



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

Occasional Paper - № 11

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

Alexandre Lambert

Geneva, July 2006

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About the Author

Mr. Alexandre Lambert is a doctoral candidate at the Graduate Institute of International Studies, Geneva (HEI). Since 2004, he has also been an Associate Professor at the Geneva School of Diplomacy and International Relations (GSD). From 2001-2005, he was coordinator and a lead researcher with the joint DCAF-HEI research project on the OSCE Code of Conduct on Politico-Military Aspects of Security, established within the HEI-based Program for the Study of International Organisations (PSIO). Prior to that, he worked as a support officer at DCAF and personal assistant to the (then) DCAF project coordinator at the Swiss Federal Department of Defence, Civil Protection and Sports in Bern. Mr. Lambert has written several books and articles in the field of international relations and security sector governance.

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List of Acronyms

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

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

Alexandre Lambert

1. INTRODUCTION

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

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

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

It has been mentioned above that the present study does provide an update of the *practical handbook on the Code of Conduct*, especially of its Part II.³ That part of the handbook, written

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

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

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

by the author of the present study, provided an in-depth assessment of the yearly exchange of information on the Code and mainly focused on the reporting period of 1999-2002. The present study therefore focuses on the subsequent reporting period with a special focus on the exchanges of 2003-2005.⁴

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

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

Assessing the information exchange on the Code is not an easy task. Every year, the participating States submit their reports in the six OSCE official languages. While a majority of national replies are written in English, hardly any courtesy translations are currently available of those reports written in the five remaining languages (French, German, Italian, Russian, and Spanish). Moreover, national replies address issues of high complexity that reach far beyond the competencies and responsibilities of ministries of defence (which are usually in charge to gather that information and submit the national reports to the other participating States). Information on democratic control of armed forces is a particular challenge, since it does not represent a 'conventional' political-military issue only. Democratic political control of armed forces also touches upon the competencies and responsibilities of extra-defence departments and governmental institutions. These include national ministries of foreign affairs, interior, as well as

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

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

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

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

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

relevant parliamentary commissions, just to mention the most important ones. After all, the ‘cross-dimensional’ Code, in its unique sections VII and VIII (paragraphs 20-37) on democratic political control of armed forces, has established a (normative) bridge between the politico-military and human dimension of the OSCE’s comprehensive security concept. This implicitly requires that the OSCE’s internal monitoring and review of the Code actually involves relevant OSCE institutions such as, for instance, the Parliamentary Assembly or the Office for Democratic Institutions and Human Rights (ODIHR).

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

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

As regards the aspect of the international fight against terrorism, it is not only possible to review the Code’s contribution thereto.¹⁰ The Code actually offers a unique opportunity also to address the international fight against terrorism in connection with democratic civilian control. The OSCE could indeed go beyond the Code and further elaborate norms and provisions regarding the roles and missions of military and security forces in preventing and combating terrorism.¹¹ One option would be to adopt a separate questionnaire or even a ‘code of conduct’ on counter-terrorist activities of the participating States. The eventual elaboration of a code of conduct related to the roles and missions of armed and security forces in the fight against terrorism would have the advantage of being unparalleled in any other international (security) organisation, including the framework of the United Nations itself – as is the case with the present Code.

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

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

¹¹ The question concerning the possible bridge between democratic civilian control and the international fight against terrorism has also been discussed in: Lambert, Alexandre: “The OSCE Code of Conduct on Politico-Military Aspects of Security: Some Reflections on the Changes in the 1990s and Background for Further Developments”, Paper submitted at the OSCE PA/CPC Conference: *Parliamentary Oversight of Armed Forces, Police and Security Forces and the Evolving Security Environment in the OSCE Area*, Vienna, 24-25 May 2004.

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

2. DCAF AND POST-COLD WAR REGIONAL INTEGRATION IN EUROPE: THE NORM-SETTING FUNCTION OF THE OSCE CODE OF CONDUCT

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

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

Since the end of the Cold War, the democratic control of armed forces has been at the heart of security sector reform, especially in the Euro-Atlantic area.¹² The ‘transition’ countries were provided with practical advice and technical assistance in their efforts to reform their respective security sectors and to promote and facilitate the structuring of civil-military relations in accordance with fundamental democratic principles.¹³ Reform and transformation, as well as good and democratic governance of security sector institutions were considered as an “integral part of the transition from one-party to pluralist political systems, from centrally planned to market economies, and from armed conflict to peace.”¹⁴ In other words, DCAF is a growing concern of international assistance.¹⁵

As Dietrich Genschel pointed out: “The establishment of democratic structures and the pursuance of democratic overseeing of the state’s armed services are at the centre of security sector reform efforts in transforming countries.”¹⁶ The post-Cold War security environment required adequate answers based on new conceptual ideas that went beyond those that had guided conventional defence reform efforts and agendas that were developed during the Cold War period.¹⁷ The new approaches to link ‘security’ with ‘governance’ have been increasingly visible in the thinking of the OSCE, the European Union, and NATO. Special emphasis has been put on the overlapping functions of nation-building, national and regional stability, increasing the democratic style of government, and assistance in the integration process throughout the continent.¹⁸

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

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

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

¹⁵ *Ibid.*

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

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

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

Although there is still no shared definition of democracy in international relations, one of the key elements towards the consolidation of democracy is a “well-governed security sector, which comprises the civil, political and security institutions responsible for protecting the state and the communities within it.”¹⁹

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

The Organization for Security and Co-operation in Europe (OSCE) has been playing a leading role to set norms of security sector governance in Europe. With the adoption of its Code of Conduct on Politico-Military Aspects of Security in 1994, the OSCE and its participating States have further codified the role of armed forces in democratic societies and set norms of security sector reform for individual participating States, as well as the OSCE region as a whole. The implementation of democratic oversight of the military thus became a political obligation for the participating States that had a mandate to implement relevant adjustments in their internal legal norms, regulations and procedures.²⁰

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

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

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

²⁰ Ibid., p. 186.

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

²² Hänggi, Heiner, “Good Governance of the Security Sector : Its Relevance for Confidence-Building”, Heiner Hänggi (ed.), *Practical Confidence-Building Measures: Does Good Governance of the Security Sector Matter?*, Geneva Centre for the Democratic Control of Armed Forces, Working Paper No. 107, Geneva, January 2003, pp. 7-12, p. 10.

²³ Ghebali (2003), op. cit., p. 85.

Eastern Europe (CEE) have been seeking membership in both the Alliance and the Union.²⁴

Accordingly, the OSCE participating States were most concerned with safeguarding the democratic governance of the security sector. By adopting the Code, they considered the “democratic political control of military, paramilitary, and internal security forces, as well as of intelligence services and the police to be an indispensable element of stability and security.”²⁵ In the early 1990s, the democratic control of armed forces was indeed a key element in reforming communist-era armed forces and civil-military relations especially in the CEE region. Cottey, Edmunds and Forster therefore underline: “The ability of post-communist elites to secure democratic control of armed forces, or at least the acquiescence of the military to the democratic transition, would have a significant impact on the prospects for democratization as a whole.”²⁶

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

One year later, paragraph 25 of the 1991 Moscow Document further specified this central concern of democratic civil-military relations. With the paragraph’s main provision, the participating States must “ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities”.²⁹ Paragraph 25 of the Moscow Document therefore anticipated what was later included in the above-mentioned paragraph 20 of the Code of Conduct. Two specific elements were thus introduced in 1991. First, with the listing of five specific armed force categories, the conventional notion of ‘armed forces’ was further defined and broadened in order to more adequately reflect external and internal security missions. Paragraph 25 of the 1991 Moscow Document, as well as paragraph 20 of the 1994 Code of Conduct offer a possible definition of the (armed)

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

²⁵ *OSCE Code of Conduct*, paragraph 20.

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

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

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

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

security sector.³⁰ Further, the Moscow Document establishes an explicit distinction between executive and legislative control.³¹ For this, the drafters of the document took into account a proposal made at the Moscow Meeting jointly by Hungary and the United States of America.³²

As pointed out by Jonathan Dean: “As with many CSCE projects of the early post-cold war period (e.g., the Human Dimension Mechanism and the Copenhagen Document), the overriding motivation of the Code of Conduct on Politico-Military Aspects of Security is to prevent repetition of the abuses of the Nazi and Soviet regimes, in this case, their use of national armed forces to intimidate and dominate other European states and their own populations.”³³

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

However, in the frame of the post-Cold War enlargement process, NATO refused to consider democratic civilian control to be a formal/explicit ‘condition’ of membership.

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

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

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

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

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

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

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

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

Moreover, experiences from Cold War enlargements shows that substantive progress in the area of democratic reforms and governance could be achieved only if new NATO members became also new member States of the European Union.³⁸ Fortunately, all NATO and PfP partner countries are also participating States to members of the OSCE and thus bound by sections VII and VIII of the Code of Conduct. It is interesting to note that almost no NATO document refers to the Code. However, some passing reference is included in section 6 of the Partnership Work Programme for 2000-2001 on “democratic control of forces and defence structures (DCF)”. The section reminds the partner countries to “discuss progress in the implementation of the OSCE Code of Conduct”.³⁹

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

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

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

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

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

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

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

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

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

2.3. Going beyond the OSCE Region

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

Concerning Pan-African affairs, the adoption of the *Draft Code of Conduct on Armed and Security Forces in Africa*, in Lomé, Togo in 2002,⁴⁸ represents a first step in this respect – even though the drafters of the African Code of Conduct had to take into account the special needs and realities of sub-Saharan security relations.⁴⁹ Although the 'Draft African Code' provides an impressive array of possible norms applicable to the security environment specific in particular in sub-Saharan Africa, the main objective of the new cooperative approach to security sector governance in Africa is to prevent unconstitutional change of government.⁵⁰ With their *Declaration on Framework for a OAU Response to Unconstitutional Changes* (of government), African leaders actually adopted, in 2000, a specific continental normative framework on this particular aspect of security

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

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

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

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

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

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

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

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

sector governance.⁵¹ Finally, emphasis on good governance in the area of the security sector has been manifested by the New Partnership for African Development (NEPAD). Complementary to the new African continental approaches, sub-regional security initiatives including aspects of security sector governance are manifest in the framework of the Economic Commission of West African States (ECOWAS), the Southern African Development Community (SADC), as well as the Intergovernmental Authority of Development (IGAD) that has been contributing to the stabilisation of Africa's North-eastern part.

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

Compared to the new regional approaches to security sector reform and governance in the Americas and to a lesser extent also in Africa, the Asian-Pacific and the Middle East regions have not yet really addressed multilateral approaches to security sector governance as understood as a confidence-building measure.⁵⁶ In both regions, the principle of non-interference with domestic affairs still predominates, while most security sectors continue to be shrouded in secrecy. However, if the current security-sector transformation process in Afghanistan and Iraq (towards democracy and good governance) would be implemented properly and in a coordinated way between local and external actors, this could in turn also trigger new regional approaches to civilian control and security sector governance.⁵⁷ Also, the Mediterranean and the Asian partner countries to the OSCE

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

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

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

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

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

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

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

could profit from their status to be introduced into Code of Conduct-related issues and thus help to initiate common approaches to security cooperation and security sector reforms in Asia and the Arab Middle East.⁵⁸

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

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

3. MAIN RESULTS OF OFFICIAL CONFERENCES AND WORKSHOPS HELD ON THE CODE (2003-2005)

The present section provides an overview on relevant conferences, workshops and seminars on the Code since 2003 and summarises some of the main lessons learned from the Code's most recent implementation process. There is growing recognition of good governance of the security sector as a confidence-building measure, based on the new concerns to link security with governance in regions like Europe, the Americas, or even Africa. As seen in the previous section, security sector governance – at the core of which lays the principle of democratic control of armed forces – is currently evolving as a new generation of CBMs. These new trends have also been reflected within the Code's recent implementation process. The conferences and workshops evaluated hereinafter do essentially take into account the official OSCE events. However, there have been other events that took into account the special role of the Code, including those organised by the Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), which provides training for civilian and military officials under the Stability Pact for South Eastern Europe.⁵⁹

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

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

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

⁶⁰ SEC.GAL/3/03, 6 January 2003.

⁶¹ *Ibid.*, p. 2.

police and other security structures' postures, as well as to define their roles and missions. Public information on these issues is also indispensable in order to assess to what extent a State's military capabilities are commensurate with its individual or collective legitimate security needs.⁶²

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

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

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

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

⁶³ SEC.GAL/103/03. 10 June 2003.

⁶⁴ Ibid.

⁶⁵ FSC.DEC/4/03, 9 April 2003.

3.3. The Need to Foster Parliamentary Control and Oversight

At yet another Seminar held on the OSCE Code of Conduct in Kiev in June 2003, which was jointly organised by the CPC and the OSCE Parliamentary Assembly, it was stressed that further progress should be made in implementing the Code's provisions on the parliamentary control and oversight of the armed forces. In many CIS countries, only limited progress has been achieved in this respect. More effective implementation of democratic political control is relevant, not only on armed and security forces, but also on intelligence services. The need for legislative approval of defence expenditures and their compliance with defence policies and military doctrines were pointed out. Finally, the event also highlighted the need to adopt further legislation regarding the rights and duties of the armed forces personnel. Two separate roundtable discussions further dealt with parliamentary oversight in the event of the assignment of armed and security forces to combat new security risks and relevant new tasks and functions in this respect. It was underlined that the legislative and executive branches of government should further coordinate their activities. One of the more general suggestions regarding implementation was that the main provisions of the Code should be made known more widely and further clarified.⁶⁶

3.4. Enhanced International Cooperation in the Fight against Terrorism

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

3.5. The Code as a Ground to Further Implement IHL

In September 2004, Switzerland organised another 'Partnership for Peace Workshops' on the OSCE Code of Conduct in Geneva/Versoix. Doing this for the sixth time, Switzerland therefore continued one of its special contributions to hosting military commanders, staff officers, as well as diplomats and civil servants for a one-week training event to deal with specific aspects of the Code's implementation. The workshop was

⁶⁶ FSC.GAL/84/03, 1 July 2003.

⁶⁷ FSC.GAL/113/03, 16 September 2003.

⁶⁸ *Ibid.*, "conclusions", p. 10.

particularly concerned about the Code's implementation aspects relating to the Law of Armed Conflict (LoAC), but also took into account aspects of democratic control of armed forces (DCAF).⁶⁹ The workshop also commemorated the tenth anniversary of the Code (in December 1994).⁷⁰ It also dealt with the Geneva Conventions on international humanitarian law (IHL) and distributed an educational CD-ROM on the law of war, which provides comprehensive instructions in 12 international languages. The CD-ROM is available to the public and is broadly disseminated by the Swiss government.

3.6. Prevention and Combat of Terrorism: The Common European Response

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

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

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

3.7. Lessons Learned from the First Decade of Implementation

In early November 2004, the Delegation of Austria to the FSC submitted a “food for thought” paper, in which it welcomed the initiative taken by the Geneva Centre for the

⁶⁹ FSC.DEL/76/04, 10 March 2004.

⁷⁰ FSC.DEL/148/04, 26 April 2004.

⁷¹ SN 86/04, Brussels, 25 March 2004.

⁷² FSC.DEL/330/04, 14 July 2004.

⁷³ *Ibid.*, p. 2.

