



**Organization for Security and Co-operation in Europe**

**Conflict Prevention Centre**

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**REPORT OF THE ACADEMIC STUDY ON THE 2010 INFORMATION EXCHANGE  
OF THE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY**

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## ***Introduction***

Since 1999 the OSCE participating States (pS) have on an annual basis exchanged information on the national implementation of the Code of Conduct on Politico-Military Aspects of Security (Code, Code of Conduct). The annual exchange of information on the Code's implementation constitutes an important confidence- and security- building measure and contributes to greater understanding between the pS regarding their policies and planning in the security sector. The commitment of the pS to this information exchange has traditionally been very high when measured by the number of replies. Between years 2007-2009, for example, 50 or more pS provided information.

The annual information exchange is carried out by the means of a specific Questionnaire, which was originally adopted in 1998 and updated in 2003 and 2009. The aim of the 2009 update (FSC.DEC/2/09) was to better reflect the structure of the Code itself and to contribute to more concise answers with less overlaps. The new questionnaire has three main sections covering inter-state elements, intra-state elements and public access and contact information. It introduces a number of new sub-questions, inter alia, on national efforts to prevent and combat terrorism, on arms control, disarmament and confidence- and security-building measures, and on issues related to international humanitarian law.

Given the wider scope of issues covered in the new Questionnaire, a reference guide (FSC.DEL/14/10/Rev.1/Corr.1) to help pS to compile their answers has been proposed by some delegations. The reference guide suggests information that could be included under each question and it can be consulted on a voluntary basis by the pS when compiling their national answers to the annual Questionnaire.

Following the proposal on the reference guide, Finland, Germany, Switzerland, Austria, Denmark and United Kingdom contributed to an extra-budgetary project involving two experts conducting a study on the information exchange. The two experts – Ms Didi Alayli for the inter-state elements and Dr Alexandre Lambert for the intra-state elements – were tasked to carry out an overview of the main trends in the 2010 information exchange and recommend how the draft reference guide could be improved.

This final report has been structured in four main parts. Chapter 1 covers the overview of the 2010 information exchange, Chapter 2 outlines the main recommendations on the reference guide and how the information exchange in general could be further improved. Chapter 3 presents the main changes between the information exchanged according to the new and old Questionnaire and short conclusions are drawn in Chapter 4.

The views expressed in this report are those of the experts and do not represent the official position of the CPC.

## ***1. Overview of the 2010 Information Exchange on the Code of Conduct***

The 2010 information exchange was the first one to be conducted entirely in accordance with the updated Questionnaire.<sup>1</sup> To date, 48 pS have submitted their information exchange - 37 pS used the new Questionnaire, 8 pS replied according to the old Questionnaire, and 1 pS used a combination of the two formats. In addition, 2 pS provided nil reports indicating no changes since the last information exchange, even though the new format introduced a number of new sub-items.<sup>2</sup>

This section consists of an overview of the replies provided in the 2010 information exchange. The aim has been to identify general trends in reporting, taking also into account the possible diversion in the participating States' replies. The section follows the structure of the new Questionnaire and most of the sub-items of the updated Questionnaire will be addressed separately. The sub-items of question 3 of inter-state elements, question 4 of intra-state elements and question 1 of the public information section will be examined together due to the overlapping and interlinked information provided under these points.

### **Inter-state elements**

#### ***1. Account of measures to prevent and combat terrorism***

##### **1.1. To which agreements and arrangements (universal, regional, subregional and bilateral) related to preventing and combating terrorism is your State a party?**

This question was comprehensively answered by the great majority of pS, also including those States still using the old Questionnaire format (Q1(a) and 1(b)). Most States structure their responses in a logical manner as follows:

- Universal/international legal instruments
- Regional/multilateral legal instruments
- Bilateral Treaties and other Co-operation arrangements

Exceptions to the above level by level approach are a few pS which only provided a general statement about commitments to international agreements and did not include either a listing of relevant agreements or an update covering the most recent period.

Although response rates to this question are high, listing of all agreements and arrangements tend to take lot of space in the beginning of Questionnaire. Hence, some pS chose to highlight the most recent developments or relegated the list of legislative measures to an Annex. It is recommended that most of international agreements and arrangements be listed in a separate Annex in the future replies.

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<sup>1</sup> It was possible to answer in accordance with the new Questionnaire already in the 2009 information exchange. 12 pS exercised this option.

<sup>2</sup> 44 replies have been taken into account in the substantial overview on the inter-state elements as this part was completed before some the late submissions were received.

### **1.2. What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?**

This question is also predominantly fully answered by States, even in some cases where States used the old format, including some very detailed responses. Meanwhile, some responses were limited to more general answers along the lines of “all necessary national legislation has been implemented” and/or no specific details of national legislation were provided.

Some States used this section to go into further detail on certain aspects, for example on AML/CFT (Anti-Money Laundering/Countering Financing of Terrorism) measures, legislation on the protection of witnesses or classified data or - in rare references to the field of prevention of terrorism - a community dialogue Prevent programme and a programme for the Promotion of Tolerance and Prevention of Extremism at the societal level.

Responses on national legislation tended to contain two types of information, the first related strictly to measures to implement the “above mentioned” international agreements, while the second related to broader national CT legislation. The latter included measures to establish the legal and institutional groundwork, including definitions, and amendments of existing national legislation in order to bring it into line with international law. A few pS used this section to outline the principles underlying their CT policy and strategy.

One pS answered this question by noting next to each international, regional etc legal instrument mentioned in Q1.1, the relevant ratification law, with date. The only drawback of this method is that if used exclusively to capture new national legislation, it could miss out the wider changes already mentioned above. So there is a need to maintain free space in which States can address this question according to their needs.

### **1.3. What are the roles and missions of military, paramilitary and security forces and the police in preventing and combating terrorism in your State?**

Responses to this question vary widely, both in the institutions and organisations covered and the depth in which they were covered. Some pS submitted extremely full responses, including information on how state agencies co-operate on CT work and governance of those arrangements.

As might be expected given this question’s more limited treatment in the previous Questionnaire (in which the role of Paramilitary and Police Forces were not covered), this section was not well covered by States which followed it. In general States seem more inclined to report on the role and missions of some agencies than others. Majority of pS reported a minimal or non-existent role for the armed forces in counter terrorism. There was generally wide coverage of the role of the police but generally less information reported on the role of Security Services.

There were even less references to the role of States’ Intelligence Services with only one or two States specifically referring to them. It may be that States are not making a distinction between the work of Intelligence Services and Security Services but it is noticeable, that even States which provide information on the latter have little to say on the former.

As a final diversion from the norm of answers to this question, a couple of pS provided only a basic overview of institutional roles and missions under this heading with further more detailed information included, thematically, under 1.4.

**1.4 Provide any additional relevant information on national efforts to prevent and combat terrorism, e.g., those pertaining inter alia to:**

- **Financing of terrorism;**
- **Border controls;**
- **Travel document security;**
- **Container and supply chain security;**
- **Security of radioactive sources;**
- **Use of the Internet and other information networks for terrorist purposes;**
- **Legal co-operation including extradition;**
- **Safe havens and shelter to terrorists and terrorist organizations.**

This question received lowest response rate in Section 1.<sup>3</sup> Even when States set out the eight subheadings they did not always provide information under them. Quite a few States also take the opportunity to use their own sub headings. The most widely completed subsections were the ones relating financing of terrorism and border controls.

Perhaps one cause of confusion is that the reference guide on Q1.4 appears to bear no relation to the actual question; not only does it fail to mirror its wording or the eight new sub sections but it also contains a mix of items (institutional, thematic etc), most of which seem to belong elsewhere. Clearer guidance by the reference guide could contribute to more comprehensive and concise answers.

It is also clear that where States have responded fully to the new format, the information provided is of high quality and, perhaps, unique value. It is worth noting that in no other publicly accessible forum is such valuable information shared between States, neither through the UNCTC country report process nor the Council of Europe CODEXTER work.

## ***2. Stationing of armed forces on foreign territory***

**2.1 Provide information on stationing of your States armed forces on the territory of other participating States in accordance with freely negotiated agreements as well as in accordance with international law.**

Along with Q1.1, Q2 also attracts full answers from the vast majority of States. This is probably due to the fact that the same Question exactly was also covered in the old format, under Q4, and that it is relatively straightforward to answer. For most States, their answers relate to participation in NATO/multilateral missions, UN peacekeeping etc. A few pS focused on a specific issue, such as referring to the illegal presence of another State's armed forces on their soil.

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<sup>3</sup> Interpretative statement 3 of FSC.DEC/2/09: "OSCE participating States are at liberty to provide answers to question 1.4 of the updated Questionnaire on the Code of Conduct but are not required to do so. In this same connection, the form, structure and content of the answers, in the event they are provided, remain entirely at the discretion of the OSCE participating States."

### ***3. Implementation of other international commitments related to the Code of Conduct***

**3.1 Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence- and security-building as an element of indivisible security are implemented in good faith.**

**3.2 Provide information on how your State pursues arms control, disarmament and confidence- and security-building measures with a view to enhancing security and stability in the OSCE area.**

None of the pS which responded in the old format, nor the one State which used a mixture of the two formats, replied to this question. Of those who replied, some did at length and to good effect. In general, however, replies were very diverse. A number of States chose to answer either 3.1 or 3.2, but not both, or simply provided a combined answer.

A significant number of States took the opportunity to mention their commitment to the Vienna Document 1999, CFE and Non-Proliferation and Disarmament Treaties, with a few making further reference to a wider set of initiatives including (commonly) the Open Skies Treaty, mutual inspection activities and SALW and (less commonly) WMD and START. A small number of States provided particularly detailed and comprehensive responses to both parts of the question covering a range of contemporary issues.

A couple of pS took the further step of introducing new formatting – either sub dividing Q3.1 in order to provide more detailed information or adding a new sub section in order to report specific information on the implementation of UNSCR 1325.

For a small number of States, responses focused on external assistance and international co-operation activities. A further minority focused on their role in exchanging information and visits instead of addressing the policy commitment.

The range of varied, overlapping and joint replies elicited under Q3.1 and 3.2 indicate that this question could benefit from being re-framed. Unfortunately, this question is not covered by the current reference guide.

### **Intra-state elements**

#### ***1. National planning and decision-making process***

**1.1. What is the national planning and decision-making process in determining/approving military posture and defence expenditures in your State?**

A number of countries indirectly emphasized the predominating role of the executive, mostly presidential powers to adopt manifold legal acts and providing for overall leadership in the field of defence and security policy. Moreover, many states also emphasised the key role played by senior executive advisory bodies, such as the National Security Council. In general, some national reports either emphasised the role of executive/presidential constitutional

powers, while others emphasised the constitutional prerogative of Parliament on major decisions and legislation related to the overall planning and decision-making process.

Many pS referred to the checks and balances, chain of command, and how the government accounted to democratic institutions on defence planning and management issues. Some countries also discussed issue of military posture in the broader context of defence policy. As regards defence expenditures, a number of states linked the issue of defence planning and implementation with the issue of accounting and auditing in the defence sector. Some countries even added some statistical figures regarding their military expenditures, either absolutely or as a share of the GDP. Within this group of countries, some mentioned in average a share of 1% of the GDP, other made emphasis that they were committed to spend an average of 2%. Finally, the 2010 information exchange reveals that many countries have been going through reform and restructuring processes in the defence sector in order to adapt to an evolving international environment.

### **1.2 How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?**

National perceptions and interpretations of sub-item 1.2 varied considerably. Some countries referred to sub-regional security cooperation, while others emphasised their international efforts in support of multilateral cooperation, the principle of indivisible security, international transparency and confidence-building, as well as arms control. The 2010 information exchange finally illustrated that there is a general trend to participate in multi-national constabulary missions and sharing the burden of international stability and security.

## ***2. Existing structures and processes***

From the perspective of *democratic control of armed forces*, item 2 is by far the most relevant and substantive item, though important information overlaps on this issue exist with sub-item 1.1., 2.2 and 2.3. Information overlaps and duplications within item 2 were enhanced by the fact that national reports did not make a clear distinction between *procedures* (2.1) *authorities/institutions* (2.2) as induced by the Questionnaire.

Information-exchange on item 2 more generally illustrates that participating States seem to have quite *diverse national military traditions and structures* – including terminology – both with respect to the defence and security sectors. Most countries, while reporting relatively extensively on their ‘military’ in the conventional sense of the ‘armed forces’ (usually composed of the three core components of the Army, the Navy, and the Air forces), submitted much less confirmative and/or clear information on relevant structures that might be characterised as paramilitary and/or internal security forces – though it becomes clear that a large amount of participating States maintain substantive structures combining internal security and national/state security and which are at the same time distinguished from the ordinary police and civilian intelligence services. Even where explicit or implicit information was provided on paramilitary and/or internal security forces, almost no information was added on civilian control and democratic oversight. Compared to this, in the case of (civilian or domestic) ‘intelligence services’ (beyond the armed forces), information about structures was relatively explicit. However, few countries provided clear and substantive information on democratic oversight over intelligence services. Considerably more



information, including on civilian control and democratic oversight by some states, was in turn exchanged on the Police.

The least amount of (explicit) information was exchanged on the category of paramilitary forces (despite the fact that the Code contains one entire paragraph on this issue). As a matter of fact, most countries stated that they didn't maintain paramilitary forces. Most countries also stated that they didn't maintain any particular internal security forces. After all, almost no country introduced any clear or systematic distinction between 'internal security forces' (2.1) and 'security forces' (2.3). Reporting on the 'Police' included National or Federal police forces and administrative structures as distinct from local police, and to some extent the issue of community policing.

Some countries referred to the adoption and updates of defence white papers or security policy reports describing the international security environment, the evolving context of national security, and respective adaptation or the roles and missions of military and security forces. A majority of countries reported on the armed forces participation in multinational peace support, crisis management and humanitarian relief operations, mostly in support of the United Nations, but also in the context of regional security organizations, including the CIS, EU, NATO, OSCE. Some countries also referred to sub-regional security cooperation and collaboration with foreign countries and international organisations providing technical assistance to them. Few countries made an explicit distinction between the roles and missions of military and security forces in peacetime and/or times of war or emergency.

Many countries explicitly mentioned that the armed forces may be assigned for internal security missions and respective *subsidiary police missions* in order to support operational capacities in the event of natural disasters, public turmoil or specific security operations such as counter-terrorism, while some emphasised that any such missions had to be placed under the *operational responsibility of relevant civil authorities*. In this context, practically no country made an explicit link to the issues dealt with within sub-item 4.3 of the Questionnaire, though many countries reported indirectly, within 4.3, on constitutional and legal provisions to safeguard civilian and democratic oversight in the event of armed forces' assignment to internal security missions.

As it is the case with sub-item 1.1, reporting within sub-item 2.1 illustrates that some OSCE participating States provide information on the leading role of the executive constitutional powers (often the head of state or government such as the President or Prime minister) as others tend to emphasise certain 'prerogatives' of the legislative powers, and respective accountability duties of the minister of defence (on behalf of the Cabinet) to Parliament.

In order to more or less classify the wealth of (rather diverse) information exchanged only within 2.1, the subsequent illustrations there cluster around the following key themes: Constitutionally established procedures ensuring civilian control and democratic oversight; Cross-departmental coordination and public scrutiny beyond the state; Special information about civilian control and reforms in the Police; Structure, oversight, reform, and privacy protection in relation to civilian/domestic intelligence services; Special information regarding the basic structure of the armed security sector; Additional explicit or indirect reference to paramilitary and / or internal security forces; and: Trends towards the privatization in the security sector / PMSCs.

## **2.1 What are the constitutionally established procedures for ensuring democratic political control of military, paramilitary and internal security forces, intelligence services and the police?**

A number of countries apparently aimed at pro-actively reporting on this issue. Several countries stated that they had not only introduced relevant institutions but also adopted *explicit legal/constitutional provisions* safeguarding democratic and civilian control of the armed forces and security services.

Few countries provided an explicit, systematic, and clear distinction between the competences and authorities of the *three respective constitutional powers, the executive, legislative, and judicial power*. Not all countries though delivered clear and unambiguous information regarding checks and balances and respective delineations of competencies and responsibilities of relevant constitutionally established authorities:

Almost no country provided clear-cut information regarding *all* respective categories of forces (military-; paramilitary-; internal security forces; intelligence services; police). The least (explicit) information was clearly submitted on *paramilitary forces*.

The replies clearly illustrate that the security sector in the OSCE region remains rather diverse. At the same time, the issue of ‘democratic control of armed forces’ cannot be adequately assessed unless the core components of a State’s national security structures are clearly identified. A general assessment reveals that there remains a substantive, though badly defined ‘grey zone’ of two ‘traditionally overlapping’ overlaps and one ‘emerging overlapping’ area in the armed security sector of the State:

1. Overlaps between conventional military defence forces and non-conventional paramilitary security structures
2. Overlaps between paramilitary and/or internal security forces and security and intelligence services
3. Emerging overlap between regular, statutory armed and security forces (either conscripted or voluntary) and non-statutory outsourced/contracted/privatised security and military actors

Some pS also reported on private military and security companies in this section.

## **2.2 How is the fulfilment of these procedures ensured, and which constitutionally established authorities/institutions are responsible for exercising these procedures?**

There are substantial overlaps of reporting under this sub-item with the preliminary sub-item 2.1 leading to considerable amount of duplications of information. In addition to information provided under item 2.1, the participating States reported on further procedures, institutions and best practices at the executive and legislative levels. Replies covered, *inter alia*, delineation of defence competencies, the relation between civilian and military personnel in the defence structures as well as the role of an Ombudsperson.

### **2.3 What are the roles and missions of military, paramilitary and security forces, and how does your State control that such forces act solely within the constitutional framework?**

This section also contains important overlaps with both 2.1 and 2.2, and even 1.1. In addition to information provided under previous questions, the participating States included information regarding:

- adaptations to a changing international security environment
- foreign defence vs. internal security (assistance) missions of the armed forces
- additional information on the status and missions of paramilitary and security forces.

### ***3. Procedures related to different forces personnel***

There are important overlaps between 3.1 and 3.2 regarding voluntary military/national service. Similarly, there are important overlaps between 3.3. and 4.4.

#### **3.1 What kind of procedures for recruitment and call-up of personnel for service in your military, paramilitary and internal security forces does your State have?**

A number of countries reported that they had passed, were in a process, or had planned to pass towards an all-volunteer, fully professionalised military personnel system. At the same time, a variety of information was submitted regarding the recruitment, call-up, and role of reserve forces, and the opportunity to perform so-called ‘voluntary national service’ in different branches of public security and non-security sectors. Respective information explicitly or indirectly distinguished this category of service from the voluntary service performed by the newly professionalised military and even privately contracted personnel. A number of these states also emphasised that conscription legislation was just *suspended* for an undetermined period of time until new circumstances may suggest returning to partial or full-fledged general mobilisation. To make it even more complicated, some countries even mentioned that citizens still had the opportunity to perform ‘voluntary conscript military service’.

It seems that even other types of ‘hybrid forms’ of compulsory *military* service exist in OSCE participating States. For instance, among those reporting that they maintain conscription, some mentioned that compulsory military service could also be performed in specialised branches of the armed security sector not strictly belonging to the armed forces; shortly: within internal security structures.

#### **3.2 What kind of exemptions or alternatives to military service does your State have?**

Most countries, regardless of whether they had compulsory or voluntary military service systems, reported that citizens or candidates with any criminal record in the past or present are exempt or not taken into account for service. Almost all countries maintaining conscription provided relatively clear information regarding specific categories of citizens exempt from compulsory military service. Among these countries, few countries distinguished between exemption and postponement of service, and only few provided relatively detailed and clear information regarding the (independent) examination of draftees’ physical and mental fitness.

Not all countries providing for compulsory military systems explicitly referred to conscientious objection as a prerequisite for performing alternative (civilian) service, though most referred to it more indirectly and by means of using a different terminology. However, not all

citizens performing alternative service did it actually in the civilian sector but rather in distinct departments and services of the security sector itself. Not all countries maintaining conscription accepted 'religious' motives for exempting somebody from armed military services and respectively granting alternative ways of national or public service. Most countries having conscription listed more or less detailed opportunities to perform 'alternative military service', 'alternative labour service' 'alternative national service', or 'alternative civilian service', whereas the range of respective alternative services varied considerably from country to country. While some listed work in the agricultural sector, others offered opportunities even to perform humanitarian work.

Some countries, while mentioning that alternative service opportunities would exist based on conscientious objection to compulsory military service, also stated that national defence was actually a '*right and duty*' of citizens.

Among the national provisions regarding exemptions from and alternatives to compulsory military service (3.2), participating states took into account the following main patterns: deferral of (compulsory) military service; criteria of exclusion (as distinct from) exemption from military service; alternative ways of serving compulsory military service (as distinct from alternative civilian service); types of alternative service, as well as the criteria of Alternative (civilian) service; procedures for applying for alternative service; and the length of alternative service.

### **3.3 What are the legal and administrative procedures to protect the rights of all forces personnel as well as conscripts?**

Information on sub-item 3.3 varied greatly. While some countries, in their reports, clearly emphasized human rights and fundamental freedoms of service personnel both in their capacities as conscripts or volunteers or even as ordinary citizens, some others seemed to emphasize more the *duty* or *disciplinary* side service. Moreover, while some countries indirectly put into evidence *military or martial courts systems* and legal procedures regarding service discipline and regulations, others tended to indirectly emphasizing the principle of constitutional supremacy of civilian constitutional power over military power and respective supremacy of competencies of civilian court systems in virtually *any* (not just criminal) matter pertaining to armed and security forces both as an institution and as regards individual service personnel. A majority of countries reported that the armed forces' personnel did not have the right to strike.

Among the national provisions on the protection of service personnel rights, participating States took into account the following main patterns: Rights of military and security forces personnel; Limitation and/or Restrictions on rights; Legal and administrative procedures protecting those rights; Rights to submit complaints, applications, requests, petitions, remonstrance; Rights to appeal disciplinary punishments and/or measures; Ombudspersons; Appeals to courts of law; Social protection, benefits, and/or pay package; Working conditions and environment; Special duties of armed forces personnel; Specific disciplinary issues and the duty to obey; Service personnel's representatives and/or associations and/or labour unions; Special provisions for ranks and conscripts; Establishment of ethical standards for internal conduct; and: Policy and reform of human resource management.

#### ***4. Implementation of other political norms, principles, decisions and international humanitarian law***

**4.1 How does your State ensure that International Humanitarian Law and Law of War are made widely available, e.g., through military training programmes and regulations?**

**4.2 What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?**

**4.3 How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity?**

**4.4 What has been done to provide for the individual service member's exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?**

**4.5 How does your State ensure that its defence policy and doctrine are consistent with international law?**

There are important overlaps in-between sub-items 4.1, 4.2, and 4.3, as well as 4.4 and 3.1. As regards the reporting on 4.1 and 4.2, *a priori*, not all countries seem to use interchangeable terminology. While a majority of countries mostly use the two terms 'International Humanitarian Law' (IHL) and 'Law of Armed Conflict' (LoAC) *quasi* interchangeably, few countries also use in addition to that term 'Law of War', whereas it does not become clear as to whether all these terms refer to the same international norms, standards, and practices of humanitarian law as applicable in armed conflict. For instance, one country stated that all personnel in the Armed Forces receive mandatory instruction in IHL "which is also known as the Law of Armed Conflict". Another country apparently aimed at providing specific information on its Department of Defence's 'Law of War' Programme.

Most countries limited their information on IHL-training to *military* forces. Very few included paramilitary or internal security forces though these two categories of forces are likely to be used more frequently in the context of both domestic and international constabulary missions. Training includes legal awareness raising, as well as pragmatic aspects (such as Soldiers and Officers Handbooks or Easy-to-carry personnel instruction cards) as well as practical and simulation exercises.

Often, states collaborate with either the ICRC, San Remo Institute of Humanitarian Law, or national branches of the Red Cross and Crescent to promote general awareness on the Geneva Conventions and IHL-training of armed forces personnel. Moreover, some countries state that also collaborate with non-governmental and research institutes to organise public seminars and promote IHL to a broader national or international public. Many countries also put into evidence that training also had to include International Human Rights and Penal Law and referred to the need to provide special and refresher training on both IHL and Human Rights Law of troops deployed abroad. One country even organised special workshops on the

Code of Conduct, including relevant IHL-training, in which military officers and civil servants of all OSCE participating States could participate.

In the context of 4.3, further information was provided on the need to offer special training for military and security forces on human rights law, including cultural and collective rights, and in preparation mainly of international peace and constabulary missions. However, some countries also referred to national provisions protecting specific ethnic and religious rights, and national minorities in particular.

Sub-item 4.4 considerably overlaps with sub-item 3.1 of the Questionnaire. Moreover, only few countries provided explicit and detailed information on the issue of ‘political neutrality’ as such, and for instance how (and why) they balanced the restrictions of service personnel civil rights with specific legal incentives and social benefits of service and herewith balancing political and social justice compared to ordinary citizens. Most countries mentioned specific restrictions on the part of human and civil rights of military and security forces’ personnel (while on duty), such as the prohibition to organize or participate in political meetings, declarations or propaganda, or to collect signatures for political purposes. A majority of states mentioned that the armed forces personnel were denied the *right to strike*. Most countries in turn reported that the personnel enjoyed the *right to vote* like any other citizen.

National replies on 4.5 varied greatly though comparatively modest (additional) information was submitted within this sub-item.

### **Public access and contact information**

This section as such represents a considerable quantitative and substantive amendment compared to previous information exchanges under the old format of the Questionnaire. Especially the reporting on public access to information and awareness raising on the Code represents a completely new aspect of the Questionnaire – though the amount of information exchanged on this issue so far (2009/2010) remains surprisingly modest.

#### **1. Public access**

##### **1.1 How is the public informed about the provisions of the Code of Conduct?**

##### **1.2 What additional information related to the Code of Conduct, e.g. replies to the Questionnaire on the Code of Conduct, is made publicly available in your state?**

##### **1.3 How does your State ensure public information related to your State’s armed forces?**

The 2010 information exchange clearly shows that little has been done so far by participating States to pro-actively promote general awareness and public access to information on the Code *beyond the politico-military establishment*. One country simply stated that “members of the public may request information through the Freedom of Information Act”. Another country reported that the national military periodical regularly issued articles on the Code. Some participating States essentially reported that the item was not applicable since they didn’t have armed forces of their own. On the other hand, a rather small state noted that a national point of contact for the implementation of the Code “is being considered”.

Sub-item 1.3 formerly belonged to a section within the Questionnaire where aspects of democratic control of armed forces were addressed. So far, the technical extraction from there and insertion of this aspect into the new sub-section III of the Questionnaire hasn't negatively impacted from a democratic control of armed forces perspective.

## **2.1 Provide information on the national point of contact for the implementation of the Code of Conduct.**

Most countries referred to either an address within the Ministry of Foreign Affairs or Ministry of Defence (or both). One pS also reported on how the reply to the Questionnaire was prepared by the co-operation of different ministries and the Parliament.

### **Other information**

Following the two interpretative statements given in conjunction of the adoption of FSC.DEC/2/09, a number of replies included information also Women, Peace and Security and Democratic Political Control of Private Military and Security Companies. This information was either spread throughout the Questionnaire or in a separate section devoted to the topic.

## ***2. Main recommendations for improving the information exchange***

The 2010 information exchange, based on the technically updated Questionnaire of 2009, clearly illustrates a positive development towards better structured reporting, less overlaps between sub-items, and more substance and diversification of information. Nevertheless, there are still number of points that could be improved in the information exchange in general as well as in the proposed reference guide.

### ***Recommendations to improve the draft reference guide***

The detailed changes to the draft reference guide can be found in the Annex of the report and only general observations are presented in this section.

#### **Intra-State Elements:**

- Q1.1 - In the current format, the replies to the first question listing all international anti-terrorism agreements and arrangements take up lot of space in the written responses. It is therefore proposed to change the way in which this information is collected in order to reduce the burden on States and form a separate new four part Annex to the Reference Guide. The CPC/ATU could update the various listings of legal instruments in Tables 1-3 of the Annex. Once a first, retrospective version of the Annex has been produced by the pS, then all subsequent annual updates would be limited to covering new commitments, made within the last year. This would free up time for the gathering and submission of more quality information (for example, under Q1.4). The new, stand-alone format could also act as a helpful information management tool for States, and for use by ATU and others in the CT field.
- Q1.2 - It would be useful to offer all States the opportunity to simply enter ratification details – law reference and date - against each of the relevant (pre-listed) international legal instruments in the above legislative Tables 1 and 2 in the new Annex, to which an additional right hand column would be added for this purpose. Free space is also needed in order to respond to Q1.2 where pS can provide additional information relating to any new national legislative measures since they last reported. This would be in addition to the option of noting references to relevant ratification laws in Tables 1 and 2 of the Annex.
- Q2. - It may assist clarity if the Draft Reference Guide includes an explicit reference to Status of Forces Agreements (SOFAs).
- Q3. - The reference guide could also provide some guidance on this question as currently the replies are overly diverse. The pS could focus (a) on activities in the past year relating to any the CSBMs, arms control or disarmament activities they are implementing, (b) the relative importance they attach to each initiative in terms of maintaining or improving security.



### **Intra –State Elements:**

- Q1.- Adding (additional) guidelines with reference to the issue of ‘constitutionally established procedures’ (II.1.1) and ‘constitutionally established institutions/authorities’ (II.2.1) referring specifically to the role of the three constitutional powers of the executive, legislative, and judicial branches of government, as well as on checks & balances.
- Q2. - Adding (additional) guidelines to the Questionnaire further specifying relevant ‘constitutionally established’ “procedures” (II.2.1) (as distinguished from ‘constitutionally established’ “institutions/authorities”: II.2.2).
- Q3. - Adding (additional) guidelines to sub-items II.3.3 on general patterns of human rights and fundamental freedoms of armed forces personnel, and add further guidelines on the specific aspect of civil rights as well as on the armed forces’ political neutrality within II.4.4.

In addition, the reference guide could also indicate where voluntary information on the implementation of UNSRC 1325 on Women, Peace and Security and on democratic, civilian, and political control, including multi-national and multi-stakeholder regulations of Private Military and Security Companies would best fit. This would help to locate the information which is spread around different sections of the replies depending on reporting pS.

### ***Recommendations for possible future updates of the Questionnaire***

While the aim of the study was not to suggest changes to the Questionnaire itself, it helped to identify some gaps and points for improvement. The following recommendations are included in this report for the consideration of the pS should they in the future agree on another update to the Questionnaire.

### **Inter-state Elements:**

- The lack of direct reference within the Questionnaire to programmes for the community based prevention of terrorism is a rather surprising omission, especially given its presence in the Code of Conduct itself - Section VI, paragraphs 17 and 18. More recently, the same concern has been given prominence both in the Council of Europe Convention on the Prevention of Terrorism (2005), to which most of the OSCE member states are signatories, under Article 3 “National Prevention Policies”, and as one of the four pillars (“Prevent”) of the European Union’s Counter Terrorism Strategy. It would be good to address this omission through an amendment to the Questionnaire.
- A question requesting information about the roles of the various institutions in either the internal (national) sphere and/or the external (international) sphere could be added.
- Q 1.2 – This question could be framed to cover a broader range of National Measures - both legislative and institutional- to combat terrorism like in Q1(d) of the old Questionnaire. This method would help to re-establish the previous helpful distinction between national legislation to implement international agreements etc (to be covered in

the Annex) and other national legislative changes which form part a wider set of CT efforts and measures.

- Q1.3 - To encourage more comprehensive answers and avoid potential confusion, it would be helpful to include a reference to “intelligence services” in the title of the question.
- Q1.4 – This question could be repackaged and renamed “Thematic Developments”. There is also a potential role for this question as being the place to capture more dynamic developments in States’ CT practice. This should be the place where States set out their own progress in key, thematic areas, which would no doubt change over time and, ideally, the Questionnaire would be updated periodically to reflect this.
- Similarly, a new question on international counter terrorism co-operation could be added. This would give the pS the opportunity to share info on expert meetings (open or closed), pilot projects, sharing good practice, technical assistance (whether offering or receiving) in specific areas, such as those mentioned on Q1.4. The aim of this would be:
  - (a) to increase the relevance and practical application of the annual information gathering process to States by providing them with the opportunity to express their interest in working with other States to share good practice in a area of counter terrorism practice (either as a provider or recipient of expertise)
  - (b) to remedy the apparent lack of cross reference or joint working between the various international bodies concerned with Counter Terrorism - OSCE, UNCTC, Council of Europe, EU etc. As the OSCE already has a mechanism for collecting annual information from a large number of States, it could take the initiative to maximise use of this information in co-operation with other international fora.

#### **Intra-state elements:**

- Adding (again) references to all corresponding paragraphs of the Code within each item/sub-item of the Questionnaire, because this considerably enhances transparency and adds additional practical guidelines to the Questionnaire.
- Moving new sub-item II.1.2 to the inter-state sections of the new Questionnaire, since it represents an inter-state aspect of the Code.
- Removing the stipulation “*How is the fulfilment of these procedures ensured...*” from II.2.2, since it does not add anything but unnecessary overlaps with sub-item 2.1.
- Changing the respective stipulation of II.2.3 (and as highlighted hereafter in italic/bold) as follows: “... and how does your State *safeguard* that such forces act solely within the constitutional framework”. The word ‘controls’, though consistent with the corresponding provision in the Code, is not clear enough – at least from a democratic control of armed forces perspective.

- Changing the wording of sub-item 4.4., the essence of which may include the following elements: “Additional information regarding the *protection (and restrictions) of the civil rights of armed forces’ individual personnel*, as well as on the *armed forces’ political neutrality’ as an institution*” in order to avoid unnecessary overlaps with sub-item 3.3 and to enhance complementarities on the part of armed forces human rights and fundamental freedoms.
  
- Extracting sub-item III.1.3 from Section III of the new Questionnaire and transferring it to Section II, for instance in form of new sub-item II.1.2 – while the current sub-item II.1.2, as stated above, could be reallocated within Section I of the Questionnaire. The issue of “public access to information on the armed forces” (in general) is an important aspect of democratic accountability, public transparency, and integration of the armed forces with civil society. It also thematically corresponds with the public transparency regarding defence expenditures as implicitly provided for in sub-item II.1.1.

### ***3. Main changes in the information exchange in accordance of the old and new questionnaires***

#### ***General observations***

Compared to the old Questionnaire where individual items were mixed up in a random fashion, the new Questionnaire's structure has been improved and made more transparent and consistent with the structure of the Code. This facilitated a more coherent and better structured national reporting in general.

However, a number of states have replied to the old format of the Questionnaire, despite the fact that the new Questionnaire has been available already for the 2009 information exchange. Moreover, several countries proceed to almost copy-paste information from previous national reports and without paying attention to the slightly amended semantics of the new Questionnaire. These general trends can be identified at least as regards the reporting under section II on aspects related to intra-state aspects and democratic control of armed forces in particular. Compared to this, the (new) section III of the Questionnaire clearly delivers a significant shift of reporting if compared to the old format which did not include most of its aspects. Accordingly, information exchange under section III represents both a qualitative and quantitative amendment.

The most obvious manifestation of the Questionnaire's improved structure is the introduction of three respective sub-sections reflecting indirectly the (implicit) structure of the Code according to *inter-state provisions* (sections I-VI) and *intra-state provisions* (sections VII-VIII), as well as *implementation arrangements* (sections IX-X). Accordingly, the Questionnaire's new section I now focuses on relevant inter-state aspects, while its new section II refers to intra-state aspects of the Code. In addition, the new section III of the Questionnaire deals with certain implementation arrangement mainly connected to national measures undertaken to raise public awareness and access to information on the Code and the armed forces more generally.

However, one major (formal) shortcoming of the new Questionnaire is that it does not anymore include explicit references to respective paragraphs of the Code to which individual questions relate to. This should be changed again, in the sense of the 2003 Questionnaire.

#### ***Inter-state elements***

Regarding the inter-state section, the new questionnaire followed to a large extent the old format. Therefore, questions 1.1 and 1.2 are relatively well covered by all pS, including those who still used the old version. Those pS, who used the new Questionnaire do appear to provide more comprehensive information under Q1.2 with more references to participation in multilateral fora.

Regarding Q1.3, the scope of the old Q1(e) covered roles and missions of "armed and security forces", while the new Q1.3 extended the scope to cover "military, paramilitary and security forces and the police". Therefore this section was not well covered by any State which followed the old format as that excluded the police role in counter terrorism work which, for many States, is an important and wide ranging one.

The introduction of Q1.4. with the thematic sub-ticks, is a major change to the old format and requests the pS to report on a number of practical measures in CT. This section can potentially produce a lot of unique information that is not reported in other fora and can be useful for pS,

think tanks and international organizations. In the 2010 exchange, this question received the lowest response rate and replies were diverse.

### ***Intra-state elements***

On the intra-state elements, there are only minor changes in item 2 of the new Questionnaire, as it corresponds more or less with the old Questionnaire's sub-items 3a-c. At the same time, there is a major difference with regards to old sub-item 3.d regarding "*public access to information regarding the armed forces*", since this aspect has been re-allocated within the new section III (1.3) of the Questionnaire, and despite the fact that public access to information on the armed forces is an important aspect of democratic governance of the security sector. So far, this hasn't negatively impacted on the quality of reporting, including from a democratic control of armed forces perspective.

A more substantive amendment is the introduction of question 4. The IHL aspect is further amended via new sub-item II.4.2 referring to the respective provision under §31 of the Code regarding the *individual accountability* of armed forces personnel under both national and international law – which implicitly adds the new dimension of (national and international) human rights and penal law.

Sub-item II.4.3, for the first time since the launch of a standard Questionnaire in 1998, adds a key aspect of section VIII of the Code dealing with the (*democratic*) *use of armed forces*, including in the event of *the* assignment of armed forces to *internal security missions* (specifically: §37 of the Code). Both from the perspective of democratic control of armed forces and in the context of the evolving security environment (including with regards to counter-terrorism) this perhaps represents a mini-revolution within the Code's implementation process.

The 2009 Questionnaire also introduced a new section on Public Access and Contact Information. Especially the issue of public awareness-rising on and public access to information on the Code add new dimensions to the Questionnaire both from a quantitative and qualitative perspective. At the same time, it should be stated that the new Questionnaire does not anymore provide for opportunity (at least formally) to "*add any other information*" as it was the case with item 7 of the old Questionnaire. This, however, has not prevented many participating States from adding additional information after section III anyway.

## ***4. Conclusions***

The current annual information exchange is collecting some very important information which is not being collected by any other international body. The participating States need to be commended on their efforts to gather and share a vast amount of information each year.

However, with the new Questionnaire the response rate has declined. In addition, the scope and detail of information, as well as approaches to structured and systematic reporting varies considerably. Some national reports ranged over 60 pages, some did just consist of 1 single page; some replies to individual items/sub-items ranged over 10 pages while some items/sub-items weren't addressed at all by in individual national reports. While it is not desirable that all pS would report according to a same pattern or model – and without taking into account the specificities of each system – more structured and coherent replies would contribute to the usefulness of the shared information.

The challenge for the OSCE is to find new ways of extracting added value from this time- and energy-consuming process in order to maximise benefits for pS. To this end, the information could be used and analyzed more by the OSCE and pS themselves, and promoted within international organizations, think tanks and the academia.

For example Q1.4 gathers important information on counter-terrorism activities. This information should be actively analysed by the OSCE/ATU. This would enable establishing relevant links to other international capacity building and CT information sharing initiatives (CODEX-TER, UNCTC). It would also maximise opportunities for international co-operation activities in the Counter Terrorism field in the OSCE area.