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## From Regional Stabilization to Security Co-operation in Bosnia and Herzegovina – The Role of the OSCE Mission

### *Introduction*

When the OSCE Mission to Bosnia and Herzegovina was established, it had a well-defined mandate in the politico-military field and a rather narrow set of tasks. This changed over time, and we may in retrospect distinguish between two phases:

- The first phase, in which the responsible department within the OSCE Mission executed the tasks assigned to the OSCE by Annex 1-B of the Dayton Peace Accords in assisting in the implementation and verification of the agreements on confidence and security building and on sub-regional arms control;
- The second phase, during which the tasks increasingly shifted towards assisting Bosnia and Herzegovina in fulfilling its commitments within the OSCE's politico-military dimension as a participating State of the OSCE, in particular those derived from the Code of Conduct on Politico-Military Aspects of Security. The latter also encompasses the defence reform enacted in 2003.

The phases partially overlap, yet it is possible to distinguish between them relatively clearly, and even to specify exact dates for the transition. This contribution describes the development of the two phases, in particular emphasizing the transition from the first to the second and the latter's further development, including its achievements.<sup>1</sup>

Finally, against the backdrop of the experiences gained in this process, I undertake a critical assessment of the role of OSCE missions in the implementation of OSCE commitments by their host nations.

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<sup>1</sup> The author had the opportunity to work within the Politico-Military Department of the OSCE Mission both at the beginning of the first phase (1996-1997) and during the start and further development of the second phase (2002-2003). This provided good opportunities for a kind of "participant observation".

*The Point of Departure for the OSCE's Role in the Military Stabilization of Bosnia and Herzegovina*

The point of departure for the OSCE's role in the military stabilization of Bosnia and Herzegovina was determined by the military aspects of the constitutional arrangements that had emerged as the result of the war and the Dayton Peace Accords of late 1995. Bosniaks, Croats, and Serbs had been at war since 1992. The armed conflict between Bosniaks and Croats was terminated in 1994 by the Washington Agreement, based on a US initiative. It envisaged a federal structure for the whole of Bosnia and Herzegovina, which was later intended to include the Serbs as well, and which was conceived of as a sovereign state. For its part, the Republika Srpska was also founded on the claim that it was a sovereign state, as expressed in its constitution. However, the constitution finally provided by the Dayton Peace Accords established a federal state for the whole of Bosnia and Herzegovina, with the Bosniak-Croat Federation and the Republika Srpska being given the status of non-state "entities". Nonetheless, the two entities retained their constitutions, which had been created for sovereign states and which ascribed to each entity sovereignty in defence matters.

The situation was aggravated by the fact that the Dayton constitution allowed for a high degree of autonomy on the side of the entities.<sup>2</sup> Furthermore, both entities were permitted to maintain the armed forces they had established during the war of 1992-1995. Finally, the situation was made even more complex as the Dayton constitution does not contain any explicit reference to defence being a state matter<sup>3</sup> which was – given the continued existence of the entities' separate armed forces – for a long time interpreted as meaning that defence and "military matters" would be a prerogative of the entities rather than the state.<sup>4</sup> This constitutional situation and the prevailing interpretation thus led to the *de facto* military division of Bosnia and Herzegovina, with two separate military-political structures and two<sup>5</sup> armies.

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2 The state constitution obliged the entities to eliminate all provisions within their constitutions that contradicted the state constitution. This obligation was, however, mostly ignored, in particular on the Serbian side.

3 The Constitution of Bosnia and Herzegovina (Annex 4 to the Dayton Peace Accords) reserves competencies for the state authorities in the areas of "foreign policy", "foreign trade policy", "customs policy", and other tasks relating to international affairs, e.g. co-operation with Interpol, etc. The only explicit reference to "military matters" is the provision on the Standing Committee on Military Matters (SCMM) of the collective state Presidency.

4 This view incorrectly equates "defence" and "military matters". It ignores, however, the fact that "defence" is a political function within the context of external security, and thus primarily a matter of "foreign relations", which the constitution explicitly assigned to the state level. This view is based on the provisions of Article III, paragraph 5 of the constitution, which provides that the state "shall assume responsibility for matters which are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina".

5 If not "two and a half", as the armed forces of the Federation were effectively split between the forces of the former "Armija" (*Armija Republike Bosne i Hercegovine*, ARBiH) of the Bosniaks, and the "Croatian Defence Council" (*Hrvatsko Vijeće Obrane*, HVO).

*The First Phase: Dayton and the Agreements under Annex 1-B*

While the *de facto* military division of Bosnia and Herzegovina was more or less accepted by the international community as a result of the Dayton compromise, there had been efforts from the beginning to mitigate its effects and to allow Bosnia and Herzegovina to develop into a “normal” state as far as possible.

During the first phase immediately after the end of the war, these efforts were mostly aimed at preventing the resumption of hostilities and achieving a transition to a kind of “cold peace”. Thus, the Dayton Peace Accords established the mandate for creating a robust peace implementation force (IFOR, replaced by the Stabilisation Force, SFOR, in 1997) as well as a set of agreements on arms control in the widest sense, including both “soft” and “hard” arms control measures. They recognized the *de facto* division of Bosnia and Herzegovina but aimed at minimizing its effects. The approach was based on the agreements and documents that had been developed within the CSCE/OSCE framework for the whole of Europe during the Cold War.

These two complementary tasks were assigned to different institutions by the relevant annexes to the Dayton Peace Accords. Annex 1-A provided the mandate for NATO’s deployment of IFOR. Annex 1-B created a framework for negotiations to take place under the auspices of the OSCE. Starting at the centre and expanding in concentric circles, these negotiations can be seen as aiming to establish military stability through co-operation between the parties. The envisaged steps were:

- Negotiations on confidence- and security-building measures for Bosnia and Herzegovina (Annex 1-B, Article II) between the (state level) institutions of Bosnia and Herzegovina and the two entities as equal partners;
- Negotiations on sub-regional arms control (Annex 1-B, Article IV) between the state of Bosnia and Herzegovina, its two entities as well as Croatia and the then Federal Republic of Yugoslavia (FRY); and
- Negotiations on regional arms control “in and around former Yugoslavia” (Annex 1-B, Article V).<sup>6</sup>

The negotiations on confidence- and security-building measures for Bosnia and Herzegovina started on 4 January 1996 in Vienna and successfully concluded on 26 January 1996 with the Agreement on Confidence- and Security-

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6 Both the upheavals in the Federal Republic of Yugoslavia in late 2000 and its accession to the OSCE rendered the negotiations under Article V superfluous. The participants thus terminated the negotiations in July 2001, adopting a concluding document which, however, contains no obligatory measures. The matter will thus not be followed further in this paper. Cf. also Heinz Vetschera, The negotiations on regional arms control under Annex 1-B, Article V of the Dayton Agreement – a preliminary post-mortem; in *Helsinki Monitor* 3/2001, pp. 177-184.

Building Measures for Bosnia and Herzegovina (Vienna/Article II Agreement). This agreement pertains to the whole territory of Bosnia and Herzegovina and contains a varied set of measures, rooted partly in the OSCE-wide Vienna Documents of 1992 and 1994 on Confidence- and Security-Building Measures, and also derived directly from provisions within Annex 1-B. The verification regime was mostly taken from the Treaty on Conventional Armed Forces in Europe (CFE), which was concluded in 1990. The main objectives of this agreement were to facilitate transparency in matters related to the armed forces, to limit the available options for military operations, and to prevent unintended escalation. It did not, however, contain any provisions for armament limitations.

Besides Bosnia and Herzegovina and its two entities, participants in the negotiations on sub-regional arms control (Article IV) included Croatia and the FRY. These were also held in Vienna, but the resulting agreement (the Agreement on Sub-Regional Arms Control) was finally signed on 14 June 1996 in Florence (and is hence known as the Florence/Article IV Agreement). In terms of its philosophy and structure, this agreement follows the CFE Treaty in establishing ceilings on battle tanks, armoured combat vehicles, artillery pieces, combat aircraft, and combat helicopters for all parties. In addition, the parties agreed on voluntary personnel limits for their armed forces. Implementation is subject to a verification regime, also modelled on the CFE Treaty.

Excess weapons systems were to be reduced, primarily by destruction and scrapping. The agreed limits were achieved after some delays in November 1997, with a total of 6,580 heavy weapons systems eliminated. Verification of the remaining armaments became a routine matter which was also covered by the verification regime provided for by the agreement.

#### *The Role of the OSCE Mission in the Implementation of the Agreements*

Not only were the negotiations under Articles II and IV to take place “under the auspices of the OSCE”, but Annex 1-B also provided that “the OSCE would assist the Parties in the implementation and verification of the agreements”. In the implementation process, the OSCE was represented vis-à-vis the parties in two ways:

- Formally, by a Personal Representative of the OSCE Chairman-in-Office tasked with the implementation of the two agreements, and
- On the ground by the Politico-Military Department of the OSCE Mission to Bosnia and Herzegovina, which had been subordinated to the Personal Representative in these matters.

The Politico-Military Department was established within the Mission immediately after the conclusion of the Agreement on Confidence- and Security-

Building Measures. In accordance with the terminology of Annex 1-B to the Dayton Peace Accords, it was named the “Office for Regional Stabilization”.<sup>7</sup> In line with the way its tasks were then understood, this Office was organized primarily along military lines and staffed with military officers experienced in peacekeeping operations or the verification of arms control agreements, as well as experts in questions of military confidence building and arms control.

Formally, the Office’s tasks were to represent the Personal Representative on the ground and to advise and support the parties to the Article II Agreement in all questions of implementation. In reality, however, the main task was soon seen primarily to be in assisting the mutual inspections, which led to the dominance of verification “bean counters”. A further task envisaged by the agreement, the provision of implementation assistance in a wider sense, which would have encompassed the political level, was pushed to the back-burner.

Despite this, the then Personal Representative and several OSCE experts within the Office already made efforts to widen the scope of the Office’s activities during the first year of its existence. They sought to go beyond the mere implementation of the two agreements and to support Bosnia and Herzegovina as an OSCE participating State in complying with its existing obligations under the OSCE’s politico-military dimension, but without formally leaving the framework of the existing agreements. The optimal point of departure was seen as being Measure XI (“Contacts and Co-operation”) of the Article II Agreement, which provided the basis for the organization of several “seminars”. These were to serve, firstly, in the spirit of this provision, to motivate representatives of the three parties – the state and the entities – to joint participation, thereby promoting contacts among them. Secondly, they were also organized with a view to making the politico-military elites at both state and entity levels acquainted with the politico-military commitments under the various OSCE documents to which Bosnia and Herzegovina is subject as an OSCE participating State.

The first such seminar was organized in December 1996 in Sarajevo on the topic of “The OSCE Code of Conduct and Democratic Control of Armed Forces”.<sup>8</sup> It was the beginning of a series of seminars, two of which have been held each year since then, at which representatives of the entities’ defence establishments, in particular, were introduced to the OSCE’s Code of Conduct on Politico-Military Aspects of Security. Organizing such seminars – on the Code of Conduct in particular but also on other subjects – subsequently became an integral part of the Office’s work programme.

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7 It was re-named the “Department for Security Co-operation” in 2001.

8 Further seminars in this early phase dealt with arms control and military doctrines. The first seminar on military doctrines in July 1997 was the first occasion at which representatives of both entities’ general staffs could present and discuss their respective military doctrines.

The Article II framework thus functioned to some extent as a surrogate for the distribution of competencies within “normally functioning” states for the implementation of OSCE commitments. In a “normally structured” state, implementation of foreign policy commitments would be a responsibility of the ministry for foreign affairs, which could rely on the expertise of the defence ministry. Due to the particular situation in Bosnia and Herzegovina and the prevailing understanding of defence competencies, this procedure was inapplicable. Article II enabled structured co-operation between the entities and between the entities and the state, and achieved comparable results. All these activities were, however, undertaken by the Personal Representative and the Office without putting into question the military division of the country, which continued to be perceived as an immutable fact.

#### *Transition to the Second Phase*

The transition to the second phase was initiated by the political changes in Croatia in early 2000, but first and foremost by the democratic revolution in the FRY in October 2000. The demise of governments that had harboured at least implicit reservations about respecting Bosnia and Herzegovina’s territorial integrity, thus indirectly supporting radical, nationalist, and separatist forces within Bosnia and Herzegovina, significantly changed both the security policy environment and the politico-military situation in the country.

The first phase of military stabilization was thus coming to a close, as an armed conflict with neighbouring states or between the entities had ceased to be a realistic scenario. The relationship between the entities, and between their armed forces in particular, improved markedly and SFOR force levels were reduced correspondingly.<sup>9</sup> Efforts to achieve some “normality” in the military field could now enter a new phase, enabling Bosnia and Herzegovina to become a “normal” state with respect to defence policy.

#### *The Development of Platforms*

The international community in Bosnia and Herzegovina developed the organizational framework initially used to co-ordinate the activities of the various organizations. The first such platform was the Common Security Policy Working Group (CSPWG). It emerged in 1999 out of an informal group established jointly between the Office of the High Representative (OHR), SFOR, and the OSCE Mission after the Madrid Peace Implementation Council (PIC)<sup>10</sup> meeting of 15-16 December 1998 to develop a politico-military strategy for and

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<sup>9</sup> From more than 60,000 troops in 1996 to about 20,000 troops in 2001.

<sup>10</sup> The Peace Implementation Council was established at the London Peace Implementation Conference on 8 December 1995. It is the supreme international body for supervising the implementation of the Dayton Peace Accords and co-ordinating the activities of the various international institutions in Bosnia and Herzegovina.

within Bosnia and Herzegovina. Between January and March 1999, this working group elaborated the rudiments of a common approach by the various organizations that aimed at strengthening the state level with a view to developing a common security policy strategy for the state, and creating adequate state-level security policy institutions.

In March 1999, this informal group was transformed into the formally established CSPWG, which consisted of SFOR, NATO, the OHR's Military Cell, and the OSCE Mission's Office for Regional Stabilization. Its purpose was to develop a common security policy for the whole of Bosnia and Herzegovina. Parallel efforts were undertaken simultaneously by the OHR in particular to create corresponding structures at the state level, with an implicit aim of finally establishing a ministry of defence for the whole state.

Taking a broader approach, the Institution Building Task Force (IBTF) was established by the High Representative in early 2002 and presented to the PIC Steering Board at its meeting in February 2002, where its creation was explicitly endorsed. The Task Force consisted of representatives of OHR, the OSCE Mission, SFOR, the EU (represented by the state holding the EU Presidency), and – until its mandate ended in 2002 – the UN Mission in Bosnia and Herzegovina. The IBTF ran a wide-ranging programme focusing on establishing of state-level institutions in areas such as public administration, democratization, and civic participation; defence and security; media development; and (rudimentary at the beginning) education.

A working group was established to deal with each of these subjects. However, the working group for defence was effectively identical with the CSPWG.<sup>11</sup>

#### *Ambitions to Join the Partnership for Peace (PfP)*

Efforts to create state-level institutions took on a new character thanks to Bosnia and Herzegovina's ambitions to join the Partnership for Peace (PfP), which were also strongly supported by Western governments.

The decisive point of departure was a message by NATO's Secretary General to the Bosnia and Herzegovina Presidency in July 2001 outlining the criteria for accession. Most weight was laid on the existence of an effective and credible state-level civil command and control structure, including a state-level ministry responsible for defence matters.

Other factors mentioned included the provision at state level of the following:

- Democratic parliamentary oversight and control over the armed forces of Bosnia and Herzegovina;
- Transparency of defence plans and budgets;

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<sup>11</sup> The obvious duplication was finally solved by transforming the CSPWG into the "Defence and Security Steering Group" (DSSG) which was subordinated to the IBTF.

- The development of common doctrines and standards to train and equip the armed forces of Bosnia and Herzegovina; and
- The development of a security policy for Bosnia and Herzegovina.

The aim of these steps was the eventual merging of the entities' armed forces into one state army of Bosnia and Herzegovina. The merger of the entities' armed forces and the establishment of a state-level defence ministry became the core criteria for Bosnian accession to the PfP, even if, at that time, this was still expressed in rather cautious terms for political reasons.

#### *Efforts to Establish a Joint Army and a State-Level Ministry of Defence*

*Downsizing of entities' armies prior to their merging:* The international community demanded the downsizing of the entities' armed forces for various reasons: First, because of the financial burden imposed by the entities' excessive defence spending; second, because it was assumed that the reduction of forces to a level lower than was militarily reasonable would lead to the merger of the remaining forces into one army as the only means of maintaining effective military forces.

The demand that forces be downsized had financial origins. The PIC meeting in Madrid in 1998 had already expressed concerns over the levels and lack of transparency of the entities' defence spending. As the entities' obligations within the annual information exchange on military budgets in accordance with Measure (I) of the Article II Agreement were seen as the most feasible way of influencing defence expenditures at that time, the Personal Representative tasked a team of auditors with assessing the contents of the budget information that had been exchanged by the entities in a formally correct procedure. The process revealed significant discrepancies between the real figures and those given in the information exchanged. Furthermore, they revealed that defence expenditures were far in excess of the international average, something that could be traced primarily to the disproportionate size of the entities' armed forces, itself rooted in their mutual perception of each other as a threat. In accordance with the PIC's decision of 24 May 2000, the entities should thus have reduced both their defence expenditures and the size of their armed forces by 15 per cent by the end of 2000. In the future, the forces should be reduced between January 2002 and December 2005 from 22,600 to 13,200 active service personnel in the case of the Federation, and from 11,300 to 6,600 active service personnel in the case of the Republika Srpska.<sup>12</sup>

At that time, these efforts were still primarily concerned with reducing excessive defence expenditure. From 2001, however, they became increas-

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12 Which would also have maintained the 2:1 ratio of forces in favour of the Federation that was applied to weapons systems in the relevant provisions of the Article IV Agreement on Sub-Regional Arms Control.



ingly entangled with the question of Bosnia's joining the PfP and the associated requirement to strengthen the state level. Subsequently, both objectives – downsizing the armed forces and establishing state-level institutions – were no longer followed merely *in parallel* to each other, but were *synchronized*.

The pressure to downsize the armed forces thus increased after the end of 2001 with the aim of achieving the planned levels as early as mid-2002. Force reductions would then have taken place simultaneously with the planned transformation of the Secretariat of the Standing Committee on Military Matters (SCMM) into a state-level defence ministry.

The management of the downsizing process was entrusted to the OSCE Mission's Department for Security Co-operation on the basis of its previous involvement in auditing the entities' defence budgets and assisting in their reduction. In this way, the Department's activities started to exceed its original tasks as outlined by the Article II Agreement.

*Establishment of a state-level ministry of defence:* Efforts of the international community concerning this issue concentrated on the SCMM, as it was the only state-level institution with an explicit mandate in military matters. This idea, which was soon turned into a formal programme, concentrated on transforming the SCMM's previously quite insignificant Secretariat into a state-level ministry. Because it was an administrative institution, the SCMM's Secretariat was an obvious choice for this purpose. Despite its attractions, this idea was not without constitutional problems: It utterly ignored the clear functional separation of the Presidency and the government, as well as the fact that the SCMM's function within the constitution is to act as a coordinating body between the Presidency and the entities, which would have made a transformation of parts of it into an element within the government even more problematic. Nevertheless, the idea, once adopted, became a key component of the international community's efforts in this field.

Based on the PIC decisions from 2000 and the criteria for PfP accession, the OHR organized a series of informal negotiations ("seminars") in cooperation with SFOR and the OSCE Mission to prepare the restructuring of the SCMM and the Secretariat's transformation into a kind of state-level ministry-like institution. The local parties took different positions on this question. The strongest support came from the Bosniak/Muslim side, which was generally in favour of strengthening the state level in all fields. The Croats, too, were mostly in favour, as they hoped to gain more influence in state institutions than they had within the Federation, where they were limited to the role of junior partner. Even the Serbian side proved relatively flexible on substantive questions, but became uncooperative when terms such as "state-level ministry of defence" were introduced, or when demands were raised to change the Dayton constitution with respect to the distribution of competencies between the state and the entities.

The results of these seminars were compiled into a working paper, which proposed changing the composition of the SCMM, now to have nine

members.<sup>13</sup> It also proposed enlarging the SCMM Secretariat to create a structure on the scale of a ministry, with departments for personnel management and administration; security and defence issues; internal and foreign military affairs; and co-operation with NATO. The Secretariat would be led by a secretary general with two deputies, in order to ensure ethnic balance. The secretary general would later take over the position of state minister of defence.

The seminars also concluded that the SCMM should establish a military commission composed of representatives of the entities' defence ministries and command structures, to become the *de facto* state-level military command institution. Finally, the working paper was intended to create the basis for a joint military command for all armed forces in Bosnia and Herzegovina, and to provide the legal framework for joint defence.

The Serbian side accepted the substance of the paper. However, when the draft was submitted to the collective Presidency on 16 May, it explicitly stated that the SCMM Secretariat should become the defence ministry for Bosnia and Herzegovina. The Serbian member of the Presidency objected to the draft and asked for ten days' delay to consult with the entity's authorities.<sup>14</sup> Against the Serbian member's vote, the two other members adopted a decision that would have transferred command authority to the SCMM. The defence council of the Republika Srpska<sup>15</sup> rejected the paper on 23 May 2002, branding it "unconstitutional". On 28 May 2002, after the ten-day deadline expired, the state Presidency decided to put the issue on the backburner.

#### *The Role of the Department for Security Co-operation*

The Department for Security Co-Operation began to play an ever more integral role in these efforts. At first – still within the framework of its original mandate – it had supported the work of the auditors that had been appointed under the provisions of the Article II Agreement. Subsequently, however, the Department also became tasked with managing the force reductions, which was not one of its original tasks.

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13 Namely the three members of the (collective) Presidency; the state ministers for foreign affairs, for civilian affairs and communication, and the minister of the treasury; the president of the Republika Srpska and the president and deputy president of the Federation. Representatives of SFOR, the international community and parliamentary commissions would participate without a right to vote.

14 As far as it could be established, the text version that had been presented to the state Presidency was at variance with the previously agreed text, which provoked the refusal by the Serbian side.

15 Although the defence council was established by the Defence Law of the Republika Srpska, it was exempt from parliamentary control and thus a typical relict of the old thinking and already at variance with the then applicable legal requirements. It was finally dissolved by the High Representative in the context of the ORAO affair in 2003 (see below).

The Department also represented the OSCE Mission in the CSPWG and – with respect to military matters – within the IBTF. Although in view of its original tasks and its near total subordination to the Personal Representative the Department had been something of an alien element within the Mission up to then, it now developed increasingly into the politico-military representative of the OSCE Mission, but also into an actor equal to the other international institutions. In this way, it became involved in developments that went clearly beyond its original mandate.

In early 2002, there was a significant shift in the Department's tasks. The activities foreseen by its original mandate in supporting the Personal Representative in the implementation of the two agreements reached under Annex 1-B continued. In parallel, however, the new tasks gained a dynamism of their own, which brought them increasingly into the foreground, and they came to take precedence over the original tasks.

### *The Second Phase*

In their early stages, the efforts to reform the defence sector, including the establishment of democratic control of the armed forces, made practically no reference to the OSCE's politico-military dimension, despite the fact that they covered very much the same territory. Instead, they were primarily promoted by the High Representative's efforts to strengthen the state level, and by SFOR with a view to Bosnia and Herzegovina's future membership of the PfP. If the OSCE Mission had any function at all, it was merely a supporting one. Its key task in this context was primarily seen as to manage the process of reducing the entities' armed forces.

This changed in April 2002 as result of two events. First, the then Director of the OSCE's Conflict Prevention Centre (CPC) sent a letter to all Heads of Mission on 12 April 2002, asking them to report on the implementation of commitments under the OSCE's politico-military dimension by their host countries, and encouraging them to ensure better implementation, in particular with respect to the Code of Conduct, the Vienna Document 1999, and the use of the end-user stations of the OSCE Communication Network.<sup>16</sup> Then, almost simultaneously, the annual rotation of the Department's Deputy Director took place. While, up to this point, the post had been filled by verification experts, it was now occupied by an expert in the politico-military dimension of the OSCE, who had served in the CPC and his country's OSCE Delegation for several years, and had been attached to the Department in 1996-97. At that time, he had, under the instruction of the then Personal Rep-

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16 The network is a system of electronic links for the exchange of politico-military information. It was originally established by the Vienna Document 1990 as a means for communication in crisis situations but has since come to be seen as a confidence-building measure on its own account.

representative, also organized the first seminars aimed at familiarizing the politico-military elites at state and entity level with the OSCE's politico-military dimension.

#### *Development of a New Strategy for the Department*

The new Deputy Director treated the letter from the CPC Director as the point of departure for a strategy centred on the OSCE's politico-military dimension and the implementation of the associated commitments by the host country, making them the basis of activities already started by the Department, as well as for future steps. The strategy rested on the following considerations:

- As a participating State in the CSCE/OSCE since 1992, Bosnia and Herzegovina has co-adopted all CSCE/OSCE documents passed since then, including those of the politico-military dimension;
- Since then, Bosnia and Herzegovina has been obliged to implement the commitments made under these documents. However, annual implementation surveys, such as those submitted by the CPC for the Annual Implementation Assessment Meetings, have shown that Bosnia and Herzegovina has in most issues been a "black hole", with an implementation quota comparable, at best, to some micro-states or Central Asian states;
- Improving Bosnia and Herzegovina's implementation record was therefore a matter of urgency, not least in order to improve Bosnia and Herzegovina's international credibility;
- The implementation of commitments under the OSCE's politico-military dimension is without a doubt a foreign policy issue and would therefore fall exclusively within the prerogative of the state and not that of the entities;
- There is no doubt that, under the constitution of Bosnia and Herzegovina, the entities are obliged to assist the government (i.e. the state-level authorities) in implementing international obligations;
- Other competencies assigned explicitly or implicitly to the entities by the state constitution are therefore completely irrelevant; in matters of foreign and security policy, they are subordinated to the state;
- The Code of Conduct explicitly demands that participating States ensure its implementation. Whenever the entities prove unable or unwilling to ensure that the Code of Conduct is implemented within their own areas of responsibility, the state level has the right and the duty to ensure implementation.

In this view, all efforts to create a state-level framework for security and defence policy, including the establishing of a state ministry of defence, are based on international commitments and the current constitution.

Concerning the reduction of the armed forces, the strategy referred to the Code's provision that "participating States" should maintain only such armed forces as are commensurate with their legitimate security interests. As the Code explicitly refers to the security interests of "states", the entities' views and perceptions in this perspective had to yield to the Code's provisions.

This strategy can be said to have killed two birds with one stone. On the one hand, the ongoing activities of the OSCE Mission in creating state-level defence structures and in reducing the entities' armed forces could now be legitimized by reference to OSCE commitments.<sup>17</sup> On the other hand, the Department's activities could now be oriented towards improving Bosnia and Herzegovina's implementation record. This led to better relations with the Mission's local partners compared to the earlier situation when the Mission had only been able to make demands, but could not even refer to a mandate on which they were based.<sup>18</sup>

The Mission thus took the indisputable gaps within the implementation record in the OSCE's politico-military dimension as its point of departure to demand, on the one hand, their full implementation, and, on the other, the elimination of all obstacles preventing this. The lack of adequate state control was identified as the main hindrance, impacting on the implementation of the following provisions of the Code of Conduct among others:

*Political neutrality of the armed forces:* The entities' armed forces were established as the armed forces of the various ethnic groups, and were more or less mutually exclusive.<sup>19</sup> As a consequence, these forces bear a *de facto* resemblance more to party militias than to the regular armed forces of an OSCE participating State. This, in turn, prevents the forces from being politically neutral, which is in clear contradiction to the Code's provisions.

*Democratic/parliamentary control, including control of the defence budget and control by authorities vested with democratic legitimacy:* At state level, proper parliamentary control was completely absent, this could be accounted for, on the one hand, as a result of the traditional perception that the military would somehow stand "outside", if not even "above" civilian control. It resulted, on the other hand, also from the division of the armed forces into ethnically defined units, which claimed to defend "the people" (meaning the ethnic group). As a consequence of these two factors, the armed forces laid claim to disproportionately high levels of financial resources, which were

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17 This had also become necessary to achieve the required budgetary support within the existing OSCE structures. Activities without any reference to the OSCE are unlikely to have gained support within the Finance Committee.

18 E.g. for downsizing or the creation of joint state-level institutions.

19 Within the armed forces of the Federation, this division went so far as to mean that units from corps level downwards were ethnically homogenous, i.e. either Croat or Muslim.

then themselves overspent, not least due to the lack of financial control by the parliaments.

There was also a lack of control by authorities vested with democratic legitimacy. Not only was there no defence ministry at state level, but the ministries of defence established in both entities answered only to the entities' parliaments. Moreover, these parliaments also lacked the expertise in defence matters needed to exert adequate political control over the ministries. This was aggravated by the narrow, provincial, and ethnically determined perspective of the parliaments, which were thus unable to exercise truly democratic control.

The same applies to the intelligence services within each entity. They acted practically outside democratic control and their uncontrolled activities represented a risk factor.

*Military capabilities commensurate with legitimate security interests:* The implicit orientation of the entities' armed forces towards the defence of each entity against the other has also led – or did at least at the beginning – to internal arms races, which, however, were successfully contained by the Article IV Agreement. However, it also led to the legitimate security interests of the state being ignored. "Security interests" was too frequently identified with "interests of the entities" which, however, are not recognized by the Code of Conduct, which explicitly refers to "states".

As a consequence, it had never been asked whether the military capabilities accumulated by the entities would really be "commensurate with the legitimate security interests" of the state, or whether they might not be far in excess of the levels needed.

In addition, the military division of the country also impeded the implementation of other commitments of a more technical nature:

*OSCE Document on Small Arms and Light Weapons (SALW):* The entities' armed forces had extremely high levels of SALWs stockpiled for their reserve forces from the time of the war. Although militarily ineffective, owing to a lack of both sufficient training and equipment, these forces lent legitimacy to the huge stockpiles of SALWs, which, as a rule, were kept in badly guarded storage areas, which have been characterized as "one-stop shops for criminals". These stockpiles were therefore justifiably considered to be a "destabilizing" accumulation in the sense of the SALW Document, and hence were to be eliminated.

In addition, the obligatory annual information exchange on SALW could not take place, as the responsible state authorities did not receive any relevant information from the entities.

*OSCE Document on Principles Governing Conventional Arms Transfers (CAT):* Bosnia and Herzegovina's arms industries were also subject to the exclusive control of the entities without any state control. In Yugoslavia, they had been subordinated to the ministry of defence, and the entities had maintained this structure after the break-up of Yugoslavia within the federal

structure of Bosnia and Herzegovina. However, the industries produced arms not just to meet the demands of their respective armed forces but also for export, again practically without control.

There was no state control because arms production, being subordinated to the various ministries of defence, was considered to be a military matter and therefore a prerogative of the entities. While SFOR exerted tight control over all movements of forces and armaments, including armaments destined for export, this did not extend beyond monitoring security during transportation. The practice of unregulated exports had frequently led to tension in foreign relations, and although these problems were caused by the entities, they were formally the responsibility of the state.<sup>20</sup> For the same reason, the obligatory annual exchange of information on CAT could not take place, as the state authorities once more did not receive any relevant information from the entities.

*Vienna Document 1999:* This was the first issue to be addressed by the international community when the May 2000 meeting of the PIC in Brussels, in the annex to its declaration, demanded that “the competent Bosnia and Herzegovina authorities shall create the necessary conditions to fully meet their obligations under the 1999 Vienna Document”. The same year also saw some cautious progress being made towards implementation when a state-level mechanism for information exchange was prepared. However, this mechanism was not implemented, as the entities demanded clearer separation of the various elements of information to be exchanged.

Another failure of compliance concerned Bosnia and Herzegovina’s obligation to invite international inspectors to visit an airbase in the country every five years. No such invitation has been issued for almost a decade.

*Communication network:* Bosnia and Herzegovina was one of the few states not yet connected to the OSCE Communication Network. Here, too, implementation failed as a result of the long-standing demands of the entities to be directly connected to the network, bypassing the state level. If the entities had been connected to the network, however, it would probably have been interpreted, in particular by the Republika Srpska, as acceptance of their implicit claims to sovereign statehood. It was for that reason consistently refused.

#### *Implementation of the Strategy by the Department*

The annual workplan for 2003 drawn up in June 2003 envisaged the following activities for the Department: *first*, continued support for the Personal Representative in the implementation and verification of the agreements reached under Articles II and IV. This covers the organization of seminars

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20 An example was the export of several Panhard reconnaissance vehicles to Israel by the Bosniak-Croat Federation, which provoked anger within the Arab world at the (Muslim) Bosniaks.

and other voluntary activities, including aerial observation and a command-post exercise for disaster relief activities, as well as support for inspections to be conducted in Bosnia and Herzegovina under the Article II and Article IV Agreements. *Secondly*, it also now explicitly referred to tasks resulting from the implementation of OSCE commitments. Here, the emphasis was placed on commitments under the Code of Conduct, which could hardly be implemented without shifting competencies towards the state level. However, even the existing Dayton constitution should have made it possible to establish adequate institutions at state level. This would have fulfilled the Code of Conduct's demands for democratic control, while also enabling Bosnia and Herzegovina to implement all its other commitments in the politico-military dimension.

Thus, as well as continuing to provide support for the Personal Representative's activities under the Article II and IV Agreements, the Department has assumed two further key areas of responsibilities. The first is the provision of direct support for the implementation of the commitments through the provision of expertise and the establishment of contacts between the competent authorities within Bosnia and Herzegovina and the OSCE. The second is to make an active contribution to establishing the pertinent institutions at state level.

The new tasks were also reflected in the restructuring of the Department in accordance with the 2003 workplan. This envisaged a structure consisting of three main sections: one for the support of activities under the Article II and IV Agreements; one for the support of implementation activities deriving from the various documents within the OSCE's politico-military dimension; and a politico-military section tasked with contributing to the establishment of state institutions.

The new fields of activity also led to the creation of new partnerships on the ground. As long as the Department had seen its tasks primarily as consisting in supporting the verification of the two agreements, its main contacts were the entities – and their defence ministries and the various verification centres in particular. There were occasional contacts with the SCMM, which was formally a state institution, although its members saw themselves primarily as representatives of their respective ethnic groups and their forces. Under the new arrangement, however, the Department saw the ministry for foreign affairs as its main partner, as, on the one hand, it was undeniably the competent authority for the implementation of foreign policy commitments, and, on the other hand, it could be expected to co-operate in the implementation of the Department's new strategy. Further key partners for the question of democratic controls were the parliaments of the entities and the state.



### *Merger with the OHR Military Cell*

This strategy was originally developed to support the Department's role, as part of the OSCE Mission, of conducting specific activities in combination with other international institutions within the existing organizational frameworks. However, with the High Representative's decision to reduce the number of international players and his suggestion that OHR's Military Cell be merged with the OSCE's Department for Security Co-operation,<sup>21</sup> the situation changed dramatically. The merger was implemented in August 2002, and the head of the OHR's Military Cell also took over the position as the Director of the Department.

These steps had a direct impact on the Department's structure and composition. The establishment of the politico-military section, which had been planned for 2003, was implemented immediately, primarily so as to integrate the former OHR personnel. They also had an immediate impact on the Department's work, as it could no longer concentrate on the implementation of OSCE commitments but had to stress institution building, which had been primarily the task of the OHR Military Cell until then.

The situation was aggravated by the fact that former OHR personnel continued to identify with their former institution and showed little understanding of the specific role of the Department as an OSCE institution. This identification with the OHR declined as the rotation system thinned out the former OHR personnel, replacing them with staff recruited by the OSCE Mission. At the top, however, there was a distinct lack of change, as the Director proved unwilling to accept the Department's role as an OSCE institution. Nor was he prepared to accept the usefulness of the Department's strategy of using the commitments under the OSCE's politico-military dimension to support the common objective of establishing defence institutions at state level. The tensions resulting from this significantly reduced the Department's ability to continue as planned.

### *The Work of the Department Since August 2002*

Despite the growing tensions, progress was made in various fields.

*Downsizing of the entities' armed forces:* Downsizing, which had been initiated in spring 2002, was completed within the envisaged timeframe. A particular problem emerged with severance payments, which posed a serious financial burden.<sup>22</sup> While it had been hoped that international loans would help pay for this, they could not be granted for a purpose that was deemed to be "military". In the end, the severance payments were financed by means of

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21 Cf. High Representative to Bosnia and Herzegovina, Lord Ashdown, Presentation to the OSCE Permanent Council, Vienna 4 July 2002; PC.FR/26/02, Vienna, 1 July 2002.

22 Each demobilized soldier received 10,000 convertible marks (equivalent to the old German mark). The cost to the Federation alone, which had started the process, was 100 million marks.

loans secured on that portion of the former Yugoslavia's property (the "succession fund") that had been inherited by Bosnia and Herzegovina, and distributed between the entities. Social programmes for the re-integration of demobilized soldiers into the civilian economy were offered by the World Bank and the International Organisation for Migration (IOM) and frequently accepted.

Yet the intended effect of forcing the remaining entity forces to merge did not materialize, rejected by the Serbian side against the background of the discussions on the transformation of the SCMM into a state ministry of defence. Downsizing thus achieved its original purpose of budget reduction, but not the additional objective of inducing the merger of the two armies.

*Restructuring the SCMM:* After the failure of efforts to restructure the SCMM in May 2002, the informal negotiations continued during the summer of 2002 without attracting much attention. The Serbian side soon abandoned their position of total rejection and began to show greater flexibility. While they insisted that they would retain their own armed forces, they also displayed an increasing willingness to discuss any other questions and solutions that would bring Bosnia and Herzegovina closer to PfP accession.<sup>23</sup> Nevertheless, the low-profile efforts continued throughout the summer break and were eventually successful. On 29 August 2002, the Presidency passed a "Decision on the Organization and Functioning of Defence Institutions of Bosnia and Herzegovina", which defined the following:

- The composition of the SCMM proper as a political body;
- The enlargement and restructuring of the SCMM Secretariat along the lines of a ministry, including the creation of various departments;
- The appointment of a secretary general and several deputies; and
- The establishment of a military commission to co-ordinate "the activities of the armed forces in Bosnia and Herzegovina" in the areas of "defence, sovereignty, and the territorial integrity of Bosnia and Herzegovina".

*Providing expertise for the entities' defence committees:* The department continued its efforts to strengthen democratic control of the armed forces at entity level. This was undertaken in parallel to the efforts to establish parliamentary control at state level. In negotiations with the defence committees of both entity parliaments, the Department secured the agreement that two defence experts on each committee would have the task of advising the com-

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23 On various occasions, however, the positive developments were undermined by statements made by international actors containing provocative terms such as "joint forces", "joint command", or "state-level ministry". Unfortunately, statements of this kind were made even by higher-ranking SFOR functionaries, who are expected to display a certain sensitivity to such questions. These developments and attempts to arrogate to SFOR competencies that had been assigned to other international institutions by the Dayton Peace Accords led to tension between the various international institutions in mid-2002.

mittees on defence issues. The Department was involved in the selection of these experts to ensure that they were suitably qualified and to exclude, as far as possible, any political interference. These experts' salaries were paid by the Geneva-based *Centre for Democratic Control of Armed Forces* (DCAF).

*Eliminating obstacles to inspections under the Vienna Document 1999:* Just like any other OSCE participating State, Bosnia and Herzegovina is subject to the verification regime of the Vienna Document and obliged to accept up to three inspections of its territory per year. In practice, the inspecting parties selected as a rule an inspection area that traversed the Inter-Entity Boundary Line, thus incorporating sections of the territory of both entities. This prevented these inspections being interpreted as proof of sovereign statehood as claimed by the entities.

In accordance with the provisions of the Vienna Document 1999, the inspecting state is entitled to request an aerial inspection performed by aeroplane or helicopter. In Bosnia and Herzegovina, however, this could not be realized due to the refusal by SFOR to allow such flights across the Inter-Entity Boundary Line, even when the competent state authorities would have given the consent required. This practice corresponded to SFOR's basic mandate of ensuring the separation of the former belligerents, but became increasingly counterproductive in the context of the envisaged co-operation – or even merger – of the entities' armed forces, the emphasis on the statehood and unity of Bosnia and Herzegovina, and the push for better compliance with the pertinent commitments under the OSCE's politico-military dimension.

In negotiations, the Department successfully persuaded SFOR to adapt its procedures concerning the regulation of such flights to take account of the special conditions prevailing in Bosnia and Herzegovina.

*Regulation of arms exports:* As mentioned before, the practice of unregulated arms exports by the entities was a cause of foreign policy tension on several occasions and made state-level control increasingly an imperative. By June 2002, initial steps had already been taken within the IBTF to establish a joint "Weapons Export Control Commission", which was to have been composed of representatives of the competent state authorities and the international community. These steps were taken largely to improve compliance with the relevant OSCE documents.<sup>24</sup> In particular, they should have led to ensuring compliance with the export criteria established within the OSCE's CAT and SALW documents.

However, during the summer of 2002, intelligence reports increasingly indicated that the Serbian aircraft manufacturer ORAO had been involved in illegal arms shipments to Iraq, in clear breach of the United Nations embargo.

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24 The intention was to improve Bosnia and Herzegovina's ability to comply with the pertinent provisions under the 1993 OSCE Document on Conventional Arms Transfers (CAT), thereby holding the entities to their obligations under the constitution of Bosnia and Herzegovina to assist the state in complying with international commitments. This should have been the first "trial run" for the department's new strategy in this respect.

ORAO was an armaments company specializing in aircraft design and production as well as maintenance of jet engines. It had been established by the former Yugoslav People's Army, was taken over by the armed forces of the Republika Srpska following the break-up of Yugoslavia and the subsequent war within Bosnia and Herzegovina, and had been subordinated to the general staff and defence ministry of the Republika Srpska since then.

These reports were made public in August 2002. The High Representative used them to demand that Bosnia and Herzegovina should establish state control over arms exports. At the same time, it was also made clear that effective state control over the military sector as such would be an indispensable precondition for any kind of "normality" in Bosnia and Herzegovina's foreign relations.

Initially, in October 2002, the High Representative decided to task the state ministry for foreign trade and economic relations with elaborating, in close co-operation with the international community, a state-level law regulating arms exports. The legal basis for this approach was the fact that the constitution had assigned "foreign trade" to the state rather than the entities, which made it possible to bypass the still controversial dispute over competencies for "military matters".

The task of elaborating a draft law was given to a small group of experts from certain key ministries of Bosnia and Herzegovina (Foreign Trade and Foreign Affairs) and international organizations (led by the OSCE Mission, together with SFOR and OHR). Within five weeks, the group completed the draft text of a law on the import and export of arms and military equipment. Taking into account relevant commitments under the OSCE documents on CAT and SALW, this was finally adopted by both houses of the state parliament of Bosnia and Herzegovina in February 2003.

In retrospect, the passing of this law was a milestone. For the first time, a matter previously regarded as "military" and therefore entirely within the entities' sphere of competence, was now regulated by a state law within a sphere of competence at state level (foreign trade). The establishment of state-level competencies for regulating arms imports and exports also initiated a paradigm shift for the international community. Until then, the idea had prevailed that it would be necessary to "transfer the competencies in military affairs from the entities to the state". But now they were proven that the explicit and indisputable competency of the state for "foreign relations" could be taken as a point of departure in addressing competencies in matters of defence and the military. It thus confirmed the strategy previously developed within the OSCE Mission.

The ORAO affair gave the final impetus to the major defence reform, whose way had been prepared by various preliminary measures. By weakening the position of the Republika Srpska and its security policy elite, the affair provided a golden opportunity to establish state-level military command and control capabilities and to overcome the unacceptable military division of

the country. The establishment of state-level institutions was a non-negotiable prerequisite for Bosnia and Herzegovina's joining the Partnership for Peace.

### *The Defence Reforms*

The final steps towards the planned large-scale defence reform proper took the form of seminars on defence law. They were organized within the framework of the Defence and Security Steering Group (DSSG) by various international organizations under SFOR's organizational leadership. Their aim was to prepare local decision makers for the planned reforms. The first seminar was held in March 2003, and the second in May 2003. Although the Department participated in both seminars, however, it focused primarily on issues of demobilization and did not deal with essential questions relating to the compatibility of the planned reforms with the state constitution.

On 8 May 2003, at the end of the second seminar, the High Representative officially announced the establishment of a Defence Reform Commission and the appointment of its chairman.<sup>25</sup>

*The Defence Reform Commission:* From this point in time, defence reform took place within a separate organizational framework: the Defence Reform Commission. In accordance with its mandate, which was also established by the High Representative's decision of 8 May, its task was to examine the legal measures necessary to reform defence structures in Bosnia and Herzegovina, to identify constitutional and legislative provisions at variance with such requirements, and to propose legislation and other legal measures.

The High Representative's decision of 8 May 2003 outlined the following general objectives and principles for the Commission's work: Defence structures in Bosnia and Herzegovina, and the legislation establishing such structures, must be consistent with Euro-Atlantic standards and must respect and be fully consistent with the commitments undertaken by Bosnia and Herzegovina within the politico-military dimension of the OSCE. Explicit demands referred to democratic civil oversight of the armed forces in Bosnia and Herzegovina at both state and entity level, specific provisions to guarantee state-level command and control and the interoperability of defence structures throughout Bosnia and Herzegovina, and a requirement that funding for defence structures in Bosnia and Herzegovina be held within the fiscal limits established by political authorities through the democratic process.

The Commission's work was based on a concept paper, which had in part been elaborated at the legal seminars, but it also included the specific measures required for Bosnia and Herzegovina's accession to the PfP pro-

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25 The person appointed chairman was the American defence expert Jim Locher III, who had already chaired a defence reform commission in the USA. During the negotiations, he proved to be both a capable and flexible chair and someone who was open-minded to the peculiarities of the situation on the ground.

gramme. Above all, it envisaged the strengthening of the state in defence matters.

The concept paper also outlined in detail tasks for the state parliament, the collective state Presidency, the SCMM, and the council of ministers, and defined the competencies of future state-level defence institutions such as the defence minister, the chief of general staff, the defence ministry, the joint general staff, and the operative command.

The Commission consisted of twelve members and four observers. The members were the Chairman of the Commission, the Secretary-General of the SCMM and his two deputies, two civilian representatives, one each appointed by the President of Republika Srpska and the President of the Federation of Bosnia and Herzegovina; the two entity ministers of defence; one member designated by the High Representative in his capacity as European Union special representative; one representative designated by each of NATO, SFOR, and the OSCE. Invitations to appoint a permanent observer to the Commission were sent out to the United States, the Presidency of the European Union, Turkey as representative of the Organisation of the Islamic Conference (OIC), and the Russian Federation.

The Department for Security Co-operation effectively became the Commission's staff element, with the key function of providing personnel for the Commission's Secretariat. However, only a limited role was given to the Department's technical experts.

*Work of the Commission:* In its initial sessions, the Commission defined its objectives, namely to implement the principles defined by the High Representative's decision, and to establish defence structures that would conform to the criteria for PfP accession. The deliberations generally followed the lines set down in the concept paper; decisions were reached by consensus.

The main bulk of the Commission's work was undertaken in working groups. The working groups, which had two co-chairs each,<sup>26</sup> elaborated draft reports that were submitted to the Commission's plenary in July 2003. These reports, including the Commission's commentaries, were finalized in August 2003 and submitted to the plenary, where they were adopted together with the revised concept paper as the Commission's final report.

*The Commission's Report:* The report of the Defence Reform Commission was published on 25 September 2003 and can be seen as a blueprint for the reform efforts that the international community expected from Bosnia and Herzegovina. In terms of its contents, it follows the concept paper almost to the last comma. Its chapters on legal reforms outline the future defence law of Bosnia and Herzegovina as well as the necessary changes to the entities' constitutions, defence laws, and army laws.

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26 One representative of the international community (in practice always a representative of an international organization active within Bosnia and Herzegovina), and a citizen of Bosnia and Herzegovina.

The centrepiece of the report is the creation of a state-level defence ministry; most of the chapter on “implementation” is devoted to this subject. Another vital topic also covered in this chapter is parliamentary oversight, with an emphasis on budget control in the context of budget reductions. On the other hand, little space was devoted to the question of protecting the rights of enlisted personnel. The matter of the political neutrality of the armed forces was not even mentioned in the report, despite frequent demands by the OSCE Mission to this effect.

#### *Other Activities of the Department*

Despite the predominance of its work on defence reform, the Department continued to work on other issues concerning commitments under the OSCE’s politico-military dimension.

*Arms exports:* In close co-operation with the competent authorities within SFOR and on the basis of the newly adopted state law on arms imports and exports, the Department carried out checks on requests for arms exports. In particular, this involved determining whether the necessary confirmation had been provided by the ministry for foreign affairs confirming the compatibility of the request with international obligations and the foreign policy interests of Bosnia and Herzegovina.

*Arms production:* In addition to the law on the import and export of arms and military equipment already adopted, the High Representative called for the elaboration of a state law on arms production and the arms trade. The department had a major role in elaborating this law which was adopted by the state parliament in March 2003

*Connecting Bosnia and Herzegovina to the OSCE Communication Network:* The improved co-operation between the Department and the foreign ministry of Bosnia and Herzegovina finally led to Bosnia and Herzegovina being connected to the OSCE Communication Network. Previously, this had generally been perceived as a military matter and attempts to integrate Bosnia and Herzegovina had failed due to the demand on the part of the entities’ defence ministries that they be directly connected to the network, bypassing the state level. Now it was possible for the first time to identify a state-level institution that could function as the end-user station. Correspondingly, in co-operation with the OSCE Conflict Prevention Centre, foreign ministry personnel were trained to access and use the network. As the ministry for foreign affairs lacked suitable computer equipment, the Mission donated a computer for linking up with the network.

#### *Defence Reform Implementation so far*

On 1 December 2003, the State Parliamentary Assembly adopted the Defence Law of Bosnia and Herzegovina, which more or less followed the concept

paper in every detail. In accordance with the Defence Law, a state minister and his deputies were appointed in March 2004. Other key functions (joint staff, operational command, inspector general, etc.) were staffed in July 2004.

On 24 March 2004, the collective state Presidency, pursuant to the Defence Law, adopted a decision on the size and organization of the armed forces of Bosnia and Herzegovina. This entails a further reduction of the entity armed forces to 8,000 military professionals in the Bosniak-Croat Federation and 4,000 in the Republika Srpska. In addition, there would be up to 12,600 conscripts (8,400 in the Federation and 4,200 in the Republika Srpska), and 60,000 reserves (40,000 in the Federation and 20,000 in the Republika Srpska).

Supporting defence reform continued to be a dominating factor for the Department. Following a further restructuring, in 2004, it consists of sections dedicated to assisting with the implementation of OSCE commitments, and to supporting implementation of the Article II and Article IV Agreements, as well as three sections tasked with implementing defence reform (parliaments; establishing the state ministry of defence; intelligence reform). The Secretariat of the Defence Reform Commission was also integrated into the Department.

### *Conclusions and Assessment*

The substance of the Department's work has undergone significant changes since 2002, triggered in part by the changes in the country and within the security policy environment, but also by incidental developments, which by themselves again contributed to changes in the security policy environment.

The most significant cause of the changes in the security policy environment was, beyond a doubt, the political changes in Croatia and the end of the Milosevic-regime in the FRY in 2000. Thereafter, the question of the excessive autonomy of Bosnia and Herzegovina's entities could finally be explicitly addressed as a problem to be solved. The establishment of an institutional framework by the international community in the form of the CSPWG and the IBTF provided the tools for preparatory steps to enable action at the appropriate time.

In the area of defence, the prospect of Bosnia and Herzegovina joining the PfP provided additional incentives for defence sector reform.

Nonetheless, resistance to the establishment of adequate state-level defence institutions would probably still have been too strong on the Serbian side, in particular. It took the self-inflicted damage of the ORAO affair to finally break the capability of effective political resistance and pave the way for reform.

These developments had an immediate effect on the work of the OSCE Mission's Department for Security Co-operation. Within its rather narrow



original mandate as an instrument to assist the Personal Representative in implementing the two agreements reached under Annex 1-B, it could not possibly have had a role in these developments. Rather, by being tasked with auditing the defence budgets within the framework provided by the Article II Agreement, it slipped almost accidentally into assisting with budget reductions through demobilization, and was finally tasked with assisting with demobilization itself. When this became linked with the establishment of state-level defence structures, the Department also became drawn into these matters, which went far beyond its original mandate.

Further factors also played a role, the first being the letter of 12 April 2002 from the Director of the OSCE Conflict Prevention Centre, in which he encouraged the OSCE missions to support their host countries in complying with commitments under the OSCE's politico-military dimension. The other was the almost simultaneous appointment of a Deputy Director in the Department with long-standing experience with these issues as well as with the Department's work and who could combine these two elements into a coherent strategy. Compliance with OSCE commitments thus became a central part of the Department's activities, and the Department's role in demobilization and the establishing of state-level defence institutions found their legitimate place.

The merger with the OHR's Military Cell also had a major influence on the Department's work. In formal terms, it contributed to avoiding duplication and to streamlining the structures on the side of the international community. On the other hand, however, it increasingly created problems for the Department's self-understanding, as the primary loyalty of leading persons remained with the OHR. This was combined with ignorance of and unwillingness to use the Mission's potential as an OSCE institution to help achieve compliance with the various documents of the OSCE's politico-military dimension and thus also to achieve objectives in the area of defence reform. This led to unnecessary limitations on the Department's work. In the meantime, it has become a common view that playing the OSCE card more strongly might have made defence reform significantly easier, or shortened the timeframe for its achievement.

Overall, the Department's work could be termed a success, albeit with variable results across the various fields.

In assisting with the implementation and verification of the agreements reached under Annex 1-B of the Dayton Peace Accords, the Department has acted professionally from the beginning. In the area of inspections, which accounted for the bulk of activities at one time, it supported, from 1996 until December 2003, under the Article II Agreement on Confidence- and Security-Building Measures, 105 inspection tours to 269 "objects of inspection" and ten inspections of an "area". These were carried out by a total of 389 OSCE inspectors and 409 inspectors from the entities. Under the Article IV Agreement on Sub-Regional Arms Control, it supported 205 inspection tours

with 484 inspections (including 34 inspections tours with 122 inspections relating to armaments reduction or the destruction of excess weapons), involving 625 OSCE inspectors from 28 OSCE participating States.

During the same period, it supported 32 monitoring missions to “Weapons Manufacturing Capabilities” (i.e. arms and ammunition factories) under the Article II Agreement, carried out by 45 experts provided by OSCE participating States, and 84 experts provided by the entities. It also held at least four related seminars every year.

These tasks were primarily of a technical nature, leaving little room for manoeuvre on the part of the Department. Moreover, Bosnia and Herzegovina’s unique situation (as a result of its military division) makes it impossible to assess “success” and “failure” in comparative terms. Nonetheless, it is clear that the professionalism of all involved meant that no problems emerged that were capable of impeding implementation.

It is a simpler matter to identify success in the implementation of the Department’s strategy to improve the compliance record with respect to the various documents under the OSCE’s politico-military dimension.

In *substantive* terms, assistance in the elaboration of the laws on the import and export of weapons and military equipment and on arms production provided the legal basis for Bosnia and Herzegovina to implement relevant commitments under the CAT and SALW documents, while simultaneously putting an end to the repeated violations of these documents through the entities’ uncontrolled activities. Co-operation on defence reform, too, directly contributed to making the pertinent provisions of the Code of Conduct effective, namely with respect to parliamentary control and the establishment of authorities vested with democratic legitimacy. It also created the preconditions for Bosnia and Herzegovina to effectively implement other commitments under the Code of Conduct.

A further achievement was the successful connection of Bosnia and Herzegovina to the OSCE Communication Network in December 2003, which was achieved directly thanks to the Department’s efforts.

Efforts by the Department to motivate Bosnia and Herzegovina to organize a visit to an airbase under the Vienna Document remained unsuccessful. However, the reasons for this had less to do with a lack of political will on the side of the authorities in Bosnia and Herzegovina than with the absence of state-level institutions capable of organizing such a visit. It is thus natural that the visit was postponed until the state defence ministry is ready to function.

With respect to *formal* implementation, a visible improvement is evident since the Department took up these issues. While Bosnia and Herzegovina had already participated in the information exchange under the Vienna Document 1999 back in 2001, practically no other activities of this kind have been carried out since then.<sup>27</sup> Though delayed, Bosnia and Herzegovina submitted its annual

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27 The exception being the information exchange under the Document on Anti-Personnel-Landmines in 2001.

information on the implementation of the Code of Conduct on 29 July 2002 for the first time. In May 2003 it did so again, once more with a slight delay. Bosnia and Herzegovina provided information under the exchange regime of the SALW Document for the first time in November 2002. The Department's efforts, and above all the improvement of co-operation with the foreign ministry of Bosnia and Herzegovina, also made it possible for that country to participate in the Global Exchange of Military Information (GEMI) in June 2004 for the first time, and in a further exchange in accordance with the document's provisions on SALW on 1 July 2004.

Overall, the Department's activities concerning compliance with commitments under the politico-military dimension can thus be termed a success. While Bosnia and Herzegovina had previously shown initial indications of complying, a significant improvement took place only when the Department took up these questions and visibly supported the Bosnia and Herzegovina authorities interested in these issues. Improvement of the compliance record thus stands in clear and direct correlation to the Department's activities in this field.

Concerning defence reform, the situation appears more complex. On the one hand, defence reform in itself has to be seen at least in part as the implementation of commitments under an OSCE document, namely the Code of Conduct. The Department's work in this area can thus also be perceived as assistance in improving compliance, as it indeed was by the majority within the Department. At the same time, well-functioning state authorities – together with limitations on the freedom of action of the entities – is an essential prerequisite for compliance with obligations under the OSCE's politico-military dimension in general.

On the other hand, the primary focus of defence reform remained on the formal questions of establishing a state-level defence ministry and state-level control in general, which was not fully compatible with the envisaged wider approach. Furthermore, the actual role of the Department was quite limited. While its Director was a key member of the Defence Reform Commission, he saw his own function primarily in his original and continued role as military adviser to the High Representative, with his function as a member of the OSCE Mission clearly secondary to that. Addressing the wider question of compliance with OSCE commitments played a marginal role, if any, despite the fact that it had been enshrined in the Commission's mandate.

All in all, therefore, the Mission's achievements must be considered a mixed bag. On the positive side, the very establishment of state-level structures and democratic control through the state parliament may be considered a success both in substantive terms, and with respect to the implementation of the pertinent provisions of the Code of Conduct. Furthermore, it has to be seen as a positive development that the reform created the necessary organizational infrastructure for future complete compliance with all commitments deriving from documents under the OSCE's politico-military dimension. On the negative side, the Commission virtually ignored many issues that would

have had to be covered under its mandate. These include questions relating to the human rights of individual soldiers, and the political neutrality of the armed forces, which unfortunately remained ethnically divided even after the reforms.

### *Outlook*

The Department's work was significantly affected by the developments in 2002 and 2003 and will have to continue under the changed conditions.

For example, the establishment of state-level defence structures had far-reaching consequences for the agreements reached under Annex 1-B to the Dayton Peace Accords. Soon after the state parliament had adopted the state law on defence in December 2003, the parties to the Article II Agreement decided to convoke an extraordinary review conference for June 2004. There, on 16 June 2004, they agreed to voluntarily cease implementation of most measures of the Agreement with immediate effect, with the exception of measures concerning contacts and co-operation (Measure XI, sections I and II), and of the provisions on the Joint Consultative Commission (Measure XV).<sup>28</sup> They further decided to terminate the Agreement no later than the next meeting of the Joint Consultative Commission (29 September 2004).<sup>29</sup>

A major part of the Department's previous activities must thus be seen as completed. What currently remains in this area is the continuing provision of support for inspections conducted in Bosnia and Herzegovina under the Agreement on Sub-Regional Arms Control. However, the number of inspections has declined so significantly following the massive decrease in the numbers of units and weapons systems deployed that they have been effectively rendered irrelevant. Nonetheless, the parties to the Agreement have expressed an interest in using the OSCE Mission as a framework for applying voluntary measures in the areas of contacts and co-operation. If these plans bear fruit, the Department's arms control activities might once again increase.

In the area of defence reform, the adoption of the Commission's report was not the end of the Department's efforts, as the Commission continued to work on implementation of its September 2003 recommendations. In 2004, tasks related to implementation dominated the Department's work schedule and there has been an increase in the number of sections involved. It appears, however, that these tasks will be of limited duration and will end with the establishment of the pertinent state structures – a process that should have been completed by the end of 2004. At that point, a NATO office established

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28 Cf. Final Document of the Fifth Conference to Review the Implementation of the Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina, Vienna, 14-16 June 2004.

29 This provision was required due to the 30-day timeline for withdrawal from the Agreement, which had also been agreed at the review conference.

in Sarajevo and tasked with facilitating PfP accession will also become operational

A similar time limit is likely to apply to the Mission's work supporting efforts to improve compliance with commitments under the OSCE's politico-military dimension. It will be possible to consider this as accomplished only when Bosnia and Herzegovina has reached a compliance standard comparable to that of other states. While achievements made so far look encouraging, full compliance appears to be a more distant goal than the general functioning of state-level defence structures. It can be assumed that it will only be possible to effectively implement other commitments arising from the Code of Conduct – such as those concerning democratic control, budget restraints, the political neutrality of the armed forces, guarantees of the civil and human rights of service members, and other commitments, such as that of training forces in international humanitarian law – once workable state-level enforcement structures exist. Successful completion of defence reform thus becomes a prerequisite for implementation of these commitments, making the continued assistance of the competent state authorities essential.

Similar considerations also apply with regard to compliance with other documents, such as the Vienna Document 1999 and the documents on CAT and SALW. Here, too, the existence of truly effective authorities must be seen as an absolute precondition if implementation of these commitments is to become feasible on a day-to-day basis. Assisting the host country in realizing these commitments will therefore remain a necessity above and beyond the implementation of the defence reform itself.

It may thus be expected that the activities currently dominating the Department's agenda – namely the implementation of defence reform – will be completed after an intensive phase that is nonetheless of limited duration. On the other hand, tasks relating to compliance assistance are likely to remain significant for a while. Finally, the extent to which the parties to the Article IV Agreement may assign the Department new tasks to replace its now defunct role of supporting the implementation of the Article II Agreement remains unclear.

### *Concluding Remarks*

The work of the Department for Security Co-operation within the OSCE Mission to Bosnia and Herzegovina cannot easily be compared to the work of any other mission, due to that country's unique politico-military situation. The experiences that the Department has gathered can therefore not easily be generalized. Rather, one has to distinguish between those elements that are rooted in the particular situation of Bosnia and Herzegovina, and those that are more general. Only in the case of the latter does it make sense to generalize, for instance in order to identify weaknesses and opportunities to im-

prove the work of OSCE missions in general. In order to do this, assessment must be conducted on three levels: the functional, the structural/institutional, and the personal.

On the *functional* level, the Department began with a clear task, namely to support the implementation of the agreements reached under Annex 1-B. This task was enshrined in its mandate. Over time, however, its responsibilities broadened considerably until there was finally little visible connection between its activities and the original mandate. To legitimize these activities, they were explicitly brought into the context of compliance with OSCE commitments. Without this context, they would have most probably not been considered to be tasks for an OSCE mission.

At the *structural/institutional* level, there were problems from the start. The Department was established as part of the OSCE Mission, yet it was effectively subordinated to the Personal Representative, leading to tension between the Mission and the Personal Representative on several occasions. The structural issue came to a head when it was agreed in July 2002 to merge the Department with the OHR Military Cell, and when the then military adviser to the High Representative was established as the Department's Director. Even then, it might have been quite possible to find a workable structure, with the Department exclusively subordinated to OSCE institutions (the Mission and the Personal Representative). The Department's Director could have maintained his personal function as adviser to the High Representative but without establishing a chain of command between the High Representative and the Department. In reality, however, the Department was mostly used by its Director as an instrument to help him perform his second function as military adviser to the High Representative, which led to serious friction, particularly with those members of the Department who saw their primary loyalty as lying with the OSCE and its Mission.

This leads on to the *personal level*. Here, we have to distinguish between the issue of loyalty to the Mission and that of individuals' understanding of the role of the OSCE in general, and the Mission's tasks in particular.

With regard to the loyalty issue, the fact that a person in a leading position remained expressly loyal to another institution must be considered very much a one-off occurrence. There were also significant teething problems with other members of the former OHR Military Cell who had been transferred to the OSCE Mission. In most cases, however, these resolved themselves as a result of the routine rotation of personnel.

The problems relating to the understanding of the OSCE in general, and the Mission's tasks in particular, were more extensive. Here, events once more confirmed earlier conclusions<sup>30</sup> about the serious gaps in knowledge on the part of Mission members, frequently with at least a risk of negative con-

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30 Cf. Heinz Vetschera, The Role of the OSCE in the Military Stabilization of Bosnia and Herzegovina; in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 1998*, Baden-Baden 1999, pp. 305-325.

sequences. For example, such gaps were one of the major reasons for the tension in the relationship between the Personal Representative and some Department members between 2000 and 2002, the latter not being sufficiently aware that they would effectively be subordinated to the Personal Representative. Similarly, the inadequate understanding of the OSCE's politico-military dimension on the part of both the Department and the majority of Mission members was not insignificant in the failure to sufficiently recognize the potential for using the appropriate OSCE documents to help achieve the international community's strategic objectives.

The majority of these problems appear to have been rooted in the selection process for Mission personnel, which was based on insufficiently defined criteria – not least as a result of the Mission's own inadequate understanding of precisely what it should look for in prospective members. During the early stages, an emphasis was placed on experience in the verification of arms control agreements. Thus, no negotiating expertise was available, although this was vital for the political side of implementing the agreements. This, furthermore, led to the exclusion of the state level from the dialogue, as the entities were the only parties to the agreements who had armed forces that could be verified, while the state had none. And this led to the longstanding practice of ignoring the state level, despite the fact that it was an equal party to the agreements.

The exclusive focus on a narrow range of military expertise in recruitment also led to political and legal issues being virtually ignored and ensured that no contacts were made with political institutions, such as the foreign ministry. Such contacts were only established by the new Deputy Director starting in April 2002. It is reasonable to assume that the longstanding policy of communicating exclusively with the entities was a key reason why the entities' claims that "defence" was their exclusive prerogative was accepted for so long.

Finally, this way of selecting Mission personnel led to a situation where basic knowledge about the OSCE in general – how its core institutions worked, how documents are elaborated and adopted, etc. – was virtually non-existent within the Mission. This kind of knowledge is indispensable for the Mission's work, for example in explaining to functionaries of the host country that certain obligations – such as those relating to information exchange – are not arbitrary demands of the OSCE Mission but rooted in documents adopted by all OSCE States, including the host country. Such knowledge was also needed to explain to the media the significance of connecting the host country to the OSCE Communication Network.

If these observations can lead to any conclusions on how to optimize the work of OSCE missions in the politico-military dimension, the following options should be considered:

- *Intensified training of mission members:* In order for this to have a more than marginal effect, however, it would be necessary to extend training time beyond generally acceptable limits. Experience has shown that even intensive training in specific issues tends to be submerged within the other preparations for a mission;
- *Applying more specific criteria within the selection process:* In this case, a particular emphasis should be placed on previous experience within the OSCE. Particularly pertinent in this respect are those who have worked as military advisers to their state's OSCE Delegation, and have generally gathered around three-years' experience working within relevant OSCE bodies. They would provide the necessary understanding of the functioning of the OSCE and its bodies, as well as of the substance of the politico-military dimension, and could utilize this for their work within the Mission.

It is quite likely that OSCE missions will have a greater role to play in the politico-military dimension in the future. It would thus be sensible to take the necessary steps today to ensure the Organization is capable of deploying personnel adequately prepared for the tasks they will be expected to perform.