

HELSINKI MONITOR

Quarterly on Security and Cooperation in Europe



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Quarterly on Security and Cooperation in Europe

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Security Sector Reform and the future of the Code of Conduct

*David M. Law*¹

Introduction

In 1994, the Conference on Security and Cooperation in Europe (CSCE) completed negotiations on the world's first — and to this day, only — inter-governmentally agreed, and politically binding set of norms for civil-military relations, the Code of Conduct on Politico-Military Aspects of Security (CoC). Entering into force in January the following year, the Code was the most significant norm-setting exercise that the organisation had undertaken since elaborating the Helsinki Final Act (HFA) some two decades earlier. In addition to reaffirming the Helsinki Decalogue,² it formulated a series of new standards for inter-state and intra-state behaviour. As a result, the Code would go on to play a key role in shaping the post-Cold War reform agenda in the Euro-Atlantic area.³

This article looks at the Code's legacy and its future, and makes a number of observations about its relationship with security sector reform (SSR). The Code and SSR, while different in terms of status, content and objectives, have several common and complementary elements. Indeed, the main argument of this article is that SSR could be used to develop an updated version of the Code. In particular, I will suggest that SSR can be a vehicle for reconceptualising and modernising the Code, and rendering it more pertinent to the security concerns of OSCE member states and their populations — and beyond, to communities in non-OSCE countries and regions.

In the second section, I will review what I see as the principal accomplishments of the Code. In the following section, I will describe the main attributes of SSR and how they relate to the Code. The fourth section will focus on how, from an SSR perspective, the Code might be expanded upon and its implementation enhanced. The paper will conclude with some thoughts on a strategy for putting such improvements into effect under existing political circumstances.

¹ David M. Law is a Senior Fellow at the Geneva Centre for Democratic Control of Armed Forces, in Switzerland.

² For a summary of the norms of the Decalogue and the Code, see Table 1. The Helsinki Decalogue, referred to in the Helsinki Final Act (1975), is a set of ten politically-binding principles governing the behaviour of OSCE members toward other OSCE participating states and toward their own citizens.

³ The Helsinki Final Act can be accessed at http://www.osce.org/documents/mcs/1975/08/4044_en.pdf, the Code of Conduct at http://www.osce.org/documents/sg/1994/12/702_en.pdf.

The Significance of the Code of Conduct

Although the Code entered into force two decades after the HFA, in what was a radically different security landscape, it is in many respects its ideological heir. The Code builds on the Helsinki Decalogue and formulates a number of new interstate norms. In its chapters six and seven, which are generally seen to be the most innovative and relevant to the security sector, it puts forward several groundbreaking principles for intra-state behaviour.

While the Helsinki document is mainly concerned with the external behaviour of states, the Code acknowledges that there is an organic relationship between the comportment of armed forces within a country's borders and their behaviour abroad. For the Code, the democratic control of armed forces is the precondition for a state to meet its security responsibilities in both theatres. Of course, the HFA is not oblivious to the impact of internal matters on the international behaviour of states, as attested to most notably by its championship of fundamental human rights and freedoms. The Code, however, takes this concern a step further with its insistence on domestic oversight mechanisms for the range of security forces and on the importance of such mechanisms for a state's trustworthiness and viability as a security partner. In view of its emphasis on what happens both within states and among them, the Code has proved to be a trailblazing document that has inspired similar undertakings in other parts of the world.⁴

The Code addresses one of the major dilemmas of the twentieth century (but one that really only came into full focus in the Euro-Atlantic world with the passing of the Cold War environment): public security concerns rose significantly through the century, with more and more casualties being civilians. With its attention on not solely the military but also other security jurisdictions with primarily an internal role, the Code joined hands with the human security approach, which in the first part of the 1990s had begun to enter the security discourse in a serious way.⁵

⁴ There have been efforts to develop Code of Conduct-like documents in Africa and in particular West Africa. In 2001, eighteen African countries - Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Ethiopia, Ghana, Guinea Bissau, Lesotho, Mali, Niger, Nigeria, Democratic Republic of Congo, Senegal, and Sierra Leone - as well as France, United States, and Belgium, UN, AU, and ECOWAS - participated in a meeting to discuss an African Code of Conduct and produced a draft document. More recently a group of West African countries has been working on a Code for their region under the auspices of ECOWAS and with the support of DCAF. See the article by Adedeji Ebo, *Towards a Code of Conduct for Armed and Security Forces in Africa: Opportunities and Challenge*, Geneva, Geneva Centre for the Democratic Control of Armed Forces, DCAF Policy Paper, March 2005, at http://www.DCAF.ch/_docs/pp05_towards-code.pdf. The article includes the full text of the Draft Code of Conduct for Armed and Security Forces in Africa.

For an analysis of the relationship between SSR and human security see my article 'Human Security and Security Sector Reform: Contrasts and Communalities', *Security and Peace*, No.1, 2005, pp. 14-20.

Table No 1. OSCE Security Norms⁶

The 'Helsinki Decalogue'	The OSCE Code of Conduct on Politico-Military Aspects of Security		
	Inter-state norms <i>Reaffirmation of previous OSCE norms:</i>	Inter-state norms <i>New norms:</i>	Intra-state norms <i>New norms:</i>
1. sovereign equality: respect for the rights inherent in sovereignty	1. respect for the HFA principles and their primary significance as well as their full and equal implementation	1. solidarity principle (if OSCE norms and principles are violated)	1. democratic political control of military, paramilitary, internal security forces, intelligence services and police
2. non-threat or use of force	2. concept of comprehensive security	2. maintenance of military capabilities commensurate with individual or collective security needs	2. integration of armed forces with civil society
3. inviolability of frontiers	3. indivisibility of security	3. determination of military capabilities on the basis of democratic procedures	3. effective guidance to and control of military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy
4. territorial integrity of states	4. cooperative approach to security	4. non-imposition of military domination over other OSCE states	4. legislative approval of defence expenditures
5. peaceful settlement of disputes	5. commitment not to support terrorist acts and to take appropriate measures to prevent and combat terrorism in all its forms		5. restraint in military expenditure
6. non-intervention in internal affairs	6. non-provision of assistance to states that violate the obligation to refrain from the threat or use of force		6. transparency and public access to information related to the armed forces
7. respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief	7. right to individual and collective self-defence		7. political neutrality of armed forces
	8. right for a country to choose freely its security arrangements and memberships in international organisations and treaties		8. measures to guard against accidental or unauthorised use of military means
			9. no toleration or support for forces that are not accountable to or controlled by their constitutionally established authorities

⁶ The author is indebted to Professor Victor-Yves Ghébalí of the Geneva Graduate Institute of International Studies for his research on the OSCE. See, inter alia, his *The OSCE Code of Conduct on Politico-Military Aspects of Security (1994): a Paragraph-by-Paragraph Commentary on Sections VII and VIII*, Geneva, Geneva Centre for the Democratic Control of Armed Forces, DCAF Document no.3, 2003.

The Code also helped shape the post-Cold War security agenda. The document set many of the benchmarks that have underpinned East European reform initiatives and Western programmes intended to support them in their efforts. The norms promulgated in the Code have had a central place in NATO and EU initiatives designed to steer the security dimension of the reform process in transition states. NATO has referred to the democratic control of armed forces in a number of its policy documents, including the Study on NATO Enlargement (1995), the Membership Action Plan (1999), the Partnership for Peace Work Plan Action (2000-2001) and, most recently, the Partnership Action Plan for Defence Institution Building, or PAP-DIB (2004). Similarly, the EU has made reference to the legal accountability of police, military and secret services in the Resolution of the European Parliament on the Communication from the Commission 'Agenda 2000: for a stronger and wider Union' and to the Code in the European Union Annual Human Rights Report (2000).⁷

Last but not least, the Code has been seminal to the organisation that husbanded its emergence. Accompanying the change from conference to organisation and the attendant transformation of the CSCE into a more permanent body, the Code has provided the OSCE with a distinct institutional niche in the area of political-military relations — or more accurately, in the relationship between a country's various security forces and its people.

Security Sector Reform and the Code: Origins and Approaches

When the term SSR first appeared in the late 1990s, its focus was on the need for Western donors to address the state of the security sector in their programmes for development and to do so in a holistic way.⁸ Soon thereafter, it was being applied by some donors to reform in transition countries as well. Though there are important differences between developing and transition countries, the SSR concept reflects the common concern that unless pathologies in the security sector are addressed, the resources invested in reform and development will be wasted.

In view of its evolution, approaches to SSR can differ greatly. The security sector has been defined narrowly as '...those militarized formations authorized by the state to utilize force to protect the state and its citizens...' or broadly as encompassing all '...those organizations and activities concerned with the provision of security, and including organizations and institutions ranging from private security guards to the judiciary.'⁹

⁷ See the Resolution on the Communication from the Commission 'Agenda 2000: for a stronger and wider Union' (COM(97)2000-C4-0371/97), available at http://www.europarl.eu.int/enlargement/positionep/resolutions/041297a_en.htm and the European Union Annual Human Rights report, 2000 at http://europa.eu.int/comm/external_relations/human_rights/doc/report_00_en.pdf

⁸ The term was coined in 1998 by the Rt Honourable Claire Short. See her statement to the Royal College of Defence Studies (13 May 1998), available at <http://www.dfid.gov.uk/News/Speeches/files/sp13may.html>.

⁹ T. Edmunds, Security Sector Reform: Concepts and Implementation, Report for Geneva Centre of Democratic Control of Armed Forces, 2001, p.1,

Reform of the security sector so that security can be provided ‘...within the state in an effective and efficient manner, and in the framework of democratic civilian control’¹⁰ would be considered by many to be a generally acceptable definition. Others, however, would object that the restriction of the concept to security within the state is unhelpful in a security environment characterised by an intense and increasing degree of transnationality. Then too, for many theorists,¹¹ security sector reform is something that developed democracies promote and sponsor in developing and transition countries, not in their own backyards. Again for others,¹² this perspective has become increasingly untenable with the emergence of strategic terrorism and the fundamental vulnerabilities it has revealed in the defence and security structures of Western countries.

Another manifestation of SSR's different origins is the range of terms used to describe what is essentially the same concept. Thus, the OECD, which has been the leader in developing norms for security sector programmes sponsored by donors in developing and transition countries, uses the term security system reform. UNDP, on the other hand, prefers justice and security sector reform to accentuate the role of the judiciary in its reform programmes. In some countries, the expression security sector transformation finds favour as a way of denoting changes that are thought to be further reaching than those connoted by the word reform. Sometimes, security sector reform and governance is used to highlight the fact that in reform, governance issues are equally important as capacity-building initiatives. For most practitioners, the word reform in SSR is about both these aspects.¹³

The Code as First-Generation SSR

Unlike the Code, SSR is not the product of interstate negotiations. It is not codified, it is neither legally nor politically binding and it has no official status. Rather than a repository of standards for states to follow, SSR is a way of thinking about how to deal with security issues, resources and actors as well as a framework for analysis and programme design. The links between SSR and the Code are nevertheless substantial. Conceptually, SSR is a response to the same concerns that generated the

www.dcaf.ch/news/past_2001/ev_Geneva_01112023_Report1.pdf.

¹⁰ Ibid, p.2.

¹¹ See J. Chanaa, ‘Security Sector Reform: Issues, Challenges and Prospects’, Adelphi Paper, 344, 2002; D. Hendrickson, ‘A Review of Security Sector Reform’, CSDG Working Paper, 1, 1999; OECD, Security System Reform and Governance - DAC Guidelines, 2005, available at <http://www.OECD.org/dataoecd/8/39/31785288.pdf>; UNDP, Justice and Security Sector Reform: BCPR's Programmatic Approach, November 2002, available at <http://www.undp.org/bcpr/jssr/docs/jssrprogrammaticapproach.pdf>.

¹² See D. Law, ‘Security Sector Reform in the Euro-Atlantic Region: Unfinished Business’, in A. Bryden, and H. Hänggi (eds.), Reform and Reconstruction of the Security Sector, Münster: lit Verlag, 2004, pp. 1-23, available at http://www.dcaf.ch/_docs/bm_ssr_yearbook2004_2.pdf.

¹³ See OECD, Security System Reform...; UNDP, Justice and Security Sector Reform ...; H. Hänggi, ‘Making Sense of Security Sector Governance’, in H. Hänggi and T.H. Winkler (eds), Challenges of Security Sector Governance, Münster: LIT Verlag, 2003, pp. 2-23, available at http://www.dcaf.ch/_docs/challenges_ssg/Hanggi.pdf.

Code of Conduct and has in turn come to shape our thinking about the Code. Developed well before the term SSR came into use, the Code has several provisions that are of fundamental importance to SSR. These can be grouped around three ideas:

- the need to take a comprehensive approach to security;
- the need to ensure that those responsible for a country's security can do their work effectively and efficiently; and
- the need to make the security sector accountable to a representative, democratic authority.

These three ideas all figure importantly in the Code, the first document of its kind to bring them together under one conceptual roof. Several aspects of the Code address the need for a comprehensive approach to security. First, the Code emphasises that security encompasses a broad array of factors: political, humanitarian, economic, ecological as well as military. Second, because the Code is embraced by all Euro-Atlantic states, it demonstrates their common belief that each country's security is inseparable from the others'. Third, the Code's perspective is that insecurity within a state demands as much attention as insecurity from beyond its borders. Fourth, the Code stresses that security is about more than just the military, but rather about all those jurisdictions with a capacity to use force, including:

- the police, paramilitary forces, intelligence services;
- the civil management bodies that direct and control the security sector; and
- the legislative, judicial and civil society institutions and groups that oversee and monitor the security sector, as well as those that have a role in security analysis, information and instruction.

The Code addresses three issues relating to the question of efficiency and sufficiency in the security sector: first, the need for the security sector to receive a sufficient proportion of national resources; second, the requirement that a country's armed forces receive adequate training and are able to perform professionally; and third, the need for society to guard against the tendency of security sector actors to claim more of society's resources than is their due. The latter concern emerged during the Cold War, when many states tended to overspend on their security sectors, diverting scarce resources from national development goals. It lives on in the attitude that while the security sector needs sufficient resources to meet its responsibilities, an overinvestment of resources in the security sector can be detrimental to a society's basic interests and overall health.

The principle that the armed forces must be under democratic control constitutes the Code's most important dimension. For the Code, the primary allegiance of the armed forces is to the people and their main responsibility is to safeguard their fundamental rights and freedoms. This is to be secured through such measures as the effective guidance and oversight of the armed forces by

authorities that are democratically legitimate, transparency about the activities of the armed forces and their political neutrality, legislative approval of their expenditures, and respect for the human rights of their personnel.

Second-Generation SSR and the Code

The above represents what might be called the first-generation of thinking about SSR. All these ideas and approaches remain valid, but they are now complemented by a second-generation of thinking about SSR that has emerged in response to the changes that have occurred in the strategic environment at the beginning of this new century. This second generation SSR remains, however, constructed around the same three pillars: comprehensiveness, effectiveness, and democratic control.

For second-generation thinking about SSR, a comprehensive approach to security above all requires that new strategic realities have to be taken into account. In particular, this means addressing the fact that the roles of traditional security actors have been radically modified and new ones have entered the scene. For example, jurisdictions that have traditionally worked independently of one another, such as ministries of the interior, defence, foreign affairs, etc., need to be able to cooperate much more closely and synergistically. Similarly, there is a need to associate governmental actors that have not traditionally had a security role, such as departments of development, agriculture, transport, immigration, etc., with the deliberations of more traditional security actors.

Moreover, today we face a burgeoning number of security sector actors that are non-statutory in nature; in other words, actors that have a capacity to use force but are without a mandate from a representative authority. Some of these actors, such as the Al-Qaeda network, are malign, and may constitute the most important challenge to modern civilisation as we know it. Other non-statutory actors, such as private military companies and private security firms, while essentially benign, play an increasingly important role in our security both at home and abroad: they must be brought into our systems of accountability and democratic oversight.

The question of effectiveness and sufficiency has also evolved in important ways. While a few states may be overspending on their security sectors, the focus of the international security community has shifted from third world and communist states that had bloated security sector budgets to developing and transition countries that face new challenges requiring substantially greater resources than they can afford.

More generally, the resource issue is having adverse repercussions for our ability to deal with an array of new security challenges such as the insurgencies in Afghanistan and Iraq, large-scale environmental disasters such as the South Asian tsunami and Hurricane Katrina, the prevention and resolution of conflict in Africa, and the protection of critical infrastructure at home. If we are to deal effectively with such challenges, we need a greatly enhanced culture of inter-departmental as well as transnational, regional and international communication, cooperation and coordination. The issue of democratic control has also assumed new dimensions over the last ten years. In many areas, security concerns have taken the place of democratisation as a key vector of domestic and multilateral policies. While this

may be an understandable response to strategic terrorism, it fails to recognise that security, good governance and democratic accountability are interdependent.

This becomes evident when considering situations such as Sierra Leone, Afghanistan, or Iraq. In the latter case, it has become unmistakably clear that the effort to rebuild the security sector in the country will come to nought unless it can effectively take into account the concerns and interests of its constituent groups and be made accountable to the population. Similarly, those who sponsor security legislation in developed democracies in response to changed security circumstances need to ensure that their legislative proposals effectively take civil liberties into consideration, and where necessary envisage enhanced oversight mechanisms to provide protection against abuse. Failure to do so means that such legislation will encounter growing problems in obtaining public support, and ultimately may not be sustainable.

Thus the Code has defined the trajectory of the three central concepts of SSR, even as the security environment has undergone substantial qualitative change. This is a testimony to the wisdom of the negotiators of the Code and the continuing potential of this historic document to make a difference.

The Challenges before the Code

Since the Code was elaborated, ten OSCE participating states have joined NATO. As for the EU, the thirteen new countries that it has taken in since 1994 are also OSCE members. Most of the new adherents — all ten in the case of NATO, eight in the case of the EU — are former communist states that, as part of their efforts to integrate into transatlantic and European institutions, have had to show themselves capable of meeting the Code's standards for appropriate inter-state and intra-state security behaviour, even where this has not been an explicit factor of conditionality. Other states that wish to follow them in the membership process are subject to similar considerations. Notwithstanding this contribution, the Code's work remains unfinished. For example, there are still countries in the OSCE area:

- where the central government does not enjoy a monopoly of force;
- where the central government does enjoy a monopoly of force but that role is played with little or insufficient democratic control; and
- where the central government's monopoly of force is seen by part or most of its population as representing a serious security threat, not their primary source of protection.

The costs of such pathologies in terms of peace and development, stability and prosperity can be serious indeed. But while the Code's work in the OSCE area remains incomplete, whether it will be able to meet the continuing challenges is unclear. Notwithstanding the historic importance of the Code, its status a decade after being agreed leaves much to be desired.

There are a number of reasons for this. First, except for some changes in the questionnaire used by OSCE member states to report on their performance, the Code has not evolved to take into account changes that have intervened in the security

environment over the last decade or so, in particular, the second-generation SSR thinking described above.

Second, the Code's provisions are very unevenly respected, in part because of a lack of capacity in a number of OSCE member states and in part because of the lack of attention the document has received in OSCE consultations. It is indicative of the Code's current status in Vienna that the report *Common Purpose: towards a more effective OSCE*, that the OSCE commissioned to address the serious divergences that emerged among members in 2004-2005, makes no mention of the Code.¹⁴

Third, the document remains little known outside the circles that deal with the OSCE. Civil society bodies, let alone the general public, are hardly aware of the Code's existence, let alone active in calling for its implementation. The contrast with the Helsinki Final Act, which spawned substantial non-governmental activity during the Cold War, is striking.

Fourth, the Code is in danger of losing its niche in the area of democratic control issues to other institutions. SSR has been rapidly gaining ground as a policy framework at the OSCE's sister institutions.¹⁵ After first being adopted by the OECD and UNDP, SSR has more recently been introduced into the security discourse of the Council of Europe and the EU. For example, in 2005 the Parliamentary Assembly of the Council of Europe passed a recommendation on the Democratic Oversight of the Security Sector in Member States, which takes a substantially broader approach than the Code.¹⁶ As for the EU, the Council has now drafted an SSR concept, and the Commission is in the process of elaborating its own approach, which are to serve as the basis for elaborating an overarching EU SSR concept.¹⁷ These are welcome developments but it is regrettable that the OSCE has not kept pace.¹⁸

Finally and most importantly, under the impact of recent changes in the security environment, respect for the provisions of the Code on the part of OSCE

¹⁴ See *Common Purpose: towards a more effective OSCE*, Final Report and Recommendations of the Panel of Eminent Persons at http://www.osce.org/documents/cio/2005/06/15432_en.pdf

¹⁵ V.-Y. Ghebali, *Recommendations on the Further Development of the OSCE Code of Conduct on Politico-Military Aspects of Security: The Development of the OSCE's Role in Security Sector Governance*, Food for Thought Paper, Geneva, DCAF, 2006.

¹⁶ Recommendation No. 1713, adopted by PACE on 23 June 2005, available at <http://assembly.coe.int/documents/AdoptedText/TA05/EREC1713.htm>.

¹⁷ Council of the European Union. *The EU Concept for ESDP Support for Security Sector Reform (SSR)*. Brussels, 7 November 2005. DCAF contributed a food for thought paper to the Conference on Security Sector Reform in the Western Balkans, co-organised by DCAF and the EU Institute for Security Studies, (Vienna, 13-14 February 2006), available at http://www.dcaf.ch/news/ev_vienna_061302_paper.pdf.

Professor Ghebali also suggests in his Food for Thought paper that an updated Code could be a basis for giving more focus to the OSCE's already substantial activities in the area of SSR and greater coherence to the work of the OSCE Secretariat. See Ghebali, *Recommendations on the Further Development of the OSCE Code of Conduct on Politico-Military Aspects of Security: The Development of the OSCE's Role in Security Sector Governance*, Food for Thought Paper, Geneva, dcaf, 2006.

member states has become noticeably weaker.

The Future of the Code

The first part of this section will address the need to update the Code. In particular, I will argue that the Code needs to take a more holistic approach, such as the one advocated by SSR. In the second part, I will look at the implementation record. My main concern here will be the technical dimension of implementation and the need for member states to practice enhanced solidarity in ensuring that states can meet their obligations, including proper reporting on performance. The third part will briefly explore the reasons for the lack of commitment of OSCE member states to the Code and suggest a strategy for coping with this, and perhaps in time overcoming it.

Complementing the Code

Seen from the perspective of SSR, the Code fails to approach the security sector in a holistic way and its provisions are applied unevenly. The main shortcomings that need to be addressed in this regard are summarised below.

Broadening the Code's Understanding of the Security Sector

1. The Code should address border guards and customs officials, which have become increasingly important in recent years for national security.
2. Similarly, the Code should refer to penal institutions, whose proper functioning is a matter of considerable concern in several OSCE member countries.
3. The Code should take up the issue of non-statutory security actors, such as private military companies and private security companies, also currently ignored by the Code. The document only deals with them superficially, and not by name, when it stipulates that 'the participating states will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities.'
4. The Code should address the crucial role played by civil management departments and ministries in supervising and managing the security sector, and the need to ensure that they receive the training and resources necessary to be able to perform professionally.
5. The Code should include the judiciary dimension of the security sector and in particular the role of judicial and legal institutions — the courts, Ombudsmen, human rights Commissions and the like — in overseeing, along with the legislature and the executive, the security sector.
6. The only reference to civil society comes with the call for 'the integration of ... armed forces with civil society as an important dimension of democracy'. This is an important point but it ignores the role of civil society actors, such as the media and think-tanks, in monitoring the security sector, conducting research, advising government on policy and training both specialists and the general public.
7. The Code refers to the need for member states to exercise restraint in their

expenditures on the military but not on other security forces. Moreover, the Code does not address the fact that in many countries the problem is not one of overspending but of there being insufficient resources and of resources being inefficiently used. The Code should signal that the security sector needs adequate resources to perform its responsibilities but not so many as to encourage it to embark on self-serving activities at the population's expense.

A second major area where the Code is deficient concerns its provisions for reporting on domestic security activities. The areas where improvements need to be considered are detailed below.

Enhancing Norms on Domestic Security Activity

1. The Code should contain operative provisions for all categories of armed forces; of the five categories mentioned, the document fails to do so for internal security forces, intelligence services and the police.
2. The Code should oblige the participating States to provide information on the domestic security forces, including their size, organisation, role, and objectives. Currently, this requirement is only referred to in the annual questionnaire, and only partially at that.¹⁹
3. The Code should commit the participating States to refrain from using paramilitary organisations to circumvent limitations under arms control agreements related to the use and size of their armed forces.
4. The Code should address the use of armed forces during states of emergency and crisis.
5. The Code should acknowledge, in the case of usurpation of political control by armed forces in a participating State, the responsibility of other governments to take appropriate action.

One of the most important dimensions of the Code relates to the rights and duties of individuals serving in the armed forces. Here, three areas could be improved upon:

Clarifying Rights and Responsibilities

1. The Code should enumerate the rights and duties of armed forces personnel, perhaps through an annex or references to other agreed texts.²⁰
2. The Code should make reference to the need for armed forces to offer equal opportunity to members of minorities and both genders. Again, it may be appropriate to link the Code to other documents that address these and related

¹⁹ Information Exchange on the Code of Conduct on Politico-Military Aspects of Security, FSC.DEC/4/03, 9 April 2003, Annex.
http://www.osce.org/documents/fsc/2003/04/825_en.pdf

²⁰ DCAF and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) are jointly working on a publication project entitled 'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel'. For more information, see http://www.dcaf.ch/odihr/_index.cfm?navsub1=24&navsub2=1&nav1=3.

issues in detail.

3. The Code's provisions establishing the individual accountability of the command and rank and file personnel of armed forces need to be strengthened. They are much weaker than those of the 1949 Geneva Conventions, which commit the Contracting Parties to enact penal legislation directed against persons responsible of grave crimes, as well as to search for and bring such persons (regardless of their nationality) before national and, as appropriate, foreign courts.

A number of other areas might be usefully explored for review, inclusion in or association with the Code. The Code stipulates, for example, that '...a participating State may station its armed forces on the territory of another participating State in accordance with their freely negotiated agreement...' but there is no reference here to the need for the parties to the agreement to be democratically legitimate. This would call into question a number of existing agreements on troop stationing in the OSCE area.

Moreover, the Code ignores the need for effective communication, cooperation and coordination among various security sector actors, in both the domestic environment and the regional and international context. Thought should also be given to whether and how the Code might be linked to other relevant OSCE documents, such as the Vienna CSBM Regime (1999) and the Document on Small Arms and Light Weapons (2000).²¹

Finally, the Code makes no distinction between the different situations in which different OSCE members find themselves and the different requirements they impose on the security sector. This is both an advantage and a disadvantage. It is an advantage in that it imposes the same obligations on all OSCE states, whether they are essentially transition, developing or developed states, old or new, post-conflict or pacific.

At the same time, the unwritten subtext of the Code is that there are two different categories of states when it comes to observing its provisions: the developed, Western OSCE member countries that are generally assumed to observe its norms, and the transition states of Central, Eastern and Southern Eastern Europe and the CIS that are assumed not to do so, or at least not sufficiently, and which need to be encouraged to follow the Westerners' example.

While there is some truth in this distinction, this approach ignores the need for developed democracies to reassess the performance of their own security sectors and the importance of this for the overall credibility of the Code. This is also an uphill struggle in the security sector reform discourse. However, since 9/11 and 11/3, many security practitioners in developed democracies would not acknowledge this, at least not in an off-the-record interview.

²¹ See Gheballi, *Recommendations on the Further Development of the OSCE Code of Conduct on Politico-Military Aspects of Security: The Development of the OSCE's Role in Security Sector Governance*, Food for Thought Paper, Geneva, dcaf, 2006

Addressing Deficiencies in Implementation

The OSCE currently uses a questionnaire that was revised in 2003 to take the place of the original format adopted in 1998. This is generally considered to constitute an improvement on the original reporting framework. Still, a recent in-depth study of the implementation of the Code has identified several shortcomings in the new reporting process.²²

First, the questionnaire's references to democratic control issues exclusively refer to provisions under section VII regarding conduct in times of peace. Participating states are not obliged to provide information on the domestic use of force during a state of emergency or crisis when neighbouring states' concerns about developments may be at their highest. The Code itself makes no such distinction between states' reporting responsibilities in conditions of peace, emergency and crisis.

Second, the 2003 revision took into account the new concerns about terrorism by adding an item in the questionnaire that focused on this issue. This has led to an imbalance in the reporting process, with certain countries concentrating on their anti-terrorism activities to the neglect of other issues addressed by the Code.

Third, as prior to 2003, answers to the Questionnaire were usually prepared by ministries of defence, typically without consultation with other ministries and governmental bodies with responsibilities in the security sector or parliament. This tends to result in reports that focus on military matters, to the neglect of other parts of the security sector.

Fourth, the responses to the revised questionnaire remain, despite the recent revision, highly heterogeneous and difficult to compare. In addition, some countries still answer questions of the original 1998 questionnaire. Furthermore, it seems from the answers of some countries that there are significant variations and gaps in national interpretations of what the concept of security forces entails.

A fifth problem is that the Forum for Security Cooperation, the main OSCE institution entrusted with monitoring the Code, allots insufficient time in its schedule for thorough review of implementation. Current discussion on the Code takes place mainly in a special annual meeting of the OSCE Forum on Security Cooperation, the Annual Implementation Assessment Meeting, but here it shares attention with several other agenda items.

How to address these issues? Clearly the questionnaire needs to be revised to oblige countries to report not just only the situations in peaceful domestic situations environments but in the range of domestic security circumstances. The questionnaire should also be reformulated to reflect the new concerns that have arisen about threats to civil liberties in the wake of anti-terrorist legislation.

At the same time, existing bilateral and multilateral training programmes to enhance understanding of the Code and improve reporting need to be

²² V.-Y. Ghébal and A. Lambert. 'The OSCE Code of Conduct on Politico-Military Aspects of Security. Anatomy and Implementation' Leiden: Martinus Nijhoff Publishers, 2005, pp. 358-370.

strengthened.²³ Expertise for managing the security sector within the OSCE varies enormously. Some states have sophisticated governmental structures, whereas in others bureaucratic capacity is weak and modernisation of public administration is in its infancy. This obviously has an impact on reporting on the Code and implementation of its provisions. Beyond that, the idea of developing model answers to guide national responses, put forward in 2003 but never acted upon, could also help encourage a greater uniformity in national submissions.

Another initiative that could enhance reporting would be to constitute a working group representing the various stakeholders in the security sector to prepare country reports on implementation. This could be more generally useful in inculcating a culture of communication, cooperation and coordination among security sector actors as advocated above. Finally, the OSCE Forum for Security Cooperation is considering holding an annual one-day meeting devoted to implementation, which could make a significant difference.

Strengthening Compliance

While there are real technical problems that need to be addressed to improve compliance, the most important obstacle is political in nature. Some countries have ignored key provisions, the most alarming case being the Russian Federation's resort to military and paramilitary force in Chechnya in 1995, only months after the Code entered into force. In general, respect for the Code has been weak throughout the former Soviet Union. However, even a cursory review of the various inter-state and intra-state norms of the Code demonstrates that Russia and other former Soviet states have by no means had a monopoly on non-compliance.

This is not the place for a detailed discussion of current trends in interstate relations in the Euro-Atlantic area but it is clear that the moment of 1994, when the Code was negotiated, has passed. At that juncture, there prevailed a rather broadly shared consensus on the direction and objectives of European security, wide-scale concerns about how the wars in Yugoslavia might upset the European strategic applecart unless brought to a halt, and in some countries, particularly those formed out of the USSR, formative security policies that were relatively open to other states', and particularly Western ones', influence. Ten years on, the erstwhile consensus about the democratic control issues postulated in the Code has all but evaporated, and in parts of the Euro-Atlantic area security doctrines have emerged that care little for issues of good governance and democratic control of the security sector.

An additional problem relates to 9/11 and its impact on the international system. Whether one agrees with the policies of the current US Administration or not, it is in this observer's view undeniable that 9/11 delivered a body-blow to long-standing US military superiority and leadership, and compromised many of the tenets that had shaped strategic thinking for many decades. In the wake of this

²³ One such programme is Switzerland's Workshops on the Code of Conduct organised in the framework of NATO's Partnership for Peace.

development, it is perhaps understandable that some of the previously accepted norms of security behaviour have been called into question.

These realities are reflected in all dimensions of the OSCE's work, not just those aspects that affect the Code. They suggest that as long as the current strategic situation continues, it is unlikely that it will be possible to improve implementation, let alone expand the Code. This does not mean, however, that the Code must be destined to obscurity or irrelevance. Even in prevailing circumstances, there is much that can and should be done. Those members of the OSCE that favour an active policy of implementing and developing the Code need to be prepared to challenge the current disinterest in or opposition to the document. They should expand their reporting on implementation to encompass the comprehensive approach to the security sector outlined above. This would actually be in line with existing practice, whereby reporting patterns vary greatly according to national preference.

In addition, they should act on the commitment to making information about the armed forces transparent, as promised in the Code, by reporting publicly on its implementation. This would be at odds with traditional practice, which has tended to treat the Code as a governmental construct. It has never figured strongly in the OSCE's public diplomacy efforts or received the kind of attention that was given to the HFA.

Moreover, little effort has been made to involve non-governmental organisations in monitoring, publicising and developing its provisions. It is incongruous that a foreign state should have easier access to information about a country's security practices than the citizens of that country. This practice should change. The Code should cease to be under the exclusive jurisdiction of the chancelleries of state and become co-owned by the OSCE's 55 civil societies. Rendering transparent the implementation records of OSCE member countries would be the most important single step that could be taken to improve accountability and enhance the Code's credibility.

This may seem a tall order but it is far from being an impossible one. At its core, the suggested approach follows the long-standing practice of the European Union whereby varying groupings of member states embrace different EU policy regimes as a way of protecting vital interests or attempting to develop them further. The OSCE members that wish to see the Code reach its full potential should consider taking a similar approach and establish a caucus of states committed to the Code. There is an objective need for the OSCE's more democratically-inclined states to show greater cohesion and conviction on issues of principle in Vienna. Demonstrating how the Code of Conduct could be modernised and expanded upon could be a useful rallying point for this purpose.