept of comprehensive security is included in the *Istanbul Charter for European Security* (1999), which acknowledges that "the human, economic, political and military dimensions of security" have to be addressed "as an integral whole"⁵².

Paragraph 3

Reaffirmation of the indivisibility of security in the OSCE area and beyond

They remain convinced that security is indivisible and that the security of each of them is inseparably linked to the security of all others. They will not strengthen their security at the expense of the security of other states. They will pursue their own security interests in conformity with the common efforts to strengthen security and stability in the CSCE area and beyond.

This paragraph concerns the *indivisibility of security*, which is a basic feature of both the comprehensive security concept and the cooperative security approach. Indeed, the OSCE considers the three dimensions of its comprehensive security programme as an interdependent and indivisible whole requiring parallel and balanced progress in all of their component elements; furthermore, its cooperative security approach postulates the interdependence of the security interests of all participating states.

The first sentence of paragraph 3 recalls the mutual interdependence of the OSCE participating states in the field of security – a notion affirmed in the *Helsinki Final Act* (1975) and reaffirmed ever since in many texts, including the *Charter of Paris for a New Europe* (1990) and the *Istanbul Charter for European Security* (1999)⁵³.

Proceeding from that premise, the second sentence stresses the undertaking of the OSCE participating states not to pursue their own security interests in a way which

⁵² *Istanbul Charter for European Security* (1999): paragraph 9. The same document also stresses that "the link between security, democracy and prosperity has become increasingly evident in the OSCE area, as has the risk to security from environmental degradation and depletion of natural resources" and that "economic liberty and social justice and environmental responsibility are indispensable for prosperity" (paragraph 31).

⁵³ *Helsinki Final Act* (1975): 5th unnumbered paragraph of the preamble of the First Basket; *Charter of Paris for a New Europe* (1990) : 5th paragraph of the rubric on "Friendly relations among participating states"; *Istanbul Charter for European Security* (1999): paragraph 9. See also the *1992 Helsinki Summit Declaration* (paragraph 23) and the *Helsinki Decisions 1992* (paragraph 7 of Chapter V).

could adversely affect the security of others – that is to say, to consider the implications that their actions may have on the security of others⁵⁴. Given that the security of "other states" (and not just of "other participating states") is explicitly mentioned here, this obviously means that *non-participating states* – in particular those enjoying the status of OSCE's "Partner for cooperation" – are also concerned⁵⁵. In any case, the expression "in the CSCE area *and beyond*", which closes the third sentence, confirms that the indivisibility of security is a principle applicable not only within the OSCE community of participating states but also between the latter and non-participating states.

The third and last sentence underscores that the quest for security can only be cooperative – a joint endeavour based on common security interests ("common efforts"), antipodal to a zero-sum game⁵⁶. As the *Istanbul Charter for European Security* (1999) puts it, "within the OSCE, no state, organisation, or grouping can have any pre-eminent responsibility for peace and stability in the OSCE area or can consider any part of the OSCE area as its sphere of influence"⁵⁷.

⁵⁴ The standard formula "they will not strengthen their security at the expense of the security of other states" also appears in the *1996 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (second sentence of paragraph 7) and the *1999 Istanbul Charter for European Security* (fifth sentence of paragraph 8).

⁵⁵ In 1994, the status of "Partner for cooperation" was enjoyed by some Mediterranean states (Algeria, Egypt, Israel, Morocco, Tunisia) and Asian states (Japan and the Republic of South Korea). Since the adoption of the Code of Conduct, the same status was attributed to Jordan (1998), Thailand (2000) and Afghanistan (2003).

⁵⁶ As recalled in paragraph 15 of the Code of Conduct, the indivisibility of security requires the implementation in good faith of each of the commitments in the field of arms control, disarmament and CSBM.

⁵⁷ *Istanbul Charter for European Security* (1999): last sentence of paragraph 8. A similar provision is included in the *1996 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (last sentence of paragraph 7) and in the Copenhagen's Ministerial Council Decision on *Guidelines on an OSCE Document-Charter on European Security* (paragraph 4 of MC(6).Dec/5 of 19 December 1997).

Paragraph 4

Reaffirmation of the cooperative security approach

Reaffirming their respect for each other's sovereign equality and individuality as well as the rights inherent in and encompassed by its sovereignty, the participating states will base their mutual security relations upon a cooperative approach. They emphasise in this regard the key role of the CSCE. They will continue to develop complementary and mutually reinforcing institutions that include European and transatlantic organisations, multilateral and bilateral undertakings and various forms of regional and sub-regional cooperation. The participating states will cooperate in ensuring that all such security arrangements are in harmony with CSCE principles and commitments under this Code.

This paragraph refers to the *cooperative security approach* from the dual angle of the OSCE participating states (first and second sentences) and the international security structures to which they belong (third and fourth sentences).

Cooperative security relations between participating states. After the end of the Cold War, the OSCE endorsed the approach of "common security" (proposed in the 80s by the Palme Independent Commission on Disarmament and Security Issues) while labelling it "cooperative security"⁵⁸. In the *Helsinki Decisions 1992*, the participating states expressed for the first time their determination to develop "new security relations based upon cooperative and common approaches to security" and, for that purpose, established a new specialised body: the Forum for Security Cooperation⁵⁹.

⁵⁸ In its final Report (*Common Security. A Programme for Disarmament*. London, Pan Books, 1982), the Independent Commission on Disarmament and Security Issues headed by Olof Palme argued that, in a bipolar nuclear world, security based on deterrence and mutual assured destruction could only lead to planetary catastrophe: instead of being played as a zero-sum game to the benefit of a single actor or group of actors, security should be conceived as a cooperative endeavour bringing equal advantages to all states.

⁵⁹ *Helsinki Decisions 1992*: paragraph 15 of Chapter V.

Through the *Budapest Decisions 1994*, they formally acknowledged the OSCE was contributing to "cooperative security" in its geopolitical area⁶⁰. The *Istanbul Charter for European Security* (1999) confirmed that the participating states were building their mutual relations on "the concept of common and comprehensive security"⁶¹. Initially introduced at the level of the politico-military dimension, the cooperative security approach was gradually applied to the other dimensions as well. At present, the OSCE implements a *programme* of comprehensive security by means of a cooperative security *approach*⁶².

In 2003, there is still no agreed OSCE definition of cooperative security. Actually, the general common understanding of the OSCE community of states is that it represents a regime excluding confrontation, hegemonic behaviour and unilateralism, while also characterised by equal partnership, confidence, mutual accountability, solidarity, preventive diplomacy, self-restraint and military transparency⁶³.

Cooperative security represents a soft form (of a non-coercive nature) of collective security. In principle, violations of common commitments by a participating state are not followed by sanctions or even harsh recriminations⁶⁴. They generate offers of assistance aimed at helping the concerned state to redress a situation deemed to be detrimental to itself and (given the indivisibility of security) to the rest of the collectivity of states. As such offers are not normally supposed to be rejected, this means that the parties to a cooperative security regime admit their mutual accountability and accept as legitimate a right of friendly interference in their internal affairs. Cooperative security is not directly concerned with acts of aggression, but

⁶⁰ *Budapest Decisions 1994*: introductory sentence to Chapter VII on "A Common and Comprehensive Security Model for Europe for the 21st century".

⁶¹ *Istanbul Charter for European Security* (1999): paragraph 9.

⁶² As illustrated, *inter alia*, by paragraphs 10 and 34 of the *Istanbul Charter for European Security* (1999), the concepts of "comprehensive security" and "cooperative security" are also directly associated with those of "common security" and "indivisible security".

⁶³ The *1996 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) admits that the cooperative security approach "excludes any quest for domination" (paragraph 3) and also explicitly refers to "equal partnership", "solidarity" and "transparency" (paragraph 9).

⁶⁴ The suspension of the Federal Republic of Yugoslavia from the OSCE (1992) and the establishment of "Sanctions Assistance Missions" (1993) for the monitoring of the Danube represented exceptional events whose recurrence is now hardly conceivable.

rather by their prevention and – if perpetrated – their consequences; however, preventive measures remain its priority form of action.

The first sentence of paragraph 4 of the Code of Conduct confirms the relevance of the (still undefined) concept of a cooperative security approach through a formal reaffirmation of the principle of the sovereign equality of states which lies at the heart of its philosophy. As to the second sentence, it simply recognises the "key role" played by the OSCE as a cooperative security institution⁶⁵.

Cooperative security relations between international security structures. If the question of cooperative relations between the OSCE participating states was fully consensual, that of the interface of international security organisations to which they belong (the so-called issue of "interlocking institutions") constituted one of the main stumbling blocks in the drafting process of the Code of Conduct⁶⁶. Since the end of the Cold War, because of persistent French-American squabbles, the participating states were for quite some time unable to arrive at clear decisions on the nature of the working relations that the OSCE should establish with NATO and, as a consequence, other European and transatlantic security organisations⁶⁷. Accordingly, when Poland suggested a formal engagement from the OSCE participating states "to promote contacts with and among" other existing security organisations (namely NATO, the WEE and the European Union)⁶⁸, it was not followed up and only a compromise provision confirming the *status quo* was eventually agreed: hence the third sentence of paragraph 4 of the Code of Conduct which commits governments to

⁶⁵ In the *1996 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century*, the participating states acknowledged that "the OSCE plays a central role in achieving [the] goal of a common security space" (paragraph 4).

⁶⁶ Two other issues were also particularly divisive: the inclusion in the Code of Conduct of substantial provisions related to the economic/environmental dimension and human dimension of security (*supra*, paragraph 5 of the Introduction to the present study) and the stationing of the armed forces of a participating state on the territory of another participating state (paragraph 14).

⁶⁷ Consensus was achieved only in the hypothetical area of peacekeeping activities and included in the *Helsinki Decisions 1992* where the participating states agreed that "the CSCE may benefit from the resources and possible experience and expertise of existing organisations such as the EC, NATO and the WEU, and could therefore request them to make their resources available in order to support it in carrying out peacekeeping activities" and that "other institutions and mechanisms, including the peacekeeping mechanism of the Commonwealth of Independent states (CIS), may also be asked by the CSCE to support peacekeeping in the CSCE region" (paragraph 52 of Chapter III).

⁶⁸ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, pp. 7-8.

"continue to develop" complementary and mutually reinforcing institutions; the expression "complementary and mutually reinforcing institutions" was used in place of "interlocking institutions" because of France's opposition to a concept bearing NATO's official brand⁶⁹.

The fourth and last sentence of paragraph 4 acknowledges in vague terms the necessity of harmonising the operation of existing security organisations and arrangements with the OSCE principles and the commitments embodied in the Code of Conduct – and not, as suggested by Austria and Hungary, of ensuring that they were "complementary" and that their overall evolution will lead to "a security network reflecting the OSCE's cooperative approach"⁷⁰.

The OSCE began to develop a pragmatic operational interaction with NATO and other European organisations) in 1996, for the sake of implementing the Dayton Framework Agreement⁷¹. Taking stock of what was a growing trend, the *Istanbul Charter for European Security* (1999) offered a "Platform for Cooperative Security" defining the modalities for cooperation between the institutions contributing to security in the OSCE area and endorsing the basic values of the OSCE⁷². Since then, the issue of "interlocking institutions" has seemingly ceased to be a divisive one.

⁶⁹ NATO proposed the concept of "interlocking institutions" in the early 90s within such texts as the Rome Summit Declaration of 8 November 1991 (paragraph 3) and the Oslo North Atlantic Ministerial Communiqué of 4 June 1992 (paragraph 2).

⁷⁰ CSCE/FSC/SC.22 of 15 September 1993, p. 3.

⁷¹ In the same year, the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) stated that "European security requires the widest cooperation and coordination among participating states and European and transatlantic organisations" and that the OSCE "is particularly well-suited (...) to act in partnership with them, in order to respond effectively to threats and challenges in its area" (5th "tick" of paragraph 10).

⁷² The *Istanbul Charter for European Security* (1999) acknowledges that no single international organisation has the capacity to respond alone to the complex and multifaceted security challenges of the post-Cold War world (paragraph 12). The goal of the Platform is "to strengthen the mutually reinforcing nature of the relationship between those organisations and institutions concerned with the promotion of comprehensive security within the OSCE area" (paragraph 1 of the Platform's text).

Paragraph 5

Enunciation of the solidarity principle

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

This paragraph derives from a set of Polish ideas concerning solidarity with victims of the violation of the principle of the non-use of force or, in other terms, aggression.

From the start of the negotiation, Poland suggested attributing to the Code of Conduct the aim of "building upon and amplifying" the principle of the non-use of force as well as "ensuring its full and effective implementation"⁷³. Accordingly, it tabled a series of specific provisions which, after recalling the right of *self-defence* of states in the event of an armed attack, stressed the necessity of *emergency consultations* within the framework of the OSCE and enunciated the *right of any participating state to seek assistance* "in the realisation of its right to self-defence as it may deem appropriate". The Polish text proposed to the participating states "to consider duly such requests and reply accordingly" – in particular to examine in a positive spirit demands for "purchase of material and equipment on favourable lending conditions" and to refrain from any kind of support to a state violating the prohibition of the non-use of force. It also suggested that they support and facilitate the delivery of *humanitarian assistance* to populations affected by armed hostilities⁷⁴.

⁷³ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 2.

⁷⁴ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 11. In their joint proposal, Austria and Hungary reformulated the Polish proposal in the following terms: "The participating states in full conformity with their conviction that security is indivisible, will express and practice solidarity with states clearly exposed to *direct security threats*. They will, in particular, practice solidarity with a participating state subjected to an *armed aggression* and seeking assistance in the realisation of its right to self-defence" (CSCE/FSC/SC.22 of 15 September 1993, pp. 4-5; author's italics).

Paragraph 5 of the Code of Conduct reflects in attenuated form the main thrust of the Polish proposals. The first sentence, which is a general enunciation of the solidarity principle, simply affirms that, whenever OSCE norms and commitments are violated, the participating states "are determined to act in solidarity" (and not "will act") – and only "to facilitate concerted responses" to security challenges generated by such violations.

In more affirmative language, the second sentence commits the participating states to undertake prompt consultations with any of them "seeking assistance in realising its individual or collective self-defence".

However, the third sentence announces that the participating states will not go beyond "consider[in] jointly the nature of the threat and actions that may be required" in defence of their common values⁷⁵.

The other elements of the Polish proposal were not included in the context of the solidarity principle. Nevertheless, they generated paragraph 8 (non-assistance or support to an aggressor state) and paragraph 19 (cooperation in support of humanitarian assistance in case of armed conflicts) of the Code of Conduct.

In the *Istanbul Charter for European Security* (1999), the participating states confirmed the dual components of the solidarity principle (prompt consultations and possible joint actions) – with a slight readjustment acknowledging that the principle in question could be invoked in the event of threats against the sovereignty, territorial integrity and political independence of any of them⁷⁶. They also admitted that the

⁷⁵ The basic commitment of paragraph 5 of the Code of Conduct was reiterated in the *1996 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) : (1st and 2nd "tick" of paragraph 6) .

⁷⁶ "We will consult promptly, in conformity with OSCE responsibilities, with a participating state seeking assistance in realising its right to individual or collective self-defence in the event that its sovereignty, territorial integrity and political independence are threatened. We will consider jointly the nature of the threat and actions that may be required in defence of our common values" (paragraph 16 of the *Istanbul Charter for European Security*). This provision derives from Maltese proposals for a mechanism allowing those participating states that are not members of any politico-military alliance to request assistance (including military) from the OSCE's security organisations partners: REF.PC/423/97 of 23 May 1997, PC.SMC/26/98 of 15 May 1998, PC.SMC/99/98/Rev.1 of 25 September 1998, PC.SMC/44/99 of 12 March 1999, PC.DEL/165/99 of 26 March 1999 (p. 2), PC.SMC/139/99 of 10 September 1999 and PC.DEL/542/99 of 18 October 1999.

solidarity principle could be extended to those of them meeting difficulties in complying with OSCE commitments (joint cooperative actions in the event of non-compliance with the OSCE commitments by a participating state)⁷⁷ or even facing internal breakdown of law and order⁷⁸.

Although drafted in weak terms and not mentioning the concept of "aggression", paragraph 5 of the Code of Conduct (as confirmed in paragraph 16 of the Istanbul Charter) can be viewed, from a purely abstract and theoretical perspective, as the embryo of a potential pan-European security guarantee. In any case, it represents one of the four limited innovations of the Code of Conduct in the realm of inter-state norms⁷⁹.

⁷⁷ "Today, we commit ourselves to joint measures based on cooperation, (...), in order to offer assistance to participating states to enhance their compliance with OSCE principles and commitments" (paragraph 14 of the *Istanbul Charter for European Security*). This provision derives from new Polish proposals on the solidarity principle: REF.PC/743/96 and REF.PC/744/96 of 15 November 1996, REF.PC/369/97 of 9 May 1997, REF.PC/422/97 of 23 May 1997 and REF.RM/298/96 of 20 November 1998.

⁷⁸ "We are determined to consider ways of helping participating states requesting assistance in cases of internal breakdown of law and order. We will jointly examine the nature of the situation and possible ways and means of providing support to the state in question" (paragraph 15 of the *Istanbul Charter for European Security*). In 1997, the OSCE did provide assistance to Albania in such a situation.

⁷⁹ The three other innovations are respectively embodied in *paragraph 12* (obligation to maintain only such military capabilities as are commensurate with individual or collective security needs), *paragraph 13* (obligation to determine military capabilities through national democratic procedures, coupled with a commitment on the renunciation of military domination in the OSCE area) and *paragraph 14* (authorisation to station armed forces on the territory of another participating state in accordance with freely negotiated agreement as well as international law).

SECTION II

REAFFIRMATION OF THE COMMITMENT TO COOPERATE AGAINST TERRORISM

Section II concerns terrorism, which before the adoption of the Code of Conduct had unreservedly been condemned by the OSCE as constituting a threat to security, democracy and human rights. From the 1975 *Helsinki Final Act* (where direct assistance to terrorist and other subversive activities in international relations was prohibited in the framework of Principle VI on non-intervention in internal affairs) to the 1994 *Budapest Summit Declaration*, the OSCE approach to terrorism amounted to a purely vocal determination, from the participating states, to take measures for the prevention and suppression of terrorism. At unilateral level, the measures contemplated basically concerned the prohibition of illegal activities of persons, groups and organisations that instigate, organise or engage in the perpetration of acts of terrorism against government representatives or ordinary citizens – and the "encouragement" of exchange of information. Internationally, the OSCE participating states only envisaged becoming parties (if they had not already done so) to the relevant international conventions relating to terrorism as well as to ensuring the extradition or prosecution of persons implicated in terrorist acts – while stressing that the United Nations was the most appropriate multilateral framework where the issue of terrorism must be frontally addressed⁸⁰.

Paragraph 6

Reaffirmation of the commitment to take appropriate measures to prevent and combat terrorism in all its forms

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.

⁸⁰ *Helsinki Final Act* (1975): last sentence of Principle VI of the Decalogue; *Concluding Document of the Madrid Follow-up Meeting* (1983): 4th to 7th paragraphs of the first Basket's rubric on "Principles"; *Document of the Stockholm Conference on CSBM and Disarmament in Europe* (1986): paragraph 25; *Concluding Document of the Vienna Follow-up Meeting* (1989): paragraphs 10.1 to 10.7 of the first Basket's rubric on "Principles"; *Charter of Paris for a New Europe* (1990): 5th paragraph of the rubric on "Security" related to the section entitled "Guidelines for the future"; *1992 Helsinki Summit Declaration*: paragraph 26; *1994 Budapest Summit Declaration*: paragraph 6.

They will cooperate 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.

In the drafting process of the Code of Conduct, the issue of terrorism was introduced by Turkey, which wanted to give it a prominent place by means of a commitment concerning the establishment of effective international instruments⁸¹. The "European Union plus" group of states disagreed on the grounds that the United Nations – and not the OSCE – was the most relevant forum for addressing the substance of terrorism⁸². As Turkey made the elaboration of provisions on terrorism a *sine qua non* condition for the acceptance of the Code of Conduct, the latter finally included a specific section on the matter. However, that section consists of a single paragraph which does not go beyond reaffirming the OSCE *acquis*: a verbal commitment not to support terrorism and to take undetermined ("appropriate") measures to prevent and combat terrorism, a vague commitment to implement possible new international obligations ("international instruments and commitments they agree upon in this respect") and a mild commitment ("take steps to fulfil the requirements") concerning the prosecution or extradition of terrorists.

⁸¹ However, article 12 of the *official* Turkish proposal for a Code of Conduct (CSCE/FSC/SC.8 of 16 December 1992) only suggested that the OSCE participating states "will fully cooperate with each other, as stipulated in the CSCE documents, against the threat of terrorist and subversive activities [and will] review their domestic law and regulations with a view to denying all political, financial, material and moral support to such activities" (first sentence of article 12). Actually, Turkey wanted a commitment concerning the establishment of effective international instruments. It also committed the OSCE participating states to "take all legal and administrative measures against organisations, groups of communities which utilise force, coercion, terrorism and other violent and undemocratic methods aimed at changing the democratic constitutional order of any participating state and ban the activities of those groups which advocate, support or condone such methods" (first sentence of article 17). Subsequently, Turkey would raise the idea of a *special Code of Conduct concerning terrorism* (REF.FSC/426/96 of 23 October 1996 and FSC.DEL/446/01 of 10 October 2001).

⁸² The "European Union plus" proposal for a Code of Conduct contained only a general and mild provision on terrorism (CSCE/FSC/SC.21 of 30 June 1993, p. 4) – as did the Austro-Hungarian proposal (CSCE/FSC/SC.22 of 15 September 1993, p. 8) and the Polish proposal (CSCE/FSC/SC.5/Rev.1 of 18 November 1992). A contradictory debate on the respective relevance of the OSCE and the United Nations as regards terrorism took place subsequently at the 1999 OSCE Review Conference (RC.GAL/175/99 of 10 November 1999, p. 65; position of the European Union: RC.DEL/162/99 of 28 September 1999).

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the implementation of the Code of Conduct through a standard questionnaire including 10 items⁸³. Item No 1 is related to "Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end".

After the adoption of the Code of Conduct, the issue of terrorism was marginally referred to – as part and parcel of new security risks and challenges – in the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) and the *Istanbul Charter for European Security* (1999)⁸⁴.

However, in reaction to the terrorist acts perpetrated in the United States on 11 September 2001, terrorism acquired outstanding importance overnight. Hence the *Bucharest Plan of Action for Combating Terrorism* (adopted at ministerial level in December 2001) which set up a framework for comprehensive actions to be taken by participating states and the OSCE as a whole both through the proper activities of all its bodies and in cooperation with other fora⁸⁵. The Plan of Action envisaged a large set of preventive measures pertaining to all three OSCE dimensions. At the level of the politico-military dimension, it tasked the Forum for Security Cooperation to enhance, *inter alia*, the implementation of paragraph 6 of the Code of Conduct⁸⁶.

In 2002, prompted by the fact that national replies to item No 1 of the 1998 questionnaire were generating an increasing flow of different types of information, the Russian Federation advocated the establishment of a *separate* specialised questionnaire on terrorism⁸⁷. The Forum for Security Cooperation did not endorse the idea. However, as called for in its own Roadmap for Implementation of the Bucharest Plan of Action and following a joint Russian-American initiative, it decided to expand

⁸³ FSC.DEC/4/98 of 8 July 1998.

⁸⁴ *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) : paragraph 2; *Istanbul Charter for European Security* (1999): paragraph 4. See also paragraph 14 of the 1999 *Istanbul Summit Declaration* (terrorism in Central Asia).

⁸⁵ Annex to MC(9).DEC/3 of 4 December 2001.

⁸⁶ Annex to MC(9).DEC/3 of 4 December 2001 : paragraph 8. *Roadmap for Implementation of the Bucharest Plan of Action submitted by the Forum for Security Cooperation* : FSC.DEC/5/02 of 20 March 2002.

⁸⁷ FSC.DEL/311/02 of 6 June 2002 and FSC.DEL/320/02 of 12 June 2002.

the scope of the information required under item No 1 of the 1998 questionnaire into a series of elements⁸⁸. Accordingly, each of the OSCE participating states is now formally committed to indicate the list of all international agreements concerning terrorism (or related to the issue) to which it is a party, the pertinent domestic legislation taken to implement those international agreements – and "the roles and missions of armed and security forces in preventing and combating terrorism"⁸⁹.

As illustrated by many additional initiatives – the Programme of Action of the Bishkek Conference on Strengthening Comprehensive Efforts to Counter Terrorism in Central Asia (December 2001), the establishment of an "Action against Terrorism Unit" within the OSCE Vienna Secretariat (as well as of an ODIHR Coordinator on Anti-Terrorism Issues in Warsaw), the appointment by the Portuguese Chairman-in-Office of a Special Representative for Preventing and Combating Terrorism or the adoption of the Porto Charter on Preventing and Combating Terrorism – terrorism is now (2003) a top priority at practically all levels of OSCE activities⁹⁰.

⁸⁸ *Russian-American draft proposals* : FSC.DEL/506/02/Rev.1 of 19 September 2002 and FSC.DEL/533/02 of 1 October 2002.

⁸⁹ FSC.DEC/16/02 of 27 November 2002.

⁹⁰ A comprehensive overview is provided for by the *Report on Actions of OSCE and Institutions to prevent and Combat Terrorism, including Implementation of the Bucharest Plan of Action for Combating Terrorism and the Bishkek Programme of Action* (SEC.DOC/3/02 of 29 November 2002). See also Alexandre Lambert: "The Contribution of the OSCE to the International Fight against Terrorism" – a paper presented at the 2002 Geneva Annual Meeting of the *OSCE Cluster of Competence. Text of the Porto Charter*. MC(10).JOUR/2, Annex 1, of 7 December 2002.

SECTION III

REAFFIRMATION OF THE EQUAL VALUE OF THE HELSINKI FINAL ACT'S PRINCIPLES AND OF THE COMMITMENT OF NON-ASSISTANCE TO AGGRESSOR STATES

Summary contents of Section III: Reaffirmation of the equal value of the Helsinki Final Act's Principles (§ 7). Reaffirmation of the commitment of non-assistance or support to an aggressor state (§ 8).

As a direct complement to Section I, Section III includes two re-affirmative provisions of a different nature – one which is a general reminder of the equal value of the Helsinki Final Act's 10 Principles (paragraph 7) and one which restates the specific duty, enshrined in the Charter of the United Nations, of non-assistance or support to an aggressor state (paragraph 8).

Paragraph 7

Reaffirmation of the equal value of the Helsinki Final Act's Principles

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

This paragraph is a word-by-word restatement of one the final clauses of the 1975 Helsinki Final Act's Decalogue whose rationale was to preclude an *à la carte* interpretation – in particular from the USSR which, during the Decalogue's negotiation, attempted to introduce a hierarchy among the 10 Principles. It would certainly have made much more sense to insert such a restatement within (or immediately after) paragraph 1 of the Code of Conduct where the participating states reaffirm the validity of all the Principles enshrined in the Helsinki Final Act. Given that the Code of Conduct does not contain provisions confirming the validity of every single Principle (as envisaged during the drafting process), it was felt necessary to stress the equal value of the latter in order to preempt any possible reinterpretation of the Decalogue in the post-Cold War era.

Paragraph 8

Reaffirmation of the commitment of non-assistance or support to an aggressor state

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

This paragraph reaffirms, with some nuances, a basic commitment of the United Nations Charter pledging the United Nations' member states to "refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action" (Article 2, paragraph 5) – and which is only affirmed implicitly in Principle II of the 1975 Helsinki Decalogue⁹¹. The slight innovations it introduces with respect to the United Nations Charter and the OSCE Decalogue are two-fold.

First, the Code of Conduct expressly prohibits "*support*" in addition to "assistance" – without, however, specifying that this includes due respect of sanctions, embargoes and other measures undertaken against the violator state.

Second, the prohibition is not only aimed at any OSCE participating state which would violate the basic prescription of non-use of force. It is valid as regards any state, whether a participating or a non-participating state.

The commitment established here, and which is consistent with the indivisibility of security, has been confirmed in the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996)⁹².

⁹¹ In the second unnumbered paragraph of Principle II of the Decalogue, the OSCE participating states pledged to refrain from any acts constituting a direct or *indirect* use of force against another participating state.

⁹² In this text, the OSCE participating states recommitted themselves "not to support participating states that threaten or use force in violation of international law against the territorial integrity or political independence of any participating state" (6th "tick" of paragraph 6).

SECTION IV
SECURITY RIGHTS AND OBLIGATIONS OF OSCE PARTICIPATING STATES

Summary contents of Section IV: Reaffirmation of the right to self-defence (§ 9). Reaffirmation of the right to freely choose security arrangements (§ 10). Reaffirmation of the right to belong to alliances and the right to neutrality (§ 11). Obligation to maintain only such military capabilities commensurate with individual or collective security needs (§ 12). Obligation to determine military capabilities through national democratic procedures; Renunciation of military domination in the OSCE area (§ 13). Authorisation to station armed forces on the territory of another participating state in accordance with a freely negotiated agreements as well as international law (§ 14).

In Section IV of the Code of Conduct, the participating states agreed to include several security rights and obligations half of which represent simple *reaffirmations* as in the case of the right to self-defence (paragraph 9), the right to freely choose security arrangements (paragraph 10), the right to be or not a party to treaties of alliance and the right to neutrality (paragraph 11). The only limited *innovations* introduced by Section IV are related to the duty to maintain military capabilities commensurate with individual or collective security needs (paragraph 12), the duty to determine military capabilities through national democratic procedures coupled with a commitment on the renunciation of military domination in the OSCE area (paragraph 13) and the right to station armed forces on foreign territory in accordance with the free consent of the host state and international law (paragraph 14).

Paragraph 9

Reaffirmation of the right to self-defence

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

This paragraph is a partial restatement of article 51 of the Charter of the United Nations. It does not specify that such a right is preconditioned by the occurrence of an "armed attack". Indeed, the United States refused to include the expression "if an

armed attack occurs" on the ground that its worldwide interests could necessitate a preventive use of military force in regions located outside the OSCE⁹³.

Paragraph 10

Reaffirmation of the right to freely choose security arrangements

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

The present provision (together with that of paragraph 11 which complements it) was included at the request of those former members of the Warsaw Pact Treaty Organisation and former Soviet Republics seeking accession to NATO. On the basis of the mutual sovereign equality of all OSCE participating states, it recognises that each of them has the liberty to determine its own national security interests and the general right to freely choose its own national security arrangements – for instance through alliance treaties or neutrality as specified in paragraph 11 of the Code of Conduct.

The phrase "*bearing in mind the legitimate security concerns of other states*" introduces, in the spirit of paragraph 3 of the Code of Conduct which commits the OSCE participating states not to "strengthen their security at the expense of the security of other states", a qualification. However, such qualification is clearly subjective and mild: "to bear in mind" does not have the same constraining value as "to take into account" (or "respect") the security interests of others participating states, as was suggested during the drafting process⁹⁴.

⁹³ The United States raised the same argument with regard to the drafting of paragraph 14 of the Code of Conduct concerning the stationing by a participating state of armed forces on the territory of another participating state.

⁹⁴ During the drafting process, it was even suggested that "notwithstanding these rights, the participating states will not conclude treaties or agreements or enter into security arrangements with any state, aimed at adversely affecting the security of other participating states" (DOC. 171 of 5 May 1994).

As to the phrase "*in accordance with international law and with commitments to CSCE principles and objectives*", it recalls that the freedom to determine national security interests and the right to freely choose security arrangements are embedded in international law and also in basic OSCE documents – such as the *Helsinki Final Act* (1975), the *Charter of Paris for a New Europe* (1990), the *Helsinki Decisions 1992*, the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) and the *Istanbul Charter for European Security* (1999)⁹⁵.

Paragraph 11

Reaffirmation of the right to belong to alliances and the right to neutrality

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

The present provision (as well as that of paragraph 10 of which it is an extension) was included at the request of those former members of the Warsaw Pact Treaty Organisation and former Soviet Republics seeking accession to NATO.

The first sentence, which recognises the sovereign right of each of the OSCE participating states to belong (or not) to an international organisation, to be party (or not) to a treaty establishing a bilateral or multilateral alliance as well as to neutrality, is a practical illustration of the right to freely choose national security arrangements enunciated in the preceding paragraph. Its wording is a quasi literal restatement of

⁹⁵ *Helsinki Final Act* (1975): last sentence of Principle I of the Decalogue; *Charter of Paris for a New Europe* (1990): 3rd paragraph of the rubric on "Security" included under the general heading of a "New Era of Democracy, Peace and Unity"; *Helsinki Decisions 1992*: paragraph 6 of Chapter V; *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996): paragraph 7; *Istanbul Charter for European Security* (1999): paragraph 8. See also paragraph 4 of the *Decision on Guidelines on an OSCE Document-Charter on European Security* (MC(6).Dec/5 of 19 December 1997).

the last sentence of Principle I ("Sovereign equality, respect for the rights inherent in sovereignty") of the 1975 Helsinki Decalogue⁹⁶.

The initial rationale for such a provision was the de-legitimisation of the hegemonic Soviet policy in Eastern and Central Europe. After the end of the Cold War, it was meant to allow the former members of the Warsaw Pact Treaty Organisation and other interested states to join the European Union and/or NATO if they freely wished to do so. This is precisely why the second sentence of paragraph 11 confirms that each of the OSCE participating states has "the right to change its status in this respect, subject to relevant agreements and procedures" – a right subsequently restated in paragraph 7 of the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996) and paragraph 8 of the *Istanbul Charter for European Security* (1999)⁹⁷.

The phrase "*subject to relevant agreements and procedures*" fulfils the purpose of a safeguard clause: it recalls that admission to international organisations is not automatic, but requires the consent of member states and the observance of specific procedures.

In relation to the principle of indivisibility, under which the OSCE participating states are required not to strengthen their security at the expense of the security of other states, the third sentence of paragraph 11 introduces a qualification ("*each will respect the rights of all other in this regard*") which is stronger than that of paragraph 10 which prescribes "bearing in mind the legitimate security concerns of other states". In any case, as illustrated by the issue of NATO's eastward enlargement, the notion of equal respect of the security interests of all states is not unambiguous in the sense that it aims to bridge two conflicting (if not irreconcilable) elements: the free choice of security arrangements and the legitimate security rights of third party states. In 2002, in the framework of the OSCE's Forum for Security Cooperation, the Russian Federation was still arguing that the right recognised in paragraphs 10 and 11 of the Code of Conduct had to be exercised "in a way that takes account of the

⁹⁶ "[The participating states] also have the right to belong or not to international organisations, to be or not to be a party to bilateral or multilateral treaties, including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality" (last sentence of Principle I of the Decalogue).

⁹⁷ Both texts refer to "the inherent right of each and every participating state to be free to choose or change its security arrangements, *including treaties of alliance as they evolve*" (paragraph 7; author's italics).

legitimate security interests of other states" and did not lead to "an undermining of regional and global stability"⁹⁸.

Paragraph 12

Obligation to maintain only such military capabilities commensurate with individual or collective security needs

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

Paragraph 12 (as complemented by paragraph 13) represents one of the four relative innovations of the Code of Conduct in the realm of inter-state norms⁹⁹. This is so because it commits the OSCE participating states for the first time to put limits – although on the basis of the vague notion of "commensurability" – to their military capabilities.

It is obviously inspired by Article VI of the 1992 *Treaty on Conventional Armed Force in Europe* (CFE) which sets forth a so-called "sufficiency rule" fixing at approximately one-third the legal holdings of any single state Party in each of the five categories of conventional armament and equipment limited by the Treaty within its area of application and which are the most relevant to launching a large-scale surprise attack. The incorporation of the sufficiency rule in the CFE Treaty provided for the renunciation by the USSR of military domination in Europe.

Paragraph 12 makes no reference to the CFE Treaty, presumably because some of the OSCE participating states were not parties to the latter and did not intend to

⁹⁸ In more practical terms, "this means that the expected decision on the next round of NATO enlargement must be taken in a way that at the same time takes into account the politico-military consequences of that enlargement in close cooperation with those states whose legitimate interests will be affected as result of it" (FSC.DEL/530/02 of 24 September 2002).

⁹⁹ The three other innovations are respectively those of *paragraph 5* (solidarity principle), *paragraph 13* (obligation to determine military capabilities through national democratic procedures, coupled with a commitment on the renunciation of military domination in the OSCE area) and *paragraph 14* (authorisation to station armed forces on the territory of another participating state in accordance with freely negotiated agreements as well as international law).

accede to it. Moreover, it refers to the vague notion of "commensurability" and not to a quantifiable "sufficiency"¹⁰⁰.

In the phrase "*maintain only such military capabilities as are commensurate with individual or collective legitimate security needs*", the verb to maintain means to keep and acquire. The needs referred to are basically those related to the protection of national territory, implementation of defence or alliance treaties and peace enforcement commitments under the United Nations¹⁰¹. As to the phrase, "*taking into account its obligations under international law*" it contains some redundancy in so far as it concerns, for instance, obligations towards the United Nations.

It is to be mentioned that in Section VII of the Code of Conduct, dealing with the democratic control of armed forces, a specific provision prescribes that each OSCE participating state should "exercise restraint in its military expenditures" (paragraph 22).

¹⁰⁰ In the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century (1996)*, the participating states reconfirmed the prescription on commensurability, with slight nuances, in the following terms: "... we reaffirm that we shall maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its *rights* and obligations under international law. We shall determine its military capabilities on the basis of national democratic procedures, *in a transparent manner*, bearing in mind the legitimate security concerns of other states as well as the need to contribute to international security and stability (6th "tick" of paragraph 10; author's italics).

¹⁰¹ Concerning commensurability, *Poland* proposed that "the participating states will keep the levels of their armed forces to the *minimum* commensurate with legitimate common or individual security needs *within Europe and beyond*" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 2; author's italics). The "*European Union plus*" text suggested that "the participating states affirm their commitment to maintain only such military capability *as necessary* to prevent war, fulfil their commitments with regard to the UN or the CSCE, manage crises and provide for effective defence, including in implementation of defence or alliance treaties" (CSCE/FSC/SC.21 of 30 June 1993, p. 6. author's italics). In their joint draft proposal, Austria and Hungary offered a provision stipulating that "the participating states reaffirm their commitment to maintain only such military capabilities as are commensurate with common or individual legitimate security needs within the CSCE area and beyond" (CSCE/FSC/SC.22 of 15 September 1993, p. 5).

Paragraph 13

Obligation to determine military capabilities through national democratic procedures. Renunciation of military domination in the OSCE area

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.

Through the notion of "commensurability" (a prescription for the determination of military capabilities), paragraph 12 enunciates a criterion of a *subjective* character. In its first sentence, paragraph 13 introduces an additional objective criterion – "*national democratic procedures*" (parliamentary intervention and oversight) – which also represents an advance element of the Code of Conduct's subsequent provisions on the democratic control of armed forces (Section VII)¹⁰². The phrase "*bearing in mind the legitimate security concerns of other states*" has exactly the same subjective qualifying meaning as in paragraph 10 of the Code of Conduct. As to the phrase "*the need to contribute to international security and stability*", it is equivalent to that of paragraph 12 which refers to "obligations under international law".

The second sentence of paragraph 13 is manifestly misplaced. The statement that "*no participating state will attempt to impose military domination over any other participating state*" constitutes a logical prolongation of the provision of paragraph 12 on the maintenance of "only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law". Indeed, as mentioned in the commentary on paragraph 12, the incorporation of the sufficiency rule in the 1992 *Treaty on Conventional Armed Force in Europe* amounted to the renunciation by any single state Party of building military superiority in Europe¹⁰³.

¹⁰² It is to be mentioned that in Section VII of the Code of Conduct, which deals with the democratic control of armed forces, a specific provision prescribes that each OSCE participating state "provide for transparency and public access to information related to the armed forces" (paragraph 22).

¹⁰³ The Polish draft proposal on a Code of Conduct contained a provision significantly committing the OSCE participating states to "refrain from any attempt to build military superiority *allowing any single*

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁰⁴. Item No 2 is related to "National planning and decision making-process for the determination of the military posture, including (a) the role of Parliament and ministries and (b) public access to information related to armed forces"; it concerns paragraph 22 as well.

Paragraph 14

Authorisation to station armed forces on the territory subject of another participating state in accordance with a freely negotiated agreements as well as international law

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.

The issue of the stationing by a participating state of armed forces on the territory of another participating state represented, until the very last moment, a stumbling block in the drafting process of the Code of Conduct¹⁰⁵. It was of direct concern for a number of OSCE participating states:

a) the three Baltic states in their claim for the withdrawal of Russian military forces – a matter finally resolved in August 1994, a few months before the formal adoption of the Code of Conduct¹⁰⁶;

state to dominate military the CSCE area" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 2; author's italics).

¹⁰⁴ FSC.DEC/4/98 of 8 July 1998.

¹⁰⁵ Two other issues were also particularly divisive: the inclusion in the Code of Conduct of substantial provisions related to the economic/environmental dimension and human dimension of security (see commentary on the title of the Code of Conduct) and the so-called issue of interlocking institutions referred to in paragraph 4.

¹⁰⁶ In the *1992 Helsinki Summit Declaration*, the OSCE participating states recognised that "even where violence has been contained, the sovereignty and independence of some states still needs to be upheld" and expressed support "for efforts by CSCE participating states to remove, in a peaceful manner and through negotiations, the problems that remain from the past, like the stationing of foreign armed forces on the territories of the Baltic states without the required consent of those countries". Accordingly, they

b) Moldova, on the territory of which Russian troops were stationed against the express will of the government; and

c) Azerbaijan, in view of a possible OSCE Russian-led peacekeeping operation in Nagorno-Karabakh.

In its proposal for a Code of Conduct, Poland included a provision committing the participating states to ensure that the territorial integrity and political independence of each participating state are inviolable and, accordingly, that "no foreign forces will be stationed on the territory of a participating state without that state's explicit consent" and that those forces "will be withdrawn immediately if such consent has been invalidated"¹⁰⁷. The "European Union plus" draft text proposed a practically similar provision with the following addition: "this obligation does not affect in any way the prerogatives of the Security Council as established in Chapter VII of the United Nations Charter"¹⁰⁸. As to the Austro-Hungarian draft proposal, it suggested a wording borrowing from both the Polish and the European Union drafts, but without reference to the United Nations Security Council¹⁰⁹.

All three proposals enunciated a prohibition ("*no participating state will station its armed forces ...*", "*no foreign forces will be stationed...*") whose lifting would depend on the explicit and free consent of the host state and also (as envisaged in the "European Union plus" text) on a relevant decision taken by the United Nations Security Council under Chapter VII of the Charter. However, during the drafting process, an alternative permissive wording ("armed forces of participating state may be stationed on the territory of another participating state...") was suggested – by an undetermined delegation – subject to two preconditions: "only in accordance with international law and as agreed between them"¹¹⁰.

Invoking its special international security responsibilities, which could necessitate new military operations in Iraq, the United States rejected the conjunction "and"

called on the concerned states "to conclude, without delay, orderly and complete withdrawal of such foreign troops from the territories of the Baltic states" (paragraph 15).

¹⁰⁷ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 6.

¹⁰⁸ CSCE/FSC/SC.21 of 30 June 1993, p. 5.

¹⁰⁹ CSCE/FSC/SC.22 of 15 September 1993, p. 9.

¹¹⁰ DOC. 188 of 9 May 1994 (pp. 2-3), DOC.319 of 6 June 1994 (pp. 5-6) and DOC. 551 of 22 July 1994.

which linked the expression "in accordance with international law" to that of "as agreed between them" – and suggested "or otherwise" as a substitute. This was refused by Turkey which considered that "only in accordance with international law" would empower the permanent members of the Security Council, acting under Chapter VII of the Charter, to decide the stationing of troops in any state – a dubious argument given that the Security Council's competence established by the United Nations Charter cannot be affected by any of the provisions of the OSCE politically-binding Code of Conduct ¹¹¹.

Paragraph 14 of the Code of Conduct was finally drafted in *permissive* (and not prohibiting) language. It was thus agreed that "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". The adjective "only" was dropped out and the linkage between the two preconditions (freely negotiated agreements/international law) was established by means of the expression "*as well as*". Furthermore, the text of paragraph 14 makes no reference to the United Nations Security Council. However, in the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996), the OSCE participating states took the commitment to "ensure that the presence of foreign troops on the territory of a participating state is in conformity with international law, the freely expressed consent of the host state, or a *relevant decision of the United Nations Security Council*"¹¹².

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹¹³. Item No 3 is related to the "Stationing of armed

¹¹¹ Anyhow, as specified in the third paragraph of its Preamble, the Code of Conduct was not meant to modify the contents or prejudice the applicability of existing international law instruments.

¹¹² *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the 21st Century* (1996): paragraph 8. Drafting evolution of that provision: REF.S/50/96 of 26 November 1996 (United States), REF.S/61/96 of 27 November 1996 (GUAM countries = Georgia, Ukraine, Azerbaijan, Moldova) and REF.S/101/96 of 30 November 1996 (Moldova). Paragraph 8 of the Lisbon Declaration was restated in paragraph 5(d) of the *Decision on Guidelines on OSCE Document-Charter on European Security* (MC(6).Dec/5 of 19 December 1997).

¹¹³ FSC.DEC/4/98 of 8 July 1998.

forces on the territory of another participating state with their freely negotiated agreement as well as in accordance with international law".

SECTION V

CONFIRMATION OF THE IMPORTANCE OF THE PROCESS OF ARMS CONTROL, DISARMAMENT AND CSBM

Summary contents of Section V: Importance of a good faith implementation of arms control, disarmament and CSBM commitments (§ 15). Reaffirmation of the commitment to pursue arms control, disarmament and CSBM measures in the OSCE area (§ 16).

A Code of Conduct addressing the politico-*military* aspects of security in the OSCE normally had to include references to arms control, disarmament and confidence- and security-building measures (CSBM). Section V, which is supposed to fulfil that purpose, appears however as an empty box. It only offers two provisions of a general nature which just affirm the importance of good faith implementation of arms control, disarmament and CSBM obligations (paragraph 15) and reaffirm the commitment to pursue arms control, disarmament and CSBM measures in the OSCE area (paragraph 16).

Although some of the Code of Conduct's provisions are related to defence expenditures (paragraph 22) and defence policies and doctrines (paragraph 35), Section V does not mention the *Vienna Document on CSBM*¹⁴. Still, the relation between the Code of Conduct's provisions on the democratic control of armed forces and the Vienna Document's provisions on defence planning is evident. As noted by the Head of the Swedish delegation at the opening of the 1997 Annual Assessment Implementation Meeting, the Code of Conduct could serve as a reference point for the formulation of defence policy because transparent information on the defence planning process, especially when comparable over the years, indicates the effectiveness of the democratic control of armed forces when that information is

¹⁴ Or any other text developed in the framework of the politico-military dimension of the OSCE. Besides the Code of Conduct and the *Vienna Document 1999 on CSBM*, the participating states' commitments in the politico-military dimension of the OSCE currently include the 1993 *Principles on Conventional Arms Transfers* and the 1994 *Principles on Non-Proliferation*, the 1994 *Global Exchange of Military Information* regime and the *Document on Small arms and light weapons* (2000) – as well as some Forum for Security Cooperation decisions concerning the ratification process of the 1993 Chemical Weapons Convention and the issue of anti-personnel landmines.

correctly transmitted¹¹⁵. Accordingly, it could have been appropriate to incorporate the relevant provisions of the Code of Conduct in the Vienna Document, whose revision was under way¹¹⁶. In the same vein, Finland suggested inserting in the Vienna Document's section on defence planning provisions requiring the OSCE participating states to transmit information on the measures taken by each of them to implement the Code of Conduct and how the rights and duties of the armed forces personnel are reflected in their training programme¹¹⁷. Such an arrangement would have had the advantage of linking the implementation of the Code of Conduct to that of the CSBM regime. For instance, inspection and evaluation reports submitted under the latter could have been helpful in assessing the degree of implementation of the former: the briefings held during inspections and evaluations could have included an obligation to report on the implementation of the Code of Conduct in the inspected facility. The inspected or evaluated participating state would have to present the training programme of the personnel and conscripts, thus revealing the impact of the Code of Conduct in the field¹¹⁸. Anyhow, those suggestions have not been retained in the 1999 version of the Vienna Document.

The declaratory statements of Section V of the Code of Conduct, which do not even refer to the 1992 *Treaty on Conventional Armed Force in Europe* (CFE), the 1992 *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Force in Europe* (CFE-1A) and the 1992 *Open Skies Treaty*, would have found a more natural place in Section IV where most of the security rights and obligations of the OSCE participating states are enunciated or reaffirmed.

¹¹⁵ REF.FSC/77/97 of 3 March 1977. See also FSC.VD/37/98 of 21 October 1998 (Swedish non-paper containing amendment proposals to the Vienna Document).

¹¹⁶ FSC.VD/37/98 of 21 October 1998: Swedish non-paper containing amendment proposals to the Vienna Document.

¹¹⁷ FSC.DEL/36/97 of 23 September 1997.

¹¹⁸ FSC.DEL/36/97 of 23 September 1997. See also FSC.AIAM/49/98 of 11 March (p. 21), FSC.AIAM/50/98 of 26 March 1998 (p. 5) and FSC.AIAM/47/00 of 28 March 2000 (p. 4). Turkey cautioned against mixing the implementation of a CSBM with a standard-setting measure document (FSC.AIAM/49/98 of 11 March 1998, p. 20). Russia expressed doubts about formulating a verification mechanism and supported the voluntary principle of implementation (FSC.AIAM/49/98 of 11 March 1998, p. 21).

Paragraph 15

Importance of a good faith implementation of arms control, disarmament and CSBM commitments

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

Paragraph 15 affirms in general terms the resolve of the OSCE participating states to implement in good faith their commitments in the field of arms control, disarmament and CSBM. As in the case of all other commitments undertaken in the framework of the OSCE (paragraph 1 of the Code of Conduct), the implementation of arms control, disarmament and CSBM commitments is placed under the auspices of "good faith" or, in other words, of Principle X of the 1975 Helsinki Decalogue.

Given that it refers to "their commitments" and not to "their OSCE commitments", paragraph 15 covers all relevant OSCE politically-binding commitments as well as non-OSCE (legally or not) binding commitments of a universal or regional scope: CFE Treaty, CFE-1A Agreement, Open Skies Treaty, Chemical Weapons Convention of 1993, etc.

Paragraph 15 also presents the implementation in good faith of commitments in the field of arms control, disarmament and CSBM as a prescription related to the principle of the indivisibility of security ("*an important element of their indivisible security*") which is stated in paragraph 3 of the Code of Conduct. The relevance of a commitment related to the full implementation of existing arms control and disarmament regimes "even in crisis situations", suggested in the "European Union plus" proposal¹¹⁹ did not get consensus. Likewise, the "European Union plus" states did not succeed in convincing the other governments that breaches of obligations under arms control and disarmament agreements should be considered as "a source of concern for all" which necessitate an appropriate response – such as consultations in order "to avert or resolve disputes (...) to avoid use of force"¹²⁰.

¹¹⁹ CSCE/FSC/SC.21 of 30 June 1993, p. 7.

¹²⁰ CSCE/FSC/SC.21 of 30 June 1993, p. 7. A Turkish proposal of similar inspiration suggesting that the degree of compliance with arms control and disarmament obligations be considered "as a concrete

Paragraph 16

Reaffirmation of the commitment to pursue arms control, disarmament and CSBM measures in the OSCE area

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

The provision of paragraph 16 simply indicates the general resolve of the OSCE participating states "to pursue" arms control, disarmament and confidence- and security-building "measures". It represents a confirmation, formulated in much less strong language, of a commitment undertaken by them in the *Helsinki Summit 1992 Declaration* and the *Helsinki Decisions 1992* to give "new impetus" to the process of arms control, disarmament and confidence- and security-building as well as to security cooperation and conflict prevention¹²¹. It does not provide, as suggested in the "European Union plus" proposal, for further developments in the specific fields of non-proliferation and arms transfers¹²².

yardstick in the field of military-political conduct" (CSCE/FSC/SC.8 of 16 December 1992, article 8) was also not accepted.

¹²¹ Second sentence of paragraph 22 of the *Helsinki Summit Declaration 1992* and paragraph 4 of Chapter V of the *Helsinki Decisions 1992*.

¹²² CSCE/FSC/SC.21 of 30 June 1993, pp. 8-9.

SECTION VI

REAFFIRMATION OF COMMITMENTS TO COOPERATE FOR CONFLICT PREVENTION AND CRISIS MANAGEMENT

Summary contents of Section VI: Cooperation to counter economic /environmental and human dimension tensions conducive to possible conflicts (§ 17). Reaffirmation of the equal importance of cooperation at the various phases of the conflict management cycle (§ 18). Cooperation for peaceful resolution and humanitarian assistance support in armed conflicts (§ 19).

A Code of Conduct related to the *politico*-military aspects of security in the OSCE had normally to reflect the issue of conflict prevention and crisis management. Section VI does so but in such general terms that it can be considered, like Section V on arms control, disarmament and CSBM, an empty box. Indeed, it consists of three provisions on cooperation to counter economic/environmental and human dimension tensions conducive to conflicts (paragraph 17), on the equal importance of the various phases of the conflict management cycle (paragraph 18), and on cooperation for the peaceful resolution and in support of humanitarian assistance in armed conflicts (paragraph 19).

Paragraph 17

Cooperation to counter economic/environmental and human dimension tensions conducive to conflicts

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

The first sentence of paragraph 17 commits the OSCE participating states to cooperate with the aim of preventing the development of potential conflicts by countering related tensions. The second sentence recognises that the sources of

potential conflicts in the OSCE area are linked to economic and environmental factors and to violations of the human dimension's commitments, with particular emphasis on those related to human rights and to tolerance (aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism) – an enumeration inspired from the *1992 Helsinki Summit Declaration*¹²³. Given Chapter III of the *Helsinki Decisions 1992* and the practice developed by the OSCE through "Long-Term Missions", the concept of "conflict" has to be understood as referring to *intra-state* as well as inter-state conflicts, including *armed* conflicts¹²⁴.

Since it establishes a formal linkage between the politico-military dimension of security (to which the Code of Conduct belongs) and the economic/environmental and the human dimensions, paragraph 17 is one of the rare cross-dimensional provisions of the Code of Conduct dealing with inter-state relations.

Paragraph 18

Reaffirmation of the equal importance of cooperation at the various phases of the conflict management cycle

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

While giving special emphasis to the identification of root causes of conflicts, the general provision of paragraph 18 affirms the equal importance of the various phases of the conflict management cycle: "conflict prevention, crisis management and peaceful settlement of disputes". Given Chapter III of the *Helsinki Decisions 1992* and the practice developed by the OSCE through "Long-Term Missions", the concept

¹²³ "This is a time of promise but also a time of instability and insecurity. Economic decline, social tension, aggressive nationalism, intolerance, xenophobia and ethnic conflict threaten stability in the CSCE area. Gross violations of CSCE commitments in the field of human rights and fundamental freedoms, including those related to national minorities, pose a special threat to the peaceful development of society, in particular in new democracies" (paragraph 12 of the *1992 Helsinki Summit Declaration*).

¹²⁴ Chapter III of the *Helsinki Decisions 1992*, entitled "Early warning, conflict prevention and crisis management (including fact-finding and rapporteur missions and CSCE peacekeeping), peaceful settlement of disputes", clearly refer – as regards peacekeeping – to conflicts "within or among participating states" (paragraph 17).

of "conflict" has to be understood as referring to *intra-state* as well as inter-state conflicts, including *armed* conflicts¹²⁵.

The elements enumerated in paragraph 18 do not include either *peace-building* or *peacekeeping*.

The omission of peace-building is not surprising: the first OSCE post-conflict rehabilitation operation took place only in 1996 (two years after the Code of Conduct's adoption) on the basis of the Dayton Framework Agreement on Peace in Bosnia and Herzegovina.

As to peacekeeping, the "European Union plus" and the Austro-Hungarian proposals did include provisions committing the participating states to cooperate with peacekeeping operations of the United Nations and the OSCE¹²⁶. Although the OSCE has been empowered to undertake such operations since 1992, no consensus could be achieved in this connection because the issue of peacekeeping (connected with that of NATO's post-Cold War role) was a sharply divisive one¹²⁷.

¹²⁵ Chapter III of the *Helsinki Decisions 1992*, entitled "Early warning, conflict prevention and crisis management (including fact-finding and rapporteur missions and CSCE peacekeeping), peaceful settlement of disputes", clearly refer – as regards peacekeeping – to conflicts "within or among participating states" (paragraph 17).

¹²⁶ "European Union plus": CSCE/FSC/SC.21 of 30 June 1993, p. 10; *Austria and Hungary* : CSCE/FSC/SC.22 of 15 September 1993, pp. 20-21;

¹²⁷ Paragraphs 17 to 56 of Chapter III of the *Helsinki Decisions 1992* – reconfirmed by paragraph 46 of the *Istanbul Charter for European Security* (1999) – empower the OSCE to conduct peacekeeping operations of its own and also to mandate other European regional institutions to do so on its behalf. Up now (2002), the OSCE has never *formally* made use of those provisions. Although hammered out in detail, a pan-European peacekeeping operation in Nagorno-Karabakh did not materialise. However, the OSCE currently performs such activities as ceasefire monitoring, police activities, post-conflict rehabilitation, etc which are in effect peacekeeping-related functions. The Kosovo Verification Mission (1998-1999) was indeed a peacekeeping operation – without the name. The same remark applies to the field Mission established in 1999 as an integral part of the United Nations Interim Mission in Kosovo (UNMIK).

Paragraph 19

Cooperation for peaceful resolution and humanitarian assistance support in armed conflicts

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

Paragraph 19 concerns the cooperation of the OSCE participating states in armed conflicts – whether of an intra-state or inter-state character, as signalled in the commentary of paragraphs 17 and 18.

The first sentence commits the OSCE participating states in general and mild terms (as reflected by the verb "to seek") to undertake efforts such good offices, facilitation, mediation and/ conciliation with a view to achieving the effective ending of armed hostilities and establishment of a framework for a peaceful political settlement.

In the spirit of a provision embodied in the *1992 Helsinki Summit Declaration*, the second sentence commits the OSCE participating states to cooperate "in support of humanitarian assistance" (but not to provide such humanitarian assistance as had been suggested by the "European Union plus" states) to alleviate suffering among the civilian population – *inter alia* by facilitating the free circulation of dedicated personnel and resources¹²⁸.

¹²⁸ "European Union plus" proposal : CSCE/FSC/SC.21 of 30 June 1993, p. 10. In paragraph 14 of the *1992 Helsinki Summit Declaration*, the OSCE participating states recognised that "in times of conflict the fulfilment of basic human needs is most at risk" and committed themselves "to strive to relieve suffering by humanitarian ceasefires and to facilitate the delivery of assistance under international supervision, including its safe passage".

SECTION VII

DEMOCRATIC CONTROL OF ARMED FORCES

Summary contents of Section VII : Rationale for the democratic control of armed forces (§ 20). Primacy of the constitutionally established authorities vested with democratic legitimacy over military power (§ 21). Legislative approval of, as well as restraint in, transparency of and public access to military defence expenditures (§ 22). Political neutrality of armed forces and respect of civil rights of their individual members (§ 23). Safeguards against military incidents due to accident or error (§ 24). Inadmissibility of forces that are not accountable to or controlled by their constitutionally established authorities (§ 25). Prohibition of acquisition by paramilitary forces of combat mission capabilities in excess of those for which they were established (§ 26). Consistency with human rights of recruitment or call-up of military, paramilitary and security forces (§ 27). Rights and duties of armed forces personnel, including possibility of exemptions from or alternatives to military service (§ 28). Promotion of the knowledge of international humanitarian law at national level and reflection of its commitments in military training programmes and regulations (§ 29). Instruction of armed forces personnel in international humanitarian law, including awareness of individual accountability at domestic and international level (§ 30). Individual accountability of commanders and rank and file servicemen of armed forces under national and international law (§ 31). Exercise of their human rights by the personnel of military, paramilitary and security forces (§ 32). Legal and administrative national procedures for the protection of the rights of all forces personnel (§ 33).

Section VII of the Code of Conduct is devoted, together with Section VIII, to the civilian democratic control of armed forces – or, in more updated terms, to what is now currently referred to as the "security sector"¹²⁹. The issue was not totally novel at the OSCE:

¹²⁹ As underscored by Theodor H. Winkler (*Managing Change. The Reform and Democratic Control of the Security Sector and International Order*. Geneva, Centre for the Democratic Control of Armed Forces, "Occasional paper" No 1, 2002, p. 5), the concept of a "security sector" had emerged by 1997 in British academic circles. For an analysis of the concept, see the following working papers issued by the

a) In the *Copenhagen Document on the Human Dimension* of 29 July 1990, the OSCE participating states recognised that the rule of law required, among many other elements, that "*military forces and the police (...) be under the control of, and accountable to, the civil authorities*" (paragraph 5.6).

b) In the *Moscow Document on the Human Dimension* of 3 October 1991, the OSCE participating states adopted some general obligations as regards their *military and paramilitary forces, internal security and intelligence services* and the *police activities*. They committed themselves to ensure that those forces, services and activities are subject to the effective direction and control of the appropriate civil authorities (paragraph 25.1), to maintain (and, where necessary, strengthen) executive control over the use of those forces, services and activities (paragraph 25.2) and to take appropriate steps to create (wherever they do not already exist) and maintain effective legislative supervision all such forces, services and activities (paragraph 25.3). Those obligations were formulated on the basis of a proposal concerning "civilian control over military and security forces", jointly tabled by Hungary and the United States; they reflected all of the provisions of the proposal with the only exception of a prescription forbidding the OSCE participating states "to create or permit such forces, services or activities to function beyond the reach of the executive"¹³⁰.

Section VII of the Code of Conduct represents an elaboration and development of the Moscow Document's commitments. Given the diversity of national traditions and practices in the OSCE area, it does not propose a specific model for either an "objective" or a "subjective type" of democratic control of armed forces¹³¹.

Geneva Centre for the Democratic Control of Armed Forces in 2002 by Timothy Edmunds (*Security Reform. Concepts and Implementation*), Hans Born (*Democratic Oversight of the Security Sector. What Does it Mean?*) and Wilhelm Germann (*Evaluation of Security Sector Reform Criteria of Success. Practical Needs and Methodological Problems*).

¹³⁰ CSCE/CHDM.43 of 26 September 1991. The text of the proposal, which was co-sponsored by Albania (CSCE/CHDM.43/Add. 1 of 30 September 1991), is reproduced as Annex 1 in the present *Commentary*.

¹³¹ The standard distinction between "objective" and "subjective" civilian control over the military was proposed by Samuel P. Huntington in *The Soldier and the State. The Theory and Politics of Civil-Military Relations*. Cambridge, Belknap Press of Harvard University Press, New York, 1957, xiii-534 p. According to Hans Born (*Democratic Oversight of the Security Sector. What Does it Mean?, op. cit.*, p. 6), the objective control model (which implies a highly-professional military establishment and clear-cut separation between political and military decision-making) functions in the United States and many

Paragraphs 20 to 33, supplemented by paragraphs 34 to 37 which form Section VIII, only spell out the general basic features of such a regime – namely the *primacy of democratic constitutional civilian power over military power* (paragraphs 21 to 26), the *subjection of armed forces to the norms and prescriptions of international humanitarian law* (paragraphs 29, 30, 31, 34 and 35), the *respect of the human rights and fundamental freedoms of the armed forces personnel* (paragraphs 23, 27, 28, 32, 33) and the *regulation of the use of armed forces for internal security purposes* (paragraph 36 and 37).

Beyond the prevention of the unconstitutional use of armed forces for both internal and external purposes, the aim of Sections VII and VIII taken as a whole is to promote a "conscience" of the rule of law, human rights and international humanitarian law in the military establishments of the OSCE participating states.

Outlawing the practices of the Nazi and Soviet regimes to use armed forces to dominate other European states and to intimidate their own populations (as well as the kind of abuses perpetrated in the then ongoing Yugoslav conflict) directly motivated the drafting of these portions of the Code of Conduct. The provisions of Sections VII and VIII reflected the quintessence of the lessons drawn from the experience of the Western democracies with the intention on passing them on to the new democratic regimes emerging in the former Soviet and Balkan geopolitical space¹³².

other Western countries, while the subjective control model (where democratic political loyalty prevails over professionalism) operates for instance in Switzerland. For an overview of the existing literature see Hans Born's contribution ("Democratic Control of Armed Forces. Issues, Problems and Agenda") in the forthcoming *Handbook of the Sociology of the Military*. Edited by Giuseppe Caforio. New York, Kluwer Academic, 2003.

¹³² Jonathan Dean: "The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed Up", *OSCE Yearbook*, Volume 1-2, 1995-1996, pp. 291 and 295.

Paragraph 20

Rationale for the democratic control of armed forces

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.

This paragraph introduces the concept of "democratic political control of armed forces" to which the 1991 Moscow Document did not *explicitly* refer. It also justifies its rationale and enumerates the categories concerned by it. Neither paragraph 20, nor any other in the Code of Conduct, does however offer a definition of the concept as such.

The democratic political control of armed forces is considered as including the same five categories that were mentioned in the 1991 Moscow Document: *military forces*, *paramilitary forces*, *internal security forces*, as well as *intelligence services* and the *police* – or, in other terms, all of the essential elements of the security sector excepting *border guards*¹³³.

In this enumeration, the first three categories are intentionally separated from the last two by the expression "*as well as*". Indeed, paragraph 20 fulfils the purpose of a mini-preamble. It is the only one which makes reference to *all five* categories. The following paragraphs of Section VII, which are of an operative nature, mention either the first three categories simultaneously (paragraphs 21, 27, 32 and first sentence of paragraphs 20) or just the "*armed forces*" (paragraphs 22, 23, 28, 30, 31 and second sentence of paragraph 20)¹³⁴. For most of the OSCE participating states, the

¹³³ However, since the adoption of the Code of Conduct, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has launched a number of democratisation programmes providing for training in human rights for the border guards of a number of participating states. On the issue of border guards, see Alice Hills: *Consolidating Democracy. Professionalism, Democratic Principles and Border Services* (14 p.) and *Border Control Services and Security Sector Reform*. (32 p.). Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, Working Papers No 27 and No 37.

¹³⁴ In addition, the vague notion of "*forces*" is used in paragraphs 25 and 33. In Section VIII (paragraphs 34 to 37), reference is only made to "*armed forces*".

categories of intelligence services and the police were too sensitive. Therefore, there was no consensus for mentioning them elsewhere than in an introductory paragraph of a general declaratory character. Given the diversity of national practices and historical traditions in the OSCE area, the Code of Conduct does not provide in paragraph 20 (or elsewhere) a definition for any of the five categories. In sum:

– When the expression "*armed forces*" is used in the Code of Conduct, it is reasonable to assume that it only refers to the regular forces of the army, and not to all of the five categories¹³⁵.

– The category of "*paramilitary forces*" is addressed specifically in paragraph 26 and, somewhat implicitly, in the oblique provision of paragraph 25 referring to "forces that are not accountable to or controlled by their constitutionally established authorities" (irregular forces).

– The categories of "*internal security forces*", "*intelligence services*" and the "*police*" do not appear outside the boundaries of paragraph 20¹³⁶. However, paragraph 36 interestingly refers to "armed forces" entrusted with "internal security missions". It is also worth mentioning here the existence of some (non-legal) norms framed within the United Nations and the Council of Europe concerning these same three categories.

At universal level, the General Assembly of the United Nations issued a *United Nations Code of Conduct for Law Enforcement Officials* (1979) as a recommendation for governments to use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. This instrument prescribes to all officers of the law who exercise military as well as civilian police

¹³⁵ In its proposals on the "Democratic Control of Armed Forces and their Use", Hungary however used the expression "armed forces" as covering military and paramilitary forces, as well as internal security, intelligence services and the police (CSCE/FSC/SC.25 of 23 February 1994).

¹³⁶ On these categories, see Geneva Centre for the Democratic Control of Armed Forces : *Intelligence Services and Democracy*. Geneva, Geneva Centre for the Democratic Control of Armed Forces (DCAF Working papers No 13), Hans Born: *Democratic and Parliamentary Oversight of the Intelligence Services. Best practices and procedures*. Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, 21 p. (DCAF Working Papers No 20) and James Sheptycki: *Accountability Across the Policing Field. Towards a General Cartography of Accountability for Post-Modern Policing*, Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, 25 p. (DCAF Working Papers No 35).

powers to "respect and protect human dignity and maintain and uphold human rights of all persons" (article 2) while empowering them to use force "only when strictly necessary and to the extent required for the performance of their duty (article 3)¹³⁷".

As to the Council of Europe, its Parliamentary Assembly adopted a "*Declaration on the Police*" (1979) laying down guidelines for the behaviour of police officers in case of war and other emergencies, including in the event of occupation by a foreign power. All of the Declaration's provisions (except those related to occupation) concern "individuals and organisations, including such bodies as secret services, military police forces, armed forces or militias performing police duties, that are responsible for enforcing the law, investigating offences and maintaining public order and state security"¹³⁸. Subsequently, a "European Code of Police Ethics" was drafted under the aegis of the Council of Europe's Committee of Ministers and submitted, in 2001, for opinion to the Parliamentary Assembly. The expected Code of Police Ethics is supposed to supersede the 1979 Declaration¹³⁹.

In 1981-1982, some MPs raised the idea of a "*European Code of professional ethics for the armed forces*"; however, the Parliamentary Assembly did not follow suit¹⁴⁰. In the next decade, the Parliamentary Assembly considered the issue of *intelligence services*. It therefore adopted *Recommendation 1402 (1999) on "Control of internal security services in Council of Europe member states"* providing guidelines for

¹³⁷ Resolution 34/169 adopted by the United Nations General Assembly on 17 December 1979. According to the commentary appended to that short instrument, the definition of "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention and, in countries where police powers are exercised by military uniformed/non-uniformed authorities or by state security forces, all officers of such services.

¹³⁸ The Parliamentary Assembly adopted Resolution 690 (and Recommendation 858) on the "*Declaration on the Police*" on 8 May 1979. See also Doc. 4212 of 15 January 1979 (Report by John Watkinson), Doc. 5523 of 29 January 1986 (written question to the Committee of Ministers) and Doc. 5554 of 21 April 1986 (Committee of Ministers' reply). At an earlier stage, in 1970, the Parliamentary Assembly adopted Recommendation 601 concerning the application of the 4th Geneva Convention (1949) to police officials.

¹³⁹ Council of Europe's Parliamentary Assembly: Doc. 8923 of 15 January 2001 (Draft text submitted to the opinion of the Parliamentary Assembly) and Doc. 8994 of 9 March 2001 (Report by Kevin McNamara containing the Parliamentary Assembly's reply).

¹⁴⁰ Doc. 4719 of 12 May 1981 (Motion for a Recommendation) and Doc. 4963 of 28 September 1982 (Motion for an Order). On 29 September 1982, the Parliamentary Assembly adopted Order 411 (1982) in which it deplored the decision of its Bureau to take no action on the matter and instructed the legal Affairs Committee to consider the possibility of drafting a European Code of professional ethics for the armed forces.

ensuring an equitable balance between the right of a democratic society to national security and the rights of the individual. The text requested the Committee of Ministers to elaborate a *framework convention* regulating the way internal security services should be organised, conduct their operations and be effectively controlled – which means that the concerned services should be organised on strictly legal bases and preferably not within a military structure, remain under the effective (*a priori* and *ex post facto*) control of the executive, legislative and judiciary branches, be funded exclusively through the state budget and in conformity with the national parliament's current procedures, perform in compliance with the obligations of the European Convention on human rights and not be used as a political tool to oppress the opposition, national minorities and other groups or take part in the fight against organised crime¹⁴¹. The Committee of Ministers rejected the idea of a framework convention. However, it decided to consider setting up a new committee of experts ("Group of Specialists for Internal Security services") with a view to preparing a report and, if appropriate, putting forward relevant recommendations¹⁴².

Through paragraph 20, the OSCE participating states recognise that the democratic political control of the five above-mentioned categories of armed forces forms "an indispensable element of stability and security" (first sentence) and that the further integration of those armed forces with civil society constitutes "an important expression of democracy" (second sentence)¹⁴³. The key words *stability, security and democracy* represent the basic justifications for a democratic political control of armed forces. Indeed, democratic regimes contribute to international stability and security better than any others because of their normally peaceful and reasonably predictable behaviour. As democratic control of armed forces requires transparency, this certainly allows neighbour's suspicions to be reduced or international tensions defused. Anyhow, by establishing a direct link between armed forces and democracy, paragraph 20 reflects the cross-dimensional nature of the Code of Conduct, which is

¹⁴¹ The Parliamentary Assembly adopted Recommendation 1402 on "*Control of internal security services in Council of Europe member states*" on 26 April 1999. See also Order No 550 (1999), Doc. 7104 of 13 June 1994 (motion for a resolution) and Doc. 8301 of 23 March 1999 (Report by György Frunda).

¹⁴² *Parliamentary Assembly of the Council of Europe* : Doc. 8907 of 14 December 2000 (Reply from the Committee of Ministers to Recommendation 1402).

¹⁴³ Language suggested by Austria and Hungary that the democratic control of armed forces contributes to stability, security and democracy "in the CSCE area as a whole, within regions and within states" (CSCE/FSC/SC.22 of 15 September 1993, p. 17 and CSCE/FSC/SC.25 of 23 February 1994, p. 1) was not retained.

a politico-military normative instrument including large portions (Sections VII and VIII) pertaining to the human dimension.

The second sentence of paragraph 20 ("they will further the integration of their armed forces with civil society...") seems to imply that a civil society already functions in all of the OSCE participating states – which was certainly not the case in 1994 and, to a large extent, even today (2003).

Paragraph 21

Primacy of the constitutionally established authorities vested with democratic legitimacy over military power

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.

The present paragraph affirms what the OSCE participating states consider to be the essence of the democratic control of armed forces – the primacy of "constitutionally established authorities vested with democratic legitimacy" over military power¹⁴⁴. The responsibility of "constitutionally established authorities" represents a necessary but not a sufficient condition: such authorities must also be "vested with democratic legitimacy". The democratic political control of the armed forces has therefore to be executed, on the basis of the Constitution, by constitutionally established and democratic organs sanctioned by the democratic will of the people. All this means that the authorities concerned must operate in a system of true separation of powers and in the broad context of the rule of law. Except for paragraph 22 which deals with the legislative approval of defence expenditures, all the provisions of Sections VII

¹⁴⁴ This is in line with paragraph 25.1 of the *Moscow Document on the Human dimension* (1991) in which the OSCE participating states acknowledged the necessity of subjecting their military forces, services and activities "to the effective direction and control of the appropriate civil authorities" (paragraph 25.1).

and VIII of the Code of Conduct concern (at least implicitly) the executive branch of government and do not make any reference to the *judicial branch*¹⁴⁵.

The first sentence of paragraph 21 enunciates in general terms the fundamental requirement that each of the OSCE participating states' constitutionally established authorities vested with democratic legitimacy must provide for and maintain effective guidance of the military establishment at all times: the expression "to provide for and *maintain*" means that such guidance and control must be not only achieved, but also sustained. "At all times" refers to peacetime and wartime. Noticeably, only the first three categories of armed forces listed in paragraph 20 (military, paramilitary and security forces) are here concerned¹⁴⁶.

The second sentence commits each of the OSCE participating states to take measures to guarantee that the constitutionally established authorities vested with democratic legitimacy do fulfil their responsibilities. At first sight, it just seems to restate, with no useful purpose, the substance of the first sentence. Actually it means that the OSCE participating states are committed to provide control systems allowing the democratic constitutional authorities not to *abdicate* their responsibility to control the military establishment.

The third sentence prescribes that the constitutionally established authorities vested with democratic legitimacy clearly define the role, missions and obligations of the above-mentioned categories of armed forces in order to act at all times only within the rule of law and being legally accountable for their actions.

In short, paragraph 21 rules out any possibility for the military establishment of the OSCE participating states to form, so to speak, a state within the state. However, it fails to establish, following the "European Union plus" proposal, that if the armed forces *usurp* political control in any participating state, the other governments will urgently consider *appropriate action* in the framework of the OSCE¹⁴⁷. In the course

¹⁴⁵ Likewise, the *Moscow Document on the Human Dimension* (1991) prescribed that the OSCE participating states ensure only "executive control" (§ 25.2) and "legislative supervision" over the use of military forces, services and activities (paragraph 25.3).

¹⁴⁶ Austria and Hungary suggested, in vain, that intelligence services and the police be added to the list (CSCE/FSC/SC.22 of 15 September 1993, p. 17).

¹⁴⁷ CSCE/FSC/SC.21 of 30 June 1993, p. 12 (author's italics). The Austro-Hungarian proposal also contained a provision stating that if armed forces usurp political control in any participating state, the

of the drafting process, the negotiators considered that such "appropriate action" could include the non-recognition of the legitimacy of any usurper government and the restoration of democratic constitutional order¹⁴⁸. In this connection, it is worth recalling that in the 1991 *Moscow Document*, adopted in the aftermath of the failed coup against Mikhail Gorbachev, the OSCE participating states condemned "unreservedly forces which seek to take power from a representative government of a participating state against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order"; accordingly, they committed themselves to "support vigorously", in case of overthrow or attempted overthrow of a legitimately elected government of a participating state by undemocratic means, "the legitimate organs of that state upholding human rights, democracy and the rule of law..."¹⁴⁹.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁵⁰. Two elements of the questionnaire refer to paragraph 21: *item No 4* (which also covers paragraph 20) requires information on "constitutionally established authorities and procedures to ensure effective democratic control of armed forces, paramilitary forces, internal security forces, intelligence services and the police" and *item No 5* on the "role and missions of military, paramilitary forces and internal security forces as well as controls to ensure that they act solely within the constitutional framework".

other participating states will consider it as "a source of concern" (CSCE/FSC/SC.22 of 15 September 1993, p. 17).

¹⁴⁸ Article 3 of the Turkish proposal (CSCE/FSC/SC.8 of 16 December 1992), paragraph 2.13 of the Hungarian proposal (CSCE/FSC/SC.25 of 23 February 1994), paragraph (cc) of DOC.337 (Coordinator's Perception of 3 June 1994), paragraph 16 of DOC.551 of 22 July 1994 (Coordinator's 4th revised version of the Code of Conduct), paragraph 26.3 of the Coordinator's Draft Perception of 11 November 1994 and paragraph 26.3 of the Coordinator's Working paper of 15 November 1994.

¹⁴⁹ *Moscow Document* (1991) : paragraphs 17.1 and 17.2.

¹⁵⁰ FSC.DEC/4/98 of 8 July 1998.

Paragraph 22

Legislative approval of, as well as restraint in, transparency of and public access to military defence expenditures

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 22, which refers to the global category of "armed forces" (the regular forces of the army) deals with *defence and military expenditures*.

In line with paragraph 25.3 of the *Moscow Document* (1991) which prescribes "effective legislative supervision" over armed forces, the first sentence commits each of the OSCE participating states to provide for *legislative approval* of its defence expenditures – a normal requirement in any effective representative democracy¹⁵¹. A Parliament issued from free and fair elections represents indeed, due also to its budgetary competences, a key instrument for the control and accountability of the armed forces¹⁵².

The second sentence contains two different kinds of commitments:

On the one hand, each OSCE participating state is committed to exercising *restraint* in its military expenditures, "with due regard to national security" – an expression introducing a subjective limitative element. During the drafting process, Poland suggested a stronger commitment prescribing that governments "approach with restraint their defence needs in planning military expenditures, arms procurement and infrastructure upgrading and in other aspects of the maintenance and development of their military potential"¹⁵³. Anyhow, in established parliamentary democracies, this is often a quasi routine consequence of budgetary deliberations.

¹⁵¹ Besides, paragraph 13 of the Code of Conduct commits each OSCE participating state to "determine its military capabilities on the basis of national democratic procedures ...".

¹⁵² David Greenwood: *Transparency in Defence Budgets and Budgeting*. Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, 13 p. (DCAF Working Papers, No 73).

¹⁵³ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 3.

This provision on restraint has also to be appreciated against the background of paragraph 12 of the Code of Conduct under which each participating state must "maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law".

On the other hand, each OSCE participating state is committed to provide for *transparency of and public access to information* related to its armed forces. The relevance of transparency to information on military budgets does need to be elaborated: in mature democracies, critical media and the pressure of public opinion represent a major element of accountability and control. Inexplicably, paragraph 22 does not make any reference whatsoever to the detailed commitments of the OSCE's Vienna regime on CSBM related to "Defence Planning"¹⁵⁴.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁵⁵. Item No 2 is related to "National planning and decision making-process for the determination of the military posture, including (a) the role of Parliament and ministries and (b) public access to information related to armed forces"; it concerns paragraph 13 as well.

Paragraph 23

Political neutrality of armed forces and civil rights of their individual members

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 23, which refers to the global category of "armed forces" (the regular forces of the army), confirms that in a rule of law regime, armed forces are just an instrument of the politico-civil power. Hence the provision affirming one of the most

¹⁵⁴ The commitments related to defence planning are embodied in paragraphs 15 to 15.10 of the latest version of the *Vienna Document on CSBM* (1999).

¹⁵⁵ FSC.DEC/4/98 of 8 July 1998.

fundamental elements of the primacy of the civilian power over the military: the political neutrality of the military establishment in national life. It does not however specify, as suggested in all the official basic proposals, that armed forces must not serve the interests of "particular groupings" or "ideological systems"¹⁵⁶. However, and as emphasised by the Greek delegation at the opening of the 3rd Follow-up conference on the Code of Conduct, only "those who have experienced the oppression of a dictatorship or the horrors of the war" can appreciate in full measure the importance of having the armed forces remain neutral¹⁵⁷.

Regrettably, paragraph 23 fails to establish, following the "European Union plus" proposal, that if the armed forces *usurp* political control in any participating state, the other governments will urgently consider *appropriate action* in the framework of the OSCE¹⁵⁸. In the course of the drafting process, the negotiators considered that such "appropriate action" could include the non-recognition of the legitimacy of any usurper government and the restoration of democratic constitutional order¹⁵⁹. In this connection, it is worth recalling that in the 1991 *Moscow Document*, adopted in the aftermath of the failed coup against Mikhail Gorbachev, the OSCE participating states condemned "unreservedly forces which seek to take power from a representative government of a participating state against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order"; accordingly, they committed themselves to "support vigorously",

¹⁵⁶ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 3 (Poland), CSCE/FSC/SC.21 of 30 June 1993, p. 11 ("European Union plus" proposal), CSCE/FSC/SC.22 of 15 September 1993, p. 17 (Austria and Hungary) and CSCE/FSC/SC.25 of 23 February 1994, p. 2 (Hungary). Paragraph 15.5 of the Coordinator's 4th revised and still bracketed version of the Code of Conduct also suggested that each participating state will, at all times, provide for "means ensuring that armed forces do not serve the interests of political groups or others seeking power in order to impose a particular programme or ideological system contrary to the democratic will of the people and not act on their own behalf to usurp power for similar purposes" (DOC.551 of 22 July 1994).

¹⁵⁷ FSC.DEL/212/99 of 29 June 1999.

¹⁵⁸ CSCE/FSC/SC.21 of 30 June 1993, p. 12 (author's italics). The Austro-Hungarian proposal contained also a provision stating that if armed forces usurp political control in any participating state, the other participating states will consider it "*a source of concern*" (CSCE/FSC/SC.22 of 15 September 1993, p. 17).

¹⁵⁹ Article 3 of the Turkish proposal (CSCE/FSC/SC.8 of 16 December 1992), paragraph 2.13 of the Hungarian proposal (CSCE/FSC/SC.25 of 23 February 1994), paragraph (cc) of DOC.337 (Coordinator's Perception of 3 June 1994), paragraph 16 of DOC.551 (Coordinator's 4th revised version of the Code of Conduct), paragraph 26.3 of the Coordinator's Draft Perception of 11 November 1994 and paragraph 26.3 of the Coordinator's Working paper of 15 November 1994.

in case of overthrow or attempted overthrow of a legitimately elected government of a participating state by undemocratic means, "the legitimate organs of that state upholding human rights, democracy and the rule of law..."¹⁶⁰.

While unequivocally implying that the armed forces "as such" (that is to say the military as a collective entity) cannot pretend to be above the law, paragraph 23 also recalls that individual servicemen are citizens and, therefore, entitled to the exercise of *civil rights*. Separate provisions of the Code of Conduct prescribe that each participating state ensure that its military, paramilitary and security forces personnel enjoy and exercise their *human rights and fundamental freedoms* as reflected in CSCE documents and international law (paragraph 32), including at the level of recruitment or call-up (paragraph 27)¹⁶¹. Other provisions commit the OSCE participating states to reflect in their *laws or relevant documents* the rights – and also duties – of armed forces personnel (paragraph 28) as well as to provide appropriate legal and *administrative procedures* to protect the *rights* of the latter (paragraph 33).

Paragraph 24

Safeguards against military incidents due to accident or error

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

Paragraph 24 concerns incidents of a military nature due to accident or error. It commits each OSCE participating state to elaborate (undefined) "measures" against an accidental or unauthorised use of (equally undefined) "military means" taking place within its jurisdiction; the phrase "to provide for and maintain" requires that such measures be not only taken, but also sustained.

At the OSCE, the issue of "*accidental use of military means*" was not an unfamiliar one. The 1990 Vienna regime on CSBM addressed it under the heading of "cooperation as regards hazardous incidents of a military nature". In its latest version (1999), the Vienna Document on CSBM commits the OSCE participating states to

¹⁶⁰ *Moscow Document on the Human dimension* (1991) : paragraphs 17.1 and 17.2.

¹⁶¹ In the same spirit, each OSCE participating state is committed to ensure that its armed forces are "commanded, manned, trained and equipped in ways that are consistent with the provisions of international law..." (paragraph 34 of the Code of Conduct).

cooperate "by reporting and clarifying hazardous incidents of a military nature within the zone of application for CSBMs in order to prevent possible misunderstandings and mitigate the effect on another participating state". The government whose military forces is involved in an incident of that type must "provide the information available to other participating states in an expeditious manner", being also understood that any participating state affected by such an incident may directly request clarification as appropriate¹⁶². Inexplicably, paragraph 24 does not make any reference whatsoever to the Vienna Document on CSBM.

The issue of an "*unauthorised use of military means*" represents a different aspect of the problem. Indeed, an incident of a military nature could be the result of political dysfunction or even deliberate error. In both cases, it would mean that the state's monopoly on "the legitimate use of violence", *inter alia* through military means, is defective: hence the relevance of each OSCE participating state providing and maintaining appropriate measures, in conformity with paragraph 21 of the Code of Conduct which prescribes effective guidance to and control of armed forces at all times and establishes the obligation of those armed forces to act solely within the constitutional framework.

Paragraph 25

Inadmissibility of forces that are not accountable to or controlled by their constitutionally established authorities

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

Paragraph 25 was supposed to address the issue of "*irregular armed forces*". In this connection, the "European Union plus" text proposed to commit each OSCE participating state to refrain from encouraging, supporting, aiding or protecting irregular forces using violence *on its own territory*, as well as from training, arming,

¹⁶² Vienna Document 1999 on CSBM : paragraphs 17 and 17.2.

equipping, financing, supplying or otherwise encouraging, supporting and aiding irregular forces using violence *on the territory of another participating state*¹⁶³.

Unproductive discussions during which some delegations attempted to establish a distinction between "legal" and "illegal" irregular armed forces compelled the negotiators to drop the concept of "irregular armed forces" and make oblique reference to "forces that are not accountable to or controlled by their constitutionally established authorities".

In conformity with the basic prescription of paragraph 21 of the Code of Conduct, the first sentence of paragraph 25 stipulates that such forces must not be "tolerated" (within a participating state) or "supported" (outside a participating state)¹⁶⁴.

The second sentence envisages the case where, contrary to the fundamental requirement of paragraph 21, a participating state is not able to exercise its authority on forces of that kind. In such a case, it offers to the concerned government just the faculty to "seek consultations" with the other participating states and only "to consider" what steps could be taken to redress the situation.

Paragraph 26

Prohibition of acquisition by paramilitary forces of combat mission capabilities in excess of those for which they were established

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 26 offers the Code of Conduct's only provision specifically dedicated to *paramilitary forces*.

¹⁶³ CSCE/FSC/SC.21 of 30 June 1993, p. 13. Similar provisions were also included in the Austro-Hungarian draft (CSCE/FSC/SC.22 of 15 September 1993, p. 17) and the Hungarian draft (CSCE/FSC/SC.25 of 23 February 1994, paragraph 2.9).

¹⁶⁴ During the drafting process, stronger formulations *prohibiting* the organisation of any irregular force that is not accountable to constitutional authority and stressing that "international law cannot limit the liability or responsibility of participating states or individuals acting as members of irregular forces for illegal acts committed under international or national law" were discussed: see paragraphs (kk) and (ll) of DOC. 337 (Coordinator's Perception of 3 June 1994).

During the drafting process, Poland proposed in vain a commitment under which "each participating state will refrain from allowing paramilitary organisations to be established or to serve the particular political aims of a grouping or organisation or to gain or maintain political power". It also suggested that "the participating states will not use paramilitary organisations to circumvent limitations concerning the use and size of their armed forces"¹⁶⁵.

Because of Russian objections, the final compromise embodied in paragraph 26 does not refer to the general problem of circumvention, but just to a specific aspect of it: "acquisition of combat mission capabilities in excess of those for which [paramilitary forces] were established". In addition, the expression "in accordance with [the participating states] international commitments" introduces an unhappy escape qualification.

The issue of paramilitary forces is a sensitive one. So far, the OSCE participating states have not been able to agree, as suggested during the 2nd Follow-up Conference on the Code of Conduct, on the possible "inclusion of paramilitary forces in the information exchange in order to keep track of their integration into the system of parliamentary control"¹⁶⁶.

Paragraph 27

Consistency with human rights of recruitment or call-up of armed (military, paramilitary and security) forces

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

Paragraph 27 refers only to the first three categories of armed forces listed in paragraph 20: military, paramilitary and security forces.

In line with other provisions of the Code of Conduct, which stress that servicemen are, as citizens, entitled to exercise their civil rights (paragraph 23) and overall

¹⁶⁵ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 4.

¹⁶⁶ FSC.GAL/84/99/Rev.1 of 19 July 1999.

human rights and fundamental freedoms (paragraph 32), the present paragraph prescribes that each of the OSCE participating states ensure that the personnel of military, paramilitary and security forces are *recruited* and *called up* in a way consistent with OSCE and other human rights international obligations and commitments¹⁶⁷. It means that, for instance, recruitments and call-ups must be performed on the basis of equality of treatment and non-discrimination.

The expression "consistent with..." is aimed at allowing those participating states which do not accept conscientious objection to military service (an issue evoked in paragraph 28) to proceed with regular enlistments and call-ups.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁶⁸. Item No 6 requires information on the "procedures for the recruitment or call up of personnel in the military, paramilitary forces and internal security forces".

Paragraph 28

Rights and duties of armed forces personnel, including possibility of exemptions from or alternatives to military service

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.

In line with other provisions of the Code of Conduct stressing that servicemen are, as citizens, entitled to exercise their civil rights (paragraph 23), as well as overall human rights and fundamental freedoms (paragraphs 27 and 32), the present paragraph prescribes that the OSCE participating states inject in their *laws or other relevant*

¹⁶⁷ Each OSCE participating state is also committed to ensure that its armed forces are "commanded, manned, trained and equipped in ways that are consistent with the provisions of international law..." (paragraph 34). Other provisions commit the OSCE participating states to reflect in their laws or relevant documents the rights and duties of armed forces personnel (paragraph 28) as well as to provide appropriate legal and administrative procedures to protect the rights of the latter (paragraph 33).

¹⁶⁸ FSC.DEC/4/98 of 8 July 1998.

documents provisions governing the rights and *duties* of the personnel of the global category of "armed forces". According to paragraph 33, the rights (with no mention of "duties") of all armed forces personnel must also be protected through appropriate *legal and administrative procedures*.

In the first sentence, the expression "*in their laws or other relevant documents*" refer to legislative texts and, given the practice of countries (such as the United Kingdom) where non-legislative means are used for the same purpose, texts of other nature.

The notion of "*duties*" of servicemen which appears here along with that of rights is used for the first and last time in the framework of the Code of Conduct. The very general terms in which the sentence has been formulated reflect the sensitiveness of the issues raised by the rights and duties of the "citizens in uniform" that servicemen are supposed to be.

The difficulties encountered by the Parliamentary Assembly of the Council of Europe to promote norms in this field are particularly illuminating. In 1998, this body signalled considerable differences between member states (all of whom belong to the OSCE) regarding the legal status of conscripts and the rights they enjoy. It deplored the existence within the armed forces of situations and practices in direct contravention of the obligations of the European Convention on Human Rights, especially those related to forced labour (article 4), fair trial (articles 5 and 6), free speech (article 10) or free association (article 11), and even to cruel treatment (article 3) – a reference to extreme forms of harassment imposed by older servicemen to new conscripts, notably illustrated by the Russian practice of *dedovshchina*¹⁶⁹. Accordingly, it adopted *Resolution 1166 (1998)* inviting the member states to promote the application of *civil and social rights* which conscripts should enjoy in peacetime and, as far as possible, in time of war¹⁷⁰.

¹⁶⁹ On the *dedovshchina* practice see Ilona Kiss: "Rights of Conscripts in Peacetime: Obstacles to and Opportunities for Providing Judicial and Non-Judicial Solutions in East European and Central Asian Countries", *Legal Framing of the Democratic Control of Armed forces and the Security Sector. Norms and Realities*. Edited by Biljana Vankovska. Beograd, Geneva Centre for the Democratic Control of Armed Forces/Belgrade Centre for Civil-Military Relations, 2001, pp. 45 & ff.

¹⁷⁰ *Resolution 1166 (1998) on human rights of conscripts* was adopted on 22 September 1998. In certain countries, some armed forces personnel even still have to seek permission from their superiors before marrying. See Parliamentary Assembly of the Council of Europe: paragraph 5 of Doc. 9532 of 2 September 2002 (Opinion submitted by Francisco Arnau).

Subsequently, the Parliamentary Assembly focused on one particular aspect of the matter: the *right to association* for members of the professional staff of the armed forces, which belong to the category of civil and political rights as well as of that of economic and social rights. Taking stock of the tendency of governments to convert armies from a conscription system to a purely professional system, the Parliamentary Assembly considered in *Resolution 1572* (2002), that the Committee of Ministers should call on the governments of the member states to allow members of the armed forces and military personnel to organise themselves in representative associations (with the right to negotiate on matters concerning salaries and conditions of employment), to lift the restrictions on their right to association, to allow them to be members of legal political parties and to incorporate all the appropriate rights in military regulations¹⁷¹.

Anyhow, today the basic rights of military personnel in many member countries of the Council of Europe (and hence the OSCE) are still "seriously limited"¹⁷². In the specific case of freedom of association, some states do not place any restrictions whatsoever (Austria, Denmark, Finland Norway, Sweden and Switzerland), while others allow servicemen to participate actively in professional associations, but regulate their membership of political parties (Germany, Hungary, Netherlands and Luxembourg).

Other states (such as Azerbaijan, the Czech Republic, Romania, Slovenia and Ukraine) forbid membership of political parties and authorise only in restricted forms the right to association. Finally, Croatia, France, Italy, Poland and Yugoslavia prohibit servicemen from setting up trade unions and political parties in the armed forces¹⁷³.

At non-governmental level, the *European Council of Conscripted Organisations* (ECCO), created in Sweden as a youth organisation in 1979, advocates the

¹⁷¹ *Resolution 1572 on the right to association for members of the professional staff of the armed forces* was adopted on 3 September 2002. This text actually replaced *Resolution 903 (1998) on the right to association for members of the professional staff of the armed forces*, adopted on 30 June 1998 (see also Doc. 5875 of 12 April 1988: Report submitted by Georg Apenes). In 2001, the Parliamentary Assembly noted that, despite Resolution 903 (1988), still less than half of the Organisation's membership did not recognise the right to association for members of the professional staff of their armed forces: Doc. 9080 of 4 May 2001 (motion to the Committee of Ministers for a Recommendation on the matter).

¹⁷² Paragraph 1 of the second part of Doc. 9518 of 15 July 2002 (Report submitted by Agnes van Ardenne-van der Hoeven).

¹⁷³ Paragraphs 19 to 23, *ibid.*

recognition of all basic human rights, safe working and living conditions, fair legal procedures and acceptable social and economic conditions for the "citizens in uniform" – with particular focus on the situation of conscripts in Central and Eastern Europe. ECCO's demands have been submitted under the form of a *European Charter on the Rights of Conscripts* adopted in September 1991 (as a "European Social Charter for Conscripts") and revised in September 1996 – and whose provisions are applicable in time of peace.

The second sentence of paragraph 28 of the Code of Conduct commits the OSCE participating states to "consider" introducing exemptions from or alternatives to military service. Contrary to what was suggested in the "European Union plus" proposal¹⁷⁴, the Code of Conduct does not recognise conscientious objection as an established right. It is consistent with the *Copenhagen Document* (1990) where the OSCE participating states, after taking note that the United Nations Commission on Human Rights had recognised the right of everyone to have conscientious objection to military service, agreed "to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature" (paragraph 18.4)¹⁷⁵.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁷⁶. Item No 7 requires information on "legislation or other relevant documents governing exemptions from, or alternatives to compulsory military service".

¹⁷⁴ "Each participating state will *embody in legislation* or other appropriate documents the rights and duties of members of the armed forces as well as the *right to refuse to render military service on the grounds of conscientious objections* (CSCE/FSC/SC.21 of 30 June 1993, p. 12; author's italics). See also the Austro-Hungarian proposal (CSCE/FSC/SC.22 of 15 September 1993, p. 18) and the Hungarian proposal (CSCE/FSC/SC.25 of 23 February 1994, paragraph 4.2).

¹⁷⁵ The United Nations Commission on Human Rights recognised the right to conscientious objection in its Resolution 1989/59 of 8 March 1989. The Council of Europe did the same through the Committee of Ministers' Recommendation No R (87) 8, as well as the Parliamentary Assembly's Order 132 (1997) and Recommendation 1518 (2001). The right to conscientious objection is also enshrined in paragraph 2 of article 10 of the European Union's Charter on Fundamental Rights (2000).

¹⁷⁶ FSC.DEC/4/98 of 8 July 1998.

Paragraph 29

Promotion of the knowledge of international humanitarian law and reflection of its commitments in military training programmes and regulations

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

Paragraph 29 inaugurates a series of five provisions committing the OSCE participating states to subject their armed forces to the obligations of international humanitarian law – whose basic instruments are enumerated in paragraph 34¹⁷⁷.

In the spirit of the relevant provisions of the four 1949 Geneva Conventions and their two Additional Protocols of 1977, the first sentence of paragraph 29 requires that the OSCE participating states promote a *widespread knowledge* of international humanitarian law "in their respective countries". Broached in such broad terms, this obligation means that dissemination concerns not only the armed forces personnel (those expected to apply it primarily and who remain accountable for its application), but the entire civilian population whose protection is also provided for by international humanitarian law¹⁷⁸. The aim of dissemination is to raise consciousness of the existence of so-called principles of humanity and to guarantee their effective respect through preventive means.

Proceeding from the same source of inspiration but with a more direct practical purpose, the second sentence of paragraph 29 requires that the OSCE participating states ensure, in accordance with national practice, that their *military training programmes and regulations* are in conformity with the relevant commitments of

¹⁷⁷ The subjection of armed forces to the obligations of international humanitarian law is established by five provisions located in Section VII (paragraphs 29-31) and Section VIII (paragraphs 34-35).

¹⁷⁸ The obligation to disseminate international humanitarian law at domestic level, which must be complied with in time of both peace and war, is included in article 47 of the 1st Convention, article 48 of the 2nd Convention, article 127 of the 3rd Convention and article 144 of the 4th Convention – as well as in article 83 of Additional Protocol I and article 19 of Additional Protocol II. Annexed to the Protocols, Resolution 21 suggests a general programme of dissemination, to be undertaken with the possible cooperation of the International Committee of the Red Cross (ICRC).

international humanitarian law¹⁷⁹. The expression "in accordance with national practice" takes into account, as in paragraphs 28 and 33, the diversity of existing practices at domestic level in the OSCE area.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁸⁰. Item No 8 requires information related to "instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict included in military training programmes and regulations"; it concerns paragraph 30 as well.

Paragraph 30

Instruction of armed forces personnel in international humanitarian law, including awareness of individual accountability at domestic and international level

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 30 is the second in a series of five provisions committing the OSCE participating states to subject their armed forces to the obligations of international humanitarian law – whose basic instruments are enumerated in paragraph 34¹⁸¹. It deals with two intertwined issues: instruction of the global category of "armed forces" personnel in international humanitarian law and individual accountability of such personnel at both internal and international level.

¹⁷⁹ A comparable obligation is provided for in article 47 of the 1st Convention, article 48 of the 2nd Convention, article 127 of the 3rd Convention, article 144 of the 4th Convention and article 83 of Additional Protocol I which refer to programmes of *civil instruction* as well as of military instruction.

¹⁸⁰ FSC.DEC/4/98 of 8 July 1998.

¹⁸¹ The subjection of armed forces to the obligations of international humanitarian law is established by five provisions located in Section VII (paragraphs 29-31) and Section VIII (paragraphs 34-35).

As a logical consequence of the provision concerning the inclusion of international humanitarian law obligations in military training programmes and regulations (second sentence of paragraph 29), the first sentence of paragraph 30 requires that the OSCE participating states provide their armed forces personnel with *direct instruction* on the rules, conventions and commitments governing armed conflict.

The second sentence of paragraph 30 stresses that such instruction includes making the members of armed forces aware that they are ultimately *responsible*, on an individual basis, for actions taken in contravention of the relevant norms of domestic and international law. This additional commitment is more specifically developed in paragraph 31.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁸². Item No 8 requires information related to "instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict included in military training programmes and regulations"; it concerns paragraph 29 as well.

Paragraph 31

Individual accountability of commanders and rank and file servicemen of armed forces under national and international law

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.

¹⁸² FSC.DEC/4/98 of 8 July 1998.

Paragraph 31 is the third in a series of five provisions committing the OSCE participating states to subject their armed forces to the obligations of international humanitarian law – whose basic instruments are enumerated in paragraph 34¹⁸³.

Drafted against the background of atrocities perpetrated in Bosnia and Herzegovina, paragraph 31 represents a development of paragraph 30. It concerns the individual accountability of the command and rank and file personnel of the global category of "armed forces". Being just limited to *accountability*, it is less explicit than the regime of the 1949 Geneva Conventions which commits the Contracting Parties to enact penal legislation directed against persons responsible of grave breaches, as well as to search for and bring such persons (regardless of their nationality), before national or even foreign courts¹⁸⁴. However, the Code of Conduct and the Geneva Conventions proceed from the same spirit: they both state that violations should not be left or remain unpunished.

The first sentence of paragraph 31 concerns the "armed forces personnel vested with command authority". Broached in broad terms, this expression does not specify, as suggested by Sweden during the drafting process, that officers are also directly concerned. The reason is that the concept of command has different definitions in the armies of the respective OSCE participating states. However, the expression used in this context is general enough to include officers too, since command authority can be delegated to them in specific circumstances. Therefore, it is reasonable to consider it as covering all persons who retain a command responsibility, whatever its level. In any case, command must be exercised "in accordance with relevant national as well as international law", that is to say in ways consistent with the requirements of the rule of law and of international humanitarian law – which means that "orders contrary to national and international law must not be given". By means of consequence, and given its special responsibilities, each member of the personnel vested with command authority is individually accountable under domestic and international law for the unlawful exercise of such authority.

¹⁸³ The subjection of armed forces to the obligations of international humanitarian law is established by five provisions located in Section VII (paragraphs 29-31) and Section VIII (paragraphs 34-35).

¹⁸⁴ Articles 49-51 of the 1st Geneva Convention and articles 50-53 of the 2nd Geneva Convention. Under Additional Protocol I, commanders are required to prevent breaches from being committed in making their subordinates aware of their international humanitarian obligations, to suppress breaches when they have been committed through disciplinary or penal action and, in such cases, to report breaches to the competent national authorities (article 87).

The second sentence of paragraph 31 concerns the rank and file servicemen. It clearly states that the latter could not invoke orders emanating from people vested with command authority to escape individual accountability for acts committed by any of them in contravention to the rule of law and international humanitarian law. During the drafting process, some delegations envisaged including in the Code of Conduct a provision stipulating that unlawful orders shall not have to be executed by subordinates¹⁸⁵. The suggestion was rejected by the Russian Federation on the ground that it would open the door to a process of refusal of orders and that anyhow ordinary soldiers could not always be able to fairly evaluate the lawfulness or unlawfulness of a specific order.

Paragraph 32

Exercise of their human rights by the personnel of military, paramilitary and security forces

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.

In line with other provisions of the Code of Conduct stressing that servicemen are, as citizens, entitled to exercise their civil rights (paragraph 23) as well as human rights and fundamental freedoms with regard to recruitment or call-up (paragraph 27), the present paragraph prescribes to each of the OSCE participating states to ensure that the personnel of the first three categories of armed forces listed in paragraph 20 (military, paramilitary and security forces) **will be able to enjoy and exercise *overall human rights and fundamental freedoms***.

The expression "*CSCE documents and international law*" just reflects the distinction between politically binding fact and legally binding instruments.

¹⁸⁵ DOC. 337: "... military personnel are obliged to follow lawful orders only; acts contrary to national and international law, rules of war, as well as criminal or delinquent acts cannot lawfully be ordered, and military personnel cannot be obliged to obey orders of this kind; the responsibility of subordinates does not exempt superiors from any of their responsibilities" (paragraph (ii) of the Coordinator's Perception of 3 June 1994, DOC.337 of 8 June 1994).

"In conformity with relevant constitutional and legal provisions and with the requirements of service" means that the rights in question can be restricted by the Constitution and the law in order to take due account of the particular requirements of military service – for instance, the necessity of daily life in barracks restricts the freedom of the individual to choose the place of his residence.

Separate provisions of the Code of Conduct commit the OSCE participating states to reflect in their legislative or equivalent texts the rights and duties of armed forces personnel (paragraph 28), as well as to provide appropriate legal and administrative procedures to protect the rights of the latter (paragraph 33)¹⁸⁶. The difficulties encountered by the Parliamentary Assembly of the Council of Europe to promote norms in this field are referred to in the commentary of paragraph 28 of the Code of Conduct.

Paragraph 33

Legal and administrative national procedures for the protection of the rights of all forces personnel

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

The present paragraph is a direct complement to paragraph 32, which prescribes that each of the OSCE participating states ensures that the personnel of military, paramilitary and security forces be able to enjoy and exercise overall human rights and fundamental freedoms. It complements paragraph 28 under which the governments are committed to reflect in their *laws or other relevant documents* the rights and duties of armed forces personnel.

Paragraph 32 commits each of the OSCE participating states to ensuring the protection of the rights of their servicemen by means of appropriate legal and administrative *procedures* – entitling servicemen to dispose, for instance, of means of remedy in support of the full exercise of their rights. The expression "*appropriate (...) administrative procedures*" takes into account the case of those participating states

¹⁸⁶ In Section VIII, each OSCE participating state is also committed "to ensure that its armed forces are "commanded, manned, trained and equipped in ways that are consistent with the provisions of international law..." (paragraph 34).

(such as the United Kingdom) where there exist administrative rather than formerly legal procedures.

Under a decision taken in July 1998 by the Forum for Security Cooperation, the OSCE participating states established a procedure providing for an exchange of information on the Code of Conduct's implementation through a standard questionnaire comprising 10 items¹⁸⁷. Item No 9 requires information on "legal and administrative procedures protecting the rights of all forces personnel".

¹⁸⁷ FSC.DEC/4/98 of 8 July 1998.

SECTION VIII

DEMOCRATIC USE OF ARMED FORCES

Summary contents of Section VIII: Consistency of the command, manning, training and equipment of armed forces with international humanitarian law (§ 34). Consistency of defence policy and doctrine with international humanitarian law and the Code of Conduct (§ 35). Subjection of the domestic use of force to the rule of law and commensurability of such use with the needs for enforcement (§ 36). Non-use of force to limit either the peaceful and lawful exercise of human and civil rights or to deprive people of their identity (§ 37).

Section VIII is a natural extension of Section VII. It consists of four paragraphs. The first two (paragraphs 34 and 35) are related to the subjection of armed forces to the norms and prescriptions of international humanitarian law – an issue also addressed in paragraphs 29 to 31 in the framework of Section VII. Much more importantly, the two others (paragraphs 36 and 37) concern the democratic use of armed forces in the performance of internal security missions. By contrast with the provisions of Section I to VI of the Code of Conduct, which are basically aimed at hindering the use of force *between* OSCE participating states, paragraphs 36 and 37 set forth rules restricting the use of force *within* participating states.

Paragraph 34

Consistency of the commandment, manning, training and equipment of armed forces with international humanitarian law

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 34 is the fourth in a series of five provisions committing the OSCE participating states to subject their armed forces to the obligations of international humanitarian law¹⁸⁸. It contains two general indications.

First, paragraph 34 specifies that each of the OSCE participating states is required to organise its armed forces, in peace and wartime, in accordance with international law and international humanitarian law commitments, at four basic levels: command, manning, training and equipment.

Second, paragraph 34 enumerates a number of relevant international instruments in accordance with which the OSCE participating states are expected to organise their armed forces – "as applicable", that is to say to the extent that each of them is legally bound by the instruments in question. The listing mentions the basic elements of the general corpus of international humanitarian law, namely the *Geneva Conventions of 12 August 1949* (whose regime is applicable to inter-state wars waged between the regular armed forces of sovereign states)¹⁸⁹ and the two *Additional Protocols of 8 June 1977 to the Geneva Conventions* which take into account the evolution of armed conflicts since 1949¹⁹⁰. It also includes the *Geneva Convention on prohibition or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects* (10 October 1980), which also belongs to the realm of arms control. Also known as the "Inhumane Weapons Convention", this instrument fills a gap of the Additional Protocols which did not restrict or forbid the use of any specific weapon¹⁹¹.

¹⁸⁸ The subjection of armed forces to the obligations of international humanitarian law is established by five provisions located in Section VII (paragraphs 29-31) and Section VIII (paragraphs 34-35).

¹⁸⁹ The Geneva regime is based on four instruments: a Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (I), a Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces (II), a Convention relative to the treatment of prisoners of war (III) and, finally, a Convention relative to the protection of civilian persons in time of war (IV).

¹⁹⁰ Protocol I is related to the protection of victims of international (inter-state) armed conflicts and Protocol II concerns the protection of victims on non-international armed conflicts.

¹⁹¹ The Inhumane Weapons Convention is supplemented with additional texts on non-detectable fragments Protocol I, 1980), prohibitions or restrictions on the use of mines, booby-traps and other devices (Protocol II, 1980, amended in 1996), prohibitions or restrictions on the use of incendiary weapons (Protocol III) and on blinding laser weapons (Protocol IV, 1995).

The elliptic phrase "the Hague Conventions of 1907 and 1954" actually refers to the numerous instruments of 18 October 1907 resulting from the historic Second Peace Conference, as well as the UNESCO-sponsored *Convention for the protection of cultural property in the event of armed conflict* of 14 May 1954.

Paragraph 35

Consistency of defence policy and doctrine with international humanitarian law and the Code of Conduct

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 35 is the last in a series of five provisions committing the OSCE participating states to subject their armed forces to the obligations of international humanitarian law¹⁹². It requires that each individual OSCE participating state conform its "defence policy and doctrine" to the obligations of international humanitarian law and to the relevant commitments of the Code of Conduct. During the drafting process, Poland suggested that the OSCE participating states undertake to base their *military doctrines* on defensive principles and that "the structure, equipment, state of readiness and training of the armed forces in Europe (...) be oriented to serve defensive purposes"¹⁹³. As demonstrated by two special Seminars successively held in 1990 and 1991, military doctrines in the OSCE area had already been leaning in that direction since the end of the Cold War¹⁹⁴. However, and

¹⁹² The subjection of armed forces to the obligations of international humanitarian law is established by five provisions located in Section VII (paragraphs 29-31) and Section VIII (paragraphs 34-35).

¹⁹³ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 3). A more or less similar provision was offered by the Turkish proposal (CSCE/FSC/SC.8 of 16 December 1992., 3rd sentence of article 8) and the Hungarian proposal (CSCE/FSC/SC.25 of 23 February 1994, paragraph 9.1). At a certain stage of the drafting process, the following language was envisaged: "The military doctrine of (...) armed forces is defensive/non-aggressive in character and is reviewed periodically with a view to eliminating features that may not be in conformity with the relevant principles of the Code and international law" (paragraph 23.3 of the Coordinator's 4th revised version of the Code of Conduct: DOC. 551 of 22 July 1994).

¹⁹⁴ The first Seminar on Military Doctrines took place prior to the dissolution of the USSR (Vienna, 16 January-5 February 1990). It produced no final text, but its proceedings inspired two elements which were embodied in the *Vienna Document 1990* on CSBM: the annual exchange of information on military budgets and the annual implementation assessment meetings. The second Seminar was held in 1991 (no summary of proceedings) and the third in 1998 (FSC.MD.GAL/3/98 of 9 February 1998) – both in

although the Code of Conduct included provisions committing the OSCE participating states to maintain only such military capabilities commensurate with individual or collective security needs (paragraph 12), not to impose military domination over each other (paragraph 13) and to exercise restraint in military expenditures (second sentence of paragraph 22), the Polish proposal was not retained.

Paragraph 36

Subjection of the domestic use of force to the rule of law and commensurability of such use with the needs for enforcement

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 36 offers (together with paragraph 37) standards on the *use of force for internal security purposes*, presumably in case of internal disturbances and tensions.

It establishes that the domestic use of armed forces must remain subject to the rule of law and that international law and international humanitarian law provisions must be observed in the course of such use of force as in the case of inter-state armed conflicts¹⁹⁵.

Vienna. All speeches and contributions to the 1990 and 1991 Seminars have been published by the Vienna *Institut für Sicherheitspolitik und der Landesverteidigungsakademie* in March 1990. Under paragraph 15.7 of the *Vienna Document 1999 on CSBM*, the OSCE participating states are now encouraged to hold "high-level military doctrines seminars similar to those already held". On that basis, a new Seminar took place, in Vienna, from 11 to 13 June 2001 (FSC.GAL/78/01 of 6 July 2001).

¹⁹⁵ On the rationale for the implementation of international humanitarian law rules in internal disturbances and tensions, see the special issue of the *International Review of the Red Cross* (No 769, January-February 1988) in which two experts propose a specific "Code of Conduct" Hans-Peter Gasser) and a specific "Model Declaration" (Theodor Meron).

The provisions of paragraph 36 formally refer to "internal security missions" performed by "armed forces". The Austro-Hungarian proposal considered "armed forces" as including all five categories enumerated in paragraph 20 – namely *military forces*, *paramilitary forces*, *internal security forces*, *intelligence services* and the *police*¹⁹⁶. The "European Union plus" proposal limited the same concept to the first three categories, while adding *irregular forces*¹⁹⁷. From a more sophisticated perspective, the Hungarian proposal suggested that if civilian authorities were unable to restore democratic order by political means, they could make use in the first place of the *police* and *internal security forces* and then, if the latter failed, turn to "*military forces*" specially trained for that purpose – as a last resort and only for the protection of the civilian population and the restoration of democratic legality¹⁹⁸. As no consensus could be achieved on the issue, only the general broad expression "armed forces" was retained. Despite its lack of precision, it can reasonably be assumed that it basically concerns the police and/or the internal security forces – and, in more exceptional circumstances, the paramilitary or even military forces.

Paragraph 36 refers to "armed forces" assigned to "internal security missions" and not to *internal security forces* as such; however, the latter are evidently subsumed¹⁹⁹. The first sentence of paragraph 36 establishes that any decision through which an OSCE participating state assigns to its armed forces an internal security-type mission must be taken and formulated in conformity with the procedures established by the Constitution of the country. It does not expressly provide for, as suggested by Hungary, the *accountability* of political decision-makers and commanders of such missions²⁰⁰.

The second sentence requires that internal security missions be performed under the effective control of constitutionally established authorities and subject to the rule of law. This requirement is in line with the fundamental provision of paragraph 21 prescribing that "each participating state will at all times provide for and maintain

¹⁹⁶ CSCE/FSC/SC.22 of 15 September 1993, p. 18.

¹⁹⁷ CSCE/FSC/SC.21 of 30 June 1993, pp. 13-14.

¹⁹⁸ CSCE/FSC/SC.25 of 23 February 1994, paragraphs 7, 8 and second sentence of paragraph 6.3.

¹⁹⁹ So far, the OSCE participating states have not been able to agree, as suggested during the 2nd Follow-up Conference on the Code of Conduct, on the idea of revising the 1998 Questionnaire in order to introduce a differentiation between "armed forces" and "internal security forces" (FSC.GAL/84/99/Rev.1 of 19 July 1999).

²⁰⁰ CSCE/FSC/SC.25 of 23 February 1994, paragraph 6.4.

effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy". The only difference is that paragraph 36 refers to the broad concept of "*rule of law*" which implicitly covers the notion of "authorities vested with democratic legitimacy". In any case, the expression "subject to the rule of law" implies that internal security missions must be performed under the permanent effective control of judicial as well as political civilian authorities. It is worth remembering that according to paragraph 2 of the *Copenhagen Document on the Human Dimension* (1990) the rule of law "does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression"²⁰¹.

Contrary to what had been envisaged in the course of the drafting process, paragraph 36 does not indicate that use of force may *legitimately* be used at domestic level for specific reasons including, for instance, the performance of relief operations or the maintenance and restoration of democratic public order²⁰².

It does not either foresee that "armed forces also may be called upon for other assistance during a *state of public emergency*" and that in such a case the relevant commitments of the *Moscow Document on the Human Dimension* (1991) apply²⁰³. In the latter, which was adopted in the aftermath of the failed coup against Mikhail Gorbachev, the OSCE participating states affirmed that "a state of public emergency

²⁰¹ From that premise, the *Copenhagen Document on the Human Dimension* (1990) identifies a number of basic elements (paragraphs 5.1 to 5.20) – among which are control and accountability of military forces and the police by the civil authorities (paragraph 5.6). Subsequent OSCE texts reaffirmed, more or less, parts of that nomenclature. A new element, anti-corruption, was introduced in the 1999 *Istanbul Charter for European Security* (paragraph 33) and the 1999 *Istanbul Summit Declaration* (paragraph 37).

²⁰² First sentence of paragraph 19 of DOC. 551 of 22 July 1994 (Coordinator's 4th revised version of the Code of Conduct) and paragraph 29.2 of the unnumbered *Coordinator's Perception and Suggestions* of 10 November 1994.

²⁰³ Second sentence of paragraph 19 of DOC. 551 of 22 July 1994 (Coordinator's 4th revised version of the Code of Conduct) and paragraph 26.4 of the Coordinator Perception of 11 November 1994 (unnumbered document). The issue of state of public emergency was addressed in the "European Union plus" proposal (CSCE/FSC/SC.21 of 30 June 1993, p. 12), the Austro-Hungarian proposal (CSCE/FSC/SC.22 of 15 September 1993, pp. 17-18) and the Hungarian proposal (CSCE/FSC/SC.25 of 23 February 1994, paragraph 2.12).

may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognised human rights and fundamental freedoms" (second sentence of paragraph 28.1)²⁰⁴. They also agreed that if a state of public emergency may be proclaimed by a constitutionally lawful body duly empowered to do so, subject to approval in the shortest possible time or control by the legislature (paragraph 28.2), it will have to be lifted as soon as possible in order not to remain in force longer than strictly required by the exigencies of the situation (paragraph 28.3).

More significantly, they decided that when a state of public emergency is declared or lifted, the government concerned will immediately inform the OSCE of this decision, as well as any derogation made from its international human rights obligations (paragraph 28.10)²⁰⁵.

However, by stating that "if recourse to force cannot be avoided...", the third sentence of paragraph 36 obliquely but clearly legitimises the domestic use of force from a general and more broad perspective²⁰⁶. It introduces here the subjective criterion of "*commensurability*" with the needs for enforcement – which does not exist in the Geneva Conventions (1949) or their Protocols (1977)²⁰⁷. It does not

²⁰⁴ At the same time, they condemned "unreservedly forces which seek to take power from a representative government of a participating state against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order" (paragraph 17.1) and accordingly committed themselves to "support vigorously", in case of overthrow or attempted overthrow of a legitimately elected government of a participating state by undemocratic means, "the legitimate organs of that state upholding human rights, democracy and the rule of law..." (paragraph 17.2).

²⁰⁵ Subsequently, the *Helsinki Decisions 1992* specified that the ODIHR will act as clearing-house for the information related to the declaration and lifting of a state of public emergency (first "tick" of chapter VI's paragraph 5 b). Until 2001, the commitment contained in paragraph 28.10 of the *Moscow Document on the Human Dimension* (1991) was hardly complied with (see Victor-Yves Ghebali: "The Issue of the State of Emergency in the Context of the OSCE", *Non-Derogable Rights and States of Emergency*. Edited by Daniel Prémont. Brussels, 1996, pp.317-330. In the aftermath of the 11 September terrorist attacks against the United States, several governments of the OSCE informed the ODIHR about the measures taken in the framework of the state of public emergency (ODIHR.GAL/3/02 of 31 January 2002, PC.DEL/49/02 of same date and ODIHR.GAL/8/02 of 5 March 2002).

²⁰⁶ Through the *Moscow Document on the Human Dimension* (1991), the OSCE participating states also agreed that, in the framework of a state of public emergency, "if recourse to force cannot be avoided, its use must be reasonable and limited as far as possible" (last sentence of paragraph 28.1).

²⁰⁷ The criterion of commensurability also appears in paragraph 12 of the Code of Conduct under which each OSCE participating state is committed to "maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law".

specify that armed forces will be used only "in case of absolute necessity" (as suggested by Hungary) or "only when strictly necessary" as tabled in the "European Union plus" proposal²⁰⁸ – or also "after civil means of enforcement have been exhausted"²⁰⁹.

It is from the angle of commensurability (or proportionality) that the behaviour of the Russian armed forces in *Chechnya* has been put into question at the OSCE²¹⁰. The first Chechnya war started on 11 December 1994, eight days after the adoption of the Code of Conduct and three weeks before its coming into effect. On 2 February 1995, the Permanent Council adopted (with Moscow's full agreement) a decision which, without directly referring to the Code of Conduct, expressed "deep concern over the disproportionate use of force by the Russian armed forces" in Chechnya²¹¹. At the 1995 Annual Assessment Implementation Meeting, Sweden requested clarification from Moscow²¹². Time and again, the European Union has called on Russia to fulfil its obligations under the Code of Conduct²¹³.

Drafted in non-constraining language ("take due care to avoid"), the fourth and last sentence of paragraph 36 hints that commensurability implies avoiding to the extent possible damage for civilians persons and their property. The notion of "*unlawful injury*", raised during the drafting process²¹⁴, did not gain a consensus. The idea that any OSCE participating state resorting to a domestic use of force could provide

²⁰⁸ CSCE/FSC/SC.25 of 23 February 1994, paragraph 6.3 and CSCE/FSC/SC.21 of 30 June 1993, p. 14.

²⁰⁹ Paragraph 24.2 of DOC. 551 of 22 July 1994 (Coordinator's 4th revised version of the Code of Conduct).

²¹⁰ From a human rights perspective, see Nicolas M. L. Bovay: "The Russian Armed Intervention in Chechnya and its Human Rights Implications", *Review of the International Commission of Jurists*, No 54, June 1995, pp. 29-56.

²¹¹ PC.DEC/10 of 2 February 1995.

²¹² DOC.467 of 15 March 1995.

²¹³ For instance see FSC.AIAM/10/00 of 28 February 2000. On the issue of democratisation of the Russian armed forces, see Yuri Fedorov: *Democratic Transformation of the Security Sector in Russia. A Sad Saga of Failure*. Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2002, 20 p. (DCAF Working Papers, No 98).

²¹⁴ Paragraph 29.2 of the unnumbered Coordinator's Perception and Suggestions of 10 November 1994.

information on the size, organisation, role and objectives and the activities of the armed forces involved was equally rejected²¹⁵.

In short, paragraph 36 spells out four conditions regulating the domestic use of force: a constitutionally lawful decision, respect of the rule of law during performance of the operation, commensurability with the needs for enforcement and care to avoid excessive injury to civilians and their property.

As stressed by David Raic, to a limited but real extent paragraph 36 provides for "the regulation of conduct not covered by humanitarian law and the law regarding human rights" since "in an international context, norms for the use of force in internal conflicts are virtually non-existent, the only relevant example being the *Code of Conduct for Law Enforcement Officials* adopted by the UN General Assembly in 1979". Likewise, paragraph 36 establishes "a link between the application of force and individual human rights; a link not explicitly mentioned in human rights treaties"²¹⁶.

²¹⁵ This idea was included in the "European Union plus" draft proposal (CSCE/FSC/SC.21 of 30 June 1993, p. 14) and reflected in the Hungarian draft proposal (CSCE/FSC/SC.25 of 23 February 1994, paragraphs 7 and 8).

²¹⁶ David Raic: "The Code, Humanitarian Law, and Human Rights", *Cooperative Security, the OSCE and its Code of Conduct*. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, pp. 51 and 53. Paragraph 29.3 of the unnumbered Coordinator's Perception and Suggestions of 10 November 1994 contained a provision committing the participating states to ensure that "any armed forces assigned to internal security missions will be specially trained in the implementation of such tasks, that they are aware that where police powers are exercised by military or security forces, officers of such organisations are regarded as "law enforcement officials and, as such, are to be guided by the United Nations Code of Conduct for Law Enforcement Officials". On the 1979 United Nations Code, see paragraph 20 of the present *Commentary*.

Paragraph 37

Prohibition of a domestic use of force aimed at restricting the peaceful and lawful exercise of human and civil rights or at depriving people of their individual or collective identity

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.

Along with paragraph 36, paragraph 37 establishes standards on the *use of force for internal security purposes*. The notable difference between the two paragraphs is that the former is permissively drafted ("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") – while the latter contains a *prohibition*: "the participating states will *not* use armed forces...". The philosophy of paragraph 37 is to prohibit a domestic use of force aimed at restricting human and civil rights when peacefully and lawfully exercised or at depriving people of their individual or collective identity. Similarly to paragraph 36, paragraph 37 formally concerns "*armed forces*" but without explicitly referring to "internal security missions"; however, the latter are evidently subsumed.

Paragraph 37 prohibits the domestic use of force for the sake of "*persons as individuals or as representatives of groups*" – an expression wide enough to cover all individuals and groups living in the state, including persons belonging to a *national minority and minority group*. However, it deliberately avoids referring to the concept of "national minority" which appeared in the Polish, "European Union plus", Austro-Hungarian and Hungarian draft proposals²¹⁷.

The expression "*peaceful and lawful exercise of their human and civil rights*" is the remnant of proposals aimed at committing the OSCE participating states to

²¹⁷ In their joint draft proposal, Austria and Hungary suggested (in vain) a provision stating that deprivation of national minorities of the free exercise of their rights posed "a special threat to security within and between states and thus to the stability of the whole CSCE area" (CSCE/FSC/SC.22 of 15 September 1993, p. 15).

respecting the right of citizens to advocate constitutional change by peaceful and legal means, and not to use force against those who do so²¹⁸.

The expression "*nor to deprive them of their national, religious, cultural, linguistic or ethnic identity*" is the remnant of other proposals prohibiting the domestic use of force contrary to the principle of *self-determination of peoples*, when pursued peacefully²¹⁹.

The specific terms it uses ("national", "religious", "cultural", "linguistic", "ethnic") are somewhat redundant: the umbrella concept of culture encompasses religion, language and ethnicity; besides, a "national minority" is in fact an "ethnic minority" characterised by religion and/or language.

Two particular suggestions evoked during the drafting process have not been retained. The first one concerned the prohibition of *modification by force of internal boundaries* and the *forceful resettlement of populations*²²⁰. The second one was the non-use of armed forces for *reprisal purposes*²²¹.

²¹⁸ CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 5 (Polish proposal), CSCE/FSC/SC.21 of 30 June 1993, p. 15 ("European Union plus" proposal), CSCE/FSC/SC.22 of 15 September 1993, p. 18 (Austro-Hungarian proposal) and CSCE/FSC/SC.25 of 23 February 1994, paragraph 6.5 (Hungarian proposal). The "European Union plus" proposal also suggested a commitment concerning the respect of the *peaceful evolution of states*: "The participating states will respect and encourage peaceful evolution in the constitutions of all PS in accordance with international law, the principles laid down in the Code and the democratic wishes of the people" (CSCE/FSC/SC.21 of 30 June 1993, p. 5).

²¹⁹ Polish proposal: "Accordingly, the participating states will refrain from undertaking any use of force or acts of coercion contrary to the principle of self-determination of peoples, when pursued peacefully. The use of force to deprive peoples of their national identity constitutes a violation of their inherent rights" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 5).

²²⁰ CSCE/FSC/SC.21 of 30 June 1993, p. 14 ("European Union plus" proposal), CSCE/FSC/SC.22 of 15 September 1993, pp. 16 and 18 (Austro-Hungarian proposal) and CSCE/FSC/SC.25 of 23 February 1994, paragraph 6.5 (Hungarian proposal).

²²¹ CSCE/FSC/SC.25 of 23 February 1994, paragraph 6.3 (Hungarian proposal) and CSCE/FSC/SC.8 of 16 December 1992, article 21 (Turkish proposal).

SECTION IX

IMPLEMENTATION ARRANGEMENTS

Section IX consists of a single paragraph providing for *rudimentary* implementation arrangements to the Code of Conduct. Indeed, paragraph 38 does not establish any special monitoring and verification mechanisms of the kind suggested in the sophisticated tripartite proposal tabled by Austria, Hungary and Poland)²²². It just prescribes the use of available mechanisms.

Paragraph 38

Accountability for implementation

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

In conformity with the spirit of the cooperative security approach and according to a customary practice of the OSCE, the first sentence of paragraph 38 recognises the *accountability* of each government to all others for the Code of Conduct's observance. As a direct consequence, the second sentence establishes for each OSCE participating state a right to request (at multilateral as well as bilateral level) *clarification* and a duty to respond to such requests by providing relevant information concerning compliance with the commitments of the Code of Conduct. Paragraph 38 does not go as far as committing the OSCE participating states to identify those among them responsible for breaches of the Code of Conduct (including the use of force for territorial acquisition or other unlawful use of force) and take appropriate action such as "extending the mandates for CSCE fact-finding missions to explore apparent breaches"²²³. In their joint proposal, Austria, Hungary and Poland envisaged

²²² CSCE/FSC/SC.17 of 5 May 1993.

²²³ CSCE/FSC/SC.21 of 30 June 1993, p. 15 ("European Union plus" proposal). Similarly, the Polish proposal provided for "the possibility for extending the mandate of CSCE fact-finding missions to cover the problems resulting from the implementation of the Code, including humanitarian aspects of military service" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 15).

elaborate arrangements more or less inspired by the 1990 Berlin "Mechanism for consultation and cooperation with regard to emergency situations"²²⁴.

In the standard case of "*doubts about compliance*", the requested participating state (or states) would have to provide written information within 10 days. If the clarification appeared to be unconvincing, the targeted state (or states) could be asked to give "a full explanation" within two weeks at a multilateral meeting. Alternatively, a group of nine participating states could request the Chairman-in-Office of the OSCE to establish a Rapporteur mission whose final report would be discussed at a multilateral meeting. Under either procedure, the multilateral meeting would be empowered to recommend "a course of action" *to remedy* the situation resulting from a violation of the provisions of the Code of Conduct – *if necessary in the absence of the consent of the states (or states) directly concerned*, that is to say by *consensus minus*. If the recommendations are not complied with, the Committee of Senior Officials (now known as the "Senior Council") would be entitled to take "appropriate decisions" at its next regular meeting, here again, by *consensus minus* if necessary²²⁵.

In an outstanding case of "*serious emergency resulting from a violation of basic norms in the field of security*", the 1990 Berlin Mechanism would immediately be applied with a major difference: the recommendations or conclusions for a solution (including an immediate convocation of the OSCE Ministerial Council) could be taken, if necessary, by *consensus minus*. If the recommendations were not complied with, the OSCE participating states could decide (again if necessary by *consensus*

²²⁴ Adopted at the first meeting of the OSCE Ministerial Council, held in the German capital on 19-20 June 1990, the Berlin Mechanism was patterned after the "Mechanism for consultation and cooperation as regards unusual military activities" (established by the *Vienna Document 1990 on CSBM*) – inspired itself by the Mechanism on the Human Dimension created for by the *1989 Vienna Concluding Document*. The Berlin Mechanism is applicable in case of "a serious emergency situation which may arise from a violation of one of the Principles of the [Helsinki] Final Act or as a result of major disruptions endangering peace, security and stability" – and *after* an unsuccessful attempt is made to obtain direct clarification from the concerned government. It provides for an emergency meeting (convened not by consensus, but on the basis of a quorum of at least 13 participating states) empowered to adopt "recommendations" or "conclusions", including the convening of a meeting at ministerial level. The text of the Berlin Mechanism is embodied in Annex II of the *Summary of Conclusions* of the Berlin Ministerial Council.

²²⁵ CSCE/FSC/SC.17 of 5 May 1993, Section I. The Senior Council has not been convened since March 1996. Its functions have actually been taken over by the Permanent Council.

minus) to bring to the attention of the United Nations Security Council that a situation endangering international peace and security had arisen and request it "to take the appropriate action"²²⁶.

The third sentence recalls that, as with any other OSCE basic document, the Code of Conduct implementation will routinely be assessed and reviewed in the framework of OSCE meetings (i.e. Review Conferences), as well as through mechanisms and procedures such as the 1990 Berlin Mechanism. The expression "improve if necessary the implementation of this Code" means that in the course of assessment and review by OSCE participating states, new provisions could be adopted for ensuring better implementation. After the adoption of the Code of Conduct, three procedures or practices have been established:

a) *Annual assessments*. Since 1995, the Code of Conduct has constituted a regular item on the agenda of the Annual Implementation Assessment Meeting (AIAM), the body responsible for the regular review of the implementation of the CSBM regime and all other OSCE commitments in the field of the politico-military dimension²²⁷.

b) *Annual exchange of information*. In conformity with its paragraph 39, the Code of Conduct entered into force on 1 January 1995. By the end of that year, some participating states spontaneously notified such implementation measures as the translation of the Code of Conduct into a national language and its repercussions on military training programmes. The same practice continued on a larger scale in 1996.

Given that a consensus was emerging over the principle of a generalised exchange of information on a regular basis²²⁸, the OSCE's Conflict Prevention Centre suggested that such an exchange should take place in a standardised format.

²²⁶ CSCE/FSC/SC.17 of 5 May 1993, Section II.

²²⁷ 1996 : REF.FSC/127/96 of 14 March 1996 (p. 20) and REF.SEC/218/96 of 24 April 1996 (p. 6); 1997 : REF.FSC/128/97 of 14 March 1997 (p. 18) and REF.SEC/199/97 of 27 March 1997 (p. 5); 1998 : FSC.AIAM/49/98 of 11 March 1998 (pp. 20-21) and FSC.AIAM/50/98 of 26 March 1998 (p. 5); 1999 : FSC.AIAM/41/99 of 11 March 1999 (pp. 18-19); 2000 : FSC.AIAM/15/00 of 28 February 2000 (p. 5) and FSC.AIAM/46/00 of 9 March 2000 (p. 18); 2001 : FSC.AIAM/11/01 of 26 February 2001 (p. 2), FSC.AIAM/40/01 of 7 March 2001 (pp. 14-15) and FSC.AIAM/41/01/Rev.1 of 11 April 2001 (p. 5); 2002 : FSC.AIAM/42/00 of 13 March 2002 (p. 23), and FSC.AIAM/43/02 of 13 March 2002 (p. 10); 2003 : FSC.AIAM/51/03 of 12 March 2003 (p. 24) and FSC.AIAM/53/03/Rev.1/Corr.1 of 1 April (item 11).

²²⁸ Many participating states, including those of the European Union advocated a compulsory exchange of information, while others (like the Russian Federation) expressed preference for a voluntary one.

Accordingly, in May 1997, it submitted to the Forum for Security Cooperation a model-questionnaire for the purpose of either a voluntary or compulsory exchange of information²²⁹. Poland and Germany immediately decided to fill in the questionnaire for a trial test²³⁰. Although welcoming the move, Canada criticised the Questionnaire for its length (which contained no less than 19 rubrics) and redundancies²³¹. Finally, in July 1998, the Forum for Security Cooperation decided that beginning with the following year, on 15 April at the latest, the participating states would exchange information (including documents where appropriate) on the basis of a streamlined Questionnaire including the 10 following rubrics²³²:

Question No 1	Appropriate measures to prevent and combat terrorism, in particular participation in international agreements to that end (<i>paragraph 6 of the Code of Conduct</i>)
Question No 2	National planning and decision-making process for the determination of the military posture, including (a) the role of Parliament and ministries and (b) public access to information related to armed forces (<i>paragraphs 13 and 22 of the Code of Conduct</i>)
Question No 3	Stationing of armed forces on the territory of another participating state with their freely negotiated agreement as well as in accordance with international law (<i>paragraph 14 of the Code of Conduct</i>)
Question No 4	Constitutionally established authorities and procedures to ensure effective democratic control of military forces, paramilitary forces, internal security forces, intelligence services and the police (<i>paragraphs 20 and 21 of the Code of Conduct</i>)
Question No 5	Role and missions of military, paramilitary forces and internal security forces as well as controls to ensure that they act solely within the constitutional framework (<i>paragraph 21 of the Code of Conduct</i>)

²²⁹ REF.SEC/305/97 of 16 May 1997.

²³⁰ FSC.DEL/25/97 (Poland) and FSC.DEL/27/97 (Germany) of 22 September 1997. The Netherlands followed suit in the next year (FSC.DEL/114/98 of 16 May 1998).

²³¹ FSC.DEL/76/97 of 6 October 1997 and FSC.DEL/73/98 of 18 March 1998.

²³² FSC.DEC/4/98 of 8 July 1998. Besides reducing redundancies of the initial draft Questionnaire submitted by the Conflict Prevention Centre, the streamlining led to the dilution of two important items respectively related to *paramilitary forces* and *internal security missions*.

Question No 6	Procedures for the recruitment or call-up of personnel in the military, paramilitary forces and internal security forces (paragraph 27 of the Code of Conduct)
Question No 7	Legislation or other relevant documents governing exemptions from, or alternatives to compulsory military service (<i>paragraph 28</i> of the Code of Conduct)
Question No 8	Instruction on international humanitarian law and other international rules, conventions and commitments governing armed conflict included in military training programmes and regulations (<i>paragraphs 29 and 30</i> of the Code of Conduct)
Question No 9	Legal and administrative procedures protecting the rights of all forces personnel (<i>paragraph 33</i> of the Code of Conduct)
Question No 10	Any other information

The 1998 Questionnaire refers to 12 specific provisions of the Code of Conduct. Only two items concern inter-state relations: terrorism (Question No 1) and the stationing of foreign troops (Question No 3). Seven items concern the democratic control of armed forces (Questions No 2, 4 to 9). The Questionnaire does not require information on the domestic use of force, an issue which is however regulated in paragraph 36.

In June 2002, the Forum for Security Cooperation requested the Conflict Prevention Centre to prepare an overview of the exchange of information of the current year²³³.

The report was submitted in September 2002. It noted the existence of "a marked divergence" in the interpretation of the Questionnaire by participating states (basically due to the uneven degree of precision requested in most of its items) and underscored that the nature and substance of responses provided for did not give

²³³ FSC.DEC/7/02 of 5 June 2002.

"much room for summarisation or generalisation". Accordingly, the report made the following practical suggestions²³⁴:

– Only changes to purely factual information on structures, institutions, processes and legislation need be provided on an annual basis and, therefore, a one-off submission of the type of information required under Question No 2 (national planning and decision-making process) would be sufficient.

– Question 2 (information on national planning and decision-making process) and Question 4 (identification of constitutionally-established authorities and procedures ensuring effective democratic control of armed forces) being partly repetitive, Question 4 could be expanded to include information on national legislation regarding the integration of armed forces into civil society.

– Given that Question 2 (information on national planning and decision making-process), Question 4 (identification of constitutionally established authorities and procedures ensuring effective democratic control of armed forces) and Question 5 (role and missions of military, paramilitary forces and internal security forces) contain rather repetitive information, "the subjects of political control and their respective processes and institutions could be combined into one question, which would separate the contents of the question and leave space for the elaboration of roles and missions of the forces in response to Question 5".

– As Question 9 (legal and administrative procedures protecting the rights of servicemen) is closely related to Question 6 (procedures for the recruitment or call-up of servicemen) and Question 7 (legislation or other relevant documents governing exemptions from, or alternatives to compulsory military service), a combination of these three questions – or the moving of Question 9 to follow Questions 6 and 7 – might therefore be appropriate.

In addition, the differentiation between the three categories of military, paramilitary and security forces does not provide any added value in the absence of clear definitions and ignores the fact that many participating states are gearing up for

²³⁴ FSC.GAL/102/02 of 6 September 2002 (+ Add.1 and Add.1/Rev.1 of 20 September 2002, and Add.1/Rev.2 of 7 October 2002 on status of ratification of the 12 United Nations antiterrorism Conventions and Protocols).

voluntary military service. Therefore the report suggested that the Questionnaire could be rationalised in order to avoid repetition and cross-reference responses, some information (such as that concerning legislation) did not need to be provided on an annual basis if no changes had occurred) as well as providing more targeted information.

The participating states examined the overview during the 3rd follow-up conference on the Code of Conduct (September 2002), but could not agree on a structural rearrangement of the Questionnaire. However, shortly after, they only decided to expand Question No 1 related to terrorism²³⁵.

In April 2003 they came to the conclusion that a more focused exchange of information would contribute to enhancing the implementation of the Code of Conduct. Accordingly, they agreed to restructure and rationalise the 1998 Questionnaire. The technically updated Questionnaire (applicable as from April 2004) is presented as follows²³⁶:

<p>Question No 1 (expansion of former Question No 1)</p>	<p>Appropriate measures to prevent and combat terrorism, in particular participation international agreements to that end :</p> <p>(a) List of international agreements, including all United Nations conventions and protocols related to terrorism, to which the participating state is a party;</p> <p>(b) Accession to and participation in other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities;</p> <p>(c) National measures, to include pertinent legislation, taken to implement the international agreements, conventions and protocols cited above;</p> <p>(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);</p> <p>(e) Roles and missions of armed and security forces in preventing and combating terrorism; (<i>paragraph 6 of the Code of Conduct</i>)</p>
--	--

²³⁵ FSC.DEC/16/02 of 27 November 2002. See commentary of paragraph 6 of the Code of Conduct.

²³⁶ FSC.DEC/4/03 of 9 April 2003.

<p>Question No 2 (redrafting of former Question No 2, minus item 2 b)</p>	<p>Description of the national planning and decision-making process – including the role of the parliament and ministries – for the determination/approval of</p> <p>(a) the military posture;</p> <p>(b) defence expenditure (<i>paragraphs 13 and 22 of the Code of Conduct</i>)</p>
<p>Question No 3 (combination of former Questions No 4, 5 and 2 b)</p>	<p>Description of</p> <p>(a) constitutionally established procedures ensuring effective democratic control of the military, paramilitary, and internal security forces, as well as intelligence services, and the police;</p> <p>(b) constitutionally established authorities/institutions responsible for the democratic control of military, paramilitary and security forces;</p> <p>(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;</p> <p>(d) public access to information related to the armed forces;</p> <p>(<i>paragraphs 20, 21 and 22 of the Code of Conduct</i>)</p>
<p>Question No 4 (= former Question No 3)</p>	<p>Stationing of armed forces on the territory of another participating states in accordance with their freely negotiated agreements as well as in accordance with international law;</p> <p>(<i>paragraph 14 of the Code of Conduct</i>)</p>
<p>Question No 5 (combination of former Questions No 6, 7 and 9)</p>	<p>Description of</p> <p>(a) procedures for the recruitment or call-up of personnel for service in the military, paramilitary, or security forces, if applicable;</p> <p>(b) exemptions or alternatives to compulsory military service, if applicable;</p> <p>(c) legal and administrative procedures protecting the rights of all forces personnel;</p> <p>(<i>paragraphs 27, 28 and 33 of the Code of Conduct</i>)</p>

Question No 6 (= former Question No 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 and 30 of the Code of Conduct)
Question No 7 (= former Question No 10)	Any other information

So far, five annual exchanges of information (1999-2003) have taken place²³⁷.

c) *Ad hoc follow-up conferences*. The Code of Conduct did not provide either for a tailor-made follow-up mechanism or for regular reviews²³⁸. However, upon the initiative of the European Union, the Forum for Security Cooperation decided to convene in Vienna, on an *ad hoc* basis, short follow-up conferences for the specific purpose of reviewing the implementation of the Code. So far, three such conferences have taken place, in 1997, 1999 and 2002.

The first follow-up conference (22-24 September 1997) allowed the OSCE participating states to inaugurate a direct exchange of information and open a lively dialogue on the experience gained so far in the implementation of the Code of Conduct²³⁹.

Held in the midst of the controversial debate surrounding NATO's military intervention in Kosovo, the second follow-up conference (29-30 June 1999) was, admittedly, less conclusive²⁴⁰. In the course of the proceedings, Russia suggested the holding of a special joint meeting of the Forum for Security Cooperation and the Permanent

²³⁷ A detailed table on the 1999-2002 exchange of information is included in FSC.GAL/7/03/Rev.1/Corr.1 of 24 February, pp. 37-38 (Quarterly CPC Survey in CSBM information exchanged as of 21 February 2003).

²³⁸ However, the "European Union plus" and the Polish proposals suggested that the implementation of the Code be reviewed on a regular basis (CSCE/FSC/SC.5/21 of 30 June 1993, p. 15 and CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 15).

²³⁹ Consolidated Summary of the 1997 proceedings: FSC.GAL/15/97 of 30 September 1997. Survey of suggestions tabled at the Conference : FSC.GAL/15/97 of 14 October 1997.

²⁴⁰ Consolidated Summary of the 1999 proceedings: FSC.GAL/82/99 of 9 July 1999. Survey of suggestions tabled at the Conference: FSC.GAL/84/99/Rev.1 of 19 July 1999.

Council with the aim of reviewing the applicability of the Code of Conduct during the Kosovo conflict. Supported only by Belarus, the idea was not followed up²⁴¹.

As to the third follow-up conference (23-24 September 2002), it gave overwhelming attention to one element of the Code of Conduct: the fight against terrorism²⁴².

²⁴¹ FSC.DEL/194/99 of 29 June 1999 (Russia) and FSC.DEL/205/99 of 30 June 1999 (Belarus). The United States replied that actions undertaken by the NATO allies far from contravening the Code of Conduct actually sought to end the suffering in Belgrade caused in Kosovo by its violations of human rights of the Kosovo Albanians – and that exhaustive diplomatic efforts were made to find a political solution to the conflict as required in paragraph 19 (RC.DEL/182/99 of 28 September 1999).

²⁴² Consolidated Summary of the 2002 proceedings: FSC.GAL/122/02 of 8 October 2002. Survey of suggestions tabled at the Conference: FSC.GAL/123/02 of 8 October 2002.

SECTION X

FINAL CLAUSES

Summary contents of Section X : Politically binding nature of the Code of Conduct and date of its coming into force (§ 39). Undiminished value of existing OSCE commitments (§ 40). Reflection of the Code's commitments in relevant national internal documents, procedures or legal instruments (§ 41). Publication and widespread dissemination of the Code at national level (§ 42).

The last Section comprehends final clauses indicating the nature and date of the coming into force of the Code of Conduct (paragraph 39), confirming that the provisions of the latter do not alter the commitments existing in other OSCE texts (paragraph 40) and obligating the OSCE participating states to reflect the Code of Conduct's commitments in relevant national internal documents, procedures or legal instruments (paragraph 41) as well as publishing and disseminating the instrument at national level (paragraph 42).

Paragraph 39

Politically binding nature of the Code and date of its coming into force

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

Paragraph 39 introduces two elements: the politically binding nature of the Code of Conduct and the date of its coming into force.

The first sentence underscores that, as in the case of any standard OSCE text, the Code of Conduct is a "*politically binding*" document. In the expression "politically binding", the crucial term is not the adverbial element ("politically"), but the verbal one ("binding"). This means that OSCE politically-binding commitments have to be respected as much as standard legal commitments. Indeed, in international relations, state behaviour is currently regulated by both legal and non-legal agreements: when entering into non-legal agreements states intend, as a rule, to

comply with them and expect the same behaviour from each other²⁴³; the practice of follow-up and implementation procedures for such texts also supports that assumption²⁴⁴. For governments, politically binding agreements offer advantages.

They do not have to be submitted to parliamentary approval and are easier to monitor²⁴⁵. Furthermore, their very flexibility allows governments to retain "some possibility of a way out where a situation is still fluid"²⁴⁶.

Being social rules, politically-binding obligations obviously have some common features with legal rules: they both formulate community expectations and provide some stability in international relations by making state behaviour more predictable²⁴⁷. If one or several parties do not fulfil the common obligations, the other parties are entitled to refuse to do so²⁴⁸. In sum, within the particular context of the OSCE, an international commitment does not need to be legally binding in order to have a binding character²⁴⁹. The OSCE participating states are expected to honour their politically-binding commitments. Violation of the latter is inadmissible as for legal commitments. In such a case, the sanction is only political and moral. However, as the most basic OSCE texts are signed at the level of heads of state and government, the political and moral cost of violation cannot be insignificant.

The second sentence of paragraph 39 recalls that, as a consequence of its politically binding nature, the Code of Conduct cannot be subject to the registration procedure applicable to international legal treaties and agreements established by article 102 of the Charter of the United Nations²⁵⁰. It does not provide, as was the case with the

²⁴³ Michael Bothe: "Legal and Non-Legal Norms – a Meaningful Distinction in International Relations", *Netherlands Yearbook of International Law*, Volume XI, 1980, pp. 68 and 73 and 93.

²⁴⁴ *Ibid.*, p. 85.

²⁴⁵ Peter Koojmans: "The Code and International Law", *Cooperative Security, the OSCE and its Code of Conduct*. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, pp. 35 and 37.

²⁴⁶ Bothe, *op. cit.*, p. 91. Such texts may also be used as proof of customary law, but cannot directly be made the basis of a court judgment (*ibid.*, p. 87).

²⁴⁷ *Ibid.*, p. 93.

²⁴⁸ *Ibid.*, p. 88.

²⁴⁹ Peter Koojmans: "The Code and International Law", *Cooperative Security, the OSCE and its Code of Conduct*. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, p. 34 .

²⁵⁰ Article 102, paragraph 1, of the Charter of the United Nations: "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it".

Helsinki Final Act (1975), for the circulation of the Code of Conduct as an official document of the United Nations²⁵¹.

The third sentence of paragraph 39 indicates that the Code (which has been adopted on 3 December 1994) will come into effect on 1 January 1995 – a date coinciding with that of the entry into force of the change in name from "Conference for Security and Cooperation in Europe" (CSCE) to "Organisation for Security and Cooperation in Europe" (OSCE) decided by the *Budapest Document 1994*²⁵². It does not mention, as suggested by the "European Union plus" proposal, that the Code of Conduct will have "unlimited duration unless amended or ended by the consensus of the participating states"²⁵³.

In 1996-1997, many voices advocated the integration of the Code of Conduct into the so-called Security Model exercise²⁵⁴. However, the OSCE participating states did not go farther than just reaffirming the validity of the Code of Conduct in the *Istanbul Charter for European Security* (1999) which resulted from the Security Model exercise²⁵⁵.

Paragraph 40

Undiminished value of existing OSCE commitments

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

²⁵¹ The third of the final clauses of the Helsinki Final Act provided that "the Government of the Republic of Finland is requested to transmit to the Secretary-General of the United Nations the text of this Final Act, which is not eligible for registration under Article 102 of the Charter of the United Nations, with a view to its circulation to all the members of the Organisation as an official document of the United Nations".

²⁵² "... the CSCE will henceforth be known as the Organisation for Security and Cooperation in Europe (OSCE). The change in name will be effective on 1 January 1995. As of this date, all references to the CSCE will henceforth be considered as references to the OSCE" (paragraph 1 of chapter I of the of the *Budapest Decisions 1994*).

²⁵³ CSCE/FSC/SC.21 of 30 June 1993, p. 16.

²⁵⁴ REF.SEC/218/96 of 24 April 1996, p. 6, FSC.GAL/24/97 of 14 November 1997, REF.SEC/136/97 of 3 March 1997, p. 6 and FSC.DEL/97 of 23 September 1997.

²⁵⁵ *Istanbul Charter for European Security* (1999) : paragraph 16 (first sentence) and paragraph 30 (3rd sentence); See also the *Istanbul Summit Declaration* (1999) : paragraph 40.

This provision just confirms, along with the fourth paragraph of the Preamble, that the Code of Conduct does not diminish the value of the obligations enshrined in previous OSCE texts.

Paragraph 41

Reflection of the Code's commitments in relevant national internal documents, procedures or legal instruments

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

Paragraph 41 deals, in mild terms, with the repercussion of the Code of Conduct at national level. It does not contain, contrary to what was envisaged during the drafting process, any prescription that "national laws and practices, including regulations" should conform to the Code of Conduct²⁵⁶. It only refers to "relevant internal documents and procedures or, where appropriate, legal instruments" in which the OSCE participating states should "seek to ensure" that the Code of Conduct's commitments will be "reflected".

In September 1997, according to the Conflict Prevention Centre, only two participating states reflected the provisions of the Code of Conduct in their national defence legislation, while 24 others reported that no legislative amendments were necessary in this connection²⁵⁷.

Paragraph 42

Publication and widespread dissemination of the Code at national level

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

²⁵⁶ Paragraph (bb.4) of the Coordinator's Perception of 3 June 1994 (DOC. 337). See also CSCE/FSC/SC.5/Rev.1 of 18 November 1992, p. 15 (Polish proposal) and CSCE/FSC/SC.8 of 16 December 1992, article 3 (Turkish proposal).

²⁵⁷ FSC.GAL/10/97 of 22 September 1997.

Replicating one of the final clauses of the *Helsinki Final Act* (1975), paragraph 42 commits each OSCE participating state to publish the Code of Conduct on its territory, as well as to disseminate it and make it known as widely as possible²⁵⁸. It does not specify, as suggested by the "European Union plus" proposal, that the Code of Conduct's dissemination be aimed at the "the public as well as to national legislatures"²⁵⁹.

It does not either suggest that the OSCE participating states foster in their relations with non-participating states (the present Mediterranean and Asian "Partners for Cooperation") respect for the principles and provisions of the Code of Conduct²⁶⁰.

In September 1997, according to the Conflict Prevention Centre, 29 participating states informed the OSCE about the translation of the Code of Conduct into national languages, as well as its dissemination and introduction into the training programmes of armed forces²⁶¹.

Besides, a number of participating states organised training Seminars on the Code of Conduct. The Netherlands and Germany took the lead in 1995-1996, soon followed by Sweden²⁶². Since 1998, Switzerland has organised, in the framework of NATO's Partnership for Peace Programme, annual workshops on the Code of Conduct.

As to the OSCE as a whole, it provided tailor-made training seminars to countries in democratic military transition such as Bosnia and Herzegovina (1996), Moldova (1997), Ukraine²⁶³ – and more recently to Central Asian and Caucasus states (2002-2003).

²⁵⁸ The second of the final clauses of the Helsinki Final Act provided that "the text of this Final Act will be published in each participating state, which will disseminate it and make it known as widely as possible".

²⁵⁹ CSCE/FSC/SC.21 of 30 June 1993 SC.21, p.15.

²⁶⁰ CSCE/FSC/SC.21 of 30 June 1993 SC.21, p.16. ("European Union plus" proposal) and CSCE/FSC/SC.8 of 16 December 1992, article 26 (Turkish proposal).

²⁶¹ FSC.GAL/10/97 of 22 September 1997.

²⁶² Summary report on the Seminars held at Hamburg (August 1995), The Hague (December 1995) and Koblenz (May 1996): REF.FSC/375/96 of 2 October 1996.

²⁶³ REF. FSC/502/96 of 19 December 1996 (Bosnia and Herzegovina) and FSC.GAL/10/97 of 22 September 1997 (Ukraine).

BIBLIOGRAPHY

The present analysis of the Code of Conduct is essentially based on two major sets of **primary sources** – draft proposals tabled by governments and Coordinator's papers.

A. Official draft proposals

The seven official draft proposals on the basis of which the negotiation of the Code of Conduct was undertaken (and which are reproduced as Annexes 3 to 9 to the *Commentary*) are the following:

1. Proposal submitted by *Poland* on a "CSCE Code of Conduct in the Field of Security": CSCE/FSC/SC.5/Rev.1 of 18 November 1992 (1st version: CSCE/FSC/SC.5 of 11 November 1992)²⁶⁴.
2. Proposal submitted by the Member States of the European Union as well as Canada, Iceland and Norway ("*European plus proposal*") on a "CSCE Code of Conduct Governing Mutual Relations Between Participating States in the Field of Security": CSCE/FSC/SC.21 of 30 June 1993 (1st version entitled "Elements for a CSCE Code of Conduct Governing Mutual Relations Between Participating States in the Field of Security: CSCE/FSC/SC.7 of 16 December 1992).
3. Proposal submitted by *Austria and Hungary* on a "CSCE Code of Conduct Governing the Behaviour of the Participating States Towards Each Other and of Governments towards their citizens": CSCE/FSC/SC.22 of 15 September 1993.
4. Proposal submitted by *Turkey* on a "CSCE Code of Conduct Governing the Mutual Relations of the CSCE Participating States in the Field of Security": CSCE/FSC/SC.8 of 16 December 1992.
5. Proposal submitted by *Austria, Hungary and Poland* concerning "Implementation Provisions for a Code of Conduct": CSCE/FSC/SC.17 of 5 May 1993.
6. Proposal submitted by *Hungary* on "The Democratic Political Control of the Armed Forces and of Their Use": CSCE/FSC/SC.25 of 23 February 1994.

²⁶⁴ There is also an unnumbered Food for Thought Paper on "Possible Structure of the Code of Conduct" jointly tabled by Poland and the Russian Federation on 23 March 1993.

7. Working Document submitted by France regarding the structure of a Code of Conduct: CSCE/FSC/SC/B.2 of 3 June 1993.

B. Coordinator's Papers

The Coordinator of the drafting process (James E. Hinds) issued over 40 papers consisting of compilations and/or drafting suggestions:

1. Code of Conduct. state of the Art as per 31 December 1992 in the CSCE Negotiations – a comprehensive synoptic comparison of the Polish, "European Union plus" and Turkish draft proposals.

2. Compilation of provisions relating to arms control and disarmament from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 11 February 1993).

3. Code of Conduct. Comparison of Texts [tabled by Poland, the "European Union plus" and Turkey] - synoptic table, 18 February 1993.

4. Compilation of provisions relating to democratic control of the armed forces from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 8 March 1993).

5. Compilation of provisions relating to mutual relations among states in the field of security from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 19 March 1993).

6. Compilation of provisions relating to purpose, reaffirmation, review and implementation from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 26 April 1993).

7. Compilation of provisions relating to democracy and security from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 26 April 1993).

8. Compilation of provisions relating to the use of armed force from proposals on a CSCE Code of Conduct tabled in the FSC, by Poland, the 15 and Turkey (Working Group B, Non-paper, 26 April 1993).
9. Coordinator's working texts and reference papers on the human dimension, human rights and civil rights and rights of national minorities (16 December 1993).
10. Coordinator's working texts and reference papers on arms control and disarmament (17 January 1994).
11. Coordinator's working texts and reference papers on economic cooperation, stationing of forces, borders, peaceful evolution of states, regional and transborder cooperation and environment (28 January 1994).
12. Coordinator's working texts and reference papers on early warning, conflict prevention, crisis management, peacekeeping and other CSCE missions (4 February 1994).
13. Coordinator's working texts and reference papers on humanitarian activities, democratic control of armed forces, irregular forces and use of armed forces (10 February 1994).
14. Coordinator's working texts and reference papers on internal security, public emergency, confirmation of existing norms and implementation mechanism (18 February 1994).
15. Set of texts related to 37 items (11 March 1994).
16. Coordinator's perception paper containing suggestions on indivisibility of security and comprehensive security (DOC. 84 of 19 April 1994).
17. Memorandum from the Coordinator to all FSC delegations convening an informal open-ended meeting of the "Coordinator's Friends" (DOC. 136 of 28 April 1994).
18. Memorandum from the Coordinator to all FSC delegations convening an informal open-ended meeting of the "Coordinator's Friends" (DOC. 141 of 29 April 1994).

19. Coordinator's perception paper on sovereign rights of states in the field of security (DOC. 171 of 5 May 1994).
20. Coordinator's perception paper on basic obligations in the field of security (DOC. 188 of 9 May 1994).
21. Coordinator's status report (DOC. 262 of 25 May 1994).
22. Coordinator's suggestions on cooperative security and solidarity in the context of the right to self-defence (DOC. 302 of 1 June 1994).
23. Consolidated draft text of the Code of Conduct: 3rd revision (DOC. 319 of 6 June 1994).
24. Coordinator's perception on the democratic political control of armed forces (DOC. 337 of 8 June 1994).
25. Coordinator's perception on the control of armed forces and use of armed forces (DOC. 465 of 4 July 1994).
26. Consolidated draft text of the Code of Conduct: 4th revision (DOC. 551 of 22 July 1994).
27. Coordinator's perception on rights and obligations in the field of security: sovereignty and territorial integrity and refraining from the threat or use of force (DOC. 715/94 of 14 September 1994)²⁶⁵.
28. Coordinator's perception on rights and obligations/commitments in the field of security: sovereignty and territorial integrity, refraining from the threat or use of force and inviolability of frontiers (DOC. 729 of 19 September 1994).
29. Additions to the Coordinator's 4th revision of the draft Code of Conduct text (DOC. 766/94, undated).

²⁶⁵ This document also includes a paper entitled "Coordinator's desperation based on endless discussion concerning the scope of the Code of Conduct".

30. Coordinator's perception on rights and obligations/commitments in the field of security (DOC. 810/94 of 29 September 1994).
31. Coordinator's drafting suggestion on the control of armed forces (DOC. 936/94 of 20 October 1994).
32. Coordinator's perception on the democratic control of armed forces (DOC. 954/94 of 24 October 1994).
33. 5th Revision of the draft Code of Conduct text and 6th revision of the section related to the democratic control of armed forces (DOC. 959/94 of 25 October 1994).
34. November 1994 version of the Code of Conduct (DOC. 1015/94 of 4 November 1994).
35. November 1994 version of the Code of Conduct (DOC. 1027/94 of 4 November 1994).
36. Letter from the Coordinator forwarding the November 1994 version of the Code of Conduct to the Chairman of the FSC Special Committee (DOC. 1028/94 of 4 November 1994)²⁶⁶.
37. Coordinator's perception and suggestions on the use of armed forces (10 November 1994).
38. Coordinator's perception – working paper on the democratic control of armed forces (11 November 1994).
39. Coordinator's perception on the democratic control of armed forces (14 November 1994).
40. Coordinator's perception on the democratic control of armed forces (15 November 1994).

²⁶⁶ The letter also mentions that a proposal titled "Drafting Suggestions" and distributed on 31 October 1994 (DOC. 994/94) by the delegation of Armenia "has not yet been discussed".

41. Coordinator's perception on the use of armed forces, 15 November 1994.
42. Consolidated text of the Code of Conduct: Coordinator's Perception (23 November 1994).
43. Consolidated text of the Code of Conduct: Coordinator's perception (1 December 1994).
44. Consolidated text of the Code of Conduct: Coordinator's perception (2 December 1994²⁶⁷).

Secondary sources

Scholarly works on the OSCE Code of Conduct in English are rare. So far, only one book has specifically been devoted to the subject:

Cooperative Security, the OSCE and its Code of Conduct. Edited by Gert de Nooy. The Hague, Kluwer Law International, 1996, 158 p.).

It includes contributions from Victor-Yves Ghebali ("*Introducing the Code*"), Adam Kobieracki ("*Negotiating the Code: A Polish View*"), Peter von Butler ("*Negotiating the Code: A German View*"), Crispin Hain-Cole ("*Negotiating the Code: A British View*"), Peter Koojmans ("*The Code and International Law*"), David Raic ("*The Code, Humanitarian Law, and Human Rights*"), Michael Lucas ("*The Code, Early Warning and Conflict prevention*"), Jeffrey Simon ("*The Code and Civil-Military Relations: The Polish Case*"), Stephen Blank ("*The Code and Civil-Military Relations: The Russian Case*"), Ulrich Hundt ("*The Code and Civil-Military Relations: The German Case*"), Heinz Vetschera ("*Implementing the Code: The Way Ahead*") and Gert de Nooy ("*Summary of main Conclusions*").

English articles in scientific journals are also limited in number:

1. Ortwin Hennig: "*The Code of Conduct on Politico-Military Aspects of Security*", *OSCE Yearbook*, Volume 1-2, 1995-1996, pp.273-289 ²⁶⁸;

²⁶⁷ Non-paper including two versions respectively bearing the indications "2 a.m." and "4.45 p.m.".

²⁶⁸ Footnote 3 of Hennig's article signals that, in early 1995, the German Permanent Mission to the OSCE produced – for internal use – a legal commentary of the Code of Conduct in German, obtainable on request from the German Foreign Ministry.

2. Jonathan Dean: *"The OSCE Code of Conduct on Politico-Military Aspects of Security: A Good Idea, Imperfectly Executed, Weakly Followed Up"*, *OSCE Yearbook*, Volume 1-2, 1995-1996, pp. 291-297;
3. Michael R. Lucas: *"The War in Chechnya and the OSCE Code of Conduct"*, *Helsinki Monitor*, Vol. 6, 1995, No 2 , pp. 32-42;
4. Rienk Terpstra: *"The OSCE of Conduct. Setting New Standards in the Politico-Military Field?"*, *Helsinki Monitor*, Vol. 7, 1996, No 1, pp. 27-41;
5. Victor-Yves Ghebali: *"The Normative Contribution of the OSCE to the Democratic Control of Armed Forces: The Added Value of the 1994 Code of Conduct on Military Aspects of Security" – Towards Security Sector Reform in Post-Cold War Europe. A Framework for Assessment*. Edited by Wilhelm Germann – forthcoming (2003);
6. Victor-Yves Ghebali: *"Revisiting the OSCE Code of Conduct on Military Aspects of Security". Challenges of Security Sector Governance*. Edited by Heiner Hänggi and Theodor H. Winkler – forthcoming (2003)²⁶⁹.

²⁶⁹ In French, mention should be made of Victor-Yves Ghebali's "Analyse du Code de conduite politico-militaire de la CSCE" (*Les multiples aspects des relations internationales. Recueil d'études à la mémoire du Professeur Jean Stotis*. Brussels, Bruylant, 1995, pp. 121-131).

ANNEXES

ANNEX 1

PROPOSAL SUBMITTED BY HUNGARY AND THE UNITED STATES, AT THE MOSCOW CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE, CONCERNING "CIVILIAN CONTROL OVER MILITARY AND SECURITY FORCES" (CSCE/CHDM/.43 of 26 September 1991)

Recalling their commitment in the Document of the Copenhagen Meeting that military forces and the police will be under the control of and accountable to the civil authorities, and

Determined to create and maintain effective democratic structures guaranteeing that force will not be used against innocent civilians,

The participating states decide:

– to 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;

– to maintain and, where necessary, to strengthen executive control over the use of military and paramilitary forces as well as the activities of the internal security and intelligence services and the police;

– to create, wherever they do not already exist, and to maintain effective arrangements for legislative oversight of all such forces, services and activities;

– not to create or permit such forces, services or activities to function beyond the reach of executive control or legislative oversight.

ANNEX 2

PROPOSAL SUBMITTED BY FRANCE, GERMANY AND OTHER PARTICIPATING STATES²⁷⁰, AT THE 1992 HELSINKI FOLLOW-UP MEETING, CONCERNING A "CODE OF CONDUCT ON SECURITY RELATIONSHIPS AMONG PARTICIPATING STATES" (CSCE/HM/WG2/1 of 19 May 1992 and CSCE/HM/WG2/1/Add.1 of 16 June 1992)

1. The new situation prevailing in Europe calls for a strengthening of the role of the CSCE, particularly in the field of security.

Starting from the very substantial achievements of the CSCE in this area, and with a view to clarifying and developing them whenever possible, the time has come to take a fresh qualitative step forward in order to strengthen stability and security in Europe.

The renewed commitment by the participating states to abide by common rules of behaviour and to cooperate in giving them full effect will provide the CSCE and its organs with a firmer basis for action.

2. With that in mind, we propose the drawing up of a code of conduct which the participating states would undertake to abide by in their mutual relations. Such a code of conduct would incorporate the following features:

– The reaffirmation of the commitments entered into by virtue, notably, of the Final Act and the Charter of Paris, relating to the politico-military aspects of security – especially the commitment to refrain from the threat or use of force – and their development in the form of concrete rules of behaviour;

– The definition of new rules capable, in particular, of responding to the growing interaction between the domestic behaviour of states and their mutual relations;

– Mutual assurances concerning implementation of, and provision of support to, CSCE mechanisms.

This code of conduct will take into account other proposals to strengthen the decision-making and execution capabilities of the CSCE.

3. It is for the heads of state and government to provide the necessary impetus to the establishment of this code of conduct – to emerge from a thorough and open dialogue within the framework of the CSCE Forum for security cooperation after the close of the Helsinki Meeting.

Such an exercise would show the value of giving, at the appropriate time, the common rules and their associated assurances the form of a security treaty.

We therefore propose that the Helsinki Summit instruct the negotiators in Vienna to adopt this course from the outset of their work. To that end, their terms of reference should provide that:

"The participating states will undertake consultations with a view to strengthening the role of the CSCE, by establishing a code of conduct governing their mutual relations in the field of security, which could, in time, be further developed into a CSCE security treaty."

²⁷⁰ Belgium, Bulgaria, Estonia, France/Germany, Greece, Ireland, Malta, Poland, Romania, Russian Federation, Spain and Kyrgyzstan.

ANNEX 3

PROPOSAL SUBMITTED BY POLAND ON A "CSCE CODE OF CONDUCT IN THE FIELD OF SECURITY" (CSCE/FSC/SC.5/Rev.1 of 18 November 1992)

I. GENERAL CONSIDERATIONS

(Preamble)

The participating states of the CSCE,

Determined to enhance stability and security in Europe through the strengthening of the CSCE principles, common values and shared convictions,

Aiming to give expression to the cooperative approach to security characterising the qualitatively new type of relations within the CSCE community of states,

Resolved to develop cooperative security structures in Europe,

Convinced of the need to strengthen the pluralistic and democratic nature of the new order of relations in the CSCE area,

Determined to facilitate a concerted response to the security problems and challenges on the basis of a common assessment of each others' intentions, policies and behaviour in the security field,

Establish hereby the norms guiding their conduct and mutual relations in the field of security.

(Reaffirmation and strengthening of the principle of the non-use of force)

The participating states, in adopting the present code of conduct, recall their obligations under the Charter of the United Nations and reaffirm their commitment under the Helsinki Final Act to refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes and principles of those documents.

The present code of conduct is aimed at building upon and amplifying this principle and ensuring its full and effective implementation. Through this code the participating states reaffirm at the same time their determination to expand and strengthen friendly relations among them and to promote friendship among their people, while also confirming that in their CSCE community of states there are no hostile intentions, conflicting values or aims which may divide them.

II. NORMS GUIDING DEFENCE POLICIES AND POSTURES

1. Defensive posture of the armed forces, sufficiency and restraint in military matters

(Sufficiency) The participating states will keep the levels of their armed forces to the minimum commensurate with legitimate common or individual security needs within Europe and beyond.

They will determine those needs on the basis of their domestic democratic procedures, in accordance with their obligations under international law, taking into account legitimate security concerns of other states, in particular their neighbours. They will refrain from any attempt to build military superiority allowing any single state to dominate militarily the CSCE area.

(Defensive doctrine) They will base their military doctrines on defensive principles. The structure, equipment, state of readiness and training of the armed forces in Europe will be oriented to serve defensive purposes.

(Restraint in planning) The participating states will approach with restraint their defence needs in planning military expenditures, arms procurement and infrastructure upgrading and in other aspects of the maintenance and development of their military potential.

(Arms sales controls) The participating states will follow a responsible approach to international armaments transfers and will cooperate in strengthening multilateral non-proliferation regimes. They will prevent, through appropriate legislation and enforcement procedures, illegal arms transfers.

(Ban on promotion of war) The participating states will refrain from any promotion of wars of aggression. They will not allow their territories to be used in contravention of this principle.

2. Democratic control of the armed forces

(Constitutional control and accountability) Each participating state will maintain an effective constitutional and legal framework for the status, functioning and use of the armed forces. This will include, in particular, the democratic procedure and openness of budgeting military expenditures and of the accountability of expenses. No participating state will allow its armed forces to serve the interests of a single particular political grouping or ideological system.

(Primacy of democratic government)	The participating states will ensure the primacy of the democratic civilian institutions over the armed forces. They will, in particular, ensure that the government decision-making process extends to all aspects of the functioning of the armed forces and that decisions applying to the armed forces and their implementation are subject to parliamentary control.
(Public transparency)	Each participating state will ensure, with due regard to the specific requirements of military matters, transparency of and public access to matters related to the functioning of its armed forces.
(Paramilitary)	Each participating state will execute full constitutional, legal and political control over the functioning of paramilitary organisations. Each participating state will refrain from allowing paramilitary organisations to be established or to serve the particular political aims of a grouping or organisation to gain or maintain political power. The participating states will not use paramilitary organisations to circumvent limitations concerning the use and size of their armed forces.

3. Internal organisation and functioning of the armed forces in accordance with international law and humanitarian principles

(Responsibility of personnel under law)	They will ensure that the personnel of their armed forces are equipped, trained and commanded in accordance with international law. Orders violating those principles will not be recognised as valid. Persons responsible for violating those principles will be held accountable by each participating state.
(Exercise of human rights)	Each participating state will ensure the effective exercise of human rights and fundamental freedoms by personnel serving with its armed forces in conformity with the requirements of the military service.
(Humanitarian international law)	The participating states will develop their laws and regulations concerning the status of military personnel, their rights and obligations, in conformity with international humanitarian law and CSCE standards in this field. They will ensure the applicability of the respective CSCE provisions and mechanisms to the humanitarian and social aspect of the functioning of the armed forces.
(Recruitment to military service)	Each participating state will ensure that its laws and practice relating to the recruitment of personnel to serve in the armed forces are in conformity with humanitarian principles and international law.

4. Peaceful domestic use of the armed forces

(Use of armed forces in a state of emergency)	Each participating state will use its military personnel for domestic purposes, in particular to assist in relief operations or in restoring public order, only on the basis of strict constitutional procedures and within the limits prescribed by international law.
(Non-use of force for political means)	The participating states will not use armed forces to limit the exercise of the civil rights of their people and, in particular, the right of political organisations, including those representing national minorities, to advocate, provided they do not use or encourage recourse to violence, any constitutional change they consider appropriate. The participating states will not use or encourage violence against such organisations.
(Non-use of force against self-determination)	Accordingly, the participating states will refrain from undertaking any use of force or acts of coercion contrary to the principle of the self-determination of peoples, when pursued peacefully. The use of force to deprive peoples of their national identity constitutes a violation of their inherent rights. Each participating state will ensure that all domestic disputes that may arise between groups of its population and their organisations are settled by peaceful means. The participating states will not recognise changes in the status of their internal territorial entities and their borders which result from the use of force.
(International law and civil war)	The participating states reaffirm that international humanitarian law of must be applied in civil wars and domestic conflicts.

III. NORMS UNDERLYING THE COOPERATIVE APPROACH TO INTERNATIONAL SECURITY

5. Indivisibility of security

	The participating states recognise that security is indivisible and that the security of every participating state is inseparably linked to that of all the others.
(Sovereign equality)	The participating states will pursue their security interests as sovereign and independent states and on the basis of full equality. They are all equal before the law. They will respect the right of each of them to enjoy all rights inherent in full sovereignty both in the field of security and in accordance with international law. They will ensure that the territorial integrity and political independence of each participating state are inviolable. Accordingly, no foreign forces will be stationed on the territory of a participating state without that state's explicit

consent. They will be withdrawn immediately if such consent has been invalidated.

(Equal respect for security interests)

The participating states will respect the security interests of all the CSCE states on the basis of equality. Each of them will determine its security interest itself, while taking into consideration the interests of others. They will consider the implications that their actions may have on the security of others.

(Undiminished security)

While strengthening common security and stability, the participating states will ensure that the security of each of them is not adversely affected. No state in the CSCE community will seek to strengthen its own security at the expense of that of others.

6. Promotion of arms control, security dialogue and cooperation

(Promotion of arms control)

The participating states will promote arms control, disarmament, confidence- and security-building through full implementation of their international commitments and the elaboration of new measures. They will fully use and develop the CSCE instruments and frameworks existing in this field.

(Dialogue and cooperation)

They will conduct regular consultation and permanent security dialogue, maintain close contact and cooperate on matters related to security.

7. Freedom to choose security arrangements

(Freedom of arrangements)

The participating states recall that, as provided for in the Helsinki - Final Act, they have the right to belong or not to belong to international organisations and to be or not to be a party to bilateral or multilateral treaties, including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality. They have the right to change their status in this respect as they deem necessary. Appropriate arrangements by them or among them will be concluded only on the basis of the principle of sovereign equality. The participating states undertake to respect their choice of security arrangements.

(Interlocking arrangements)

The participating states will pursue their efforts to build a lasting and peaceful order on the basis of mutually reinforcing institutions and harmony of arrangements. They will provide information on their arrangements and promote contacts with and among institutions.

(NATO)	The participating states recognise the special role of the North Atlantic Treaty Organisation (NATO) as an integral aspect for security in Europe providing one of the indispensable foundations for a stable security environment.
(WEU)	They take note of the role of the Western European Union (WEU) as the European pillar of the Atlantic Alliance.
(EC)	They also emphasise in this context the role of the European Community in maintaining stability on the continent. The participating states will consider how best to use the resources and potential offered by those organisations for the promotion of the common aims of the CSCE community.
(Regional arrangements)	The participating states recognise the role of regional arrangements in dialogue and cooperation. In developing regional and other forms of cooperation in the security field the participating states will ensure that their aims and actions are in full conformity with the objectives and principles of the Charter of the United Nations and CSCE documents.

IV. PRINCIPLES GUIDING CONDUCT IN THE PREVENTION OF CONFLICTS AND OF THE USE OF FORCE

8. Conflict prevention and peaceful settlement of disputes

(Use of CP and CM mechanisms)	The participating states will seek effective ways of preventing, through political means, conflicts that may emerge. Those political solutions will be based on the principles of the CSCE Final Act and the parties concerned will display the necessary political will. The participating states will make intensive and effective use of the mechanisms for early warning, conflict prevention and crisis management offered by the CSCE and will cooperate in implementing them. They will further develop the practical means, including relevant techniques, at their disposal. The participating states reaffirm their commitment to the principle of the peaceful settlement of disputes, which is an essential complement to the duty of states to refrain from the threat or use of force, both being essential factors for the maintenance and consolidation of peace and security.
-------------------------------	--

9. Refraining from hostile action or any other action which may aggravate the situation

(No manifestation of force)

The participating states reaffirm their commitment to refrain from any manifestation of force for the purpose of inducing any other state to renounce the full exercise of its sovereign rights.

(No support for terrorism, subversive actions)

The participating states reaffirm their commitment to prevent and combat terrorism, including prohibition on their territories of illegal activities, including subversive actions directed against other States and their citizens. They will refrain from organizing or encouraging organizations of irregular forces or armed units, including mercenaries, for the purpose of invading another participating State. They undertake to co-operate in establishing effective international instruments in this respect.

(Non-exacerbation of conflicts)

The participating states will refrain from organising, inciting, supporting or participating in acts of domestic strife or terrorism in another participating state. They will, whatever their links with the population involved in such domestic conflict, encourage the amicable resolution of the crisis. They will refrain from advocating changes in the territorial and/or political status of that state in a way incompatible with international law and CSCE principles.

V. NORMS GUIDING CONDUCT IN THE EVENT OF A CONFLICT

10. Condemnation of acts in violation of the principle of the non-use of force

(Use of force as a violation of international law)

The participating states reaffirm that non-compliance with the obligation of refraining from the threat or use of force constitutes a violation of international law.

(Condemnation of aggression)

They reaffirm in particular that war of aggression is a crime against peace. Aggression entails international responsibility. The participating states undertake to base all their actions in situations involving violation of the principle of the non-use of force on the above assumptions. The participating states will promptly, upon request and in consultation with each other, seek to establish the fact of the violation and give expression to their concern about the conflict. No consideration may be invoked to warrant recourse to the threat or use of force in contravention of the principle of the non-use of force.

(Non-validity of the acts resulting from the use of force) No occupation or acquisition of territory resulting from the threat or use of force in contravention of international law will be recognised as legal. The participating states will not recognise the validity of any other acts undertaken in contravention of this principle.

(Personal accountability for acts of violence) The participating states will hold all responsible for acts of violence personally accountable for their actions that are in contravention of the relevant norms of international humanitarian law.

11. Solidarity with victims of the violation of the principle of the non-use of force

(Individual or collective self-defence) The participating states recall the inherent right of individual or collective self-defence in the event of an armed attack, as set forth in the Charter of the United Nations.

(Emergency consultations) The participating states will further develop the CSCE's possibilities for serving as a forum for emergency communication and consultation in order to enable the states in need to share their concerns and problems as well as seek solidarity and assistance.

(Assistance) The participating states recognise the right of any one of them to seek, in accordance with the principle of sovereign equality, such assistance in the realisation of its right to self-defence as it may deem appropriate. They undertake to consider duly such requests and reply accordingly, as they deem appropriate.

(Lend-lease) They will, in particular, consider favourably – to the extent possible – requests for purchases of material and equipment on favourable lending conditions.

(Humanitarian assistance) The participating states will exert every effort to ensure that basic human needs are met and that humanitarian commitments are respected in the event of a conflict. They will contribute to, support and facilitate, as appropriate, the delivery of the necessary assistance to the population suffering from hostilities. They will ensure, in particular, the establishment and effective maintenance of humanitarian cease-fires, safe havens and humanitarian corridors.

(No support for the violators of the non-use of force) The participating states will refrain from extending any assistance to the state responsible for the violation of the principle of the non-use of force. They will, in particular, respect all possible sanctions, including embargo, undertaken against that state in accordance with international law.

12. Cooperation in restoring international peace and stability

(Defence of CSCE values) The participating states will promptly consult among each other on how their commonly shared values of democracy, respect for human rights, the rule of law, economic liberty and others have been affected by the conflict immediately after it has arisen. They stress in this context that the constant and gross violation of these values and of CSCE principles is incompatible with participating in the CSCE. They reaffirm the undiminished validity of the CSCE commitments in times of conflict.

The CSCE participating states will consider possibilities for concerted action in defence of the above values and, if such action is deemed appropriate, will determine specific forms and mechanisms for conducting it.

(Resort to other organisations) The participating states may request other organisations such as the EC, NATO and the WEU to cooperate with the CSCE or support it in a specific manner in its actions aimed at restoring peace and stability.

(Use of mechanisms) The participating states will consult on how best to use the peace-restoring mechanisms of the United Nations and to cooperate in implementing them. They reaffirm that the CSCE will work together closely with the United Nations in preventing and settling conflicts on the basis of the arrangements of Chapter VIII of the Charter of the United Nations. They reaffirm their commitment to support and facilitate the activity of peacemaking and other missions. They will ensure the full and effective application of humanitarian international law to the conflict. The participating states will facilitate and respect effective cessation of hostilities.

(Reconciliation) After settling the conflict and in overcoming its legacy, the participating states will follow the principles of reconciliation and forgiveness to restore stability and confidence.

VI. CONCLUDING ARRANGEMENTS

Nothing in the present code should be interpreted as affecting the provisions of the Charter of the United Nations or any agreement binding under international law prior to the Charter or the prerogatives of the United Nations Security Council.

The original of the code drawn up in ... will be transmitted to the Government of ..., which will retain it in its archives. Each of the participating states will receive from the Government of ... a true copy of the code.

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

The Government of ... is requested to transmit to the Secretary General of the United Nations the text of the code which is not eligible for registration under Article 102 of the Charter of the United Nations with a view to its circulation to all members of the Organisation as an official document of the United Nations.

The Government of ... is also requested to transmit the text of the code to all international organisations mentioned in the text.

Wherefore we, the undersigned High Representatives of the participating states, mindful of the high political significance we attach to the code and declaring our determination to act in accordance with it, have subscribed our signatures below.

VII. PROVISIONS RELATED TO GIVING EFFECT TO CERTAIN OF THE ABOVE NORMS

(Annex) To be developed including the following provisions:

- joint periodical review of the application of the code, including consideration of measures to improve its effectiveness;
- mechanisms for ensuring the conformity of domestic laws and practice with commitments under the code;
- general possibility for extending the mandate of CSCE fact-finding missions to cover the problems resulting from the implementation of the code, including humanitarian aspects of military service;
- specific provisions relating to the observance of the code by political, territorial and ethnic entities involved in domestic crises;
- provisions for ensuring accountability of persons responsible for the acts of violence and the violation of humanitarian international law (international court);
- provisions for the conduct of consultations to assess the conflict and the possibilities for concerted action.

ANNEX 4

PROPOSAL SUBMITTED BY THE MEMBER STATES OF THE EUROPEAN COMMUNITY, ICELAND AND NORWAY ON A "CSCE CODE OF CONDUCT GOVERNING MUTUAL RELATIONS BETWEEN PARTICIPATING STATES IN THE FIELD OF SECURITY"(CSCE/FSC/SC.21 of 30 June 1993)

PREAMBLE

The participating states of the Conference on Security and Cooperation in Europe (CSCE),

Recognising that the new political and security environment in Europe and the new dimensions to relations between participating states require expression in a Code of Conduct governing their mutual relations in the field of security,

Acknowledging that, in developing this Code, they should take full account of the commitment in the Helsinki Document 1992 to establish among themselves new security relations based upon a common and cooperative approach to security,

Recognising the need to seek new means to promote stability in the CSCE area as a whole, within regions, and within states,

Acknowledging the need to strengthen the pluralistic and democratic nature of the political system of each country in the framework of the new security order in the CSCE area, and

Recognising that this new situation demands a greater precision in, and elaboration of new norms for the behaviour of states to one another, for control and use of armed forces and for the internal behaviour of governments,

Have decided upon the following CSCE Code of Conduct Governing Mutual Relations between Participating States in the Field of Security:

PART I: INTRODUCTION. CONFIRMATION OF EXISTING NORMS

Relation to Existing Norms and Commitments

The Code builds upon and is intended to complement existing internationally recognised principles and commitments and in no way prejudices their status or content.

The participating states stress, therefore, that the need for the Code does not diminish the validity of existing principles, provisions and procedures developed within the CSCE, as enshrined in the Helsinki Final

Act, the Charter of Paris for a New Europe, the Vienna Document 1992, the Helsinki Document 1992 and other relevant CSCE documents.

They reaffirm in particular the continuing validity of the 10 principles in the Helsinki Final Act and their determination to respect them. They recall that all these principles are of primary significance and accordingly confirm that they will apply them equally and unreservedly in all aspects to their mutual relations and cooperation, each of them being interpreted taking into account the others.

The participating states confirm that nothing in the Code prejudices the provisions of the Charter of the United Nations or other principles or provisions of international law, in particular the Hague Conventions of 1907 and 1954 and the Geneva Conventions of 1929, 1949 and 1980 and the Additional Protocols of 1977.

Other Principles Relevant to Security

The participating states reaffirm their determination to promote, respect and protect human rights, fundamental freedoms, democracy and the rule of law and to promote tolerance and peaceful resolution of disputes, in accordance with international law and existing CSCE commitments, as a fundamental basis for security within and among all participating states.

As part of the above commitment, participating states confirm that they will respect the human rights of all persons on their territory. In particular, they will promote and protect the rights of persons belonging to national minorities, including their right to express their identity, and where appropriate to enjoy local autonomy.

In this spirit, they stress the obligation of persons belonging to majority groups to respect the rights of persons belonging to minorities.

Likewise, the participating states stress the need for persons belonging to minorities to respect the rights of others.

They further reaffirm their determination to expand and strengthen friendly relations between them and to promote friendship and cooperation among their peoples. In particular, they recognise the need to base mutual relations on positive interaction, cooperation and friendship in order to avoid disputes and to resolve them peacefully when the need arises.

PART II: PRINCIPLES GOVERNING SECURITY RELATIONS

Sovereignty and Territorial Integrity

The participating states reaffirm their respect for each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every

state to juridical equality, to territorial integrity and to freedom and political independence in accordance with relevant international norms and principles.

Refraining from the Threat or Use of Force

The participating states recall their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States contained in the Helsinki Final Act.

Right to Self-Defence

The participating states reaffirm the inherent right of individual and collective self-defence if an armed attack occurs, recognised in the Charter of the United Nations.

Inadmissibility of Territorial Acquisition by the Threat or Use of Force

No participating state will attempt to occupy or acquire territory by the threat or use of force in contravention of the Charter of the United Nations. The participating states will not recognise such occupations or acquisitions.

Opposition to Terrorism and Subversion

The participating states reaffirm their commitment not to support terrorist acts in any way and will take resolute measures to prevent and combat terrorism in all forms.

The participating states will not sponsor or provide support on or outside their territories for terrorists engaged, *inter alia*, in the subversion of legitimate governments of other states or in illegal activities against the citizens of other states.

Stationing of Forces

No participating state will station its armed forces on the territory of another participating state without that state's explicit and free consent. Forces stationed on the territory of another participating state will be withdrawn if such consent is withdrawn or otherwise invalidated.

This obligation does not affect in any way the prerogatives of the Security Council as established in Chapter VII of the Charter of the United Nations.

Obligations under Arms Control and Disarmament Agreements

The participating states will regard breaches of obligations under arms control and disarmament agreements including regional agreements, in particular those breaches which may constitute a threat to security, as a source of concern for all and they will undertake appropriate measures.

They will in particular consult in such cases to help to avert or resolve disputes between them and to avoid use of force, each of the interested states agreeing to give any required clarifications. They will take advantage of CSCE bodies established for such purposes.

Borders

The participating states reaffirm the principle of inviolability of borders as embodied in the Helsinki Final Act, including its application to inherited borders of recently admitted CSCE participating states. Participating states will not attempt, therefore, to change borders by force or advocate such change by force. The participating states will not recognise such changes.

The participating states equally recognise that borders may be changed, in accordance with international law, by peaceful means and by agreement, as enshrined in the Helsinki Final Act. Such changes must come about after prior democratic consultations of the populations concerned, and must be accompanied by appropriate provisions to safeguard their rights. Equally, relevant decisions and resolutions of the United Nations and provisions both of its Charter and of international law will apply.

Peaceful Evolution of States

The participating states will respect and encourage peaceful evolution in the constitutions of all participating states in accordance with international law and the principles laid down in this Code and the democratic wishes of the people.

PART III: INTERNATIONAL SECURITY OBLIGATIONS OF PARTICIPATING STATES

SECTION 1: GENERAL PRINCIPLES AND COMMITMENTS IN RESPECT OF INTERNATIONAL SECURITY OBLIGATIONS

Indivisibility of Security

The participating states recognise that security is indivisible and that the security of each of them is closely linked to the security of all others.

They commit themselves to respect the legitimate security interests of every other participating state, on the basis of sovereign equality between states.

Each participating state will, therefore, not pursue its own security interests at the expense of the legitimate security interests of other participating states.

Sovereign Rights of States in the Field of Security

Bearing in mind the indivisibility of security, each of the participating states determines its security interests itself and has the right freely to choose its own security arrangements, ensuring that they are compatible with the values and objectives of the CSCE.

The participating states recall that, as provided for in the Helsinki Final Act, each participating state has the sovereign right to decide whether or not to belong to international organisations, and whether to be or not to be a party to bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality.

Sufficiency

The participating states affirm their commitment to maintain only such military capabilities as are necessary to prevent war, fulfil their commitments with regard to the United Nations or the CSCE, manage crises and provide for effective defence, including in implementation of defence or alliance treaties.

They determine those capabilities on the basis of national democratic procedures, in accordance with their obligations under international law, taking into account legitimate security concerns of other states as well as the need to contribute to the strengthening of security and stability.

SECTION 2: ARMS CONTROL AND DISARMAMENT

Commitment to the Full Implementation of Existing Arms Control and Disarmament Agreements

The participating states reaffirm that they will implement in full all their obligations arising from existing arms control and disarmament agreements and documents. They regard each of these agreements and documents as an indispensable element of their indivisible security.

All such documents will be applied against the overall objective of enhancing and promoting dialogue, cooperation, arms control and disarmament, confidence- and security-building and stability and be kept under review in the CSCE Forum for Security Cooperation and other relevant bodies as set up in these documents.

New CSCE Measures

The participating states reaffirm their commitment in the Helsinki Document 1992 to pursue further arms control and disarmament measures, building upon the principles of transparency, predictability,

cooperation, verification and where appropriate limitation of armed forces and with a view to the maintenance of stability throughout the whole area covered by the CSCE participating states, as well as an adequate balance of forces in specific regions.

They are committed to promote the full implementation of these measures and regimes, even in crisis situations, and to foster their role in conflict prevention.

Regional agreements based on the above-mentioned principles concluded in the framework of the CSCE will be considered as contributions to the security of all.

Support for Multilateral Regimes in Respect of Non-Proliferation

The participating states reaffirm their commitment to cooperate in strengthening and supporting non-proliferation agreements and other multilateral export control regimes aimed at preventing the proliferation of weapons of mass destruction.

The participating states will therefore take all necessary steps to become parties to and to comply with existing multilateral non-proliferation agreements and regimes, in particular the Non-Proliferation Treaty, the Biological Weapons Convention and the Chemical Weapons Convention as well as the 1925 Geneva Protocol on Non-Use of Poisonous Gases and Bacteriological Weapons; they will, in addition, cooperate in respect of strengthening these agreements and regimes.

The participating states will exchange information about national export practices with a view to improving effective export controls applicable to nuclear materials and other sensitive goods and technologies related to weapons of mass destruction. The participating states will also cooperate with any participating state attempting to establish a national export control system in this field.

Restraint and Transparency about Arms Transfers

The participating states also reaffirm their commitment to exercise and promote due restraint in arms transfers and the transfer of sensitive military know-how, in particular to states engaging in the accumulation of conventional weapons beyond legitimate defensive needs, to regions where the security of a CSCE participating state would be adversely affected and, more generally, to regions where a situation of tension, crisis or conflict is growing.

They will also exercise and promote transparency in arms transfers by complying with the United Nations Register of Conventional Arms including the establishment of national and international provisions and procedures for meeting these requirements.

The participating states commit themselves to prevent, through appropriate legislation, illegal arms transfers. They will implement effective legislative controls, including where appropriate licensing, for manufacture, transport and sales or export of arms. They will cooperate against illicit arms dealing and they shall exercise control through national or international law over the prohibited holding of all kinds of weapons, explosives, munitions and firearms by individuals or groups.

The participating states will exchange information about national export practices. They will cooperate with any participating state attempting to establish a national export control system in this field.

Commitment to Dialogue in the Area of Arms Control and Disarmament

The participating states will also cooperate to promote international dialogue in the field of arms control and disarmament, including negotiation of new CSCE measures, support for multilateral regimes in respect of non-proliferation and promotion of restraint and transparency about arms transfers.

SECTION 3: EARLY WARNING, CONFLICT PREVENTION AND CRISIS MANAGEMENT AND THE PEACEFUL SETTLEMENT OF DISPUTES

- The participating states reaffirm their commitment to consult and cooperate in situations of potential conflict and stress the undiminished validity of CSCE commitments at all times, including during periods of conflict, taking into account relevant principles of international law.
- They will make use of regular political consultations in order to cooperate and avoid the development of potential conflicts. They will thus develop a dialogue on political-military issues regarding their security policies and concerns.
- They reaffirm existing undertakings in respect of conflict prevention, crisis management and the peaceful settlement of disputes as well as existing commitments to use CSCE or other relevant mechanisms in these areas.
- They will have the right to raise any concern regarding behaviour and situations which they consider as potentially threatening the stability or the territorial integrity of any of them.

New Measures

The participating states recognise that the potential sources of conflict which threaten security and stability in the CSCE area require new efforts in the area of conflict prevention, crisis management and peaceful settlement of disputes and they will therefore cooperate fully in the appropriate CSCE fora in order to strengthen existing arrangements in these areas as well as to develop new ones where appropriate.

SECTION 4: PEACEKEEPING AND OTHER CSCE MISSIONS

The participating states will support and cooperate fully with CSCE missions and peacekeeping operations. In particular, they will:

- permit, support and cooperate with missions and peacekeeping operations on their territory mandated by the CSCE,

- use best efforts to provide assistance – material, personnel, financial – to such missions and operations.

The participating states will cooperate with United Nations peacekeeping operations and other related United Nations missions. They reaffirm that the CSCE will work with the United Nations in preventing and settling conflicts in accordance with Chapter VIII of the Charter of the United Nations.

Humanitarian Activities

The participating states will promptly consult among each other on possibilities for concerted action in defence of human rights and the rule of law, in case of crisis and conflict.

The participating states will support humanitarian actions aimed at alleviating suffering among civilian populations as well as refugees and providing them with basic needs in areas of crisis and conflict.

They will facilitate the effective implementation of humanitarian actions ensuring the free circulation of personnel and resources dedicated to such tasks.

PART IV: DEMOCRATIC POLITICAL CONTROL OF ARMED FORCES

The participating states recognise that democratic political control of armed forces is an essential element for the maintenance of international stability and security.

The participating states will provide for and maintain at all times effective control of their armed forces, as well as paramilitary and security forces, by their constitutional authorities vested with democratic legitimacy and will ensure that those constitutional authorities do not fail to fulfil their responsibilities. They will ensure the constitutional control of their armed forces and will ensure that the armed forces observe the constitution. They will provide for their parliaments' budgetary approval of defence expenditures and provide for transparency of the defence budget.

The participating states affirm their commitment to the democratic political control of, and accountability for, their armed forces. The participating states will ensure, therefore, that:

- such forces are organised by and subject to the control of constitutional authorities,
- they will not allow and not support the creation on the territory under their sovereignty of any armed forces, as well as paramilitary and security forces, that are not accountable to their constitutional authorities,
- such forces and their members as individuals act at all times within the rule of law and are legally accountable for their actions, and therefore the participating states are resolved to make all necessary legal and administrative provisions to ensure that their armed forces act solely within the framework of their lawful tasks,

- such forces are politically neutral in national life and, *inter alia*, do not serve the interests of particular groupings or ideological systems.

If such forces usurp political control in any participating state, the participating states will urgently consider appropriate action within the CSCE fora.

In case of a state of public emergency, in addition to the obligations under international treaties and the commitments undertaken in the framework of the CSCE, no derogation from the provisions set forth in this Code will be permitted.

A state of public emergency may be proclaimed only in accordance with provisions laid down by law and by a constitutionally lawful body, duly empowered to do so. This decision should be submitted to the Parliament in the shortest possible time.

A state of public emergency will not remain in force after the end of the events that led to its declaration.

When a participating state declares a state of public emergency, it will immediately inform all the other participating states through the relevant CSCE institution of this decision as well as of the territorial limits, the aim, the expected duration and any derogation made from the participating state's international human rights obligations.

Each participating state will ensure that the recruitment of personnel for service in its armed forces, as well as paramilitary and security forces, conforms with CSCE provisions in respect of human rights and obligations as well as with humanitarian principles and international law. Each participating state will embody in legislation or other appropriate documents the rights and duties of members of the armed forces as well as the right to refuse to render military service on grounds of conscientious objection.

Each participating state will ensure that personnel serving with its armed forces, as well as paramilitary and security forces where these are used as part of the armed forces, are able to enjoy and exercise within the framework of the relevant constitutional and legal provisions their human rights and fundamental freedoms, as reflected in CSCE provisions and international law, in conformity with the conditions and requirements of service. They will ensure appropriate procedures to protect the rights of members of the armed forces.

A participating state has the duty, in conformity with international law, to refrain from training, arming, equipping, financing, supplying or otherwise encouraging, supporting and aiding irregular forces using violence on the territory of another participating state.

A participating state has the duty, following relevant commitments of the CSCE, to refrain from encouraging, supporting, aiding or protecting irregular forces using violence on its own territory.

Participating states will be held accountable for any derogation from these duties.

Neither such responsibility of the participating state nor the personal responsibility of each member of irregular forces under international and national law for illegal acts committed by them can be abdicated, nor their liability denied or limited by internal law.

PART V: USE OF ARMED FORCES

Application of International Law and other International Commitments

The participating states reaffirm that applicable provisions of international humanitarian law must be observed in armed conflicts and during any other actions involving armed forces, paramilitary and security forces, as well as irregular forces.

- The participating states will ensure, therefore, that their armed forces are staffed, manned, trained and equipped in accordance with relevant international instruments governing the conduct of war, and that personnel are aware of those instruments and their collective and individual rights and responsibilities under them.
- The participating states will also ensure that armed forces undertake their duties, as institutions and individuals, in conformity with international instruments, including CSCE provisions in respect of the Human Dimension.
- The participating states will ensure that the military doctrine of their armed forces is in conformity with the relevant principles of this Code.

Internal Security

The participating states recognise that there is a need to establish common standards on the use of armed forces for internal security and related activities. The participating states will therefore:

- ensure that, when permanently assigning part of their armed forces to internal security missions, their duties and missions will be performed under the effective control of political and judicial authorities,
- ensure that the domestic use of armed forces, as well as paramilitary and security forces, is subject to the rule of law, both domestic and international, and commensurate with the needs of enforcement, and in particular that armed forces, as well as paramilitary and security forces, use force only when strictly necessary and only to the extent required for the performance of their duty and according to legal procedures,
- consider measures in the appropriate CSCE fora for the provision of information on the use of armed forces, as well as paramilitary and security forces, for internal purposes. Such information could include the size, organisation, role and objectives as well as the activities of such forces, including their duration.

Human Rights and Civil Rights

The participating states will not use armed forces to limit the peaceful and lawful exercise of their human rights by individuals or by groups, including persons belonging to minorities. *Inter alia*, they will not:

- use force or acts of coercion to deprive people of their national, religious, cultural, linguistic or ethnic identity,
- use armed forces to modify internal limits or boundaries or to displace populations without their consent and without legitimate reasons.

Neither will the participating states use armed forces to limit the peaceful exercise of their civil rights by their people and, in particular, the right of individuals or political organisations, including those representing national minorities, to advocate constitutional change by peaceful and legal means.

The participating states will not use or encourage violence against such individuals or organisations. Conversely the participating states will protect individuals, populations, groups or national minorities against acts of violence.

PART VI: OBSERVANCE AND MONITORING

The text of this Code will be published in each participating state, which will disseminate it and make it known as widely as possible to the public as well as to national legislatures.

The participating states recognise that each of them is accountable to all others for progress on the implementation of this Code. Accordingly:

- each participating state will be entitled to obtain timely clarification from any other participating state concerning implementation. Communications in this context will, if appropriate, be transmitted to all the other participating states,
- the participating states will review the implementation of this Code on a regular basis in the CSCE Forum for Security Cooperation.

The participating states will promptly, upon the request of any participating state and in close consultation with one another, seek to establish the facts in relation to possible breaches of this Code, including the identification of states responsible for such breaches, and will take appropriate action. The participating states will use existing CSCE procedures and institutions for such purposes and, *inter alia*, will consider the possibility of extending the mandates for CSCE fact-finding missions to explore apparent breaches.

Without prejudice to the above provisions or to existing provisions of international law, the participating states will identify individuals responsible for breaches of humanitarian law or gross violations of human rights and will take all necessary measures to ensure the prosecution of such individuals.

The participating states recognise the importance of ensuring that all of them foster in their relations with non-participating states respect for the principles and provisions of this Code and of promoting the adoption by the non-participating states of such principles and provisions.

PART VII: CONCLUDING SECTION

This Code, which is politically binding, shall enter into effect on ...

... is requested to transmit this Code to ... and to the Secretary-General of the United Nations.

This Code will have unlimited duration unless amended or ended by the consensus of the participating states. The participating states will review the provisions of this Code in the Special Committee of the CSCE Forum for Security Cooperation on ... and every ... thereafter. In addition to the provisions of paragraphs ... above, any participating state may request

ANNEX 5

PROPOSAL SUBMITTED BY AUSTRIA AND HUNGARY ON A "CSCE CODE OF CONDUCT GOVERNING THE BEHAVIOUR OF THE PARTICIPATING STATES TOWARDS EACH OTHER AND OF GOVERNMENTS TOWARDS THEIR CITIZENS" (CSCE/FSC/SC.22 of 15 September 1993)

PREAMBLE / INTRODUCTION

The participating states of the Conference on Security and Cooperation in Europe (CSCE),

Reaffirming their approach based on their comprehensive concept of security and their conviction that security is indivisible,

Reaffirming the validity of the guiding principles and common values of the Helsinki Final Act, the Charter of Paris and the Helsinki Document 1992, embodying responsibilities of states towards each other and of governments towards their people,

Recalling that all the principles, in particular those of the Helsinki Final Act, are of primary significance and confirming accordingly that they will apply them equally and unreservedly, each of them being interpreted taking into account the others,

Recognising that the new political and security environment in the CSCE area characterised by their joint commitment to pluralistic democracy, respect for human rights and fundamental freedoms, including the rights of national minorities, the rule of law, economic liberty, social justice and environmental responsibility requires the establishment among themselves of new security relations based upon cooperative and common approaches to security,

Convinced of the need to strengthen the pluralistic and democratic nature of the new order of relations in the CSCE area,

Recognising the need to seek new means to promote stability in the CSCE area as a whole, within regions, and within states,

Acknowledging that this new situation demands a greater precision in, and elaboration of new norms for the behaviour of states towards one another, for control and use of armed forces and for the internal behaviour of Governments,

Emphasising that full implementation and strict observance of all commitments undertaken in the CSCE are a matter of direct and legitimate concern to all of them and that they remain accountable to each other for complying fully with them,

Stressing their determination to act in solidarity whenever CSCE norms and commitments are not respected,

Determined to give concerted responses to the security challenges they are facing through common assessment of one another's intentions, policies and behaviour in the field of security, and

Aiming to further strengthen, by complementing existing internationally recognised principles and commitments, the set of norms and guidelines governing their international and domestic behaviour on all aspects of security,

Have decided upon the following CSCE Code of Conduct:

PART I: GENERAL CONCEPTS GUIDING SECURITY RELATIONS AMONG PARTICIPATING STATES

Comprehensive concept of security

The participating states reaffirm their approach based on their comprehensive concept of security as initiated in the Helsinki Final Act. They further believe that the need to respond adequately to the new challenges, complex in nature, and to manage change in the CSCE area highlights the increased validity of this approach.

This concept relates political and military components of security to respect for human rights and fundamental freedoms. It links economic and environmental solidarity and cooperation with peaceful inter-state relations.

Cooperative security

The participating states recognise that this new era of cooperation and partnership based on common values has made it possible and the new challenges they are confronted with have made it a pressing need to establish a comprehensive security framework reflecting their cooperative approach to security. This security framework is to be composed of a whole variety of elements ranging from European and transatlantic organisations and institutions to multilateral and bilateral undertakings as well as various forms of regional and sub-regional cooperation. In this context the participating states emphasise the need to ensure that the elements of such a comprehensive security framework are complementary.

The participating states stress the need to ensure that the evolution of the constituents of this framework leads to a cooperative security system of interlocking and mutually reinforcing institutions and arrangements.

Indivisibility of security

The participating states recognise that security is indivisible and that the security of each of them is inextricably linked to the security of all others.

They commit themselves to respect the legitimate security interests of every other participating state, on the basis of sovereign equality between states.

In their common efforts to strengthen security and stability in the CSCE area the participating states will ensure that the security of any of them is not adversely affected.

Each participating state will not, therefore, pursue its own security interests at the expense of the legitimate security interests of other participating states. In doing so, they will consider the implications that their actions may have on the security of others.

Sovereign rights of states in the field of security

Bearing in mind the indivisibility of security, each of the participating states determines its security interests itself and has the right freely to choose its own security arrangements, ensuring that they are compatible with the principles of the United Nations and the values and objectives of the CSCE.

The participating states recall that, as provided for in the Helsinki Final Act, each participating state has the sovereign right to decide whether or not to belong to international organisations, and whether to be or not to be a party to bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality.

Such a decision will be respected by all the participating states.

Solidarity

The participating states, in full conformity with their conviction that security is indivisible, will express and practice solidarity with states clearly exposed to direct security threats. They will, in particular, practice solidarity with a participating state subjected to an armed aggression and seeking assistance in the realisation of its right to self-defence.

Sufficiency

The participating states reaffirm their commitment to maintain only such military capabilities as are commensurate with common or individual legitimate security needs within the CSCE area and beyond.

They determine those capabilities on the basis of national democratic procedures, in accordance with their obligations under international law, taking into account legitimate security concerns of other states, in particular those of their neighbours.

Regional and transfrontier cooperation

The participating states reiterate their conviction that the various regional cooperation activities among participating states contribute positively to the promotion of CSCE principles and objectives as well as the implementation and development of CSCE commitments. They consider all such forms of cooperation, based on sovereign equality and mutual interests of states and being in full conformity with the objectives and principles of the United Nations Charter and the CSCE, as integral and important components of the evolving cooperative European security system.

The participating states will, bearing in mind the crucial role good neighbourly relations play in strengthening stability in the various regions and in Europe as a whole, further encourage and promote, both bilaterally and, as appropriate, multilaterally, including through initiatives in European and other international organisations, transfrontier cooperation between territorial communities or authorities, involving border areas of two and more participating states, with the aim of promoting friendly relations between states.

They stress that such forms of cooperation should be as comprehensive as possible, promoting increased contacts at all levels, including contacts among persons sharing a common origin, cultural heritage or religious belief.

PART II: GENERAL PRINCIPLES AND COMMITMENTS GUIDING SECURITY RELATIONS AMONG PARTICIPATING STATES

SECTION I: GENERAL PRINCIPLES AND COMMITMENTS

Sovereignty and territorial integrity

The participating states reaffirm their respect for each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every state to juridical equality, to territorial integrity and to freedom and political independence in accordance with relevant international norms and principles.

Self-determination

The participating states, in accordance with the Helsinki Final Act and other CSCE documents, reaffirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law. They also confirm that all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

Refraining from the threat or use of force

The participating states recall their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States contained in the Helsinki Final Act.

The participating states, conscious that increased cooperation in all spheres of their relations is the best guarantee for lasting peace and stability in the CSCE area, express their determination to expand and strengthen cooperation, friendly and good neighbourly relations among them.

Peaceful settlement of disputes

Emphasising their obligation to refrain from the threat or use of force as a means of settling disputes, the participating states confirm that disputes among them will be settled exclusively by peaceful means.

They reiterate, in this context, their conviction that full implementation of all CSCE principles and commitments constitutes in itself an essential element in preventing disputes among them.

Should disputes arise among them, the participating states commit themselves to make extensive use of the variety of existing dispute settlement mechanisms and procedures developed both within and outside the CSCE. Bearing in mind the important role a comprehensive and coherent set of dispute settlement measures may play in the CSCE area's stability and security, they will endeavour to strengthen and develop further the existing instruments and procedures including, *inter alia*, the mandatory involvement of an impartial third party. The participating states are open to any initiative aiming at the creation of long-term conditions for maintaining and strengthening security of their region, even if it is limited to a special part of the CSCE area.

Right to self-defence

The participating states reaffirm the inherent right of individual and collective self-defence if an armed attack occurs, as recognised in the Charter of the United Nations.

Inadmissibility of territorial acquisition by the threat or use of force

No participating state will attempt to occupy or acquire territory by the threat or use of force in contravention of the Charter of the United Nations and the CSCE principles. The participating states will not recognise such occupations or acquisitions.

Opposition to terrorism and subversion

The participating states reaffirm their commitment not to support terrorist acts in any way and will take resolute measures to prevent and combat terrorism in all forms.

The participating states will not sponsor or provide support on or outside their territories for terrorists engaged, *inter alia*, in the subversion of legitimate governments of other states or in illegal activities against the citizens of other states.

Borders

The participating states reaffirm the principle of inviolability of borders as embodied in the Helsinki Final Act, including its application to inherited borders of recently admitted CSCE participating states. The participating states will not attempt, therefore, to change borders by force or advocate such change by force. The participating states will not recognise such changes.

The participating states equally recognise that borders may be changed, in accordance with international law, by peaceful means and by agreement, as enshrined in the Helsinki Final Act. Such changes must come about after prior democratic consultations of the populations concerned, and must be accompanied by appropriate provisions to protect populations which, as a consequence of such changes, become minorities.

Peaceful evolution of states

The participating states will respect and encourage peaceful evolution in the constitutions of all participating states in accordance with international law and the Principles laid down in this Code and the democratic wishes of the people. Within a state, political organisations, including those representing national minorities, have the right, so long as they do not use or encourage recourse to violent means, to advocate whatever constitutional changes they consider appropriate.

Stationing of forces

No participating state will station its armed forces on the territory of another participating state without that state's explicit and free consent. Forces stationed on the territory of another participating state will be withdrawn if such consent is withdrawn or otherwise invalidated.

This obligation does not affect in any way the prerogatives of the Security Council as established in Chapter VII of the Charter of the United Nations.

Fulfilment in good faith of obligations

The participating states reaffirm their commitment enshrined in the Helsinki Final Act to fulfil in good faith all the obligations and commitments they have entered into. They commit themselves, in particular, to implement all the provisions contained in the various CSCE documents. They will ensure that their internal laws and regulations are in conformity with their CSCE commitments.

SECTION II: COMMITMENTS WITH RESPECT TO THE DIFFERENT ASPECTS OF SECURITY

Human dimension

The participating states, bearing in mind their comprehensive approach to security, reconfirm that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law represent a fundamental basis for security and stability within and among all participating states. They reiterate their conviction that the protection and promotion of all these rights and the strengthening of democratic institutions is one of the basic purposes of government and their recognition constitutes the foundation of freedom, justice and peace.

They confirm that issues concerning human rights and fundamental freedoms, as well as their compliance with the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all of them and consequently do not constitute exclusively an internal affair of the state concerned.

The participating states note that many of the present challenges and tensions in the CSCE area they are facing are linked to the failure to observe CSCE principles and commitments with respect to the human dimension. They consider violations of international humanitarian law and CSCE principles and commitments such as "ethnic cleansing" or mass deportation as well as various manifestations of aggressive nationalism, xenophobia, anti-Semitism, racism and other violations of human rights as phenomena that endanger the maintenance of peace, security and democracy which will not be tolerated by the CSCE community.

The participating states reaffirm therefore their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society. They reconfirm their enduring commitment to implement fully all provisions of the Helsinki Final Act and other CSCE documents relating to the human dimension and to ensure that they are guaranteed for all without distinction of any kind. They recognise the compelling need to enhance substantially the international monitoring of compliance with CSCE principles and commitments with regard to the human dimension. Stressing the crucial role of the human dimension of the CSCE in longer-term conflict prevention, they emphasise that in their efforts to prevent, manage and settle conflicts peacefully early identification of root causes of tensions and of all problems related to human rights and fundamental freedoms is of vital

importance. In this regard they commit themselves to utilise and further elaborate and refine the CSCE's human dimension mechanisms for early warning on potentially dangerous situations.

The participating states regard the increasing problem of refugees and displaced persons as an issue of major concern to all of them which, potentially, may threaten their security. In accordance with the principle of solidarity and aiming to maintain and strengthen stability in the CSCE area, they undertake to cooperate closely, with the aim of sharing the common burden resulting from the refugee problem. They also recognise the need to ensure that the inalienable human rights of migrant workers lawfully residing in the participating states are respected and consequently will take resolute action against the perpetrators of any act of violence and discrimination against them.

The participating states reiterate their conviction that the active involvement of persons, groups, organisations and institutions is essential to ensure that their efforts to build a lasting peaceful and democratic order and to manage the process of change will be successful. In this context they affirm that they will strive for establishing closer cooperation with non-governmental organisations which through their dual role, their influence in building social conscience and their monitoring function, contribute to a large extent to fuller implementation of human dimension commitments. They further recognise that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

Arms control, disarmament and confidence- and security-building

The participating states reaffirm that they will implement in full all their obligations arising from existing arms control, disarmament and confidence- and security-building agreements and documents. They regard each of these agreements and documents as an indispensable element of indivisible security.

They also reaffirm their commitment to pursue further such negotiations with a view to the maintenance and establishment of stability throughout the whole CSCE area, as well as an adequate balance of forces in specific regions thereof.

They are committed to promote the full implementation of these measures and regimes, even in crisis situations, and to foster their role in conflict prevention.

Regional agreements based on the above-mentioned principles, concluded in the framework of the CSCE, will be welcome as contributions to the security of all.

The participating states will regard breaches of obligations under arms control and disarmament agreements including regional agreements, in particular those breaches which may constitute a threat to security, as a source of concern for all.

They will in particular consult in such cases to help to avert or resolve disputes between them and to avoid use of force, each of the interested states agreeing to give any required clarifications. They will take advantage of CSCE bodies established for such purposes.

Conscious of the potential threat the proliferation of weapons of mass destruction as well as of nuclear materials and other sensitive goods, technologies and expertise related to the production and possession of weapons of mass destruction poses to their security, the participating states reaffirm their commitment to cooperate in strengthening and supporting non-proliferation agreements and other multilateral export control regimes aimed at preventing their proliferation. They will therefore take all necessary steps to become parties to and comply with all the existing multilateral non-proliferation agreements and regimes.

The participating states also reaffirm their commitment to exercise and promote due restraint in arms transfers and the transfer of sensitive military know-how. They equally undertake to prevent, through appropriate legislation, illegal arms transfers.

Economic cooperation

The participating states express their conviction that increased economic cooperation among them has a crucial role to play in strengthening security and stability in the CSCE area. They recognise that the more their economies are intertwined and the stronger their market economies become the more their democracies will be strengthened and, thus, the more enduringly peace and stability in the entire area will be guaranteed. The establishment of closer economic ties among them bringing about close interdependence reinforces the vital interests of participating states in maintaining peace and strengthening stability, and is, therefore, the best guarantee for security and for the realisation of indivisibility of security.

Accumulating economic difficulties and economic decline generate social tension and unrest entailing the threat of the emergence of aggressive nationalism, intolerance, xenophobia and ethnic tensions which may lead to conflict within and between states. These instabilities, posing a special threat to the peaceful and democratic development of society, in particular in those participating states which are engaged in the process of transition to and development of democracy and a market economy, represent a fundamental challenge to the whole CSCE community.

Conscious of the relationship between economic development and economic welfare and democracy and stability, the participating states will intensify their economic cooperation. Bearing in mind their common objective of consolidating democracy and strengthening stability, they commit themselves to intensify their efforts to help economies in transition through increased market access within the framework of their overall endeavour to further promote their economic cooperation. They will take concrete steps to facilitate the integration of the economies in transition into the international economic and financial system and to prevent the creation of new divisions.

The participating states stress the social and economic importance of the conversion of military production to civilian purposes. Conscious of the social, economic and human problems the carrying out of such a programme raises, they undertake to cooperate with interested participating states.

Environment

Conscious of the impact environmental protection and their environmental policy have on their security and on their friendly and good-neighbourly relations and recognising the need for preventive action,

the participating states will further strengthen their cooperation and intensify efforts aimed at protecting and improving the environment, bearing in mind the need to restore and maintain a sound ecological balance in air, water and soil. Conscious that the preservation of the environment is a shared responsibility of all of them, they feel the pressing need for joint action in order that practices that may cause irreversible damage to the environment be discontinued.

They will do this by, *inter alia*, developing their internal legislation, including integration of environmental protection in other policies and in the economic decision-making process, and their cooperation, including transfer of technologies and expertise as well as intensification of assistance programmes necessary for efficient environmental protection. They will also take concrete steps to further develop efficient systems for monitoring and evaluating compliance with existing environmental commitments.

The participating states stress the need to ensure effectively the safety of all nuclear installations. They will cooperate closely in this regard, in order to protect the population and the environment from nuclear catastrophes. They also commit themselves to take all steps necessary to reduce the risk of defence-related hazards.

PART III: PRINCIPLES AND COMMITMENTS RELATING TO INTERNAL ASPECTS OF SECURITY

SECTION I: RIGHTS OF NATIONAL MINORITIES

The participating states reaffirm that full respect for the rights of national minorities is an essential factor for peace, justice, stability and democracy and that problems related to them represent a major challenge to the entire CSCE community and thus, at a time of promise but also a time of instability and insecurity in which various manifestations of aggressive nationalism, xenophobia, anti-Semitism, racism and other violations of human rights are present, have gained a clearly identifiable security dimension. They confirm that issues concerning national minorities, as well as compliance with international obligations and commitments concerning their rights, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective state. They realise that non-compliance with all the obligations and commitments they have undertaken in this regard, and depriving national minorities of the free exercise of their rights, pose a special threat to security within and between states and thus to the stability of the whole CSCE area.

Conscious of the close relationship between the development of democracy and the way national minorities are treated and their rights are respected, the participating states reaffirm that questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, in consultation and cooperation with freely elected representatives of national minorities. They reiterate their deep conviction that friendly relations among their peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created. Such measures, which take into account, *inter*

alia, historical and territorial circumstances of national minorities, are particularly important in areas where democratic institutions are being consolidated and national minority issues are of special concern.

They commit themselves therefore to create the necessary conditions for national minorities freely to express, preserve and develop their identity, to maintain their culture in all aspects, free of any attempts at assimilation against their will and to establish and maintain unimpeded contacts within and across frontiers, in particular with those with whom they share a common ethnic or national origin. In this regard they reaffirm the right of national minorities to establish and maintain their own educational, cultural and religious institutions, organisations and associations. They reiterate that safeguards for the right of national minorities, including local or other forms of autonomy where appropriate, must be ensured and the democratically expressed will of a national minority to establish specific forms of autonomy must be respected. In this context they recall their commitment to refrain from resettling and condemn all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories.

The participating states regard national minorities as a factor of enrichment of each respective state and society that links rather than separates them and contributes to the establishment and maintenance of stable, friendly and good-neighbourly relations among them. With a view to improving the situation of national minorities, they reiterate that special efforts must be made to resolve specific problems in a constructive manner through dialogue, promoting mutual understanding and confidence, *inter alia* by making extensive use of the offices of the High Commissioner on National Minorities or through any other appropriate means. The participating states will endeavour to integrate their efforts into a coherent system.

The participating states reaffirm their commitment to implement in a prompt and faithful manner all their CSCE commitments regarding national minorities. They will also fully respect their undertakings under existing human rights conventions and other relevant international instruments regarding questions relating to national minorities and will adhere to the relevant conventions if they have not yet done so, including those providing for a right of complaint by individuals. They will intensify unilateral, bilateral and multilateral efforts to explore further avenues for their more effective implementation.

They emphasise, however, that it is not only governments who have responsibilities. National and ethnic communities should themselves recognise their interest in living together peacefully and in a democratic political framework. This is the best way for them to achieve opportunities for economic and social progress and to ensure the political independence of the state they share.

SECTION II: DEMOCRATIC POLITICAL CONTROL OF ARMED FORCES

The participating states recognise that democratic political control of armed forces is an essential element for the maintenance and promotion of stability and security in the CSCE area as a whole, within regions and within states.

The participating states will ensure at all times effective direction and control of their military and paramilitary forces, internal security and intelligence services, and the police, by their constitutional authorities vested with democratic legitimacy. They will equally ensure that all these armed forces and

services for which they are accountable, observe the constitution. They will provide for their parliaments' budgetary approval of defence expenditures and provide for transparency of the defence budget.

The participating states will ensure that all such forces, organised by constitutional authorities, and their members as individuals, act at all times within the rule of law and are legally accountable for their actions, and therefore the participating states are resolved to make all necessary legal and administrative provisions to ensure that their armed forces act solely within the framework of their lawful tasks. All such forces must be politically neutral in national life and, *inter alia*, must not serve the interests of particular groupings or ideological systems. If such forces usurp political control in any participating state, the participating states will consider it as a source of concern for all.

Each participating state will not allow and not support the creation on its territory of any such armed force or service that is not accountable to its constitutional authorities and will refrain from supporting irregular forces in any form on its own territory or that of another participating state.

In case of a state of public emergency, which may only be limited in time and proclaimed in accordance with provisions laid down by law, no derogation from international obligations and commitments, including the provisions set forth in this Code, will be permitted. When a participating state declares a state of public emergency, it will immediately provide detailed information to all other participating states of this decision.

Each participating state will ensure that the recruitment of personnel for service in such forces conforms with international obligations and commitments in respect of human rights and fundamental freedoms and that personnel serving with such forces are able to enjoy and exercise these rights in conformity with the conditions and requirements of service. They will embody in legislation or other appropriate documents the rights and duties of members of the armed forces and also further consider the right to refuse to render military service on grounds of conscientious objection.

Participating states will be held accountable for any derogation from these duties. Neither such responsibility of the participating state nor the personal responsibility of each member of their military and paramilitary forces, internal security and intelligence services, and the police under international and national law for illegal acts committed by them can be abdicated, nor their liability denied or limited by internal law.

SECTION III: USE OF ARMED FORCES

The participating states will not use their military and paramilitary forces, internal security and intelligence services, and the police to limit the peaceful and lawful exercise of their human rights by individuals or by groups, including national minorities. *Inter alia*, they will not use force or acts of coercion to deprive people of their national, religious, cultural, linguistic or ethnic identity or use such forces to modify internal limits or boundaries or to displace populations without their consent.

Neither will the participating states use such forces to limit the peaceful exercise of their civil rights by their people and, in particular, the right of individuals or political organisations, including those representing national minorities, to advocate constitutional change by peaceful and legal means.

The participating states will not use or encourage violence against such individuals or organisations. Conversely the participating states will protect individuals, populations, groups or national minorities against acts of violence.

The participating states reaffirm that applicable provisions of international humanitarian law must be observed in armed conflicts and during any other actions involving any of the forces mentioned above.

The participating states will ensure that their armed forces are staffed, manned, trained and equipped in accordance with relevant international instruments governing the conduct of war, and that personnel are aware of those instruments and their collective and individual rights and responsibilities under them.

The participating states will also ensure that their military and paramilitary forces, internal security and intelligence services, and the police undertake their duties, as institutions and individuals, in conformity with international instruments, including CSCE provisions in respect of the human dimension.

The participating states will ensure that the military doctrine of their armed forces is in conformity with the relevant principles of this Code.

The participating states recognise that there is a need to establish common standards on the use of armed forces for internal security and related activities. They will ensure that the domestic use of armed forces, as well as paramilitary and security forces, is subject to the rule of law, both domestic and international, and commensurate with the needs of enforcement, and in particular that armed forces, as well as paramilitary and internal security forces, use force only when strictly necessary and only to the extent required for the performance of their duty and according to legal procedures. They will consider measures for the provision of information on their use for internal purposes.

PART IV: EARLY WARNING, CONFLICT PREVENTION AND CRISIS MANAGEMENT AND THE PEACEFUL SETTLEMENT OF DISPUTES

The participating states reaffirm their commitment to consult and cooperate in situations of potential conflict and stress the undiminished validity of CSCE commitments at all times, including during periods of conflict taking into account relevant principles of international law.

They will make use of regular, political consultations in order to cooperate and avoid the development of potential conflicts. They will thus develop a dialogue on issues regarding their security policies and concerns.

They reaffirm existing undertakings in respect of conflict prevention, crisis management and the peaceful settlement of disputes as well as existing commitments to use CSCE or other relevant mechanisms in these areas.

They will have the right to raise any concern regarding behaviour and situations which they consider as potentially threatening the stability or the territorial integrity of any of them.

The participating states recognise that the potential sources of conflict which threaten security and stability in the CSCE area require new efforts in the area of conflict prevention, crisis management and peaceful settlement of disputes and they will therefore cooperate fully in the appropriate CSCE fora in order to strengthen existing arrangements in these areas as well as to develop new ones where appropriate.

The participating states will support and cooperate fully with CSCE missions and peacekeeping operations. They will, in particular, permit, support and cooperate with missions and peacekeeping operations on their territory mandated by the CSCE, as well as use best efforts to provide assistance – material, personnel and financial – to such missions and operations.

The participating states will endeavour to establish close cooperation with United Nations peacekeeping operations and other related United Nations missions. They reaffirm the CSCE's availability and readiness to work with the United Nations in preventing and settling conflicts in accordance with Chapter VIII of the Charter of the United Nations.

The participating states, reiterating their vision on cooperative security, reaffirm that close cooperation between the CSCE and European and transatlantic organisations capable of offering appropriate resources for peacekeeping activities is of vital importance. With the aim of establishing such a cooperation they express their determination to take appropriate steps urgently.

The participating states will promptly consult among each other on possibilities for concerted action in defence of human rights and the rule of law, in case of conflict.

The participating states will support humanitarian actions aimed at alleviating suffering among civilian populations as well as refugees and providing them with basic needs in areas of crisis and conflict.

They will facilitate the effective implementation of humanitarian actions ensuring the free circulation of personnel and resources dedicated to such tasks.

PART V: IMPLEMENTATION MECHANISM

[Text to be developed on the basis of CSCE/FSC/SC.17, submitted on 5 May 1993]

PART VI: CONCLUDING SECTION

This Code, which is politically binding, will enter into effect on ...

... is requested to transmit this Code to ... and to the Secretary-General of the United Nations.

This Code will have unlimited duration unless amended or terminated by the consensus of the participating states. The participating states will review the provisions of this Code in the Special Committee of the CSCE Forum for Security Cooperation on ... and every ... thereafter. In addition to the provisions of paragraphs ... above, any participating state may request ...

ANNEX 6

PROPOSAL SUBMITTED BY TURKEY ON A "CODE OF CONDUCT GOVERNING THE MUTUAL RELATIONS OF THE CSCE PARTICIPATING STATES IN THE FIELD OF SECURITY" (CSCE/FSC/SC.8 of 16 December 1992)

PREAMBLE

The participating states of the CSCE,

Determined to enhance stability and security in Europe through the strengthening of the CSCE principles,

Resolved to equally and unreservedly apply all the principles and provisions of the Helsinki Final Act, the Charter of Paris for a New Europe, the Helsinki Document 1992 and of all the other CSCE documents,

Determined to protect and strengthen democracy as the only system of government of their nations,

Conscious of the need to give further expression to the cooperative approach to security,

Committed to the indivisibility of security and undertaking not to pursue their own security interests at the expense of the security interests of other participating states,

Equally resolved to work with a view to countering and eliminating all violations of the CSCE principles regardless of whether they originate from the conduct of states, governments, organisations, or other entities,

Guided by the comprehensive concept of security of the CSCE,

Have adopted the following Code of Conduct governing their mutual relations in the field of security:

SECTION I: GENERAL CONDITIONS FOR PROMOTING PEACE, STABILITY, SECURITY AND COOPERATION

Article 1

The participating states recognise that the preservation of peace and stability should be given the highest priority in order to provide the essential precondition for safeguarding the inherent right of human beings to live in freedom, under democratic governments based on the will of the people, and the primacy of the rule of law regardless of ethnic, religious, cultural, linguistic and racial differences.

The participating states condemn, as criminal, any attempts and acts against the sovereignty and territorial integrity of states and the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations and the CSCE.

They reaffirm the inviolability of borders and reiterate that frontiers can only change in accordance with international law, through peaceful means and by agreement.

Article 2

The participating states are committed to strengthening the pluralistic and democratic nature of the new security order in the CSCE area. They recognise that economic decline, social tension, aggressive nationalism, intolerance, racism, xenophobia and ethnic conflicts pose the greatest threat to this goal, and that gross violations in the field of human rights and fundamental freedoms jeopardise the peaceful development of societies. They will therefore adopt, adjust and implement domestic and foreign policies in such a way as to counter effectively those threats and closely cooperate with each other to that end.

Article 3

The participating states will uphold and promote democracy, human rights and the rule of law under all circumstances and at all times. They will ensure that the free will of all the people, including those of national minorities, within their constitutional and internationally recognised boundaries is expressed regularly through free and fair elections.

The participating states will not recognise as legitimate any Government which has come to office through usurpation of power and as a result of the violation of the constitution of the country.

Article 4

In order to meet the challenges of this new era of cooperation, the participating states will take effective steps to translate into life the spirit of the Charter of Paris for a New Europe. Those steps should be reflected in the daily life and behaviour within the participating states and relations between them. In particular, national legislation, government programmes, foreign policy documents, official press and media statements as well as military doctrines of all states shall be consistent with CSCE principles and the present Document.

Article 5

With a view to further promoting friendship among their people, the participating states undertake to work actively for the elimination of approaches to education which advocate or tolerate discrimination on racial, ethnic, religious, linguistic, cultural and historical grounds, or ideologies encouraging hostile feelings against peoples of different ethnic origin, particularly among the young generations.

Article 6

In order to promote the application of dispute settlement, crisis management and conflict prevention mechanisms of the CSCE and to obtain just and viable results, the participating states will actively cooperate with a view to helping the parties concerned to generate the will and desire to put into use available mechanisms, with their free choice.

SECTION II: NORMS OF CONDUCT WITH DIRECT EFFECT ON MUTUAL RELATIONS

Article 7

The participating states reiterate their resolve to fulfil in good faith their obligations under international law, including those arising from treaties and other international agreements. All such documents, including the politically binding documents agreed in the CSCE, will be applied with a view to enhancing and promoting dialogue, cooperation, disarmament and confidence- and security-building.

Article 8

The participating states will fulfil all obligations or commitments arising from disarmament, arms control and confidence- and security-building instruments concluded within or outside the CSCE framework. They consider the degree of compliance with obligations as a concrete yardstick in the field of military/political conduct. They will also base their military doctrines, defence postures, force deployments and arms procurement programmes on objective criteria which would emphasise their increasingly defensive character.

Article 9

The participating states will also adhere, and if they have not already done so, become parties to international arms control and disarmament treaties concluded within the United Nations framework. They will also cooperate closely with a view to furthering disarmament efforts worldwide, including the strengthening of United Nations arms control and disarmament fora by encouraging wider participation therein.

Article 10

The participating states will, at all times, be guided by the principle of full respect for the legitimate security needs of each other. They will especially refrain from irresponsible and excessive armaments transfers to regions where the security of a CSCE participating state will be adversely affected. Armaments transfers for the sole purpose of obtaining economic benefits are hereby declared as irresponsible behaviour and, therefore, a breach of this code of conduct.

Article 11

Notwithstanding the right of states to freely choose their own security arrangements, the participating states will undertake not to conclude treaties or agreements, or enter into security arrangements with any state, aimed at adversely affecting the security of other participating states. This includes, *inter alia*, transfers of armaments, expertise, technology and financial assistance.

They will not act as brokers and intermediaries or provide transit access for such purposes. Individual or joint action taken in the exercise of the right of self-defence or under a relevant CSCE or United Nations decision is outside the scope of this Article.

Article 12

The participating states will fully cooperate with each other, as stipulated in the CSCE documents, against the threat of terrorist and subversive activities. They will review their domestic laws and regulations with a view to denying all political, financial, material and moral support to such activities.

They will also cooperate, as stipulated in the CSCE documents, against illicit trafficking of arms and drugs. Involvement in such activities is considered as a serious breach of this code.

Article 13

In the important field of the environment, the participating states acknowledge that non-compliance with international commitments, including those stemming from the CSCE documents, constitutes a breach of this code.

SECTION III: ACCOUNTABILITY OF STATES TOWARDS EACH OTHER BY VIRTUE OF THEIR HUMAN DIMENSION COMMITMENTS

Article 14

The participating states will observe fully their responsibilities arising from the human dimension of the CSCE, especially the provisions of the Charter of Paris, Copenhagen and Moscow Documents and the Helsinki Document 1992. They will cooperate in order to establish the conditions conducive to the development and consolidation of pluralistic democratic institutions, including free media in their countries.

Article 15

With regard to persons belonging to national minorities, the participating states will implement in a prompt and faithful manner all their CSCE commitments, including those contained in the Geneva Report of Experts on National Minorities.

Article 16

The participating states will fulfil their obligations regarding migrant workers and their families also in a prompt and faithful manner and take all legal and administrative measures to that end.

They will take all appropriate measures to provide effective protection to foreigners against violence.

Article 17

The participating states will take all legal and administrative measures against organisations, groups or communities which utilise force, coercion, terrorism and other violent and undemocratic means aiming to change the democratic constitutional order of any participating state and ban the activities of those groups which advocate, support or condone such methods.

They will also prevent the activities of organisations and groups established with the aim of bringing about changes in the social and constitutional structures on the basis of totalitarian ideologies, racism, aggressive nationalism and religious fundamentalism which are incompatible with democracy.

Article 18

The participating states will ensure that functions, responsibilities and activities of armed groups, militia and paramilitary forces are fully controlled by the constitutional authorities in accordance with relevant legislation and that neither the establishment of such groups nor their activities against populations or other participating states will be tolerated.

They shall exercise control in accordance with law over the possession of all kinds of weapons, explosives and firearms with the aim of denying their use by unauthorised individuals or groups.

Article 19

The participating states will ensure that the establishment, structure and functioning of armed forces, internal security forces and law enforcement agencies are constitutional and legal, and that they undertake their duties, as institutions and individuals, in conformity with CSCE Human Dimension commitments, including the provisions of the Moscow and the Helsinki 1992 Documents.

Article 20

The participating states agree on the necessity of maintaining at all times political control and authority as well as the auditing of democratically elected legitimate civilian governments over all military and paramilitary forces as well as internal security, intelligence services and other law enforcement institutions. They will therefore take all constitutional, legal and administrative measures to that end.

Article 21

The participating states will refrain from using armed forces or undertaking acts of coercion to deprive people of their national, religious, cultural, linguistic or ethnic identity. States have a duty to refrain from acts of reprisal involving the use of force and to protect the populations, groups or national minorities against such acts.

SECTION IV: COOPERATION WITH REGARD TO CRISIS SITUATIONS

Article 22

The participating states will seek effective ways of preventing, through political means, conflicts that may emerge among themselves or within their territories. They reaffirm their existing undertakings on conflict prevention, crisis management, peaceful settlement of disputes and commitments to use CSCE mechanisms. In this connection, they emphasise the importance of maintaining a process of consultations during times of crisis. They also commit themselves to cooperate with CSCE and international efforts to keep peace.

They will refrain from organising, inciting, supporting or participating in acts of domestic strife or conflict in another participating state. Regardless of their links with the population involved in a domestic conflict, they will seek and encourage peaceful resolution of the conflicts and crises. Any attempt by third parties to influence, coerce, encourage, manipulate, intimidate or affect in similar ways the parties involved by use or threat of force is an aggravating and destabilising act, and a serious breach of this code. The exercise of rights arising from international treaties, as well as actions in accordance with CSCE or United Nations resolutions, is outside the scope of this provision.

Article 23

The participating states undertake to give further effect to the CSCE crisis management and conflict prevention mechanisms in times of conflict. They accept, however, the supremacy of the inherent right of states to individual or collective self-defence in the event of an armed attack, as set forth in the Charter of the United Nations. In the event of armed attack against the territorial integrity of a participating state, all CSCE participating states will act in solidarity with the victim of the aggression. All CSCE and United Nations sanctions, including embargoes, will be fully respected and implemented.

Article 24

The participating states will cooperate with each other with the aim of containing and preventing the spread of an internal conflict in accordance with the requirements and requests of the democratically elected legitimate government of the state concerned.

SECTION V: OTHER PROVISIONS

Article 25

This Code of Conduct will be politically binding and implemented together with the Helsinki Final Act, the Charter of Paris, the Helsinki Document 1992 and all other documents of the CSCE. It does not in any way prejudice existing international norms and principles.

Article 26

Japan and non-participating Mediterranean states which have a special relationship with the CSCE will have the right to ask for the application of provisions of this Code, on the basis of reciprocity, to the relations between them and the CSCE community. Such requests will be dealt with in the Special Committee of the Forum for Security Cooperation and agreed by consensus.

Article 27

This Code, done in the six official languages of the CSCE, shall be transmitted to the Secretary-General of the United Nations for circulation to all United Nations members.

ANNEX 7

PROPOSAL SUBMITTED BY AUSTRIA, HUNGARY AND POLAND CONCERNING "IMPLEMENTATION PROVISIONS FOR A CODE OF CONDUCT" (CSCE/FSC/SC.17 of 5 May 1993)

Ensuring full compliance of the CSCE participating states with the normative provisions of a code of conduct governing their mutual relations in the field of security will be a prerequisite for its effectiveness and thus for the maintenance of stability and security in the CSCE area. As is the case with other CSCE commitments, violations of its provisions constitute a source of concern.

The following implementation provisions bear similarity to existing CSCE procedures and mechanisms but are adapted to the specific needs of enhanced security through cooperative approaches. They are without prejudice to the right of participating states to raise any subject they deem appropriate at any moment in the appropriate CSCE fora. Nor will these provisions affect the continued validity of specific existing implementation procedures or mechanisms.

I.

1. Any participating state may address a request for clarification to another participating state (other participating states) whose compliance with provisions of the code of conduct is in doubt.

The requested state(s) will provide within 10 days written information in order to clarify the situation giving rise to the request.

The request and the reply(ies) will be transmitted to all other participating states without delay.

2.1. Should the doubts about the compliance with provisions of the code of conduct persist, any participating state may ask the requested state(s) to give a full explanation at a meeting of ...* as soon as possible, but not later than two weeks following this request.

2.2. Alternatively to 2.1, any participating state, with the support of nine participating states, may address to the Chairman-in-Office a request for the establishment of a rapporteur mission. The mission will be established by the Chairman-in-Office within 10 days of the request. When establishing the mission the Chairman-in-Office will take due account of the qualification and impartiality of the mission members. The costs of the mission will be borne by the requesting states. The requested state will fully cooperate with the mission.

A report will be submitted to the Chairman-in-Office within 10 days upon completion of the mission. The report will be distributed among all participating states and discussed at the next meeting of the ...*.

* CPC Consultative Committee or CSO Vienna Group, pending decisions by the Rome Council meeting.

3. A meeting held under the provisions of 2.1 or 2.2 may recommend a course of action to remedy a situation resulting from a violation of the provisions of the code of conduct, if necessary, in the absence of the consent of the state(s) which should implement this recommendation.

The issue will be kept under review. If the requested state(s) does (do) not comply with the recommendations, the CSO will be informed and will take at its next regular meeting appropriate decisions, if necessary, in the absence of the consent of the state(s) concerned.

II.

In case of a serious emergency situation resulting from a violation of basic norms in the field of security the "CSCE mechanism for consultation and cooperation with regard to emergency situations" applies. The provisions under Chapter I are not construed as obligatory steps preceding the application of the aforementioned emergency mechanism.

However, paragraph 2.13 of this mechanism (Annex 2 of the Summary of Conclusions of the Berlin Meeting of the CSCE Council) will be amended as follows:

In the light of the assessment of the situation the Committee of Senior Officials may agree on recommendations or conclusions to arrive at a solution, if necessary in the absence of the consent of the state(s) concerned. It may also decide to convene a meeting at ministerial level, if necessary in the absence of the consent of the state(s) concerned.

If the recommendations of the CSO or the Council of Ministers are not complied with, it may be decided, if necessary in the absence of the consent of the state(s) concerned, to bring to the attention of the UN Security Council that a situation endangering the maintenance of international peace and security has arisen and ask the Security Council to take the appropriate action.

This course of action would not inhibit further CSCE contributions to a peaceful solution.

ANNEX 8

PROPOSAL SUBMITTED BY HUNGARY ON THE "DEMOCRATIC POLITICAL CONTROL OF THE ARMED FORCES AND OF THEIR USE" (CSCE/FSC/SC.25 of 23 February 1994)

(1) The participating states recognise that democratic political control of the armed forces and of their use is an essential factor for the consolidation, preservation and promotion of democracy, stability and security in the CSCE area as a whole, within regions and within states.

I. DEMOCRATIC POLITICAL CONTROL OF THE ARMED FORCES

(2) The participating states will provide guidance for, and ensure at all times effective control of, their military and paramilitary forces, internal security and intelligence services, and the police (herein referred to as the armed forces) by their constitutional authorities vested with democratic legitimacy. To this end, they will:

(2.1) ensure that national laws and practices conform to international norms regarding the control of the armed forces and their activities;

(2.2) ensure that the armed forces for which they are accountable observe the constitution and national and international law, respect human rights and act solely within their legal framework;

(2.3) ensure that internal regulations of the armed forces are in harmony with national laws relating to the armed forces and the civil society, as well as with international norms;

(2.4) ensure that their national law incorporates the conditions for the use of the armed forces, specifying all circumstances in which such forces may be used, and stipulating the responsibility and obligations of persons having the right to decide on their use;

(2.5) ensure that their democratically elected legislative bodies exercise, in accordance with national law, control over the armed forces and over the governmental authorities to whom the armed forces are answerable. In this context, they will ensure, *inter alia*, that the armed forces, as well as the governmental authorities exercising control over them, are accountable to the legislative bodies;

(2.6) ensure the political neutrality of the armed forces, and that, *inter alia*, they do not serve the interests of any particular group;

(2.7) seek to ensure that members of the armed forces act at all times within the rule of law, and ensure their responsibility and accountability as individuals for their actions;

(2.8) provide for transparency at both the national and international levels regarding their defence policy, military doctrines and budgets, and their decision-making procedures in military matters;

(2.9) ensure that no armed force not accountable to the constitutional authorities is organised or operates on or from within their territories. All forces, including irregular forces, not controlled by constitutional authorities shall be disbanded. In accordance with international law, no participating state will train, arm, equip, finance, supply or otherwise encourage, support or aid any armed forces, including irregular forces, using or threatening to use force on the territory of another participating state;

(2.10) ensure that all cases of illegal acts involving members of the armed forces are referred for prosecution to courts under civilian control;

(2.11) ensure that members of the armed forces are free to profess and practice their personal religion or belief;

(2.12) ensure that in the event of the declaration of a state of public emergency, which shall be limited in time and declared in accordance with provisions laid down by law, no derogation from international obligations and commitments is permitted. They will immediately provide detailed information to all other participating states when a state of public emergency is declared;

(2.13) ensure that all other participating states are immediately informed in the event that the armed forces usurp political control or violate internationally recognised democratic norms. They will jointly consider the ways and means by which democratic political control over such forces can be restored.

(3) The responsibility for any derogation from these obligations rests with the government of the participating state in question. Neither such responsibility of the participating states nor personal responsibility and accountability under international and national law for illegal acts committed by any member of the armed forces, whether or not such forces are under the control of the participating state in question, can be disavowed, nor may such responsibilities be denied or limited under internal statutory provisions.

II. RECRUITMENT AND TRAINING OF PERSONNEL OF THE ARMED FORCES

(4) The participating states, through their legislation and practices regarding the recruitment of personnel for service in the armed forces, will ensure that:

(4.1) personnel recruitment procedures are in accordance with international obligations and commitments in respect of human rights and fundamental freedoms;

(4.2) consideration is given to the right of individuals to refuse to perform military service on grounds of conscientious objection.

(5) The participating states, through their legislation and practices regarding the training of and service by personnel of the armed forces, will ensure that:

(5.1) the internal regulations of the armed forces are in harmony with the requirements of a defensive

military doctrine and the armed forces are not trained for use against any particular state or for use against their own citizens;

(5.2) members of the armed forces, in particular officers and non-commissioned officers, are familiar with the relevant international instruments governing the conduct of war, as well as with the relevant provisions of CSCE documents and with their collective and individual rights, obligations and responsibilities under such instruments and documents;

(5.3) personnel serving with the armed forces enjoy and are able to exercise their rights, in particular those relating to the human dimension, taking into account the conditions and requirements of service.

III. THE USE OF THE ARMED FORCES

A. The internal use of the armed forces for the defence of the democratic order

(6) The participating states recognise that there is a need to establish common standards on the use of the armed forces for internal security and related tasks. In this context, they will ensure that:

(6.1) the use of the armed forces within their own territory is subject to the rule of law;

(6.2) decisions on the use of the armed forces for the defence of the democratic order within the state are taken only by civilian authorities and in accordance with national law;

(6.3) the armed forces are used only when strictly necessary and only to the extent required for the restoration of the lawful democratic order and according to legal procedures, avoiding as far as possible any harmful effect on civilians or on their property. For the restoration of democratic order within a state only armed forces specially trained for this purpose will be used. The armed forces will not be used for reprisals;

(6.4) those who, empowered by the constitution or the basic national law, take specific decisions on the internal use of the armed forces are held accountable. Commanders and members of the armed forces carrying out such operations will be individually responsible and accountable for their actions;

(6.5) the armed forces are not used to restrict the peaceful and lawful exercise of human rights by individuals or groups, including national minorities. Participating states will not, *inter alia*, use force or coercion to deprive persons of their national, religious, cultural, linguistic or ethnic identity, to change internal boundaries or to displace populations without their consent;

(6.6) the armed forces are not used to restrict either the peaceful exercise by the population of their civil rights or the right of individuals or political organisations, including those representing national minorities, to advocate constitutional changes by peaceful and lawful means;

(6.7) applicable provisions of international humanitarian law are observed in armed conflicts and during any other actions involving the armed forces.

(7) If the civil authorities of any participating state are not able to restore the democratic order, that state will, as its primary resort, use police and internal security forces for that purpose. Participating states are encouraged to provide information to all other participating states in such cases.

(8) Military force will be used within a state only for the protection of the civilian population and the restoration of the legal democratic order, following a decision of the constitutional authorities empowered to take such a decision, and as a last resort should the police and the internal security forces prove to be inadequate for those tasks. Participating states will, without delay, provide detailed information to all other participating states on the use of such forces, specifying their size, organisation, role, objectives and activities.

B. Use of military forces against outside aggression

(9) The participating states:

(9.1) will adopt no military doctrine that is not defensive in nature or not in conformity with the purposes and principles of the United Nations and the principles and commitments of the CSCE;

(9.2) will use their military forces to oppose an outside aggression only following a decision of their constitutional authorities;

(9.3) will ensure that their military forces are staffed, manned, trained and equipped in accordance with the international instruments governing the conduct of war;

(9.4) will ensure that, in the event of war or any other armed conflict, their military forces comply strictly with all the provisions of the relevant international instruments governing the conduct of war and with international humanitarian law and, in particular, refrain from committing acts of cruelty or barbarity and from damaging or destroying non-military property.

C. International use of military and police forces for peacekeeping tasks under the aegis of the United Nations or the CSCE

[To be completed]

ANNEX 9

WORKING DOCUMENT SUBMITTED BY FRANCE REGARDING THE STRUCTURE OF A CODE OF CONDUCT (CSCE/FSC/SC/B.2 of 3 June 1993)

The purpose of this document is to recall the structure of the proposal made in document SC.7 of 16 December 1992 [tabled by the European Community and other participating states] and to identify possible areas of convergence between delegations as regards the structure of the Code of Conduct.

I. PREAMBLE

This should: (1) spell out the context (new security environment in Europe); (2) state the overall objectives of the Code (to promote stability within the CSCE area); and (3) reaffirm fundamental principles such as confirmation of the existing norms and respect for human rights and the rights of minorities.

II. GENERAL PRINCIPLES OF THE CODE

Following the Preamble, this initial part should:

1. recall the most directly relevant principles,
2. emphasising their applicability *erga omnes*, and
3. spell out the content of these principles, some of which derive from the Charter of the United Nations and/or the Helsinki Final Act.

In the opinion of the 15 countries co-sponsoring the proposal made in document SC.7, this body of principles should focus on:

1. the non-use of force;
2. borders;
3. security obligations.

III. COMMITMENTS

The commitments derive from the general principles recalled in the Code and correspond to the "responsible and cooperative norms of behaviour on politico-military aspects of security" (Helsinki Document 1992, section 12 of the Programme for Immediate Action).

In the opinion of the 15 co-sponsoring countries, the Code should contain undertakings in three areas:

1. arms control and disarmament (for example, full implementation of the existing agreements and treaties, and procedures for transparency about arms transfers);

2. conflict prevention and crisis resolution (for example, the commitment to consult and cooperate in situations of potential crisis and to use the existing CSCE mechanisms);
3. peacekeeping (the field of application of the commitments would be twofold: within the CSCE framework and within the context of cooperation with United Nations missions).

IV. DEMOCRATIC POLITICAL CONTROL OF ARMED FORCES

The purpose of this section is to guarantee the principle of the control of armed forces by the political authorities.

This section contains:

1. general principles (for example, the democratic nature of the control of armed forces by the political authorities and the neutrality of armed forces);
2. commitments (for example, the subordination of armed forces to the constitutional authorities; the legal accountability of armed forces for their actions; the laying down of rights and obligations with regard to military service).

V. USE OF ARMED FORCES

The purpose of this section is to affirm the necessary conformity in the use of armed forces with the principles and commitments enshrined in the Code.

These provisions relate, *inter alia*, to:

1. the operational organisation of armed forces (compatibility with the Code of the doctrines governing their use);
2. the conformity of the use of force with international humanitarian law;
3. the need to specify principles and commitments regarding the use of armed forces, including their use internally within states.

VI. OBSERVATION AND MONITORING

The purpose of this section is twofold:

1. to specify the procedures for publicising the Code and spell out the responsibility of states and individuals in the event of non-observance of the principles and commitments set forth in the Code;
2. to ensure that the observance and application of the Code are monitored and verified.

VII. CONCLUDING SECTION

The politically binding nature of the Code will be affirmed here.

ANNEX 10

UNITED NATIONS "CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS" ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY (Resolution 34/169 of 17 December 1979)

The General Assembly,

Considering that the purposes proclaimed in the Charter of the United Nations include the achievement of international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling, in particular, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Mindful that the nature of the functions of law enforcement in the defence of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as of society as a whole,

Conscious of the important task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights,

Aware, nevertheless, of the potential for abuse which the exercise of such duties entails,

Recognising that the establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests,

Aware that there are additional important principles and prerequisites for the humane performance of law enforcement functions, namely:

(a) That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole,

(b) That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws,

(c) That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system,

(d) That every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency,

(e) That standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement official,

Adopts the Code of Conduct for Law Enforcement Officials set forth in the annex to the present resolution and decides to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

Annex. Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

*Commentary*²⁷¹:

(a) The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

²⁷¹ The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different states or regional intergovernmental organisations which would promote the application of the Code.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibition under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary :

(a) This provision emphasises that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorised to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorise the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary :

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary :

This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which : "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]".

(a) The Declaration defines torture as follows: " ... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners".

(b) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary :

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary :

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violation of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary :

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

ANNEX 11

"DECLARATION ON THE POLICE" ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (Resolution 690 of 8 May 1979)

The Assembly,

1. Considering that the full exercise of human rights and fundamental freedoms, guaranteed by the European Convention on Human Rights and other national and international instruments, has as a necessary basis the existence of a peaceful society which enjoys the advantages of order and public safety;
2. Considering that, in this respect, police play a vital role in all the member states, that they are frequently called upon to intervene in conditions which are dangerous for their members, and that their duties are made yet more difficult if the rules of conduct of their members are not sufficiently precisely defined;
3. Being of the opinion that it is inappropriate for those who have committed violations of human rights whilst members of police forces, or those who have belonged to any police force that has been disbanded on account of inhumane practices, to be employed as policemen;
4. Being of the opinion that the European system for the protection of human rights would be improved if there were generally accepted rules concerning the professional ethics of the police which take account of the principles of human rights and fundamental freedoms;
5. Considering that it is desirable that police officers have the active moral and physical support of the community they are serving;
6. Considering that police officers should enjoy status and rights comparable to those of members of the civil service;
7. Believing that it may be desirable to lay down guidelines for the behaviour of police officers in case of war and other emergency situations, and in the event of occupation by a foreign power,
8. Adopts the following Declaration on the Police, which forms an integral part of this resolution;
9. Instructs its Committee on Parliamentary and Public Relations and its Legal Affairs Committee as well as the Secretary-General of the Council of Europe to give maximum publicity to the declaration.

Appendix. Declaration on the Police

A. *Ethics*²⁷²

1. A police officer shall fulfil the duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law.
2. A police officer shall act with integrity, impartiality and dignity. In particular he shall refrain from and vigorously oppose all acts of corruption.
3. Summary executions, torture and other forms of inhuman or degrading treatment or punishment remain prohibited in all circumstances. A police officer is under an obligation to disobey or disregard any order or instruction involving such measures.
4. A police officer shall carry out orders properly issued by his hierarchical superior, but he shall refrain from carrying out any order he knows, or ought to know, is unlawful.
5. A police officer must oppose violations of the law. If immediate or irreparable and serious harm should result from permitting the violation to take place he shall take immediate action, to the best of his ability.
6. If no immediate or irreparable and serious harm is threatened, he must endeavour to avert the consequences of this violation, or its repetition, by reporting the matter to his superiors. If no results are obtained in that way he may report to higher authority.
7. No criminal or disciplinary action shall be taken against a police officer who has refused to carry out an unlawful order.
8. A police officer shall not cooperate in the tracing, arresting, guarding or conveying of persons who, while not being suspected of having committed an illegal act, are searched for, detained or prosecuted because of their race, religion or political belief.
9. A police officer shall be personally liable for his own acts and for acts of commission or omission he has ordered and which are unlawful.
10. There shall be a clear chain of command. It should always be possible to determine which superior may be ultimately responsible for acts or omissions of a police officer.
11. Legislation must provide for a system of legal guarantees and remedies against any damage resulting from police activities.

²⁷² Parts A and B of the declaration cover all individuals and organisations, including such bodies as secret services, military police forces, armed forces or militias performing police duties, that are responsible for enforcing the law, investigating offences, and maintaining public order and state security.

12. In performing his duties, a police officer shall use all necessary determination to achieve an aim which is legally required or allowed, but he may never use more force than is reasonable.

13. Police officers shall receive clear and precise instructions as to the manner and circumstances in which they should make use of arms.

14. A police officer having the custody of a person needing medical attention shall secure such attention by medical personnel and, if necessary, take measures for the preservation of the life and health of this person. He shall follow the instructions of doctors and other competent medical workers when they place a detainee under medical care.

15. A police officer shall keep secret all matters of a confidential nature coming to his attention, unless the performance of duty or legal provisions require otherwise.

16. A police officer who complies with the provisions of this declaration is entitled to the active moral and physical support of the community he is serving.

B. *Status*

1. Police forces are public services created by law, which shall have the responsibility of maintaining and enforcing the law.

2. Any citizen may join the police forces if he satisfies the relevant conditions.

3. A police officer shall receive thorough general training, professional training and in-service training, as well as appropriate instruction in social problems, democratic freedoms, human rights and in particular the European Convention on Human Rights.

4 . The professional, psychological and material conditions under which a police officer must perform his duties shall be such as to protect his integrity, impartiality and dignity.

5. A police officer is entitled to a fair remuneration, and special factors are to be taken into account, such as greater risks and responsibilities and more irregular working schedules.

6. Police officers shall have the choice of whether to set up professional organisations, join them and play an active part therein. They may also play an active part in other organisations.

7. A police professional organisation, provided it is representative shall have the right:

- to take part in negotiations concerning the professional status of police officers;
- to be consulted on the administration of police units;
- to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer.

8. Membership of a police professional organisation and playing an active part therein shall not be detrimental to any police officer.

9 . In case of disciplinary or penal proceedings taken against him, a police officer has the right to be heard and to be defended by a lawyer. The decision shall be taken within a reasonable time. He shall also be able to avail himself of the assistance of a professional organisation to which he belongs.

10. A police officer against whom a disciplinary measure has been taken or penal sanction imposed shall have the right of appeal to an independent and impartial body or court.

11. The rights of a police officer before courts or tribunals shall be the same as those of any other citizen.

*C. War and other emergency situations – occupation by a foreign power*²⁷³

1. A police officer shall continue to perform his tasks of protecting persons and property during war and enemy occupation in the interests of the civilian population. For that reason he shall not have the status of “combatant”, and the provisions of the Third Geneva Convention of 12 August 1949, relative to the treatment of prisoners of war, shall not apply.

2. The provisions of the Fourth Geneva Convention of 12 August 1949, relative to the protection of civilian persons in time of war, apply to the civilian police.

3 . The occupying power shall not order police officers to perform tasks other than those mentioned in Article 1 of this chapter.

4 . During occupation a police officer shall not:

- take part in measures against members of resistance movements;
- take part in applying measures designed to employ the population for military purposes and for guarding military installations.

5. If a police officer resigns during enemy occupation because he is forced to execute illegitimate orders of the occupying power which are contrary to the interests of the civilian population, such as those listed above, and because he sees no other way out, he shall be reintegrated into the police force as soon as the occupation is over without losing any of the rights or benefits he would have enjoyed if he had stayed in the police force.

6 . Neither during nor after the occupation may any penal or disciplinary sanction be imposed on a police officer for having executed in good faith an order of an authority regarded as competent, where the execution of such an order was normally the duty of the police force.

7. The occupying power shall not take any disciplinary or judicial action against police officers by reason of the execution, prior to the occupation, of orders given by the competent authorities.

²⁷³ This chapter does not apply to the military police.

ANNEX 12

RECOMMENDATION 1402 (1999) ON "CONTROL OF INTERNAL SERVICES IN COUNCIL OF EUROPE MEMBER STATES" ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE on 26 April 1999

1. The Assembly recognises that internal security services perform a valuable service to democratic societies in protecting national security and the free order of the democratic state.

2. However, the Assembly is concerned that member countries' internal security services often put the interests of what they perceive as those of national security and their country above respect for the rights of the individual. Since, in addition, internal security services are often inadequately controlled, there is a high risk of abuse of power and violations of human rights, unless legislative and constitutional safeguards are provided.

3. The Assembly finds this situation potentially dangerous. While internal security services should be empowered to fulfil their legitimate objective of protecting national security and the free order of a democratic state against clear and present dangers, they should not be given a free hand to violate fundamental rights and freedoms.

4. Instead, a careful balance should be struck between the right of a democratic society to national security and individual human rights. Some human rights (such as the right to be protected from torture or inhuman treatment) are absolute, and should never be interfered with by state authorities, including internal security services. In other cases, however, which right should have priority – the individual human right or the right of a democratic society to national security – will have to be established using the principles of proportionality and legality, as laid down in the European Convention on Human Rights.

5. The risk of abuse of powers by internal security services, and thus the risk of serious human rights violations, rises when internal security services are organised in a specific fashion, when they wield certain powers such as preventive and enforcement methods which involve forcible means (for example the power to search private property, run criminal investigations, arrest and detain), when they are inadequately controlled (by the executive, legislative and the judiciary), and also when there are too many of them.

6. The Assembly thus proposes that internal security services should not be allowed to run criminal investigations, arrest or detain people, nor should they be involved in the fight against organised crime, except in very specific cases, when organised crime poses a clear danger to the free order of a democratic state. Any interference of operational activities of internal security services with the exercise of human rights and fundamental freedoms as protected in the European Convention on Human Rights should be authorised by law, and preferably by a judge, before the activity is carried out. Effective democratic control of the internal security services, both a priori and ex post facto, by all three branches of power, is especially vital in this regard.

7. The Assembly considers it necessary that each individual country provide efficiently for its own internal security requirements while ensuring proper avenues of control in conformity with a uniform democratic standard. This common standard should ensure that internal security services act only in the national interest, fully respecting fundamental freedoms, and cannot be used as a means of oppression or undue pressure.

8. Thus, the Assembly recommends that the Committee of Ministers draw up a framework convention on internal security services incorporating the guidelines below which form an integral part of this recommendation.

Guidelines

A. As regards the organisation of internal security services

i. All internal security services must be organised and must operate on a statutory basis, that is on the basis of national laws which have gone through the normal law-making process in parliament, and which are completely public.

ii. The sole task of the internal security services must be to protect national security. Protecting national security is defined as combating clear and present dangers to the democratic order of the state and its society. Economic objectives, or the fight against organised crime per se, should not be extended to the internal security services. They should only deal with economic objectives or organised crime when they present a clear and present danger to national security.

iii. The executive must not be allowed to extend objectives to the internal security services. These objectives should instead be laid down by law, to be interpreted by the judiciary in case of conflicting interpretations (and not by successive governments). Internal security services should not be used as a political tool to oppress political parties, national minorities, religious groups or other particular groups of the population.

iv. Internal security services should preferably not be organised within a military structure. Nor should civilian security services be organised in a military or semi-military way.

v. Member states should not resort to non-governmental financing sources to support their internal security services, but finance them exclusively from the state budget. The budgets submitted to parliament for approval should be detailed and explicit.

B. As regards the operational activities of internal security services

i. Internal security services must respect the European Convention on Human Rights.

ii. Any interference by operational activities of internal security services with the European Convention on Human Rights must be authorised by law. Telephone tapping, mechanical or technical, aural and visual surveillance, and other operational measures carrying a high risk of interference with the rights of the individual should be subject to special a priori authorisations by the judiciary. Legislation should normally

establish parameters which are to be taken into consideration by judges or magistrates, who should be available for prior authorisations 24 hours a day so that the demand for authorisation can be processed within a few hours (maximum), before they authorise operational activities such as house searches. These parameters should include as minimum requirements for authorisation that:

a. there is probable cause for belief that an individual is committing, has committed, or is about to commit an offence;

b. there is probable cause for belief that particular communications or specific proof concerning that offence will be obtained through the proposed interception or house searches, or that (in the case of arrest) a crime can thus be prevented;

c. normal investigative procedures have been attempted but have failed or appear unlikely to succeed or be too dangerous.

The authorisation to undertake this kind of operative activity should be time-limited (to a maximum of three months). Once observation or wire-tapping has ended, the person concerned should be informed of the measure taken.

iii. Internal security services should not be authorised to carry out law-enforcement tasks such as criminal investigations, arrests, or detention. Due to the high risk of abuse of these powers, and to avoid duplication of traditional police activities, such powers should be exclusive to other law-enforcement agencies.

C. As regards effective democratic control of the internal security services

i. The executive should exercise ex post facto control of the activities of the internal security services, for example by obliging the internal security services to draw up and submit annual detailed reports on their activities. One minister should be assigned the political responsibility for controlling and supervising internal security services, and his office should have full access in order to make possible effective day-to-day control. The minister should address an annual report to parliament on the activities of internal security services.

ii. The legislature should pass clear and adequate laws putting the internal security services on a statutory basis, regulating which kind of operational activities carrying a high risk of violation of individual rights may be used in which circumstances, and providing for adequate safeguards against abuse. It should also strictly control the services' budget, *inter alia* by obliging these services to submit to it annual detailed reports on how their budget is used, and should set up special select control committees.

iii. The judiciary should be authorised to exercise extensive a priori and ex post facto control, including prior authorisation to carry out certain activities with a high potential to infringe upon human rights. The overriding principle for ex post facto control should be that persons who feel that their rights have been violated by acts (or omissions) of security organs should in general be able to seek redress before courts of law or other judicial bodies. These courts should have jurisdiction to determine whether the actions complained of were within the powers and functions of the internal security services as established by law. Thus, the court should have the right to determine whether there was undue harassment of the individual or abuse of discretionary administrative powers in his or her regard.

iv. Other bodies (for example ombudsmen and data protection commissioners) should be allowed to exercise ex post facto control of the security services on a case-by-case basis.

v. Individuals should be given a general right of access to information gathered and stored by the internal security service(s), with exceptions to this right in the interest of national security clearly defined by law. It would also be desirable that all disputes concerning an internal security service's power to bar disclosure of information be subject to judicial review.

* Assembly debate on 26 April 1999 (9th Sitting) (see Doc. 8301, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Frunda). Text adopted by the Assembly on 26 April 1999 (9th Sitting).

INDEX TO PART I²⁷⁴

A

Accidental (or unauthorized) use of military means, safeguards against : *General Introduction* (§ 12); § 24. See also *Vienna Mechanism for consultation and co-operation as regards unusual military activities*.

Accountability of armed forces personnel under national and international law : *General Introduction* (§ 12); § 30; § 31.

Additional Protocols (1977) to the 1949 Geneva Conventions on international humanitarian law : § 29; 31; § 34.

Afghanistan : OSCE Asian "Partner for co-operation" (§ 3).

Aggressor State, non assistance or support to an : *General Introduction* (§ 7); § 8.

Albania : collapse of (§ 5); and democratic control of armed forces (*Introduction to Section VII n 131*).

Algeria : OSCE "Mediterranean Partner for co-operation" (§ 3).

Alliances, right of States to belong or not to belong to : § 11.

Annual Assessment Implementation Meetings (AIAM) : § 36; § 38.

Anti-personnel landmines : *Introduction to Section V (n 115)*.

Armed forces : accountability of armed forces personnel under national and international law (*General Introduction*, § 12; § 30; § 31); transparency of and public access to information related to – (§ 13; § 22); stationing of armed forces on foreign territory (§ 14; § 38); integration of the – with civil society (§ 20); control and accountability of (§ 22); political neutrality of – (§ 23); overthrow by - of a legitimately elected government (§ 23); usurpation of political control by – (§ 23); irregular - (§ 25);

²⁷⁴ Main references are related to specific paragraphs of the *Commentary*; other references concern the General Introduction to the *Commentary* and Introductions to Sections of the latter.

rights and duties of the personnel of – (§ 28; § 31); dissemination of international humanitarian law within - (§ 29); instruction of - in international humanitarian law (§ 30); unlawful orders to – (§ 31); commandment, manning, training and equipment of – in accordance with the norms and prescriptions of international humanitarian law (§ 29, § 34, § 35); assignment of internal security missions to – (§ 36); domestic use of armed forces (§ 37, § 38). See also, *Intelligence services, Internal security forces, Paramilitary forces, Police forces*.

Arms control and disarmament : *General Introduction* (§ 7, 14); § 2; § 15; § 16.

Arms trafficking : *General Introduction* (§ 4).

Arms transfers : *Introduction to Section V* (n 115); § 16.

Austria : and servicemen's right to association (§ 28).

Austria, joint proposals of - with Hungary on : a Code of Conduct (*General Introduction, § 4*); title of Code of Conduct (n 35); economic/environmental dimension of security (n 36); the Code of Conduct's rationale (2nd paragraph of the Preamble); interlocking institutions (§ 4); solidarity principle (§ 5 n 75); terrorism (§ 6 n 83); commensurability of military capabilities with individual or collective security needs (§ 12 n 102); stationing of armed forces on foreign territory (§ 14); peacekeeping (§ 18); democratic control of armed forces (§ 20); usurpation of political control by armed forces (§ 21, § 23); democratic control of armed forces' rationale (§ 21 n 144); intelligence services and the police (§ 21 n 147 and n 148); political neutrality of armed forces (§ 23 n 157); usurpation of political control by armed forces (§ 23 n 159); irregular armed forces (§ 25 n 164); conscientious objection (§ 28 n 175); state of public emergency (§ 36 n 204); national minorities (§ 37); peaceful evolution of States (§ 37); prohibition of forceful resettlement of populations (§ 37 n 221); prohibition of modification by force of internal boundaries (§ 37 n 221).

Austria, joint proposals of - with Hungary and Poland : follow-up arrangements to the Code of Conduct (*General Introduction, § 4; § 38*).

Azerbaijan : and Nagorno-Karabakh (§ 14); and servicemen's right to association (§ 28). See also *GUAM countries*.

B

Baltic States : 5th paragraph of the Preamble (n 49); § 14.

Belarus : § 15 of *General Introduction* (1 15, n 29); § 38.

Belgium : and the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3, n 3).

Berlin Mechanism for consultation and co-operation with regard to emergency situations (1990) : § 38.

Bishkek Conference on Strengthening Comprehensive Efforts to Counter Terrorism in Central Asia (2001) : § 6.

Boundaries, internal – see *Prohibition of modification by force of internal boundaries*.

Bucharest Plan of Action for Combating Terrorism (2001) : § 6.

Border guards : *General Introduction* (§ 14); § 20.

Bosnia and Herzegovina : § 4; § 18; § 31; § 42.

Budapest Decisions 1994 : *General Introduction* (§ 5); 5th paragraph of the Preamble; § 4.

Budapest Document 1994 ("Towards a Genuine Partnership in a New Era") : 5th paragraph of the preamble (n 49); § 39.

Budapest Review Meeting (1994) : *General Introduction* (§ 5).

Budapest Summit Declaration (1994) : *General Introduction* (§ 5, n 15); 5th paragraph (n 49); *Introduction to Section II* (n 81).

Bulgaria : and co-sponsorship of the French-German initial proposal for a Code of Conduct *General Introduction* (§ 3, n 3).

C

Call-up of armed forces personnel in accordance with human rights obligations : § 27; § 38.

Canada : and co-sponsorship of European Union's draft proposal for a Code of Conduct (*General Introduction*, § 4, n 3) ; and trial Questionnaire on the Code of Conduct (§ 38).

Caucasus States : democratic military transition in the – (§ 42).

Central Asian States : democratic military transition in the – (§ 42).

CFE-1A Agreement (Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Force in Europe, 1992) : § 15.

CFE Treaty (Treaty on Conventional Armed Force in Europe, 1992) : § 12; §13; § 15.

Charter on Fundamental Rights of the European Union (2000) : § 28.

Charter of Paris for a New Europe (1990) : *General Introduction* (§ 7); 4th paragraph of the Preamble; § 3; § 10, § 10, N 96; *Introduction to Section II* (n 81).

Charter of the European Union on Fundamental Rights (2000) : § 28 n 176.

Charter of the United Nations : 3rd paragraph of the Preamble; § 8; § 9; § 11; § 12; § 14, § 39, n 256.

Chechnya : *General Introduction* (§ 15); § 36.

Chemical Weapons Convention (1993) : § 15; *Introduction to Section V* (n 115).

Citizens in uniform : § 14 of *Introduction*; § 28.

Civil authorities – see *Constitutionally established authorities vested with democratic legitimacy*.

Code of Conduct on Politico-Military Aspects of Security : controversial issues in the drafting process of the (*General Introduction*, § 5; § 4 n 67; § 14 n 106); innovative provisions of the (*General Introduction*, § 7; 5 n 80; § 12 n 100); Netherlands and need for a "*Manual*" on the (*General Introduction*, 17 n 34); (2nd paragraph of the Preamble); and undiminished status of existing international law principles (3rd paragraph of the Preamble); and undiminished status of existing OSCE commitments (4th paragraph of the Preamble); inter-State norms of the (*General Introduction*, § 6 ; § 1 to § 19); intra-State norms of the (*General Introduction*, § 6 ; § 20 to § 37); implementation arrangements and final clauses of the (§ 38 to § 42); date of entry into force of the (§ 39); politically binding nature of the (§ 39); reflection of the commitments of the – in national defense legislation and national documents, procedures or legal instruments (§ 41); publication and dissemination of the – at national level (§ 42); training Seminars on the – (§ 42); translation of the – in national language (§ 42).

Code of Conduct for Law Enforcement Officials (1979) – see *United Nations*.

Commandment of armed forces personnel in accordance with international humanitarian law obligations : *General Introduction*, § 12; § 29; § 34; § 35.

Commensurability of domestic use of force with the needs for enforcement : § 9 of *Introduction*; § 36.

Commensurability of military capabilities with individual or collective security needs : § 12; § 13; 36.

Common Foreign and Defense Policy (CFSP) : *General Introduction* (§ 4).

Common Security : § 3, § 4 n 62;

Commonwealth of Independent States (CIS) : § 4 n 68.

Comprehensive security : *General Introduction* (§ 5, § 7); 2nd paragraph of the Preamble, § 2, § 3, § 4.

Concluding Document of the Madrid Follow-up Meeting (1983) : *Introduction to Section II* (n 81).

Concluding Document of the Vienna Follow-Up Meeting (1989) : *Introduction to Section II* (n 81); § 38.

Conflict management and/or prevention : *General Introduction* (§ 7); § 2; § 17, § 18; § 19.

Conflict Prevention Centre : § 41; § 42.

Conscientious objection to military service : § 27, § 28.

Conscripts : rights and duties of – : § 23; § 27; § 28; § 32; § 33; § 38; respect of the human rights and fundamental freedoms of the armed forces personnel : *General Introduction* (§ 9, § 12, § 14; § 23; § 27; § 28; § 32; § 33); legal status of – in the Council of Europe area (§ 28).

Consensus minus one : § 38.

Constitutionally established authorities vested with democratic legitimacy : control of – over armed forces : *General Introduction* (§ 9, § 10, § 12); *Introduction to Section VII*; § 20; § 21; § 22, § 23; § 24; § 25; § 26.

Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954) – see *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*.

Convention on the Use of Certain Conventional Weapons (10 October 1980) : § 34.

Co-operative security : *General Introduction* (§ 7); 2nd paragraph of the preamble; § 3; § 4; § 38. See also *Indivisibility of security*.

Copenhagen Criteria (1993) of the European Union : *General Introduction* (§ 15).

Copenhagen Document on the human dimension (29 July 1990) : *Introduction to Section VII* ; § 28; § 36.

Council of Europe : "Declaration on the Police", 1979 (*General Introduction*, § 1; § 20); "European Code of Police Ethics" (§ 20); European Code of professional ethics for the armed forces" (§ 20); Parliamentary Assembly's Recommendation 1402 of 1999 on "Control of internal security services in Council of Europe member States" (*General Introduction*, § 1; § 20); legal status of conscripts in the Council of Europe area (§ 28; § 32); Parliamentary Assembly's Resolution 1166 of 1998 on human rights of conscripts (§ 28); Parliamentary Assembly's Resolution 1572 of 2002 on the right to association for members of the professional staff of the armed forces (§ 28); Parliamentary Assembly's Resolution 903 (1998) on the right to association for members of the professional staff of the armed forces (§ 28); Committee of Ministers' Recommendation No R (87) 8 on conscientious objection (§ 28 n 176); Parliamentary Assembly's Order 132 of 1997 and Recommendation 1518 of 2001 on conscientious objection (§ 28),

Croatia : disproportionate domestic use of force in (*General Introduction*, § 15); and servicemen's right to association (§ 28).

CSBM (Confidence- and Security-Building Measures) : (*General Introduction*, § 7); § 2; *Introduction to Section V* ; § 15; § 16; § 22; § 24; § 35 n 195; § 38 n 225.

CSCE (Conference on Security and Co-operation in Europe) : name change from – to OSCE (§ 39). See also OSCE.

Czech Republic : and servicemen's right to association (§ 28).

D

Dayton Framework Agreement on Peace in Bosnia and Herzegovina (1995) : § 4; § 18.

Decalogue – see *Helsinki Decalogue*.

Decision on Guidelines on an OSCE Document-Charter on European Security – see *Guidelines*.

Declaration on the Police (1979) – see *Council of Europe*.

Declaration on Principles Guiding Relations between Participating States (1975) – see *Helsinki Decalogue*.

Dedovshina : § 28.

Defense expenditures – see *Military expenditures*.

Defense planning : *General Introduction*, § 15; § 22.

Defense policy and doctrine : consistency of - with international humanitarian law and the Code of Conduct (§ 35).

Democratic control of armed forces : rationale of – (*General Introduction* § 9, § 13; § 20; § 21, § 22); shortcomings in the Code of Conduct's regime on – (*General Introduction* § 14); from the executive branch (*General Introduction* § 10; *Introduction to Section VII*; § 21 n 146); – from the legislative branch (*General Introduction* § 9, 10 and 12; § 13; *Introduction to Section VII*; § 21 n 146; § 22); – from the judiciary branch (*General Introduction* § 14); Albania and – (*Introduction to Section VII*, n 131); Huntington's distinction of "objective" or and a "subjective" type of – (*Introduction to Section VII*, n 132); absence of definition of the concept – in the Code of Conduct (§ 20); Joint US-Hungarian proposal on civilian control over military and security forces (*Introduction to Section VII*); Hungarian proposals on the – (*General Introduction*, § 4); § 20 n 136); 1991 Moscow Document provisions on – (§ 21 n 145). See also *Armed forces, Council of Europe* and *Rule of law*.

Denmark : and co-sponsorship of European Union's draft proposal for a Code of Conduct (*General Introduction*, § 4, n 3); and servicemen's right to association (§ 28).

Disarmament – see *Arms control and disarmament*.

Document on Small arms and light weapons (2000) : *Introduction to Section V* (n 115).

Document of the Stockholm Conference on CSBM and Disarmament in Europe (1986) : *Introduction to Section II* (n 81).

Domestic use of armed forces : *General Introduction* (§ 1, § 12, § 14, § 15); § 36; § 37.

Drugs trafficking : *General Introduction* (§ 4).

E

Economic and environmental dimension of security : *General Introduction* (§ 4, § 7); 2, § 4 n 67; § 14 n 106; § 17.

Equipment of armed forces personnel in accordance with international humanitarian law obligations : *General Introduction* (§ 12); § 29; § 34; § 35.

Estonia : and co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3 n 3).

Ethnic minorities : § 37 n 220.

European Code of Police Ethics – see *Council of Europe*.

European Code of Professional Ethics for the Armed Forces – see *Council of Europe*.

European Convention on Human Rights : § 20; § 28.

European Council of Conscript Organizations (ECCO) : § 28.

European Union : and the French-German initial proposal for a Code of Conduct (*General Introduction* § 3, n 3).

European Union, Charter of the – on Fundamental Rights (2000), see *Charter of the European Union on Fundamental Rights (2000)*.

"European Union plus" group of States : proposal for a Code of Conduct (*General Introduction* § 4); and title of the Code of Conduct (n 35); and the Code of Conduct's rationale (2nd paragraph of the Preamble); and terrorism (§ 6); and commensurability of

military capabilities with individual or collective security needs (§ 12 n 102); and the stationing of armed forces on foreign territory (§ 14); and the implementation of arms control and disarmament regimes in crisis situations (§ 15); and non-proliferation and arms transfers (§ 16); and peacekeeping (§ 18); and humanitarian assistance in conflict situations (§ 19); and usurpation of political control by armed forces (§ 21; § 23); and political neutrality of armed forces (§ 23 n 157); and irregular armed forces (§ 25); and Chechnya (§ 36); and state of public emergency (§ 36 n 204); and domestic use of force (§ 36 n 216); and peaceful evolution of States (§ 37 n 219); and the prohibition of modification by force of internal boundaries (§ 37 n 221); and forceful resettlement of populations (§ 37 n 221); and breaches to the Code of Conduct (§ 38); and *ad hoc* follow-up conferences on the Code of Conduct (§ 38); and compulsory exchange of information on the Code of Conduct implementation (§ 38 n 229); and review of implementation of the Code of Conduct on a regular basis (§ 38 n 242); and unlimited duration of the Code of Conduct (§ 39); and the Code of Conduct's dissemination (§ 42); and the fostering of relations with OSCE non-participating States through the Code of Conduct (§ 42 n 265).

Exchange of information on the Code of Conduct : § 38. See also *Follow-up Conferences on the implementation of the Code of Conduct*.

Executive branch, control of the – over armed forces : *General Introduction* (§ 10); *Introduction to Section VII*; § 21 n 146.

F

Finland : and servicemen's right to association (§ 28); as depositary of the Helsinki Final Act (§ 39 n 256).

Follow-up conferences on the Code of Conduct implementation : *General Introduction* (§ 17 n 34); § 23; § 26; § 36 n 200; § 38.

Forum for Security Co-operation : *General Introduction* (§ 3, § 5, § 15); 2nd paragraph of the Preamble; § 6; *Introduction to Section V* (n 115); § 11; §§ 13; § 14; § 28.

France : French pan-European security Treaty project (*General Introduction*, § 2); French-German initial proposal for a Code of Conduct (*General Introduction*, § 3); French working document on the Code of Conduct's structure (*General Introduction*, § 4); and interlocking institutions (§ 4); and servicemen's right to association (§ 28).

Free and fair elections (linkage of – with the democratic control of armed forces) : § 22; § 23; § 36.

Friendly interference, right of : § 4.

G

Geneva Conventions on international humanitarian law (12 August 1949) and their 1977 Additional Protocols : (*General Introduction*, § 1 4); § 29; § 31; § 34.

Geneva Report on National Minorities (19 July 1991) : § 1.

Germany : and the French Pan-European security Treaty project (*General Introduction*, § 2); French-German initial proposal for a Code of Conduct (*General Introduction*, § 3); and undiminished status of existing OSCE commitments with regard to the Code of Conduct (4th paragraph of the Preamble); and servicemen's right to association (§ 28); and trial Questionnaire on the Code of Conduct (§ 38).

Global Exchange of Military Information regime (1994) : *Introduction to Section V* (n 115).

Gorbachev, Mikhail : *General Introduction*, § 14 n 22); § 21; § 23; § 36.

Good faith, implementation of international law obligations in – : *General Introduction*, § 7); 3rd paragraph of the Preamble (n 44); § 1; § 15.

Greece : and co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3 n 3); and political neutrality of armed forces (§ 23).

GUAM countries (Georgia, Ukraine, Azerbaijan, Moldova) : and stationing of armed forces on foreign territory (§ 114 n 113).

Guidelines on an OSCE Document-Charter on European Security (1997), Decision on : § 3 n 57; § 10 n 96; *Introduction to Section V (n 113)*.

H

Hague Conventions of 1907 : § 34.

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954) : § 34.

Helsinki Decalogue (1975) : *General Introduction*, § 7; 3rd paragraph of the Preamble; § 7; § 8; § 11, § 38 n 225; Principle I, see *Sovereign equality States*; Principle II, see *Prohibition of use of force*; Principle V, see *Peaceful settlement of disputes*; Principle VII, *Human rights and fundamental freedoms*; Principle VIII, see *Self-determination*; Principle X, see *Good faith*.

Helsinki Decisions 1992 : 2nd and 4th paragraphs of the Preamble; § 3 n 53; § 4 n 68; § 10; § 16; § 18; § 36 n 206.

Helsinki Document 1992 ("The Challenges of Change") : 4th paragraph of the Preamble (n 45).

Helsinki Final Act (1975) : *General Introduction* (§ 1 , § 7); , 1st , 2nd , 3rd and 4th paragraph of the Preamble; § 1; § 2; § 3; *Introduction to Section II (n 81)*; § 7; § 8; § 10; § 38 n 225; § 42 n 256. *Helsinki Decalogue*.

Helsinki Follow-up Meeting (1992) : § 3 of *Introduction*.

Helsinki Summit Declaration (1992) : *General Introduction* (§ 3 n 5); 4th paragraph of the Preamble n 45; § 1; § 2 n 51; § 3 n 53; § 14 n 107; § 16; § 17; § 19.

Hinds, James E. (American Co-ordinator of the drafting process of the Code of Conduct) : *General Introduction* (§ 4, § 16).

Human dimension of security : *General Introduction* (§ 4); § 2; § 4 n 67; § 14 n 106; § 17; § 38 n 225.

Human rights and fundamental freedoms : of conscripts (*General Introduction*, § 13, §15; *Introduction to Section VII*; § 23, § 28, § 32, § 33); consistency of recruitment and call-up of conscripts with – (§ 27; § 1; § 2; § 17; § 27; 32; § 37).

Humanitarian assistance in armed conflicts : *General Introduction* (§ 7); § 5; § 19.

Hungary : and co-sponsorship of the French-German initial proposal for a Code of Conduct *General Introduction* (§ 3 n 3); 1992 proposal on democratic control and use of armed forces *General Introduction* (§ 4); § 20 n 136; 1991 joint US-Hungarian proposal on civilian control over military and security forces (*Introduction to Section VII*); and usurpation of political control by armed forces (§ 21 n 149); political neutrality of armed forces (§ 23 n 157) ; and domestic use of force (§ 36 n 216).

Hungary, joint proposals of - with Austria on : a Code of Conduct (*General Introduction*, § 4); title of Code of Conduct (n 35); economic/environmental dimension of security (n 36); the Code of Conduct's rationale (2nd paragraph of the Preamble); interlocking institutions (§ 4); solidarity principle (§ 5 n 75); terrorism (§ 6 n 83); commensurability of military capabilities with individual or collective security needs (§ 12 n 102); stationing of armed forces on foreign territory (§ 14); peacekeeping (§ 18); democratic control of armed forces (§ 20); usurpation of political control by armed forces (§ 21, § 23); democratic control of armed forces' rationale (§ 21 n 144); intelligence services and the police (§ 21 n 147 and n 148); political neutrality of armed forces (§ 23 n 157); usurpation of political control by armed forces (§ 23 n 159); irregular armed forces (§ 25 n 164); conscientious objection (§ 28 n 175); and domestic use of force (§ 36 n 216); state of public emergency (§ 36 n 204); national minorities (§ 37); peaceful evolution of States (§ 37); prohibition of forceful resettlement of populations (§ 37 n 221); prohibition of modification by force of internal boundaries (§ 37 n 221).

Hungary, joint proposals of - with Austria and Poland : follow-up arrangements to the Code of Conduct (§ 38).

Huntington, Samuel P. : *Introduction to Section VII* (n 132).

I

Iceland : co-sponsorship of European Union's draft proposal for a Code of Conduct, (*General Introduction*, § 4).

Indivisibility of security : *General Introduction* (§ 7); § 3; § 4 n 62; § 11; § 15. See also *Co-operative security*.

Interference in internal affairs – see *Friendly interference in internal affairs*.

Intelligence services : *General Introduction* (§ 14); § 20; § 21 n 147; § 36; § 38.

Interlocking institutions : *General Introduction* (§ 5); § 4; § 14 n 106.

Internal boundaries, prohibition of modification by force of : § 37.

Internal security forces : Council of Europe's Parliamentary Assembly Recommendation 1402 of 1999 on "Control of internal security services in Council of Europe member States" (§ 20); human rights and fundamental freedoms of servicemen – of (§ 32); recruitment and call-up of – (§ 38); security missions assigned to – (§ 36); democratic control of – (§ 38); role and missions of – (§ 38);

International Committee of the Red Cross (ICRC) : § 29 n 179.

International humanitarian law, subjection of armed forces to the obligations of : *General Introduction* (§ 9, § 12, § 13, § 14); *Introduction to Section VII*; § 29; § 30; § 31; § 34; § 35.

International law : the Code of Conduct and undiminished status of existing – principles (3rd paragraph of the Preamble); right of States to freely choose their security arrangements in accordance with – (§ 10); obligation of States to maintain only such military capabilities commensurate with individual or collective security needs taking into account obligations under – (§ 12); stationing of armed forces on foreign territory in accordance with – (*General Introduction*, § 5, § 8, § 15; § 4 n 67; § 5 n 80; § 9; § 12 n 100; § 14; § 38);

Iraq : § 14.

Irregular armed forces : *General Introduction* (§ 9, § 12); § 20; § 25; § 26; § 36.

Ireland : co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3 n 3).

Israel : OSCE "Mediterranean Partner for co-operation" (§ 3).

Istanbul Charter for European Security (1999) : 4th and 5th paragraphs of the Preamble; § 2; § 3 n 54; § 4, § 5, § 6, § 10, § 11, § 18, n 18; § 36 n 200; § 39.

Istanbul Summit Declaration (1999) : § 36 n 200; § 39 n 260.

Italy : and servicemen's right to association (§ 28).

J

Japan : OSCE Asian "Partner for co-operation" (§ 3).

Jordan : OSCE "Mediterranean Partner for co-operation" (§ 3).

Judiciary branch, control of the – over armed forces : § 21.

K

Kosovo conflict : § 38.

Kosovo Verification Mission (KVM) : § 18. See also *United Nations Interim Mission in Kosovo (UNMIK)*.

Kyrgyzstan : co-sponsorship of French-German initial proposal for a Code of Conduct (*General Introduction*, § 3).

L

Landmines, anti-personnel : *Introduction to Section V (n 115).*

Law Enforcement Officials, United Nations Code of Conduct for – see *United Nations*.

Legislative branch, control of the – over armed forces : *General Introduction (§ 9, 10 and 12); § 13; Introduction to Section VII; § 21 n 146; § 22.*

Lisbon Declaration on Common and Comprehensive Security Model for Europe for the Twenty-First Century (1996) : 4th paragraph of the Preamble; § 3 n 54 and 57; § 4 n 64, 66 and 72; § 5 n 76; § 6, § 8, § 10, § 11, § 12 n 101; § 14 n 113.

Luxembourg : and servicemen's right to association (§ 28).

M

Madrid, Concluding Document of the Madrid Follow-up Meeting (1983) : *Introduction to Section II (n 81).*

Malta : co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction, § 3 n 3*); and assistance to OSCE States not belonging to politico-military alliances (§ 5).

Manning of armed forces personnel in accordance with international humanitarian law obligations : *General Introduction (§ 12); § 29; § 34; § 35.*

Mediterranean Partner for co-operation, status of OSCE : § 3, § 42.

Migrant workers : *General Introduction (§ 4).*

Military capabilities, obligation to maintain only such – commensurate with individual or collective security needs : *General Introduction (§ 8); § 5 n 80; § 12; § 13; § 36.*

Military doctrines : § 14 of *Introduction, § 35.*

Military domination, renunciation to – in the OSCE area : *General Introduction* (§ 8); § 5 n 80; § 12 n 100; § 13.

Military expenditures : legislative approval of – (*General Introduction*, § 12; § 22; § 38); restraint in – (*General Introduction*, § 12; § 12; § 22; § 38); transparency and public access to information related to – (*General Introduction*, § 12; § 12; § 22).

Military forces : recruitment and call-up of (§ 27; § 38); human rights and fundamental freedoms of conscripts of – (§ 32). See also *Armed forces, Conscripts, Democratic control of armed forces* and *Servicemen*.

Military incidents, hazardous : § 24. See also *Accidental (or unauthorized) use of military means*.

Military service, conscientious objection to : § 27; § 28; § 38.

Military training programs and regulations : § 29; § 30; § 38.

Moldova : stationing of Russian troops in – (*General Introduction*, § 15; § 14); and democratic military transition (§ 42). See also *GUAM countries*.

Morocco : OSCE "Mediterranean Partner for co-operation" (§ 3).

Moscow Document on the Human Dimension (3 October 1991) : *General Introduction* (§ 14); § 1; *Introduction to Section VII*; § 20; § 21 n 145 and 146; § 22; § 23; § 36.

N

Nagorno-Karabakh conflict : § 14; § 18 n 128.

National minorities : *General Introduction* (§ 4, § 15); § 1; § 20; § 37 n 220.

NATO (North Atlantic Treaty Organization) : *General Introduction* (§ 2, § 4, § 15 n 29); § 4, § 10, § 11, § 18, § 38.

Netherlands : and need for a Code of Conduct Manual (*General Introduction*, § 17 n 34); and servicemen's right to association (§ 28); and trial Questionnaire on the Code of Conduct (§ 38).

Neutrality, right of States to : § 11.

"Non-diminution" clauses of the Code of Conduct : undiminished status of international law principles (3rd paragraph of the Preamble); undiminished status of existing OSCE commitments (4th paragraph of the Preamble, § 40).

Non-proliferation : *Introduction to Section V* (n 115); § 16.

Non-use of force – see *Prohibition of use of force*.

Norway : co-sponsorship of European Union's draft proposal for a Code of Conduct (§ 4 of *Introduction*); and servicemen's right to association (§ 28).

O

ODIHR (Office for Democratic Institutions and Human Rights) : § 6; § 20 n 134; § 36 n 206.

Open Skies Treaty (1992) : § 15.

OSCE (Organization for security and Co-operation in Europe) : politically binding nature of commitments (2nd and 4th paragraphs of the Preamble; § 32; § 39); – Asian "Partners for co-operation" (§ 3; § 42); – Platform for Co-operative Security (§ 4) ; Assistance to OSCE States not belonging to politico-military alliances (§ 5); Long-Term Missions (§ 17); Peacekeeping operations (§ 4 n 68; § 17 n 125; § 18 n 126 and n 128); Kosovo Verification Mission : § 18; Seminars on military doctrines (§ 35 n 195); Annual Assessment Implementation Meetings (§ 36; § 38); name change from "CSCE" to – (OSCE) § 39; Mediterranean Partners for-Co-operation (§ 42). See also *Berlin Mechanism, Charter of Paris, Chechnya, Code of Conduct, Copenhagen Document, Forum for Security Co-operation, Helsinki Decalogue, Helsinki Decisions 1992, Helsinki Document 1992, Helsinki Final Act, Helsinki Follow-up Meeting, Helsinki Summit Declaration, Istanbul Charter for European Security, Istanbul Summit Declaration,*

Human dimension of security, Economic and environmental dimension of security, Lisbon Declaration, Moscow Document, ODIHR, Politico-military dimension of security, Terrorism, Vienna Document on CSBM.

P

Palme Independent Commission on Disarmament and Security Issues : § 4.

Palme, Olof : § 3.

Paramilitary forces : *General Introduction* (§ 9); § 20; § 38 n 233; parliamentary control of – (§ 26), Poland and – (§ 26); Russian Federation and – (§ 26); recruitment and call-up of – (§ 27; § 38); rights of servicemen of – (§ 32); assignment of internal security missions to – (§ 36); democratic control of – (§ 38).

Partnership for Peace's Framework Document (1994) : *General Introduction* (§ 15).

Peaceful evolution of States, non-retained proposals on : § 37 n 219.

Peaceful settlement of disputes : 3rd paragraph of the Preamble; § 17 n 125; § 18 n 126.

Peacekeeping : § 4 n 68; § 17 n 125; § 18 n 126.

Platform for Co-operative Security : § 4.

Poland : co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3 n 3); Polish draft proposal for a Code of Conduct (*General Introduction*, § 4); Joint Russian-Polish food for thought paper on the Code of Conduct's structure (*General Introduction*, § 4 n 10); and title of the Code of Conduct (n 35); and the Code of Conduct's rationale (2nd paragraph of the Preamble); signature of the Code of Conduct (5th paragraph of the preamble, n 48); and interlocking institutions (§ 4); and solidarity principle (§ 5); and terrorism (§ 6 n 83); and commensurability of military capabilities with individual or collective security needs (§ 12 n 102); and military domination in the OSCE area (§ 13 n 104); and stationing of armed forces on foreign territory (§ 14); and restraint in military expenditures (§ 22); and Poland and political

neutrality of armed forces (§ 23 n 157); and servicemen's right to association (§ 28); and military doctrines (§ 35 n 194); and peaceful evolution of States (§ 37 n 219); and follow-up arrangements to the Code of Conduct (§ 38); and trial Questionnaire on the Code of Conduct implementation (§ 38); joint proposals of - with Austria and Hungary on follow-up arrangements to the Code of Conduct (§ 38; n 242 and n 248); and conformity of national laws and practices with the Code of Conduct (§ 41 n 261);

Police forces : *General Introduction* (§ 14); *Introduction to Section VII*; § 20; § 21 n 147; § 36; § 38. See also *Council of Europe*.

Politically binding nature of OSCE commitments : 2nd and 4th paragraphs of the Preamble; § 32; § 39.

Politico-military dimension of security : *General Introduction* (§ 1, § 3, § 4 and § 5); § 2; § 4; *Introduction to Section V* (n 115).

Porto Charter on Preventing and Combating Terrorism (2003) : § 6.

Prohibition of use of force : *General Introduction* (§ 3, § 4); 3rd paragraph of the Preamble; § 5; § 8.

Public emergency, role of armed forces during a state of : *General Introduction* (§ 14); § 36.

Q

Questionnaire on the implementation of the Code of Conduct : trial Questionnaire (§ 38); 1998 version (§ 6; § 13; § 14; § 21; § 22; § 27; § 28; § 29; § 30; § 33; § 36 n 200; § 38); revision of item 1 of the 1998 version (§ 6); 2003 updating of the 1998 version (§ 38).

R

Recruitment of armed forces personnel in accordance with human rights obligations : § 20; § 27; § 38.

Rights and duties of armed forces personnel – see *Conscripts*.

Right of States to belong or not to belong to alliances : see *Alliances*.

Right of States to freely choose their security arrangements : *General Introduction* (§ 7); § 10; § 11.

Right of States to neutrality : see *Neutrality*.

Right of States to self-defense – see *Self-defense*.

Romania : co-sponsorship of the French-German initial proposal for a Code of Conduct *General Introduction* (§ 3 n 3) ; and servicemen's right to association (§ 28).

Rule of law, linkage of – with democratic control of armed forces : *General Introduction*, § 1, § 10, § 12, § 13, § 15); § 1; § 20; § 21; § 23; § 36.

Russian Federation : co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction*, § 3 n 3) ; Joint Russian-Polish food for thought paper on the Code of Conduct's structure (*General Introduction*, § 4 n 10); and NATO's military intervention in Kosovo (*General Introduction*, § 15, n 29; § 38); and terrorism (§ 6); and NATO enlargement (§ 11); and the Baltic States (§ 14); and the Nagorno-Karabakh conflict (§ 14); and verification mechanism for the Code of Conduct implementation (§ 15 n 119); and the practice of *dedovshina* (§ 28); and the concept of unlawful orders to armed forces (§ 31); and Chechnya (§ 36); and voluntary exchange of information on the Code of Conduct implementation (§ 38 n 229).

S

Security sector reform : *General Introduction* (§ 15); *Introduction to Section VII* .

Self-defense, right of States to : *General Introduction* (§ 7); § 5; § 9.

Self-determination of peoples : § 37.

Servicemen, rights and duties of – see *Conscripts*.

Slovenia : and servicemen's right to association (§ 28).

Small arms and light weapons (2000), OSCE Document on : *Introduction to Section V (n 115)*.

Solidarity principle : *General Introduction (§ 4, § 5, § 8)*; 3rd paragraph of the preamble (n 44); § 5, § 12 n 100.

South Korea : OSCE Asian "Partner for co-operation" (§ 3).

Sovereign equality of States : 3rd paragraph of the Preamble; § 4; § 10.

Spain : co-sponsorship of the French-German initial proposal for a Code of Conduct (*General Introduction, § 3 n 3*).

State of public emergency – see *Public emergency*.

Stationing of armed forces on foreign territory : *General Introduction (§ 5, § 8, § 15)*; § 4 n 67; § 5 n 80; § 9; § 12 n 100; § 14; § 38.

Stockholm, Document of the – Conference on CSBM and Disarmament in Europe (1986) : *Introduction to Section II (n 81)*.

Sufficiency rule under the CFE Treaty : § 12; §13.

Sweden : and defense planning (*Introduction to Section V, n 116*); and servicemen's right to association (§ 28); and Chechnya (§ 36).

Switzerland : and servicemen's right to association (§ 28).

T

Terrorism : *General Introduction (§ 4, § 7)*; § 6, § 38.

Thailand : OSCE Asian "Partner for co-operation" (§ 3).

Training of armed forces personnel in accordance with international humanitarian law obligations : *General Introduction* (§ 12); § 29; § 34; § 35.

Training Seminars on the Code of Conduct : § 42.

Treaty on Conventional Armed Force in Europe (CFE), 1992 – see *CFE Treaty*.

Tunisia : OSCE "Mediterranean Partner for co-operation" (§ 3).

Turkey : and the "European Union plus" proposal for a Code of Conduct (*General Introduction*, § 4); Turkish draft proposal for a Code of Conduct (*General Introduction*, § 4); and migrant workers (*General Introduction*, § 4); and terrorism (*General Introduction*, § 4); and arms trafficking (*General Introduction*, § 4); and democratic control and use of armed forces (*General Introduction*, § 4); and proposed title for the Code of Conduct (n 35); and the Code of Conduct's rationale (2nd paragraph of the Preamble); and terrorism (§ 6); and stationing of armed forces on foreign territory (§ 14); and CSBM (*Introduction to Section V*, n 119); and arms control and disarmament (§ 15 n 121; § 16); and non-recognition of the legitimacy of an usurper government (§ 21 n 149; § 23 n 160); and military doctrines (§ 35 n 194); and non-use of armed forces at domestic level for reprisals purposes (§ 37 n 222); and fostering of relations with OSCE non-participating States through the Code of Conduct (§ 42 n 265).

U

Ukraine : and servicemen's right to association (**§ 28**); and democratic military transition (§ 42). See also *GUAM countries*.

UNESCO : § 34.

United Kingdom : and servicemen's rights and duties (§ 28; § 33).

United Nations : and terrorism (§ 6 n 83; 38), Security Council (§ 14; § 38); United Nations Interim Mission in Kosovo (UNMIK) (§ 18 n 128); Code of Conduct for Law Enforcement Officials, 1979 (*General Introduction*, § 1; § 20; § 36; § 37 n 217); United Nations Commission on Human Rights (§ 28) and conscientious objection to military service; and Helsinki Final Act (§ 39 n 256). See also *Charter of the United Nations*.

United States : and the French pan-European Security Treaty project (*General Introduction*, § 2); and the "European Union plus" draft proposal for a Code of Conduct (*General Introduction*, § 4); objection to opening the Code of Conduct for signature (4th paragraph of Preamble); and interlocking institutions (§ 4); and terrorism (§ 6; § 36 n 206); and the right of states to self-defense (§ 9); and stationing of armed forces on foreign territory (§ 9; § 14); and Iraq (§ 14); 1991 joint US-Hungarian proposal on civilian control over military and security forces (*Introduction to Section VII*); and NATO's military intervention in Kosovo (§ 38). See also *Hinds, James E.* (American Co-ordinator of the drafting process of the Code of Conduct).

Unlawful orders to armed forces : § 31.

UNMIK (United Nations Interim Mission in Kosovo) : § 18

Use of force for internal security purposes – see *Domestic use of force*.

Usurpation of political control by armed forces : *General Introduction* (§ 14); § 21; § 23.

V

Vienna Document on CSBM : *General Introduction* (§ 14); *Introduction to Section V* (n 115 and 116); § 22 n 155; § 24; § 35 n 195; § 38 – see also *CSBM*.

Vienna Follow-Up Meeting (1989), Concluding Document of the : *Introduction to Section II* (n 81); § 38 n 225.

Vienna Mechanism for consultation and co-operation as regards unusual military activities : § 38 n 225.

W

Warsaw Pact Treaty Organization : § 2 of *Introduction*, § 10, § 11.

Western European Union (WEU) : § 4 n 68.

Y

Yugoslavia : suspension from the OSCE (§ 4); and servicemen's right to association (§ 28).



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

Established in October 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes security sector reform conforming to democratic standards.

The Centre collects information and undertakes research in order to identify problems, to gather experience from lessons learned, and to propose best practices in the field of democratic governance of the security sector. The Centre provides its expertise and support, through practical work programmes on the ground, to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, and academic circles.

Detailed information on DCAF can be found at www.dcaf.ch

Geneva Centre for the Democratic Control of Armed Forces (DCAF):
rue de Chantepoulet 11, PO Box 1360, CH-1211 Geneva 1, Switzerland
Tel: ++41 22 741 77 00; fax: ++41 22 741 77 05; e-mail: info@dcaf.ch;
website: www.dcaf.ch