

649th FSC Security Dialogue on the Code of Conduct on politico-military
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Trends in the Code's implementation in reflection of the 2010 Information Exchange

Overview

An improved 2010 Questionnaire

Overview of the
Questionnaire's
main sections

Trends of Inter-State
elements

Trends of Intra-State
elements

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... in comparison to previous formats (1998; 2003) of the Questionnaire

FORM

- The main formal amendment of the new 2010 Questionnaire is its improved structure and more consistent order of items and sub-items
 - *Unfortunately, the former explicit references to corresponding CoC paragraphs were removed*

CONTENT

- The Questionnaire's substance has also been extended, adding *i.a.*:
 - *New aspects of counter-terrorism and arms control*
 - *For the first time, the Q. also adds important (though sensitive) aspects of the Code's section VIII*
 - *Public access to information on the Code itself*

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Basic structure / main items of the (2010) Questionnaire

- **Section I: Inter-state elements**
 1. Account of measures to prevent and combat terrorism
 2. Stationing of armed forces on foreign territory
 3. Implementation of other international commitments related to the Code
- **Section II: Intra-state elements**
 1. National planning and decision-making process
 2. Existing structures and processes
 3. Procedures related to different forces personnel
 4. Implementation of other political norms, principles, decisions and international humanitarian law
- **Section III: Public access & Contact information**

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Account of measures to prevent and combat terrorism

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Sub-Item I/1.1: agreements and arrangements to prevent and combat terrorism

CONTENT

- Most states provided comprehensive information
- Universal/international legal instruments
- Regional/multilateral legal instruments
- Bilateral Treaties and other Co-operation

FORM

- Some states have been using the format of the old O.
- Listing of relevant agreements and arrangements tend to take a disproportionate amount of space
- Recommendation:
 - *In order to more efficiently using time and space: refer legislative acquis, including ratification of international treaties to a specified annex*

Potential improvements

- Refer technical information such as the legislative *acquis* to an annex attached to the Q. (see also the reference guide's format)
- Use time and space more for the reporting on wider national CT measures and international cooperation, including CT policy and strategy
- Eventually take into account specific prevention measures related to violent extremism and radicalization, including at the community level, and link it more explicitly to relevant issues as highlighted under *i.a.* § 17 & § 18 of the Code
 - *Related issues: cross-cultural dialogue (ethnic; racial; religious); protection of national minorities*

Sub-Item I/1.2: national legislation to implement those agreements and arrangements

CONTENT

- Most states provided comprehensive information
- Measures related to both international, regional and domestic CT legislation
- Adaptation of national legislation to bring it in line with international law
- Special information:
 - *National principles of CT policy and strategy*
 - *AML/CFT*
 - *special prevention programs*

FORM

- Some states used old format of the Q.

Sub-Item I/1.3: roles & missions of military, paramilitary, and security forces in PT and CT

CONTENT

- Depth of information varies widely
- Preference of certain agencies than others
- Majority reported a minimal or non-existent CT role for the armed forces
- Most information on police; relatively little on security services and almost nothing on intelligence services

FORM

- Little explicit distinction between security services and intelligence services
- Tendency to merely provide a basic overview of *institutional* roles and missions; relatively little information on *inter-departmental / -agency coordination / -cooperation*, or even *governance*

Sub-Item I/1.4: more specified national efforts of P&C of terrorism (see below under content)

CONTENT

- 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 purpose
- Legal cooperation including extradition
- Safe havens and shelter to terrorist and terrorist organizations

FORM

- Considerable potential for added value
- Lowest response rate within section I of the Q.
- Selective answering
- Most additional information in financing of terrorism and border controls
- Recommendation: reference guide should further clarify sub-items

Stationing of armed forces on foreign territory

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Sub-Item I/2.1: ... in accordance with freely negotiated agreements and international law

CONTENT

- Most states provide comprehensive information
- Special Information
- Participation in NATO-, other multilateral missions; UN peacekeeping
- Reference to the 'illegal' presence of another State's armed forces on the own soil

FORM

- The same question exactly was also covered in the old format of the Q.
- Recommendation:
 - *Within the reference guide, SOFA could be explicitly referred to*

Implementation of other international commitments related to the Code

- Section I: Inter-state elements
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Sub-Items I/3.1 and I/3.2: implementation in good faith of arms control- / disarmament- / CSBMs- commitments as an element of indivisible security

CONTENT

- Very diverse national replies
- Often explicit links made to the Vienna Document 1999, CFE-, Open Skies-, non-proliferation- and disarmament treaties, SALW, and to a lesser extent WMD and START
- Few countries provided either extensive replies on contemporary issues or focused on external assistance and international cooperation

FORM

- A number states chose to answer either 3.1 or 3.2 or simply provided a combined answer
- Recommendations:
 - *Given the overlaps and joint replies in-between 3.1 and 3.2, this item could be reframed*
 - *Relevant aspects could be added to the reference guide*

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National planning and decision-making process

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Sub-item II/1.1: ... in determining/approving the military posture and defense expenditures

CONTENT

- A number of states tended to (implicitly) emphasize the role of executive / head of state / presidential powers, as well as senior executive advisory bodies
- In contrast, another group of states emphasized the constitutional prerogative of Parliament and democratic oversight and accountability, checks & balances, chain of command, as well as defense management & efficiency

FORM

- Some states linked defense planning and implementation with accounting and auditing, while others related it more to restructuring processes and adaptation to a changing security environment
- Statistical figures regarding the defense budget as a share of GDP

Sub-Item II/1.2: military capabilities taking into account legitimate security concerns of 3rd pS

CONTENT

- Considerable variety of national returns, some main issues relate to:
 - *Sub-national security arrangements*
 - *International efforts in support of multilateral cooperation*
 - *Indivisible security*
 - *International transparency confidence-building, and arms control*

FORM

- Eventually one common denominator: a trend to participate in multi-national constabulary missions and more generally to share the burden of international peace, security, and stability

Existing structures and processes

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General trends under this item

CONTENT

- By far the most substantive part regarding democratic control of armed forces
- Reflecting differing national military traditions, structures, and policies
- Very little information on paramilitary and internal security forces with a majority of pS stating that they didn't have such forces

FORM

- Unavoidable thematic overlaps in-between sub-items 1.1, 2.2, and 2.3
- Moreover, most reports didn't make a clear-cut distinction between *procedures* (2.1) and *authorities/institutions* (2.2)
- Almost no state made any explicit links made between the issue of internal security missions and sub-item 4.3

Specific aspects related to the democratic control of armed forces

- Constitutional procedures to safeguard civilian control and democratic oversight
- Cross-departmental coordination as well as public scrutiny beyond the state
- Information on special structures / procedures:
 - *Civilian control and reforms of the police*
 - *Structure, oversight, reform, and privacy protection in relation to civilian/domestic intelligence services*
 - *Basic structure of national security sectors*
 - *Paramilitary and internal security forces*
 - *Privatization in the security sector & PMSCs*

Sub-Item II/2.1: constitutionally established procedures to ensure democratic political control

CONTENT

- Procedures and (explicit) legal/constitutional provision
- Respective roles of the 3 constitutional powers
- Great variety of national approaches to the 'security sector' and corresponding definition/perception of related terminology

FORM

- Not all states were unambiguous regarding checks & balances
- Almost no country submitted clear-cut information regarding the 5 respective forces categories; the least information submitted on paramilitary forces

Tentative categorization of « grey zones » in the (armed) security sector

- 2 traditionally overlapping areas + 1 emerging overlapping area:
 - *Overlaps between conventional military defense forces and non-conventional paramilitary security structures*
 - *Overlaps between paramilitary and/or internal security forces and security and intelligence services*
 - *Emerging overlap between regular, statutory armed and security forces (either conscripted or voluntary) and emerging, non-statutory (outsourced/contracted/privatized) military and security actors, including PMSCs*

Sub-Item II/2.2: fulfillment of and institutional responsibility vis-à-vis these procedures

CONTENT

- Further procedures, institutions and best practices at mainly executive & legislative levels
- Specific aspects covered:
 - *Delineation of competencies*
 - *Ratio between civilian and military staff in respective structures*
 - *Ombudsperson*

FORM

- Considerable overlap with 2.1

Sub-Item II/2.3: Roles & missions of forces and safeguards so that they (all) act within the constitutional framework

CONTENT

- Additional aspects include:
 - *Adaptations to the changing international security environment*
 - *Foreign defense vs. internal security (assistance) missions mainly of military forces*
 - *Status and missions of paramilitary and security forces*

FORM

- Important overlaps with 2.1 and 2.2, and to some extent 1.1
- Most of the returns deal with the operational mission aspect; very few information regarding constitutional and legal safeguards, e.g. as regards internal security missions

Procedures related to different forces personnel

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Sub-Item II/3.1: procedures for recruitment and call-up of military and security personnel

- Trend towards all-volunteer, fully professionalized military personnel systems / suspension of conscription
- Special aspects:
 - *Special roles of reserve forces and voluntary national service opportunities*
 - *Voluntary conscript military service and hybrid or alternative opportunities for compulsory military service*

Sub-Item II/3.2: Exemptions or alternatives to (compulsory) military service

- Special safeguards for any person holding a criminal record
- Exemptions vs. Postponement
- Physical and mental check-up
- Conscientious objection
 - religious issues
 - Service duty vs. right
- Compulsory military service opportunities in military and civilian sectors
- Alternative civilian service vs. Alternative national/military/labor service
- Great variety of alternative service opportunities

Sub-Item II/3.3: safeguards to protect the rights of personnel

- Rights / freedoms vs. Duties / discipline
 - E.g. right to vote vs. Right to strike
 - Associations and labour unions
- Rights / privileges / social benefits
- Religious rights and freedoms
- Officers / ranks ; + Conscripts (new element within the 2010 Q.)
- Military / martial courts vs. Principle of supremacy of civilian constitutional (judicial) power
 - *E.g. Prohibition to try civilians in military courts*

Implementation of other political norms, principles, decisions and international humanitarian law

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Sub-Item II/4.1: Dissemination and training of IHL / Law of War

- Terminology: IHL / LoAC vs. Law of War
- Most of information on the military; very little on paramilitary and security forces / PMSCs
- Formal training vs. Practical / simulation exercises
- Collaboration with civil society / NGOs
- Special refresher training for peace operations (cultural & linguistic; gender)
- Internal security missions (ethnic / national minorities)

Sub-Item II/4.2: Awareness raising among personnel regarding individual legal liability

- New security environment / new security missions / new transnational penal institutions (e.g. ICC): IHL > IHRL
- Responsibility of superiors does not exempt subordinates from their own responsibility and criminal accountability

Sub-Item II/4.3: Assignment of armed forces for internal security missions / human rights!

- This new item in the 2010 Q. is a potential « mini-revolution » within the Code's implementation process
- For the first time, the Q. explicitly addresses politically sensitive issues as referred to under section VIII of the Code
- Most significant from a DCAF point of view
- Internal / domestic constabulary missions
- Use / roles & missions of paramilitary and internal security forces
- Ministries of Interior
- National minorities
- Human rights
- Protection of civilians and their property
- Links to § 17 of the Code of Conduct

Sub-Item II/4.4: Civil rights of personnel and political neutrality of the armed forces

- Exercise of (individual) civil rights and fundamental freedoms of military and security personnel in contrast to the neutrality of security sector institutions as (collective) institutions
- Political neutrality of armed forces also relevant for inter-state relations and confidence-building (possible links to inter-state provisions of the Code)

Sub-Item II/4.5: Consistency of defense policy and doctrine with international law

- First aspect of international law: International humanitarian law (IHL) and international human rights law (IHRL)
- Second aspect of international law: politico-military *acquis* and traditional inter-state relations: so: potential links to inter-state aspects of the Code

Public Access and Contact Information

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Sub-Item III/1.1 & 1.2: Public access to information on the Code

- A new element of the 2010 Questionnaire
- Remarkably little return so far
- Almost no pro-active dissemination and awareness raising by states on the Code (both inside national governments and administrations and towards to broader public)
- Access to and dissemination of the Code as a document; public events and seminars
- Access to the Questionnaire and national replies (beyond the FSC website)
- No information on how capitals coordinate / manage information gathering with parliament and civil society to fill in the CoC Questionnaire

Sub-Item III/1.3: public information related to the armed forces

- Was formerly an intra-state section issue; is an important DCAF-aspects and indirectly related also to the question of how governments establish military budgets
- Overall PR-policies
- Special information: freedom of information acts; confidentiality & secrecy; mainstreaming of PR-policies (e.g. among NATO members)

« Additional Information »

- Frequently quoted issues in this final section of the Questionnaire:
- Women, Peace and Security
- Deployment, as well as democratic civilian control of PMSCS

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CONCLUSIONS

- The 2010 Questionnaire has been significantly improved
- The Reference Guide is likely to enhance peer review
- Remaining shortcomings:
 - *CT: role of intelligence services?*
 - *Paramilitary and internal security forces (despite different national traditions)*

RECOMMENDATIONS

- Add again the numbers of corresponding paragraphs of the Code to each Q-item
- Add both the 2003 and 2010 Questionnaires to the FSC's website on the Code
- All pS ideally avoid using the old (2003) Q-format
- Endorse, publish, and use the new Q-reference guide
- More systematic implementation follow-up
- Improve CoC-awareness & outreach inside and outside the OSCE

Thank You!



Q & A

