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Finalizing the Dayton Peace Accords: The Concluding Document of the Negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina

On 18 July 2001, the 20 nations participating in the negotiations on Article V of the Dayton Peace Accords¹ reached consensus on a Concluding Document. This achievement ended a three-year effort to finalize the last of three instruments mandated by the Dayton Peace Accords. The Article V negotiations had been conducted under the auspices of the OSCE with the aim of establishing a “regional balance in and around the former Yugoslavia”. The Concluding Document contains a list of voluntary confidence- and security-building measures (CSBMs) that build upon similar measures found in the Vienna Document 1999. These CSBMs were tailored to regional requirements and are basically a catalogue of guidelines to be employed by the participating States according to their own security requirements.

The actual contents of the Document reflect the changed security situation in the region since the signing of the Dayton Peace Accords. At that time, there was a great deal of concern regarding security among the countries in the region. While the Dayton Peace Accords had ended the conflict in Bosnia in 1995, there was still lingering apprehension among countries in the region. In the ensuing years, conditions worsened and armed conflict broke out in Kosovo in 1999. However, after the Kosovo conflict ended, the security situation stabilized, and confidence gradually increased among the countries in the region. By 2001, the changed perceptions of the states in and around the former Yugoslavia were reflected by the contents of the Concluding Document.

Background

Article V must be viewed as but one part of the General Framework Agreement for Peace in Bosnia and Herzegovina. That agreement ended the war in Bosnia and consists of eleven articles and eleven annexes. One of the annexes, Annex 1-B, the “Agreement on Regional Stabilization”, mandated that

1 Hereafter referred to as “the participating States”. These are: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, the former Yugoslav Republic of Macedonia, the Netherlands, Romania, the Russian Federation, Slovenia, Spain, the United Kingdom, the United States of America, Turkey and the Federal Republic of Yugoslavia.

the Organization for Security and Co-operation in Europe (OSCE) develop and implement three separate instruments:²

- Article II, entitled “Confidence- and Security-Building Measures in Bosnia and Herzegovina”, provided the framework for holding negotiations on an agreement on CSBMs in Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska were explicitly named as participants. Article II negotiations were concluded in Vienna on 26 January 1996 and entered into effect immediately. The result of negotiations, the “Agreement on CSBMs in Bosnia and Herzegovina”, consisted of a comprehensive set of measures to enhance mutual confidence and reduce the risk of conflict.
- Article IV, entitled “Measures for Sub-Regional Arms Control”, provided the framework for negotiations for a sub-regional arms-control agreement. Explicitly named as participants were the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, Croatia and the Federal Republic of Yugoslavia (FRY)³. It was concluded in Florence on 14 June 1996 and entered into force on 1 November 1997. The result of Article IV negotiations, the “Agreement on Sub-Regional Arms Control”, established ceilings in five categories of conventional armaments (battle tanks, artillery, armoured combat vehicles, combat aircraft and attack helicopters) together with specific reduction methods, mechanisms for extensive information exchange and an intrusive inspection regime. It is based on the Treaty on Conventional Armed Forces in Europe (CFE Treaty) in terms of introducing limits on five categories of conventional armaments and an intrusive inspection regime.
- Article V, entitled the “Regional Arms Control Agreement”, provided the framework for negotiations for a regional arms-control agreement applicable to the area “in and around the former Yugoslavia”.⁴

2 Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accords), initialled in Dayton, Ohio, USA, on 21 November 1995, and later signed in Paris, France, on 14 December 1995.

3 In February 2003, the Federal Republic of Yugoslavia became Serbia and Montenegro. For the purposes of this article, the former name or the acronym “FRY” will be employed as these were the designations under which the country conducted the Article V negotiations.

4 Article V, the “Regional Arms Control Agreement”, states: “The OSCE will assist the Parties by designating a special representative to help organize and conduct negotiations under the auspices of the OSCE Forum on [sic!] Security Co-operation (‘FSC’) with the goal of establishing a regional balance in and around the former Yugoslavia. The Parties undertake to co-operate fully with the OSCE to that end and to facilitate regular inspections by other parties. Further, the Parties agree to establish a commission together with representatives of the OSCE for the purpose of facilitating the resolution of any disputes that might arise.” At: <http://www.nato.int/ifor/gfa/gfa-an1b.htm>.

Other than the “Parties” to the Dayton Peace Accords, no other participants are specified. Unlike Articles II and IV, no time frame for negotiations is defined, nor are there any guidelines for the contents of the prospective agreement. These three Articles can be viewed as three concentric circles in terms of their respective geographic areas. Article II includes only parties to the conflict in Bosnia and Herzegovina. Article IV expands the area of application beyond Bosnia and Herzegovina to include the FRY and Croatia. Article V further expands the area of application to the area “in and around the former Yugoslavia”. Thus, in contrast to Articles II and IV, which applied to clearly delineated geographic areas, Article V is deliberately vague.

While Articles II and IV had been the subjects of extended negotiations at Dayton, Article V was very much a last-minute addition. Its origins are hidden in the fog of the eleventh-hour negotiations of the Dayton Peace Accords. While there is no official record of the fact, there is an understanding that Article V was the result of a demand by the FRY for a regional arms-control regime. It purportedly was the *quid pro quo* for an agreement at Dayton. Since there is no negotiating record of Article V, there is no meaningful guidance as to what the drafters actually wanted to achieve through a regional arms-control agreement. This rather unusual situation led to a very wide range of proposals for the prospective agreement.

High Expectations

At the time of the signing of the Dayton Peace Accords, Article V was the source of much optimism, and many of the OSCE States entertained high expectations of an arms-control agreement for the Balkans region. In addition, Article V was the first attempt at a regional arms-control regime within the OSCE; this fact alone caused great interest in the Article V negotiations, even among OSCE States not taking part. But while the goal of Article V was to establish a regional balance “in and around the former Yugoslavia”, there was no specific guidance on how this was to be accomplished. The very term “arms control” was the cause of no small misunderstanding. Several participating States interpreted this as referring to “hard” arms-control measures with arms-control limits like those found in Article IV or the CFE Treaty. According to this view, the new Article V agreement would include legally binding limits on conventional arms and an intrusive inspection regime to verify compliance. Other participating States understood the term to mean “arms control” in the general sense and favoured a politically binding agreement limited to CSBMs. The tension between the “hard” arms-control advocates and those wanting only CSBMs persisted for a greater portion of the negotiations and was exacerbated by the composition of the participating States. Of the 20 Article V participating States, 13 were States Parties to the

CFE Treaty⁵ and hence already subject to legally binding limits on conventional arms and intrusive inspections. A similar situation applied in the case of the three signatories of the Article IV agreement.⁶ Understandably, a number of these countries were wary of the prospect of accruing further arms-control obligations over and above those already in place. On the other hand, some of the most avid proponents of “hard” arms-control measures were States Parties to the CFE Treaty. The four Article V participating States who were neither members of the CFE Treaty nor of the Article IV agreement,⁷ had their own specific qualms about taking on arms-control obligations. Each exhibited wariness, based on national interests, towards the prospect of becoming subject to arms-control limits and intrusive inspections. Since the military forces of each of the four presented no threat to its neighbours, they saw little urgency or value in taking on these obligations.

The anticipated goals for Article V were reflected in its mandate for negotiations, wherein four objectives were detailed:

- Establishing a broad security dialogue among the participating States
- Enhancing transparency, openness and predictability in the field of military security in order to ensure consistently high levels of these qualities throughout the region
- Complementing the existing and mutually enforcing measures for arms control and confidence and security building in the region
- Promoting co-operation and good neighbourly relations in the region.

The stated aim of the negotiations was to “devise measures to reduce localized instability in order to enhance stability as a whole within the region and to strengthen the concept of its indivisibility.”⁸

Negotiating History of Article V

Negotiations on Article V did not begin until after the Article IV agreement had been implemented in November 1997. The Special Representative of the OSCE Chairman-in-Office for Article V Negotiations, Ambassador Henry Jacolin of France, was appointed at the Copenhagen OSCE Ministerial Council in December 1997. Ambassador Jacolin started consultations for a mandate with the goal of attaining initial results by the summer of 1998. In addition to the three signatories of the Dayton Peace Accords, a number of other

5 Bulgaria, France, Germany, Greece, Hungary, Italy, the Netherlands, Romania, the Russian Federation, Spain, Turkey, the United Kingdom and the United States of America.

6 Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia.

7 Albania, Austria, the former Yugoslav Republic of Macedonia and Slovenia.

8 Regional Stability – Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina, Mandate for the Negotiations of an Article V Agreement, “Aim and Objectives”, pp. 1-2 (unpublished).

countries voiced their interest in participating in the negotiations. The nations located in the geographic vicinity of the FRY – Croatia and Bosnia and Herzegovina – were required by the Dayton Accords to be included. The six nations of the Contact Group (France, Germany, Italy, the Russian Federation, the United Kingdom and the United States) became participating States. Turkey and Greece joined the group due to their geographic proximity and interest in the region. Spain and the Netherlands, nations with previous experience and interest in the region, also joined. The number of participating States was finally limited to 20. After several attempts, consensus on a mandate for the negotiations was finally reached in November 1998. This agreement was officially welcomed at the OSCE Oslo Ministerial Council, and negotiations were scheduled to begin in full in January 1999.

However, in December 1998, the massacre in Racak (Kosovo) occurred and with the ensuing Kosovo crisis, the start of negotiations was delayed for three months. An opening plenary meeting was finally held on 8 March, but subsequent meetings were postponed due to the outbreak of hostilities later that month. After the cessation of hostilities, the negotiations resumed in September 1999, but little was accomplished on Article V during the remainder of the year, as OSCE States placed more emphasis on the upcoming Istanbul Summit and the adaptation of the CFE Treaty.

Negotiations finally began in earnest in January 2000. The participating States initially negotiated until the beginning of the summer recess in July, and talks were resumed at the beginning of the OSCE autumn session in September 2000. The negotiations continued with some difficulty, but the participating States finally reached consensus on an agreement just prior to the recess break in July 2001. At the OSCE Ministerial Council meeting in Bucharest in December 2001, the Special Representative submitted the Concluding Document to the Ministers, thus completing his task.

Contents of the Concluding Document

The Concluding Document is a politically binding instrument that does not contain any restraints or limits on arms and does not require participating States to carry out any specific measures. It is exhortatory in nature, calling upon participating States to voluntarily go beyond CSBM measures being implemented through the Vienna Document 1999. The Concluding Document consists of nine sections.

The “General” section consists of nine paragraphs that include avowals of adherence to a number of international agreements, including the Charter of the United Nations, the Helsinki Final Act, the Charter of Paris for a New Europe, the Charter for European Security, the Vienna Document 1999 and the OSCE Code of Conduct on Politico-Military Aspects of Security. The participating States also underlined their support for the full implementation

of the General Framework Agreement for Peace in Bosnia and Herzegovina and recalled the achievements reached through the Florence and Vienna agreements. The participating States reaffirmed the significance of the Open Skies Treaty and noted that an adapted CFE Treaty, upon entry into force, will be open to voluntary accession by other OSCE participating States. Perhaps most important, in view of the present circumstances, is the reaffirmation of the commitment to take appropriate measures for the prevention of the participating States' respective territories being used for the preparation, organization or commitment of extremist violence including terrorist activities directed against other participating States and their citizens.

The section on "Defence-related information" provides voluntary extensions of the provisions of the Vienna Document for annual submissions regarding defence-budget transparency. It recommends the exchange of information on actual yearly expenditures denominated in the local currency. It also encourages the provision of information about financial or other forms of contribution received from any other State and applied to its defence budget. The section on "Expanded military contacts and co-operation" calls for participating States, on a voluntary basis and as appropriate, to promote and facilitate two types of measures: "Military contacts" and "Military co-operation and risk reduction." A number of suggestions for further military contacts and co-operation and risk-reduction measures are enumerated.

The "Military activities" section calls for participating States to consider, on a voluntary basis and as appropriate, the reduction of thresholds for military activities of their respective armed forces subject to prior notification and observation to lower levels than those set out in the Vienna Document 1999.⁹ Many viewed this as a potentially very useful measure, since the levels of military personnel actually employed in exercises have gradually decreased in the past decade. In like manner, the section on "Inspections and evaluation visits" calls for participating States, on a voluntary basis, to offer supplementary Vienna Document inspections and evaluation visits of their forces, particularly those in border areas.

The section on "Antipersonnel mines" proposes that participating States voluntarily provide financial and technical support to other participating States on request for the de-mining of areas on their territory where antipersonnel mines are emplaced and for the destruction of such mines. The section on "Small arms and light weapons" calls for participating States to reaffirm their commitment to the OSCE Document on Small Arms and Light Weapons and to co-operate in combating illicit trafficking, safe and effective management of weapons stockpiles, the reduction and destruction of surpluses and other related issues.

The penultimate section establishes a Commission to review the implementation of the Concluding Document. The establishment of a "commission

⁹ On this see: Organization for Security and Co-operation in Europe, Vienna Document 1999, Vienna, 16 November 1999, FSC.JOUR/275, Chapters V and VI.

[...] for the purpose of facilitating the resolution of any disputes that might arise” was the one requirement that Article V mandated. This Commission is to meet once per year, unless otherwise agreed; extraordinary meetings may be convened at the request of any participating State following appropriate consultations with all participating States by the Chairman. Decisions are to be taken by consensus and the rules and procedures are to be left to the Commission to determine. The Commission is to convene under the auspices of the OSCE and to liaise with the sub-table on Defence and Security Issues of Table III of the Stability Pact for South Eastern Europe.

The section entitled “Final” states that all the measures included in the Concluding Document are voluntary in nature. The Document was deemed politically binding and became effective on 1 January 2002.

Factors Affecting the Article V Negotiations

Three factors strongly influenced the Article V negotiations. The first was the 1999 Kosovo conflict that resulted in a suspension of negotiations and essentially caused a year’s delay. As noted above, the actual Article V negotiations were to have begun in January 1999 but were postponed until September and did not really begin in earnest until January 2000. In retrospect, the fact that negotiations were even resumed so soon after the end of hostilities was viewed as a positive sign. The FRY delegation re-entered the negotiations with a businesslike manner and showed little rancour when the negotiations resumed. That the FRY was able to participate in negotiations with participating States with which it had been engaging in hostilities (and vice-versa), underscored the importance of continuing the negotiations and reaching a conclusion.

The second factor influencing the Article V negotiations was agreement on the adaptation of the CFE Treaty at the OSCE Istanbul Summit in November 1999.¹⁰ The CFE Treaty was an agreement between two groups of states, NATO and the Warsaw Pact, and not between individual states. There were no provisions in the original CFE Treaty for the accession of new members. The adapted CFE Treaty, which was altered to reflect Europe’s changed political structure, will allow for the accession of new members. Of the 20 Article V participating States, 13 are CFE States Parties. The seven exceptions (Albania, Austria, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Slovenia and the FRY) will be eligible to join the adapted CFE Treaty upon its entry into force. The seven non-CFE States have, to varying degrees, indicated interest in joining the CFE Treaty. The desire on the part of the non-CFE States to eventually join the Treaty complicated the Article V negotiations. Prospective new CFE members were natu-

10 On the adaptation of the CFE Treaty see the contribution by Pál Dunay in this volume, pp. 259-288.

rally cautious in taking on new obligations and requirements in addition to those they would incur upon joining the CFE Treaty. There was also concern about assuming obligations that might complicate the accession process to the CFE Treaty.

The third factor affecting the negotiations was the FRY's accession (or reaccession, to some) to the OSCE. In 1992, the Federal Republic of Yugoslavia had been suspended from the Organization. After the country's break-up, all its successor states except the FRY (i.e. Croatia, Slovenia, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina) joined the OSCE and became parties to the Vienna Document. The early stages of the Article V negotiations were dominated by attempts to involve the FRY in Vienna Document CSBMs without its actually being a party to the Vienna Document. The intention of a number of proposed CSBMs was to obtain some degree of transparency into the military affairs of the FRY. Numerous inventive measures were proposed and discussed that were variations on this theme. However, for various reasons, most of these measures were not translated into CSBMs. In addition, some participating States began to view the negotiations as an attempt to create a *cordon sanitaire* around the regime of Slobodan Milosevic. In their view, the FRY had become the main reason for pursuing the Article V negotiations. Paradoxically, however, this was also the main hindrance to the negotiations, since many participating States harboured reservations about concluding an agreement with Belgrade as long as Milosevic was in charge. In the autumn of 2000, the Milosevic government fell, and soon thereafter, the FRY became a member of the OSCE. With the removal of Milosevic from the scene, a major impediment to the conclusion of the negotiations was removed. And with the inclusion of the FRY among the circle of participating States of the Vienna Document, the measures that had been designed to "connect" the FRY to the Vienna Document were rendered moot. With a new government in Belgrade, the atmosphere in the region improved to the point where the FRY began to be no longer viewed as a threat by its neighbours and vice versa.

Another factor that influenced the negotiations – albeit to a lesser degree – were restrictions within the CFE Treaty itself. As noted above, a number of participating States desired to have the Article V agreement include "hard" arms-control measures similar to those in the CFE Treaty. Some even proposed that the new Article V agreement be linked to the CFE Treaty and Dayton Article IV, whereby inspectors from all participating States could participate in inspections under those treaties. However, this suggestion proved untenable as the CFE Treaty limits inspectors to nationals from States Parties to the CFE Treaty.¹¹ While they could be invited to participate on an *ad hoc* basis as observers, there was no way that personnel from non-CFE

11 Treaty on Conventional Armed Forces in Europe, Protocol on Inspection, Section III.2. "Inspectors shall be nationals of the inspecting State Party or other States Parties", at: <http://www.osce.org/docs/english/1990-1999/cfe/cfetreat.htm>.

States could participate as full-fledged inspectors in a CFE Treaty inspection regime.

A further development affecting the negotiations was the relatively recent adaptation of the Vienna Document regime. The Vienna Document 1999 was the culmination of a major undertaking by the OSCE to update and modify the CSBM regime. To many OSCE participating States, it represented the limit of what could be achieved in the area of CSBMs for the foreseeable future. In the wake of the finalization of the Vienna Document 1999, the adaptation of additional CSBMs in the ensuing two years would prove to be an extremely challenging task.

Finally, the potential costs of arms-control measures were also a factor. Even when not overly expensive, arms-control measures – even “modest” CSBMs – can still be costly in terms of resources, personnel and time. While not a decisive factor, this was a consideration in the negotiations.

Evaluating the Results of the Article V Negotiations

The Concluding Document contained less than many participating States had anticipated at the beginning of the negotiations. This fact reflected both the changed political and security circumstances in the region and the difficulty in finding common positions among twenty participating States that often held very divergent views. While there were no “hard” arms-control measures, such as limits on categories of conventional arms or an inspection regime, the Concluding Document does contain a number of voluntary CSBMs that will build upon those found in the Vienna Document 1999. It “pushed the envelope” of CSBMs in Europe as far as it could go at this juncture.

Ambassador Jacolin later summarized the situation as follows: “The negotiations were long and sometimes very difficult, but with the political will and flexibility of all participating States they were able to be brought to a successful conclusion.” Ultimately, the Article V negotiations can be viewed as a success, since, through their conclusion, the Dayton Peace Accords finally reached fulfilment. Further, the stated aims of the mandate for negotiations have essentially been met. A broad security dialogue among the participating States has been established. Co-operation and good neighbourly relations has have been promoted. The existing and mutually reinforcing measures for arms control have been complemented. And transparency, openness and predictability in the field of military security have been enhanced.

That the negotiations did not achieve all that many participating States had initially hoped for can be attributed to the changed circumstances in and around the former Yugoslavia. The need and desire for more ambitious arms-control measures has been reduced by the emergence of a more stable security environment. The improved situation in the region was reflected in the contents of the Concluding Document. The participating States no longer

considered it necessary to adopt more stringent measures. The measures that were ultimately included in the Concluding Document reflect the common denominator of the perceived needs of the participating States at the time of their being adopted.

In addition to successfully concluding the Dayton Peace Accords, the Article V negotiations underscore an important aspect of international arms-control agreements: Nations will mutually accept the arms-control obligations that they feel will enhance their security. However, they will be loath to gratuitously accept obligations that they do not consider to be helpful or beneficial to their security. While many participating States were willing to consider certain arms-control measures at the beginning of the Article V negotiations, the improved political and security situation rendered those measures less palatable, and they were ultimately not adopted.