

The OSCE "Code of Conduct on Politico-Military Aspects of Security": A Good Idea, Imperfectly Executed, Weakly Followed-up

The OSCE "Code of Conduct on Politico-Military Aspects of Security" was adopted at the Budapest Review Meeting (October-December 1994) and endorsed by the Budapest Summit on 5-6 December 1994. It entered into force as a politically binding agreement on 1 January 1995.

The Code consists of 37 recommended rules of behavior in the field of military security (and five implementing paragraphs). These rules, or principles, cover four main subjects: (1) the security relationship among OSCE participating States, including protection of participating States from domination by others; (2) democratic control over the armed forces of individual participating States, including paramilitary forces; (3) protection of the democratic rights of members of national armed forces; and (4) restrictions on the use of national military forces in war and their use against the civilian population of their own state.

Because many of the OSCE participating States most active in formulating the text had divergent objectives, the Code lacks coherence. Nevertheless, its unifying theme is to place restrictions on the use of armed forces between participating States and inside them. So far, the Code has had less determined follow-up by OSCE institutions than other projects, such as those in human rights and minority rights fields; more follow-up is needed and is possible. Partly as a consequence of limited follow-up, the Code has not been fully applied to the armed forces of many former Warsaw Pact states and Soviet successor states that were its main intended target. This is especially true of Russia. Nonetheless, the Code has had some impact, and its usefulness has not ended.

Negotiating History

As with many CSCE projects of the early post-cold war period (e.g., the Human Dimension Mechanism and the Copenhagen Document), the overriding motivation of the Code of Conduct on Politico-Military Aspects of Security is to prevent repetition of the abuses of the Nazi and Soviet regimes, in this case, their use of national armed forces to intimidate and dominate other European states and their own populations.

In 1992, France, always desirous to consolidate post-cold war security arrangements and to prevent backsliding, proposed that CSCE security obligations be codified in treaty form. The United States was already nervous at that time about the post-cold war future of NATO and about potential competition to NATO from French actions to build up the WEU. It reacted sourly to the French proposal for a new treaty, believing that carrying out the French project could augment the status of OSCE and make it a more dangerous competitor to NATO. Once again caught between its two major allies, France and the USA, Germany proposed as a compromise the idea of a politically binding code of conduct for the armed forces of OSCE participating States. This proposal was approved by the 1992 Helsinki Review Conference and referred for implementation to the Forum for Security Cooperation established by the same Review Conference. A text was negotiated between 1992 and 1994, and only barely completed in December 1994 in the last hours of the Budapest Review Conference.

The main OSCE participating States in drafting the text were Poland, the European Union acting as a unit, and Austria and Hungary in tandem. Poland's approach was the most ambitious in the political sense; its underlying aim was to use the formulation of the Code as the kernel of a European security system. More specifically, without naming names, Poland sought to restrict military behavior which could bring repetition of its wartime and post-war domination by Nazi Germany and the Soviet Union. Thus the Code (para. 5) commits other participating States to consult promptly with a participating State requesting help in defending itself in order to jointly consider the nature of the threat and what can be done about it. Participating States are called on (para. 8) to deny assistance to any State that threatens use of force or uses force against the territory or political independence of another State, and the Code also declares (para. 13), that "(n)o participating State will attempt to impose military domination over any other participating State." Although Poland secured inclusion of these components of a possible security system in the text of the Code, the underlying idea has not yet been further developed or discussed.

The European Union members had decided after signature of the Maastricht Treaty to fulfill the Treaty requirement to move toward a Common Foreign and Security Policy (CFSP). They decided to begin by coordinating the policy of EU member States on CSCE issues and arms control. The Code of Conduct project was one of the first applications of that decision to a specific OSCE issue. Influenced by the original French proposal for a treaty, the EU members, for the first time in CSCE caucusing separately from NATO members, wanted a text that defined norms of European security. They focused on bringing together and slightly elaborating some of the longstanding OSCE principles, including several from the original Helsinki Accords, such as full

respect for all CSCE principles, respect for national sovereignty, and the right to join alliances or not to join them (paras. 4, 10, 11).

Because the Code project was an early experiment in Common Foreign and Security Policy for the European Union, individual EU members felt compelled to support the texts initially agreed by them and not to depart from them during OSCE discussions in order to seek compromise. This factor added to the length of the deliberations. The EU group was criticized by other participating States for selecting only some CSCE security principles for elaboration, allowing the erroneous impression that those principles not selected were no longer valid. As a result of this criticism, the Code (para. 7, para. 40) explicitly asserts the validity of all previously agreed CSCE security principles.

Turkey, evidently apprehensive about potential EU use of the Code project to influence Turkey's treatment of its Kurdish population, tried to neutralize this danger by submitting a counter-draft to the EU draft. It finally settled for the inclusion of a commitment for joint cooperation against terrorism (para. 6).

Austria and Hungary, acting as a team, energetically pursued the objective of using the Code to set forth a comprehensive, updated OSCE security code, to include some mention of all OSCE principles having to do with security. The two governments wished to include not only traditional military security but also security based on promotion and protection of human rights, economic rights and protection of the environment. In the final text, the close relationship between peace and respect for human rights, economic and environmental cooperation is mentioned (para. 2), as is cooperation to develop sound economic and environmental conditions and to avoid violations of human rights (para. 17). Austria and Hungary did not give up their support for the broadest possible coverage of these concepts until the Budapest Review Conference was in session. As a result, Forum participants devoted a great deal of time to debating the merits of broad and narrow definitions of security, an additional reason why discussion of the Code lasted so long.

The United States, a reluctant participant from the outset, limited itself to opposing the more far-reaching aspects of both the EU and the Austrian and Hungarian drafts. It made little positive contribution to the entire operation until late in the work discussion, coming out in March 1994 with a paper supporting provisions assuring democratic control of the armed forces. Russia played a defensive role throughout, prophetically trying to cut back on some of the proposed restrictions on the domestic use of armed forces. As it was, the Code was approved by the Budapest Summit five days before the Russian military assault on Chechnya, the campaign repeatedly violated the Code's restrictions on excessive use of military force against civilians.

In the end, elements of all positions were hurriedly combined to form the final text. To some degree, the circumstances of its negotiation deprived the Code of clear thrust and purpose.

Content

The content of the Code reflects the divergent perspectives of its authors. As noted, the first section of the Code lists a number of principles taken from the Helsinki Accords and the Charter of Paris: Among them are respect for all decisions of the CSCE; security is shared and cannot be obtained at the expense of others; respect for sovereign equality; endorsement of the inherent right of self-defense; each State has the right to belong to alliances or not to belong to them (paras. 1, 2, 3, 4, 7, 9, 10, 11).

The next group of articles, which reflect concepts pushed by Poland and other Eastern European states, have as their objective protecting small States against domination by large States. These principles include an obligation for joint consideration of threats to security of a participating State; the obligation to refrain from assistance to States that threaten participants; the right of each State to belong or not to belong to alliances; a prohibition against stationing of foreign forces on the territory of a second State without the freely negotiated agreement of the latter; and prohibition of attempts to impose military domination over another State (paras. 5, 11, 13, 14).

A third section (paras. 20-37) contains a detailed description of principles of democratic control of the military, e.g., control of armed forces should be by "constitutionally established authorities vested with democratic legitimacy" and accountable to national legislatures; decisions on defense budgets should be made by national legislatures, not the executive. This section also treats the role of the citizen soldier, emphasizing that treatment and training of military personnel should reflect high standards of human rights. Several important paragraphs insist that restraint should be exercised by military and paramilitary personnel both in interstate conflict and internal security missions (paras. 24-26, 28-31, 34-37).

These principles contain new material going beyond earlier CSCE decisions, and in that sense can be said to represent the main substance of the Code. On the one hand, these provisions represent the essence of the lessons on democratic control of the military and the citizen soldier culled from Western experience and intended to be passed on to the Eastern states. On the other hand, the agreed principles restricting the use of military force in war and for internal security, contained in Paragraphs 34-37 - military commanders should be accountable both to national and international law; armed forces should be used for internal security missions only in conformity with constitu

tional principles; armed forces should use restraint and avoid injury to civilians and civilian property; armed forces should not be used to limit peaceful exercise of human and civil rights - reflect concerns over historic misuse of armed forces in the Third Reich and the Soviet Union and in areas under Nazi and Soviet occupation, but also more contemporary abuses of armed forces in Russia and surrounding republics, as well as Bosnia.

Implementation

The Code represents a marriage of convenience between the French desire to codify the principles of peaceful relations between states and the desire of the United States and others to direct the Code at assuring democratic control over armed forces.

In both cases, the target was the states of Eastern Europe and the newly independent successor states of the former Soviet Union, states whose armed forces had earlier been under the firm control of the Communist Party and which lacked experience in parliamentary control. The lengthy negotiation of the Code did provide an extended opportunity for officials of these states to learn of the experience of Western states in democratic control of the armed forces.

As in the case of OSCE documents on human rights and minority rights, the Code provides all OSCE participating States with the opportunity to observe and comment on fulfillment of Code commitments by other participating States, a right specifically assured in Paragraph 38. In 1995, discussion of national performance in applying the Code was added to the annual assessment of confidence-building measures carried out by the Conflict Prevention Centre. Naturally enough in the circumstances, the main subject of both the March 1995 and the March 1996 review sessions was the conduct of Russian forces in Chechnya, which far diverged from the Code's agreed principle of avoiding undue violence by armed forces against their own citizens. In 1995, Russia responded by arguing that the OSCE Mission in Grozny had not reported any violations. The OSCE has not been able to bring about lasting change in Russian military conduct in Chechnya. However, the legitimacy of enquiry and comment by participating States' governments on the issue of Russian behavior and policy in dealing with an internal crisis has been established.

It has been left to individual participating States' governments to volunteer statements on their performance of Code commitments. Written reports have been submitted by several states, among them Ireland, Finland, Belgium, Slovakia and Italy. During the March 1996 assessment of confidence-building measures, oral presentations on their implementation of the Code were made

by Greece, Ukraine, Poland, and Sweden. By March 1996, half of OSCE participating States had reported in some form regarding their fulfillment of Code commitments, often to the effect that they have translated and distributed the Code to their officials and military officers.

This issue, reporting how participating States have complied with the Code and discussing these reports, should receive more emphasis from the OSCE Chairman-in-Office and the OSCE Ministerial Council. Other OSCE participating States' governments and NGOs should be encouraged to express their own evaluation of how well the Code has been implemented in practice by individual participating States. The aim should be to develop systematic discussion of this topic of the kind that has taken place on the human dimension and on minority rights.

In May 1995, the Netherlands and Germany took the initiative to sponsor a series of seminars to foster understanding of the Code. The first seminar took place in December 1995 at The Hague with a general review of the history and potential of the Code. A second seminar was held in May 1996 at Koblenz, Germany, focusing on the armed forces ombudsman of the German *Bundestag* and on the principles of the citizen soldier as developed in the post-war German armed forces. It is valuable that these two countries, Netherlands, with a strong history of democratic control of the forces, and Germany, which has a dark history of earlier abuse and a post-war record of signal achievement in democratic control over the armed forces, should undertake this project.

However, despite adoption of the Code, the actual situation in many newly independent countries both as regards democratic control and restraint in the use of military force is quite negative. Democratic control over the armed forces is weak in Poland and Romania, to name two, and extremely weak in Russia. In Russia, although the Duma approves the military budget, there is no real parliamentary control over the actions of the military, paramilitary or intelligence services, no accountability by the military to the parliament as regards spending of funds, and unmediated direct command over the armed forces by the Russian President. With regard to use of force, the actions of the Yugoslav National Army in Croatia and of the Turkish armed forces in repressing the uprising of the Turkish Kurds did not conform to the standards of avoiding injury to civilians while using armed forces for internal security missions. The disregard for safety of civilians on the part of the Russian armed forces in the civil war in Chechnya from December 1994 to the present, with at least 30,000 civilians killed, has been widely documented. The protests of OSCE countries did at least bring Russia to permit an OSCE observer-mediator mission at Grozny.

Russia is the worst offender against the Code, both as regards democratic control and failure to limit injury to civilians from domestic use of military

forces. And Russia is simply too large and too poorly governed now to be brought to accountability and reform by the Code. Yet the fact that Russia has signed the Code means that, over time, it can be repeatedly reminded of its commitments; Europe is better off with a Code violated by Russia than with no Code at all. Reviving and implementing another OSCE project, "Third Country Peacekeeping", which would enable OSCE observers to check some of the excesses of Russian troops on peacekeeping missions, might provide more practical help.

There is more light with regard to Code compliance by smaller countries. OSCE authorities in Bosnia negotiating arms control for former Yugoslavia will surely seek to bring the parties to accept the Code. The Code was not explicitly mentioned in the September 1995 report of the NATO Council in describing the requirements to be met for candidates for NATO enlargement, although it could well have been cited in the report. However, the NATO report does give prominent mention to the general subject of democratic control over the armed forces in listing the requirements that should be met by candidates for NATO membership. (The only explicit mention of the Code of Conduct in the NATO report is in paragraph 27, which urges Russian adherence to the Code in a clear reference to Russian behavior in Chechnya.) Moreover, Western delegations report that NATO officials are referring to the Code in discussing with Eastern governments the Partnership for Peace program and also enlargement of NATO. Therefore, whatever the intrinsic benefits or shortcomings of the NATO enlargement project, it has generated inducement to meet higher standards of civilian control over the armed forces. Both in the preparation phase and after NATO enlargement has taken place, NATO member governments will probably keep up the pressure on this subject on candidates for NATO membership and new members. Present NATO members will do this in their own self-interest of maintaining high standards for members of their own alliance.

Since adoption of the Code, there has been little discussion of its potential as a focus for discussion of a possible pan-European defense community. In opening the December 1995 Conference in The Hague, the Netherlands Foreign Minister stated his belief that the Code principles, especially Paragraph 17, which lists types of friction that can lead to conflict, and Paragraph 18, which urges early identification of potential conflict, might also be used as a form of early warning. Up to now, there has been no organized development of this aspect by participating States' governments.

Evaluation

The OSCE Code of Conduct on Politico-Military Aspects of Security will remain a basis for continuing constructive dialogue among OSCE participating States' governments on the use of military power and on the relationship between the armed forces and other institutions in pluralistic states. The Code was a good idea that has been imperfectly executed and that has been rather weakly followed-up by OSCE. It joins other OSCE concepts and projects in waiting for the day when OSCE gains sufficient weight to put more energy and authority behind implementing its own decisions and principles.

Confidence- and Security-Building Measures developed by the CSCE/OSCE have in the course of time and in various guises found regional application around the world. Despite imperfect application in the OSCE area, the OSCE Code of Conduct could with benefit also be discussed and applied outside the OSCE area. This would be particularly valuable in a number of non-industrialized countries, like some in Central America, whose armed forces have a long record of using violence against the civilian population. In this sense, it is to be hoped that the OSCE Secretariat will have transmitted the text of the Code of Conduct to the Organization of American States, to the Organization of African Unity, and to ASEAN's Regional Forum, as well as to the United Nations, and that the OSCE will in the course of time make it possible for officers and officials from non-industrialized countries to attend seminars on the Code.