

Kate Joseph, Confidence and Security Building Measures Officer, OSCE, Vienna

Military Ethics and the OSCE Code of Conduct on Politico-Military Aspects of Security

Introduction

Please allow me to begin by thanking the organizers of this event for extending an invitation to the OSCE. I consider it an honor and a privilege to be here today and I am glad to be able to share with you the OSCE's experience on this important subject.

Many of you may be familiar with the OSCE, but for those who are not I would like to take a few moments to review the fundamental principles of the organization and the historical context in which it was established. I will then move on to an explanation of the Code of Conduct itself, including its background and development, and will focus in detail on those paragraphs, which are relevant to the topic of this seminar. Finally, I would like to take a few moments to update you on the implementation of the Code in recent years, and to fill you in on those issues, which are the focus of attention in the OSCE at the moment.

OSCE and the Politico-Military Dimension

The founding document of what was then the CSCE is the Helsinki Final Act, which is still as valid today, even in the wake of the new risks and challenges faced by the Organization, as it was when it was signed in 1975. Its three facets of security, the politico-military, the economic and environmental as well as the human dimensions are interlinked, and therefore comprehensive.

The Act constituted a breakthrough in East-West relations during the Cold War period. Participating States adopted the Decalogue of basic principles guiding relations among themselves. Further, it marked the beginning of the "Helsinki process" which became the main forum for political consultation and negotiations on a comprehensive set of issues, including questions of human rights. The CSCE was instrumental in keeping the spotlight on human rights and linking the progress in that sphere with co-operation on other more traditional security questions. One of the most important of these was military security. In this way there were mutually supporting processes because parallel to the ongoing dialogue it was possible for the CSCE to work out a set of confidence building measures.

In fact, linking the processes and dimensions of security became the hallmark of the OSCE. Subsequent documents of the OSCE, such as the 1990 Charter of Paris, 1992 Helsinki Document, other summit documents and more recently the 1999 Charter for European Security, also build on this approach.

In 1992, the Forum for Security Co-operation (FSC) was established to deal with politico-military aspects of security in what later became the OSCE. It is the body within which all the negotiations about the above-mentioned enhancements and further developments of CSBMs take place on a weekly basis. Even in its earliest years, delegates in FSC also discussed ways to adapt the tools of the politico-military dimension to a changing security arena. The Code of Conduct is one of the results of these discussions.

Background to the Code of Conduct

With the collapse of Communism, existing texts and principles of the CSCE were looked at in a new light. The threat of major conventional armed conflict in Europe had receded. Documents that were drafted with this potentiality in mind had to be revised. At the same time, security and stability in the OSCE region had become a different concern, and was threatened by emerging developments. The states in transition within the OSCE region were faced by new challenges, not least the need to modernize their armed forces and the principles and procedures on which they

were based. Civil-military relations, and more specifically, democratic control of the armed forces, became a pressing issue.

The Code grew out of a French project to negotiate a legally binding pan-European security treaty, which would build on existing OSCE norms and develop new principles to deal with the needs of post-Communist Europe. The idea did not gain consensus in either NATO or OSCE, and was eventually revamped as a French-German proposal for a *politically binding* Code of Conduct. Negotiations took place in Vienna from 1992 to 1994, and the final text was adopted at the Budapest Review Conference at the end of that process.

The Essence of the Code

In order to understand the Code and its application in the OSCE region, it is important to bear in mind that it is largely a declaratory agreement, which does not contain any principles and measures that are legally binding on participating States. Furthermore, as a result of rather painful negotiations, much of it constitutes a reaffirmation of existing OSCE principles, such as the concept of comprehensive security, the sovereign equality of all states, and the commitment to arms control, disarmament and confidence and security building measures.

Nevertheless, the Code did go beyond this. It broke new ground by formulating new norms for intra-state relations, particularly on the role of armed forces in democratic societies. Under the Code, armed forces should be fully integrated into civil society and guided by democratically elected authorities, which must also approve defense expenditures. Individual service members are to be instructed in the international humanitarian law of conflict. Furthermore, States agree not to tolerate or support non-state paramilitary forces and not to assign combat missions for state paramilitary forces.

As you will see, the Code is a wide-ranging, and some would say rather rambling document, which takes in many of the guiding principles of the OSCE. For the purposes of this presentation, I would like to focus on two main aspects of the Code – democratic control of the armed forces, and their conduct in times of peace and war, and the rights and duties of individual service members. Not only are these aspects the most relevant for you, but they also constitute what we might consider the most meaningful and innovative part of the Code.

Democratic Control of the Armed Forces

Section VII of the Code deals with democratic political control of the armed forces, which are defined in the broadest sense as including not only military forces, but also paramilitary forces, internal security forces, intelligence services, and even the police. According to paragraph 21, these forces must be submitted to the political control of constitutionally established authorities at all times, including during peacetime and in war. These authorities are to be vested with democratic legitimacy and under legal responsibilities. This was a marked departure for some OSCE participating States. The Code further strengthens the parliamentary role by requiring legislative approval of defense expenditures, and prescribes restraint in national military spending as well as transparency and public access to information related to the armed forces (Para 22.)

Paramilitary forces were a major focus of this section, and are also limited by the same provisions that apply to other armed and security forces. Participating States agreed not to tolerate forces that are not accountable to or controlled by their constitutionally established authorities, a provision which has been a challenge for many countries, such as those of the former Yugoslavia. Those states unable to exercise authority over paramilitary groups are encouraged to seek consultations with the OSCE with a view to considering possible steps to be taken, although this provision has not been invoked. Furthermore, paramilitary groups are not to be assigned combat missions – a provision, which aims to prohibit the use of paramilitary forces with a view to circumventing arms control agreements.

The Code, International Humanitarian Law, and Human Rights

Fundamental principles of international humanitarian law and human rights are enshrined in the Code of Conduct, and in some respects, the Code went beyond internationally agreed legal instruments. Section VIII of the Code deals with this aspect of the Code, and as such, provides much of the document's added value.

In this crucial section, the provisions of the Code refer not just to international conflicts, but also to all armed conflicts. Again, the Code deals with intra-state norms and behavior, a major departure in this field. Although the Geneva Conventions on international humanitarian law did make provision for internal conflicts, the jurisdiction of the Conventions is limited by the reciprocal relationship they create. That is, in order for the provisions of the Conventions to apply, the warring parties in an internal conflict need to take the formal step of *deciding* that they apply. The OSCE Code of Conduct, being a politically rather than legally binding document, places no such obligation on the warring parties and therefore applies in all cases.

Paragraph 34 of the Code stipulates that all participating States must ensure that their armed forces are, in peacetime and in wartime, trained, equipped and manned in accordance with international law. Reference here is made to the relevant conventions: the Hague Conventions of 1907 and 1954; the Geneva Conventions of 1949 and 1977 Protocols; and the Convention on the Use of Certain Conventional Weapons of 1980. Moreover, defense policy and military doctrine must also be consistent with international law (Para. 38), and participating States must ensure that international humanitarian law of war is widely disseminated among their armed forces.

The Code's most relevant paragraph, however, is paragraph 36. It states that:

“Each participating State will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law. If recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs of enforcement. The armed forces will take due care to avoid injury to civilians or their property.”

This is a particularly important provision, as it overcomes the problem contained in the Geneva Conventions, whereby a State can simply avoid characterizing the situation as an internal conflict and merely refer it as a security mission in the context of restoring public order or maintaining public safety. The Code goes beyond this problem, and states that the use of force must be proportionate in all internal security missions, whether or not they are classed as internal conflicts. There are no exceptions.

The Code also has something to say about human rights. Paragraph 37 of the Code states that the armed forces cannot be used *“to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.”* With regard to the rights and duties of individual service members, it was agreed that they should be politically neutral, instructed in international humanitarian law of conflict, and accountable for their actions. At the same time, their civil rights must be protected. Participating States also agreed to consider exemptions from or alternatives to military service.

Implementation of the Code

Naturally, as a politically binding document, there are limits to what can be achieved with the Code. In the absence of legal commitments, and a monitoring mechanism, interpretation and implementation of the Code is a matter for national governments. At no time can the organization as a whole become involved in judgments about whether or not individual participating States are fulfilling their obligations as laid down in the Code.

At the same time, as a forum for discussion, possible violations of the Code have come under the spotlight in OSCE negotiating bodies. Both the conflict in Chechnya and the NATO intervention in Kosovo (Yugoslavia was suspended at the time) were discussed in the FSC as contravening the letter and spirit of the Code. Although no consensus was reached on this, and no action taken, it can be argued that simply by raising the issue, and heightening peer pressure, there was some value added.

In general, the Code is just as relevant today as it was when it was agreed in 1994. Much progress has been made since then, including agreement on a comprehensive information exchange related to implementation of the Code. This year, my office in the Conflict Prevention Centre (CPC) conducted a thorough overview of that information in order to inform the Third Follow-Up Conference on the Code of Conduct, which was held in Vienna in September 2002. During the conference, it was agreed that the Code is still a valuable document, and that more work needs to be done to raise awareness of its provisions. Participating States also considered useful the work done by the CPC to foster implementation of the Code at the national level. For example, the CPC and the OSCE Parliamentary Assembly recently brought together parliamentarians and senior military personnel in Belgrade to discuss the Code and democratic control of the armed forces. Later this month, we will hold two seminars in Kazakhstan and Kyrgyzstan to promote the Code of Conduct in Central Asia.

Much of the focus on the Code of Conduct within the OSCE is on highlighting the potential of the document to help the Organization in its efforts to prevent and combat terrorism. Paragraph 6 of the Code commits participating State to co-operate in the fight against terrorism, and although this paragraph was something of an afterthought when the Code was agreed, it is more than coming into its own now. It has brought much-needed attention to the Code, but the real challenge for participating States will be to ensure that other provisions of the Code, namely democratic control of the armed forces, as well as respect for human rights and international humanitarian law, are maintained and observed in the fight against terrorism.

I would like to close with the words of the FSC Chair, Ambassador Milinković of the Federal Republic of Yugoslavia, at the end of the third follow-up conference. He concluded that:

The Code has proven to be a living document with significant potential for responding to some new security risks and challenges, although this potential has not been reached so far. Its cross-dimensional nature, which links the politico-military dimension with the human, economic and environmental aspects, was clearly highlighted by many delegations. Its emphasis on bonum humanum, in other words, the good side of human nature, especially good intentions when force has to be used, remains an inspiration for us all.

Kate Joseph,
OSCE Conflict Prevention Center,
Forum for Security Co-operation Support Unit, Vienna