



Organization for Security and Co-operation in Europe

The Secretariat

**Director of the
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Mr Chairman, Ladies and Gentlemen,

Thank you for the invitation to take part in this follow-up seminar on the topic "Security Sector Reform and its Impact on Azerbaijan's Defense and Security Policy". I appreciate the opportunity to speak on behalf of the OSCE about the OSCE's Code of Conduct on Military Aspects of Security. And I would like to thank the Geneva Centre for the Democratic Control of Armed Forces, DCAF, for this initiative and the invitation.

Introduction

The "Code of Conduct on Politico-Military Aspects of Security" is one of the most important normative documents adopted by OSCE pS since the 1975 Helsinki Final Act. Among other politico-military commitments of OSCE pS, it occupies a fundamental place for at least two basic reasons. First, it represents an instrument which has no real counterpart in any other international organisation. Second, it touches on an area of state power which so far has been considered a taboo: armed forces.

From this perspective, the Code's provisions regulating the role and use of armed forces (at domestic and international levels) complement other politico-military norms. Not least due to this, the Code needs to be seen in context with other OSCE dimensions, which support and enable an effective and purposeful implementation of the Code.

In my presentation, I would like to outline the essence and political significance of the Code. I will specifically focus on the relevance of the Code in terms of conflict prevention,

and on how security sector reform, as referred to by the Code, matches the larger framework and potential of the OSCE. Examples in this respect can be drawn from our experience in the Balkans. Finally, some thoughts on the importance of the Code for the Caucasus, referring to OSCE's activities in this region.

1. Essence of the CoC

The Code of Conduct comprises a comprehensive set of rules on the deployment of armed forces, both in international and domestic conflicts. It was negotiated within the OSCE Forum for Security Co-operation, starting from 1992, and was adopted at the Budapest Summit in 1994. The Document has been in force as a politically binding document since 1 January 1995, which marks nearly a 10 year anniversary.

Provisions

In the field of *inter*-state norms, the CoC confirms general OSCE and UN principles such as

- the co-operative security approach,
 - the OSCE's comprehensive security concept,
 - the indivisibility of security in the OSCE area and beyond,
 - the commitment of non assistance or support to an aggressor state,
 - the right to self-defense,
- and others¹.

As regards *intra*-state relations - and this is the really innovative part - the Code's provisions concerning the democratic control *and use* of armed forces truly broke new ground: pS committed themselves to ensuring that constitutionally established and democratically legitimate authorities monitor the security forces. Furthermore,

- concerning paramilitary forces, pS agreed not to tolerate forces that are not accountable to or controlled by constitutionally established authorities. This provision has been of

¹ - the commitment to take appropriate measures to prevent and combat terrorism in all its forms,
- the right to free choice of security arrangements,
- the good faith implementation of arms control, disarmament and CSBM commitments,
- the necessity to pursue arms control, disarmament and CSBM measures,
- the countering of economic/environmental and human dimension tensions conducive to conflicts,
- the equal importance of co-operation at the various phases of conflict management as well as
- the peaceful resolution of and humanitarian assistance in armed conflicts.

particular relevance for example to countries of former Yugoslavia, which were unable to exercise authority over paramilitary groups.

- Moreover, security forces should only be entrusted with internal missions in conformity with constitutional procedures.
- In case the use of force is unavoidable, it would need to be commensurate with the needs for enforcement.
- Furthermore, pS commit to ensuring that security actors fully respect international humanitarian law of war and are informed of their rights and obligations under international law.
- PS further agreed to support the integration of armed forces with civil society as an important expression of democracy.

Implementation

As a politically binding document there are clear limits in making sure the Code is being implemented. However, the implementation of Code is discussed in the Coc Follow Up Conferences (three times so far), in the FSC working groups and Annual Implementation Assessment Meetings of the FSC. Also ODIHR has been involved in the Code implementation. In co-operation with DCAF ODIHR is planning to compile a Handbook of human rights in the Armed Forces, based on the provisions of the Code.

One of the main instruments for monitoring the implementation of the Code has been the Questionnaire adopted by the FSC in 1998 with the purpose of making the exchange of information more systematic. It contains questions covering all areas of the Code and is exchanged among pS annually. The questionnaire has been updated last in March 2003, giving particular consideration to anti-terrorism measures.

2. Significance of the CoC

Security sector, political stability and democracy are conceptually linked by the Code. It also connects domestic and international levels. While stressing the importance of politico-military security, the Code goes beyond it by focussing on the rule of law and a **broader concept of security**. The application of the Code therefore cuts across OSCE dimensions and does not exclusively pertain to military aspects of security.

The political significance of the Code lies in the fact that pS decided to base norms for **internal** regulations of politico-military behaviour (sections VII and VIII) on international guidelines. Specifically the principle of **democratic/civilian control** (already an issue in the Copenhagen and Moscow Documents) is introduced for the first time into the body of politico-military norms themselves. The Code is therefore unparalleled in any other IO and is used as a reference document, e.g. in the PfP process. It helps to overcome a shortcoming of the Geneva Conventions and its Additional Protocols, whereby a state can simply avoid characterising a situation as an internal conflict and refer to the mission in terms of maintaining public order or safety.

By referring to **paramilitary** and (internal) security forces, the scope of the Code raises questions related to the state's monopoly of the legitimate use of force. This indeed is relevant and reflects some realities within the OSCE area, which require comprehensive and sustained reform efforts (especially) in the security sector as a whole.

Finally, the Code is a **living document** that is adaptable to emerging ('new') threats. The Questionnaire for example was updated to give greater weight to exchanges on issues pertaining to anti-terrorism measures. The real challenge here is to maintain other provisions of the Code while fighting terrorism - namely democratic control and respect for HR and international humanitarian law. Due this, the Code is a useful framework and an opportunity to ensure that anti-terrorism measures are based on democratic principles and the rule of law.

3. Specific significance of the CoC in terms of conflict prevention

The OSCE Strategy on New Threats identifies terrorism, organised crime, economic and environmental factors, politico-military factors, discrimination and intolerance as particularly relevant for today's security. How does the Code contribute to preventing conflicts arising from these and other threats?

Good governance

Common to new and old threats alike is that bad governance, especially in the security sector, tends to exacerbate insecurity whereas good governance generally makes threats more manageable and lessens them.

Broadly speaking, the quality of governance in the security sector determines the quality of security delivered. Security extends to *both*

- the protection of states against aggression and subversion and
- the protection of individuals from (state) violence or extensive criminality.

Good governance is thus closely linked to human rights, the rule of law, economic development and structural stability.

Why oversight matters

In this connection, the issue of oversight has important security implications:

1. Democratic oversight is essential in consolidating **accountability of armed forces**. Members of the security sector - individually and collectively - must be answerable for their actions. Unless compliance with formally set standards is effectively enforced, a culture of impunity may develop all too easily.

2. Secondly, **executive officials** managing the security bodies must also be accountable (legislative oversight). Their responsibility also extends to the implementation of new anti-terrorism legislation and violations of civil and human rights that possibly occur in this respect. The security sector must not be politically influenced.

3. Finally, if highly autonomous security bodies are able to act with impunity, they invariably are **professionally weak**. This puts security at risk, constrains democratic development, increases the chance of financial misallocation, and also blocks economic development.

For all these reasons, democratic oversight is an imperative and effective mechanism to ensure and consolidate security for the state and its population.

4. Larger framework and potential of the OSCE

Although this makes clear why the Code is significant in terms of security, actual needs and challenges in implementing the Code may not always fully be recognised by formal review processes. A key question therefore is: How can the OSCE assist pS in implementing the Code *in practice*? And how are the Code and its provisions supported by the larger OSCE approach to security?

Options for external assistance?

Strengthening democratic governance in the security sector is a highly political activity and cannot be addressed by technical assistance alone. Activities in this field require a profound understanding of the situation in the partner country (political relationships among key actors, how and why decisions are made, incentives and resistances to change). This creates a number of challenges for external actors offering assistance in security sector reform.

There are two principle ways in which external actors can assist security sector reform processes:

- 1) by providing specific types of assistance (see DAC box, annexed) or
- 2) by ensuring that assistance is being delivered in such a way that it connects with and supports an ongoing reform process in the country. (I will elaborate on our experience in BiH shortly).

Most of the direct support options often are limited in practice due to restrictive mandates, legislation or long-standing practice of many support actors. Restrictions of this kind make partnerships on international levels ever more necessary if partner countries are to be supported purposefully in their reform efforts.

Potential of OSCE

In this respect, the OSCE could well serve as a co-ordinating **platform** and

- facilitate the setting of priorities within reform (and assistance) processes,
- encourage exchanges of opinion among colleagues (FSC),
- help to build consensus on the desirability and direction of a reform process and supports a reform friendly climate,

- share information on best practices as documented by regular reviews,
- engage with other (international) actors relevant in this field,
- ...

Furthermore, in an effort to promote the acceptance and effectiveness of principles such as oversight, the OSCE is able to **make available specific kinds of expertise**, e.g. strengthening the Human Rights awareness among armed forces, or improving civilian skills, particularly among parliamentarians, to analyse, debate and oversee the security system. It may be interesting to note at this point that, unlike many donor countries, the OSCE is not restricted in its co-operation by the question of ODA eligibility.

On a general note, democratic governance in the security sector can only be enhanced as part of a more comprehensive agenda that supports a reform-conducive environment. The OSCE's broad conceptual basis of security, which comprises the Code as one element, offers an effective frame and basis for enabling such an environment. The OSCE plays a crucial role in **spreading normative concepts** of security such as the Code of Conduct.

In addition, there are various channels and instruments that can help pS implement the CoC: the FSC, the PA, the ODIHR, the OCEEA, the Secretariat and missions of the OSCE - all can play a role in supporting the objectives pursued by the Code. Allow me to focus briefly on the **field missions** as they play a crucial role in understanding the specificities of security in a particular country and region, and in strengthening the partnership of the OSCE with these countries. Concerning the implementation of the Code and other reform measures, the insights of the missions allow the OSCE to

- identify existing concepts and reform efforts which can be built on, and to take into account history and mode of operations, which differ in each country. There is no template for security sector reform; while transparency and accountability remain desired end states, they may be achieved by different paths.
- be in direct and close contact with the national leadership of a country and support its commitment in reforming the security sector.
- observe and constructively accompany the practical implementation of reform processes. Very often, challenges lie less with norms and regulations but rather in the practice thereof.

- mediate and strengthen confidence between governmental security bodies and civil society. Not least due to their long-term presence, missions may be in a good position as interlocutors.
- document, accumulate and spread best practices.

The OSCE is therefore able to assist pS in implementing the Code as well as wider reform in the security sector

- on a permanent basis (“membership”),
- in the long-term (missions) as well as
- in response to most pressing issues (transmission of expertise).

6. Lessons learnt in BiH

For practical illustration, allow me to elaborate on our experience in assisting the defence reform process in BiH, and on lessons that may be learnt in this respect.

Defence Reform Commission

In May 2003, the High Representative for BiH (HR) established a Defence Reform Commission, tasked to draft and amend legislation, including regulations to implement such legislation, necessary to reform BiH reform structures. The Commission comprised a mix of top officials from national defence structures, civilian representatives, international experts - all appointments confirmed by the HR. The composition of the Commission reflected a balance of the constituent ethnic representatives in BiH.

The Commission was specifically tasked to ensure

- consistency with Euro-Atlantic standards and credible candidacy for PfP
- consistency with OSCE politico-military commitments
- democratic civil oversight
- state-level command and control
- interoperability of defence structures
- defence funding within fiscal limits

The mandate and functions of the Commission have been expanded further to assist BiH in the practical implementation of the Commission’s recommendations.

Role of the OSCE

According to a decision by the HR, the Director of the Department of Security Cooperation at the OSCE Mission to BiH has served as Vice Chairman of the Defence Reform Commission. Moreover, OSCE staff of this Department of the mission comprise the staff of and manage the Secretariat of the Commission, which supports members of the Commission, including its nine teams, in matters of management, strategic guidance, coordination and assistance.

Lessons Learnt

The experience in BiH is unique in terms of the mandates of the IC, established as a result of the GFAP and the role of the HR. However, while considering this, some general lessons may be identified, which one could apply also to other countries:

- A useful starting point for defence reform was the clear definition of the **end goals** to be attained. For BiH, these were contained primarily in the PfP benchmarks and BiH's OSCE politico-military commitments.
- The foundation for all defence reform work was the identification and drafting of the **legal measures** necessary to reform defence structures. This also included regulations needed to *implement* legislation.
- Military-technical reforms should not be separated artificially **from overall security sector reforms**. In the case of BiH, SFOR-led military-technical reforms could have been associated even more closely with the political calculus that was essential for reform implementation.
- **Leadership** is a key factor in reforming security systems. Within the IC and within the country, there needs to be one person designated to lead the process. These individuals should have appropriate backing within their respective communities (international community and local community). In addition, the Defence Reform Commission achieved progress not least because its chairman possessed the experience, gravitas, negotiating skills, and respect to push the defence reform process forward. Leadership, in particular on part of the IC, cannot be effectively exercised from a distance unless there is a supporting staff organisation, both within the IC and the local community (normally the Ministry of Defence), with the appropriate leadership, competencies and mandate to support and implement reform.
- In the case of BiH, the Defence Reform Commission further served as a **catalyst** for overcoming initial obstacles among international actors such as a lack of a common

strategic vision, divided leadership, duplication of effort, inadequate communication, and cross-cutting institutional interests that were often at odds with one another.

- The local and IC leaders must set the **strategic goals** and the tactical objectives necessary to the realisation of those goals. Both must be realistic about what their respective communities will support, so that their mutually agreed plan is a workable one. All of those involved – international and local – must know, understand and support the strategic plan.
- **Implementation:**
 - (i) Once the core issues have been agreed, they should be implemented immediately and solidly before other issues are raised. There should not be a gap between agreement and action. The IC in particular must maintain its focus.
 - (ii) The defence reform process should flow from success to success, not from missed deadline to missed deadline (or from falsified achievement to falsified achievement). The **credibility** of the process cannot be maintained if the rules keep changing. The process should move on to the next step, whatever it may be, only when the preceding step has been accomplished. (This does not preclude strategic planning.) The IC must avoid the temptation to move faster than the local community will accept or can be made to accept.
- Not least due to this, it is essential for the IC to take into account the **political, cultural, and historical aspects** of the country in order to invigorate and sustain (existing) defence reform initiatives. While Bosnian efforts have been led by the IC, there exists an ongoing requirement for establishing and developing local ownership of the reform agenda and process.
- **Transparency of defence budgets** and the defence budget process is a basic and ongoing requirement.

7. Relevance of the CoC for Azerbaijan

While these have been lessons based on experience so far, the question remains how to apply them elsewhere. How relevant are reform processes of the kind in BiH – and thus the OSCE's CoC as a guiding principle – for the South Caucasus region? What are the most important issues of concern, how are they dealt with and how can the OSCE assist?

It depends entirely on the pS itself on which issues it may request assistance. In this sense, our discussion and the insightful contributions of previous speakers today have been useful and informative.

OSCE (mission) activities in Azerbaijan

Allow me to mention the most recent OSCE activities in Azerbaijan within this area, which have intensified, not least in response to requests for greater prominence to be given to the politico-military dimension.

During the past year, our Office in Baku has co-operated with the Azerbaijani Government on several areas related to the security sector reform, in particular **(1) the implementation of the CoC, (2) the dissemination of International Humanitarian Law, and (3) Police Assistance.**

1. Prior to the deployment of the Azerbaijani International Battalion in Iraq, the Office, in co-operation with the Swiss Ministry of Defence and the FSC Support Unit based in Vienna, has organised a training course on the CoC and its practical aspects, in which participants were also briefed on the relevant International Military Conventions.

This event has led to a closer co-operation between the Office and the Ministry. In November 2003, the Office organised a seminar in Baku for middle ranking officers of the Azerbaijani Armed Forces, and members of the Ministry of Foreign Affairs, the Ministry of Internal Affairs, as well as the Ministry of National Security. The event, which was tailor-made to the needs of the Azerbaijani Armed Forces, was mainly *devoted to the practical issues* of the Code implementation and proved to be of great benefit for the participants.

In light of this success, similar projects are being planned for this year. Depending on budget availability, they would address, among others, issues such as storage and accounting of weapons and ammunitions, as well as the proliferation of small arms and light weapons.

2. Concerning the respect of Human Rights, the Office has been implementing a project on “Legal service for military servicemen and conscripts”, which is aimed at preventing

human rights violations in the army and assisting the victims of such abuses. The project is being conducted in co-operation with three lawyers based in Baku and Ganja and involves law students and recent law school graduates. On the basis of written agreements with the beneficiaries, the lawyers may act as legal counsellors for specific cases, e.g. compensation claims for the loss of labour capability during the military service².

The Office also met with representatives of several standing commissions of the National Parliament in order to get an in-depth understanding of the legislative work on alternative military service.

3. As regards Police Assistance, the Office and SMPU experts, in close collaboration with the leadership of the Ministry of Interior, have developed a Police Programme of Assistance that includes a number of activities, such as: critical needs assessment by expert missions, study trips abroad, and brain-storming meetings. The Programme was distributed to Permanent Delegations on the 8 September. Specific elements of the Programme are:

- The introduction of community policing methods at a ‘Model Police Station’ site in the town of Mingechevir, a busy jurisdiction with progressive police leadership;
- The strengthening of intelligence-led drug investigations supported by a police operational information system and linked to subsequent work by UNODC; and
- Modernization of the curriculum of the Police School for non-commissioned police staff.

An Agreement on Implementation has been prepared for signing when 50% of the required budget has been pledged by participating States.

² Azerbaijan recently established legal advisers to commanders on a low (batallion) level. This is to be welcomed as an opportunity to further promote Human Rights protection and instruction within the military as well as awareness of CoC principles.

9. Look ahead

These activities reflect to some extent the Code's relevance for the South Caucasus. Clearly there is scope for further improving the Code's implementation within and beyond this region:

- It may be useful in this sense, for example, to further *enhance the awareness* of the Code in the international communities, but also within the OSCE³. Events such as this conference today are an important part of a broader learning process.
- One may also consider making use of the *FSC* as an even more *active* assistance mechanism and explore further fields of assistance where OSCE expertise and assistance may be useful.
- The connection of the Code with *other dimensions of security* could be further strengthened in a mutually supportive way. As illustrated, a comprehensive approach is important since the Code impacts on wider issues of governance and (personal) security concerns. A cross-dimensional approach would be in line with other international actors such as the OECD whose member countries support a so called 'whole-of-government approach' in reforming security sectors.
- Finally, within the Security Dialogue, it has been discussed how to update the Code's *implementation and review process*. Further updates and specifications of the Questionnaire may be practical considering a re-shifting of threats; the addition of questions related to terrorism are a point in case. [Personally however, and considering the role of other organisations such as the UN in this field, I believe that there remains sufficient scope for improving the implementation of the *core* of the Code: Democratic control and democratic *use* of armed forces remain key elements in ensuring security and democratic consolidation that must not be neglected, and are issues of concern for *all* pS.]

These are only some of the issues being discussed with a view to further developing the Code. However, this is an ongoing debate that first and foremost depends on and lives off the pS themselves and their active input into the debate. In this sense, I look forward to continuing the interesting discussion with you today.

³ e.g. as part of military-to-military CSBMs.