

The Code of Conduct on Politico-Military Aspects of Security
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Excellencies!
Ladies and Gentlemen!

The Code of Conduct on Politico-Military Aspects of Security has frequently been called a ‘landmark document’, ‘a most innovative document’, or as the chairperson of the 2006 FSC Code of Conduct Implementation Meeting formulated it: “one of the most significant documents ever adopted by the OSCE.” I share this view; all this is true. However, in spite of all this justified praise, we should not overlook the fact that the Code of Conduct has, as does almost any international document, a less perfect side.

International documents represent compromises between different states’ competing interests, and this leads to ambiguities, logical omissions, contradictions between different norms contained in a document, and tensions between norms and their implementation. And it is this area of tensions and contradictions related to the Code of Conduct that I was asked to address today. My presentation is structured as follows: *First*, I will discuss an example of vague language. *Second*, I will deal with a politically relevant case of contradictions between different norms in the Code of Conduct. *Third* and finally, I will address two examples of norms in the Code that have not been implemented either by a specific State or by many States.

First example – vague language: In paragraph 12 of the Code we read that states “will maintain only such military capabilities as are commensurate with individual or collective legitimate security needs”. With this stipulation, the Code introduces a general sufficiency rule, something we know from the old CFE Treaty that had a specific sufficiency rule with a concrete ceiling for the purpose of limiting the armed forces of the Soviet Union. This rule has been abandoned in the Adapted CFE Treaty, but here in the Code of Conduct we find it again as a general OSCE norm, applicable to each and every participating State. From its normative substance, this is quite a far-reaching obligation, because it says no less than that States are obliged to limit their military capabilities to what they need for defence. However, the formulation of paragraph 12 is so general that almost all military capabilities can be claimed as

fulfilling this norm. Thus, an innovative and far-reaching norm has been introduced, but formulated in such an abstract manner that it can scarcely be implemented in real life.

Now, let us look at an example of tensions between specific norms. On the one hand, the Code of Conduct proclaims co-operative and indivisible security. Paragraph 3 reads: “They [the participating States] remain convinced that security is indivisible and that the security of each of them is inseparably linked to the security of all others. They will not strengthen their security at the expense of the security of other States.” And this is even enhanced by the so-called solidarity clause in paragraph 5 that reads as follows: “They [the participating States] will consult promptly, [...], with a participating State seeking assistance in realizing its individual or collective self-defence. They will consider jointly the nature of the threat and actions that may be required in defence of their common values.”

Reading these stipulations, one gets the impression that the OSCE States enjoy an undivided space of equal security, something that does certainly not coincide with the actual reality of tensions between States and the existence of military alliances. What is more, the existence of military alliances is explicitly legitimized by the Code of Conduct. Paragraph 11 reads: “The participating States each have the sovereign right to belong or not to belong to international organizations, and to be or not to be a party of bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality. Each has the right to change its status in this respect, subject to relevant agreements and procedures. Each will respect the right of all others in this regard.” This means not only that there is no OSCE norm that forbids the enlargement of a military alliance such as NATO, but also that other States have taken on the obligation to respect such a step.

One has to admit that there is substantial tension between the ideal world evoked in paragraphs 3 to 5 of the Code and the real world, including the existence of military alliances fully legitimized by paragraph 11. Ideally, in an undivided space of equal security, we would need no alliances. But we have them - NATO and also the CSTO. And although there are institutions for liaison and co-operation such as the NATO Russia Council, there is competition, there are sometimes tensions, and sometimes even open conflict, as we unfortunately had to experience in 2008 with the war in Georgia.

Normative contradictions reflect contradictions in States' real security relations. And in this respect it is no surprise that the more traditional norm just discussed – the right of States to join military alliances – is worded in a far more concrete language than the more innovative stipulations on co-operative and indivisible security that are phrased in a very abstract manner. This shows that although there is already a vision of equal and co-operative security, today's world is still dominated by the traditional notion of 'we' and 'they'.

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Let me now address two cases where we have to take note of obvious problems of implementation. The first one concerns the issue of host nation consent in a bilateral relationship. Paragraph 14 of the Code of Conduct stipulates that the stationing of armed forces on the territory of participating States is only possible “in accordance with their freely negotiated agreement as well as in accordance with international law.”

Russia has stationed armed forces on the territory of the Republic of Moldova based on – according to information provided by Russia in the 2010 Exchange of Information on the Code of Conduct – three documents from 1992 and 1994. The government of Moldova, however, has contested the validity of these documents, and stated – at the Annual Implementation Assessment Meeting on 3 March 2011 – “that the presence of Russian troops on the territory of the Republic of Moldova does not enjoy host nation consent and defies the generally recognized norms and principles of international law.” Thus, what we have here is a clear dispute on whether host nation consent is based on valid international documents or not. Although the government of Moldova officially denies the existence of host nation consent, there is no remedy for the situation. The Code of Conduct has formulated a norm without providing effective means for its implementation.

My second example for deficiencies in implementing norms in the Code refers to disarmament and arms control. Paragraph 15 of the Code stipulates that: “The participating States will implement in good faith each of their commitments in the field of arms control, disarmament and security-building as an important element of their indivisible security.” This is completed by paragraph 16: “With a view to enhancing security and stability in the OSCE area, the participating States reaffirm their commitment to pursue arms control, disarmament and confidence- and security-building measures.”

The real world looks quite different. The Adapted CFE Treaty has never been put into force. As a reaction to this long delay, the Russian Federation suspended the old and still valid 1990 CFE Treaty, that is, Russia stopped implementing it. And the new talks on the future of the conventional arms control regime in Europe, which started with so much hope in last July, are reportedly close to failure. There is concern that the CFE Review Conference, which must be held in autumn this year, will become a second-rate funeral for the CFE Treaty that once was praised as a “cornerstone of European security”.

The situation with the other elements of the European arms control regime is not much better. The Vienna Document 1999 is outdated in many respects. The

negotiations on its modernization, which were started last year, have, to a degree, been taken hostage by the lack of progress on CFE. What remain are Open Skies, the Code of Conduct and some sub-regional agreements – all in all only a pale shadow of what European arms control used to be.

In an ideal world, we would no longer need arms control because the relations between States would have become so good that arms control would have become pointless. However, what we are experiencing now is quite different: States cannot agree on a new approach to conventional arms control because of their disagreements on Georgia and the application of the principle of host nation consent.

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Against the background of these obvious difficulties in translating the obligations of the Code of Conduct into reality one may ask what the actual relevance of this document is.

International norms reflect States' behaviour in their international relations including contradictions between co-operation and conflict. However, norms can be somewhat ahead of reality, particularly if they were adopted at a time when the co-operative element was more prominent than it is now. And this is clearly the case with the Code of Conduct. Thus, the Code provides us with an opportunity to create a productive tension between its beneficial norms and a reality that is frequently less beneficial. In this sense it might be advisable to introduce a regular format of discussion on the implementation of the Code of Conduct, also taking into account the vast amount of material provided by the Exchange of Information on the Code.

In the first decade after the system change in 1989/1990, the European States created, largely within the framework of the OSCE, a remarkable network of norms and obligations for the behaviour of States related to security and human rights. A process was started in which power-based behaviour was gradually replaced by norm-based behaviour – a civilisational quantum leap by any standards. This process has been stopped and partially reversed over the last decade, and this unfortunate development has not yet been fully turned around in a more positive direction. For this reason, too, it might be advisable to strengthen the discussion on the implementation of the Code of Conduct – the most comprehensive document on security-related behaviour we have at our disposal.