

## Verification of the Dayton arms control agreements

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The Dayton arms control agreements derive from the General Framework Agreement (GFA) for Peace in Bosnia and Herzegovina, initialled in Dayton, Ohio, on 21 November 1995 and signed in Paris, France, on 14 December 1995. The treaty, which ended the war in the former Yugoslavia, was brokered by American Ambassador Richard Holbrooke after a North Atlantic Treaty Organisation (NATO) bombing campaign forced the Bosnian Serbs to the negotiating table. It was signed by the Federal Republic of Yugoslavia (FRY), Croatia, Bosnia and Herzegovina (BiH) and the two so-called entities which comprise BiH—the Serbian Republika Srpska (RS) and the Muslim–Croat Federation of Bosnia and Herzegovina (FBiH). Negotiated at proximity talks held from 1–21 November 1995 at the Wright Patterson Airforce Base in Dayton, the GFA consisted of 11 articles and 11 annexes.

As part of the overall settlement package, Annex I-B provided for confidence- and security-building measures (CSBMs) in Bosnia and Herzegovina, subregional arms control measures among the states of the former Yugoslavia and wider regional arms control measures in the Balkans. Specifically, the Annex, in three articles, mandated the Organisation for Security and Co-operation in Europe (OSCE) to help elaborate and implement three distinct instruments:

- In Article II, an agreement on confidence- and security-building measures in Bosnia and Herzegovina modelled after the OSCE Agreement on Confidence- and Security-Building Measures, the Vienna Document 1994;
- In Article IV, a subregional arms control agreement modelled after the 1990 Conventional Armed Forces in Europe (CFE) Treaty; and
- In Article V, a regional arms control agreement applicable in and around the former Yugoslavia.

## **The Agreement on CSBMs in Bosnia and Herzegovina**

The negotiations on CSBMs in BiH, involving the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, began in Bonn, Germany, on 18 December 1995, under the auspices of the OSCE and with the assistance of the Personal Representative of the OSCE's Chairman-in-Office.<sup>1</sup> The Agreement on CSBMs in BiH was concluded in Vienna, Austria, on 26 January 1996. It entered into force immediately.

### *General provisions*

The agreement provided for a comprehensive set of measures to enhance mutual confidence and reduce the risk of conflict. As envisaged, it drew heavily on the OSCE's Vienna Document 1994.<sup>2</sup> The CSBMs included in the agreement are: the exchange of military information between the FBiH and the RS; notification and observation of, and constraints on, certain military activities; restrictions on military deployments and exercises in certain geographical areas; and the withdrawal of forces and heavy weapons to cantonments or designated emplacements.

All these measures are subject to verification and inspection. Compliance issues are dealt with by a Joint Consultative Commission (JCC) composed of one high-level representative of each party and the Personal Representative of the OSCE Chairman-in-Office. The JCC may propose, consider and decide on amendments to the agreement by consensus of the parties. The area of application of the agreement is limited to the territory of Bosnia and Herzegovina.

### *Verification*

Annexed to the agreement are seven protocols on: verification; exchange of information and notifications; existing types of conventional armaments and equipment; communications; the Joint Consultative Commission; media guidelines; and establishment of Military Liaison Missions.

The Exchange of Information is modelled on the Vienna Document 1994. The entities are expected to exchange information annually on their military forces with regard to military organisation, manpower, and major weapon and equipment systems. The latter are defined as battle tanks, helicopters, armoured combat vehicles (ACVs), look-alike ACVs, anti-tank guided missile launchers permanently or integrally mounted on armoured vehicles, artillery pieces and armoured vehicle

launch bridges (self-propelled armoured transporter–launcher vehicles capable of carrying and employing/retrieving a bridge structure).

Inspections are the basic means of verifying compliance with the provisions. Inspections are conducted by a team comprising inspectors and crew members designated by the inspecting party or by the Personal Representative of the OSCE Chairman-in-Office for each particular inspection. There are two lists of inspectors drawn up in advance. The first consists of the names of inspectors nominated by each party and approved by the other parties. The second is a list nominated by the OSCE through the Personal Representative, but which is not subject to the approval of the parties. All inspectors have equal rights and obligations.

Inspections are planned and led either by the entities or by one of five OSCE member states—France, Germany, Italy, the UK and the US—the Contact Group. If led by the two entities the team includes two to three inspectors from different OSCE countries. If led by one of the Contact Group countries, up to five inspectors from the entities are included. The inspection process is overseen and to some degree co-ordinated by the Verification Co-ordinator for Article II/IV at the OSCE in Vienna, Austria.

The following are subject to inspections:<sup>3</sup> (a) declared sites such as: objects of inspection, which are any formation or unit at the organisational level of brigade/regiment, wing/air regiment, independent battalion squadron or equivalent as notified in the Exchange of Information; any storage site not ‘organic’ to formations and units, such as maintenance units holding armament or equipment notified in the Exchange of Information; and units below the level of battalion holding conventional armament and equipment directly subordinate to a unit or formation above the level of brigade/regiment. Or (b) undeclared sites, defined as a specified area anywhere on the territory of a party, not exceeding 65 square kilometres, other than a declared site.

The implementation of the agreement has generally proceeded without major problems. From 1996 to May 2001, 75 inspections were conducted and 217 objects of inspection inspected. These missions were supported by 296 OSCE inspectors and 368 inspectors from the two entities. Thirteen visits to 18 weapons manufacturing facilities were conducted, supported by 24 OSCE experts and 76 from the parties. All on-site activities were carried out without significant problems.<sup>4</sup> For 2001, a

total of 10 inspections are planned. Of these, five are to be party-led, while five are to be OSCE-led.

### **Implementation problems**

Despite the overall smoothness of the implementation process, several verification-related problems have arisen.

#### *Access to information*

OSCE inspectors are at a disadvantage *vis-à-vis* the entities because they do not have access to all of the JCC's amendments to inspection procedures. The JCC has taken approximately 30 decisions so far, some of which have directly altered the agreement. Since these decisions are incorporated in the minutes of the JCC meetings, it is currently impossible for inspectors to know whether they are following the latest procedures. However, an updated version of the agreement on CSBMS may be issued later in 2001.<sup>5</sup> The same problem has arisen in implementing the Sub-Regional Arms Control Agreement under Article IV, where the Sub-Regional Consultative Committee (SRCC) has the power to alter inspection procedures.

#### *Short-notice changes to the annual inspection schedule*

An annual inspection schedule is prepared by the Personal Representative based on input from the parties and has to be approved by them. After consultation with the OSCE countries providing inspectors for party-led inspections, the Verification Co-ordinator determines which states will provide inspectors. One goal is to have a balance between OSCE countries. However, this annual inspection schedule is subject to short-notice changes, which makes it difficult for countries with small verification agencies to be always in a position to nominate inspectors. OSCE inspectors scheduled on short notice may not perform as effectively as those who are well prepared in advance. This problem also exists under the inspection regime of the Sub-Regional Arms Control Agreement.

#### *Insufficient time for inspection preparation*

OSCE inspectors usually join a party-led inspection team the day before the team's arrival at the point of entry (POE). This allows them to be present only during the last stages of the pre-inspection planning and briefing. In some instances OSCE

inspectors join the team only on the day of the inspection, rendering them unable to help prepare for the inspection. This problem is exacerbated by the fact that OSCE inspectors have limited access to the information required to prepare for an inspection. Information from the Exchange of Information, for example, which is the basis for planning an inspection of a declared site, is not available to OSCE inspectors prior to their rendezvous with the inspection team. This problem also exists under the Sub-Regional Arms Control Agreement.

### **The Agreement on Sub-Regional Arms Control**

The negotiations on a subregional arms control agreement were launched in Vienna on 4 January 1996, also under OSCE auspices and with the assistance of the Personal Representative of the OSCE's Chairman-in-Office. The Agreement on Sub-Regional Arms Control was concluded in Florence, Italy, on 14 June 1996. The signing of the agreement was witnessed by representatives of the countries of the Contact Group. It came into effect on 1 November 1997 and is of unlimited duration.

#### *General provisions*

The agreement engages the same three parties as the CSBM agreement, as well as Croatia and the FRY. It aims to establish balanced and stable defence force levels at the lowest number consistent with the national security of the parties. The area of application is the territory of Croatia, the FRY and BiH.

The Agreement establishes ceilings in five categories of conventional armaments:

- battle tanks;
- artillery pieces;
- combat aircraft;
- attack helicopters; and
- armoured combat vehicles.

It thus mirrors the relevant sections of the 1990 CFE treaty, which imposed restrictions in the same five categories of weapons on all participating states from the Atlantic Ocean to the Ural Mountains (but not, notably, the then Yugoslavia).<sup>6</sup> The Agreement establishes force levels for the FRY, Croatia and BiH according to a ratio of 5:2:2. In absolute terms, this limits the rump FRY to holdings equal to

approximately 75 percent of those of the former Federal Republic of Yugoslavia, while Croatia and BiH are each limited to holdings equal to 30 percent of those levels.<sup>7</sup> Two-thirds of BiH's 30 percent are allocated to the FBiH and one-third to the RS.

The agreement also provides for: specific armament reduction methods; extensive exchanges of military information; intrusive inspections; and an implementation review through the SRCC.

### *Verification*

The agreement is modelled on the Vienna Document 1992<sup>8</sup> and the CFE treaty. The parties agreed to report their holdings according to the format prescribed in the Vienna Document 1992 and to establish numerical limits of their holdings as defined in the relevant sections of the CFE treaty. The parties have the right to implement all reductions in accordance with the Protocol on Reduction or the Protocol on Procedures Governing the Reduction of Conventional Armaments and Equipment under the CFE treaty.<sup>9</sup>

The parties also agreed on inspection procedures, including the use of 'assistants'. Since the regime is modelled on the CFE treaty, assistance from CFE states parties was essential to the successful implementation of the regime. An assistant is an individual designated by the Personal Representative of the OSCE Chairman-in-Office to assist the parties in the conduct of an inspection and who is included on the Personal Representative's list of assistants. At the request of a party, up to three assistants may be designated.<sup>10</sup>

Annexed to the agreement are six protocols on:<sup>11</sup> inspection; reduction; procedures governing the reclassification of specific models or versions of combat-capable trainer aircraft as unarmed trainer aircraft; exchange of information and notifications; existing types of armament; and the Sub-Regional Consultative Committee.

Inspection is the only method to physically verify compliance with the provisions of: Article IV (limitations on armaments); Article V (reduction in accordance with the CFE treaty); Article VI (aircraft reclassification); and Article VIII (notification and exchange of information).

Inspections are conducted by a team of up to nine inspectors designated by an inspecting party for each particular inspection. Inspectors are drawn from each

party's accepted list of inspectors. An inspection team is never mixed; only nationals from one state party take part. They can be assisted by up to three assistants from OSCE countries.

The following are subject to inspections:<sup>12</sup> (a) declared sites, which are those containing one or more objects of inspection, such as: any formation or unit at the organisational level of brigade/regiment, wing/air regiment, independent battalion squadron or equivalent as notified in the Exchange of Information; any storage site not organic to formations and units, such as maintenance units holding armament/equipment limited by the agreement; units below the level of battalion holding conventional armaments and equipment directly subordinate to a unit or formation above the level of brigade/regiment; or reduction sites. And (b) undeclared sites anywhere on the territory of a party, not exceeding 65 square kilometres, other than a declared site.

By 1 May 2001 a total of 7,457 pieces of Armament Limited by the Agreement (ALA) had been reduced, as follows:<sup>13</sup>

- FRY: 440 battle tanks, 1,268 artillery pieces, 174 ACVs and 123 combat aircraft;
- Croatia: 3 battle tanks, 697 artillery pieces and 30 ACVs;
- FBiH: 40 battle tanks, 2,333 artillery pieces and 20 ACVs; and
- RS: 283 battle tanks, 1,952 artillery pieces, 84 ACVs and four combat aircraft.

From 1997 to March 2001, 172 missions involving 418 inspections were carried out under the agreement. These included 37 reduction missions and 124 inspections with the assistance of 498 OSCE assistants from 28 countries.<sup>14</sup> As of 1 May 2001, the Republika Srpska remained in non-compliance with the agreement because its holdings of 119 ACVs exceeded the ceiling by six.

For 2001, 32 declared site inspections are scheduled (11 by the FRY, seven by Croatia, seven by the RS and five by the FBiH). Two inspections scheduled for BiH are problematic (see below).<sup>15</sup>

### **Implementation problems**

Several verification-related problems have arisen during implementation of the agreement. These concern the role of the assistant, the annual inspection schedule, inspection timelines, the inspection of undeclared sites and the status of BiH.

*The role of the assistant*

During 1996, at the beginning of implementation, the provision of assistants from states parties to the CFE treaty was essential to the success of the process. But the role of the assistants has changed over the years. The fact that the relevant procedures do not adequately reflect this changing role poses significant problems for those individuals designated to assist the parties.

The 12th meeting of the SRCC in October 1998 tasked the Personal Representative with developing Standard Operating Procedures for Assistants (SOPs).<sup>16</sup> During the 18th SRCC meeting the parties were asked to comment on the latest draft of November 2000. The SOPs were again on the agenda for the 19th meeting of the SRCC in June 2001.

The draft SOPs accord the assistants the same privileges and immunities as inspectors and crew members. They state that assistants will be under the operational control of the Verification Co-ordinator. But the document changes the role of the assistants insofar as they no longer 'represent either OSCE or their countries'. The SOPs oblige assistants to indicate clearly when statements are made in a personal capacity.<sup>17</sup> This changed mandate creates a difficult situation for assistants who see themselves as OSCE officials, tasked by their national government.

Another problem is the attempt to restrict the possibility to be designated as an assistant. According to the draft SOPs only individuals who have participated in an OSCE course on the Dayton Agreement's Articles II and IV and who have extensive inspection and escort experience under the CFE treaty can be appointed as assistants. Thus, individuals from over 20 OSCE nations which are not states parties to the CFE treaty (the OSCE has 55 states parties and the CFE treaty 30) cannot become assistants. However, in the past many non-CFE member states have been frequently contacted by the OSCE to provide assistants. One solution to this problem would be to make attendance at a Dayton inspectors training course<sup>18</sup> one of the selection criteria. Because some national verification centres have few staff, however, it is not always possible to allow those who have done the course to go on an inspection mission.

Even though the draft SOPs accord the same legal standing to assistants and inspectors, the privileges and immunities of the former are frequently violated. Thus their notebooks may be checked or they may be prevented from taking



notes by the host party's escort officials. To preserve the assistants' impartiality and independence, it is essential that the confidentiality of their notes be protected.

### *The tasks and designation of the assistants*

During the initial implementation phase of the agreement, the tasks of the assistant included: assisting inspection and/or escort teams in preparing and organising for the inspection; preparing the inspection plan; identifying armaments and equipment; determining access to buildings; taking photographs; declaring ambiguities; preparing the inspection report; declaring sequential inspections; providing debriefings to the team at the end of the inspection; providing interpretations of agreement provisions; interpreting the working register in respect of reductions; and explaining export procedures.

As these tasks have become routine, they are increasingly expressing their concerns about the 'quality' of the assistants. These criticisms are justified insofar as some assistants are now ill-prepared—some, for example, only read the agreement for the first time during the mission. One solution would be to forward reports by the parties on the performance of the assistants to the Personal Representative, who will then transmit these to their home countries for comment and, if required, for action.

Finally, the term 'assistant' no longer reflects the tasks involved. Technical assistance is nowadays needed only in exceptional cases. A new term, such as guest assistant or observer, should perhaps be used.

### *Short-notice changes to the annual inspection schedule and timelines*

The problems arising prior to and during inspections are similar to those under the Agreement on Confidence-and Security Building Measures (see above).

### *Inspection of undeclared sites*

As of June 2001, for 'political reasons', no inspection of an undeclared site has ever been conducted.<sup>19</sup> The regime is further weakened by the fact that parties have carried out inspections of undeclared sites (specified area) under the Vienna Document 1999. This agreement limits inspections of undeclared sites (specified area) to military sites only, whereas the subregional arms control agreement envisaged that all sites within the inspected area, whether military, industrial or civilian,

would be open to inspection. This failure to implement the provisions for undeclared site inspections sets a bad precedent for other arms control and disarmament regimes.

### *The legal status of Bosnia and Herzegovina*

An intractable problem related to the implementation of both the Agreement on Confidence- and Security Building Measures and the Agreement on Sub-Regional Arms Control is that the political and military integrity of BiH, which is presumed under the agreements, remains largely a fiction. Article 1 of the Constitution of BiH provides for the former Republic of Bosnia and Herzegovina to continue under the name of Bosnia and Herzegovina. The country continues its legal existence as a state under international law, with internationally recognised borders. The goal of creating a unified state is mirrored in Annex 1-B, which assumes the establishment of trust among its citizens and ethnic groups, as well as the territorial integrity, sovereignty, political independence and international personality of BiH.<sup>20</sup>

But the reality on the ground is different. Although the two entities which make up the BiH—the FBiH and the RS—are not recognised internationally as separate states, it is they which have all the accoutrements of statehood. By contrast, BiH has no military forces, no verification organ and no procedures for actively conducting inspections. This prevents it from playing an active role in the implementation of confidence-building and arms control regimes. While inspections under different arms control regimes, such as the Vienna Document 1999 and the 1993 Chemical Weapons Convention, are carried out on the territory of BiH, the active inspection quota for BiH has never been implemented.

### **The Regional Arms Control Agreement**

Article v of the Dayton GFA envisaged a wider regional arms control agreement for the Balkans in which the subregional agreement would be 'nested'. The goal would be to establish a balance of conventional forces in and around the former Yugoslavia. No deadline was set for the conclusion of negotiations. Twenty states were to participate in the negotiations—Albania, Austria, BiH, Bulgaria, Croatia, France, FRY, Germany, Greece, Hungary, Italy, the Former Yugoslav Republic of Macedonia (FYROM), the Netherlands, Romania, Russia, Slovenia, Spain, Turkey,

the UK and the US. After a long period of consultations and meetings a mandate for the negotiations was agreed in 1998. After the OSCE Istanbul Summit Meeting in 1999 the negotiations accelerated with the aim of concluding an agreement by the end of 2000. Agreement was finally reached in July 2001 on the Concluding Document of the Negotiations under Article V of Annex I-B of the General Framework Agreement for Peace in Bosnia and Herzegovina.

The negotiations were complicated by the fact that many of the participating states were already subject to conventional arms limitations. Although all are subject to the OSCE Vienna Document 1999 on Confidence- and Security- Building Measures, only three (the FRY, Croatia and BiH) were parties to the Dayton Agreement on Sub-Regional Arms Control, 13 were CFE treaty parties,<sup>21</sup> and four (Albania, Austria, FYROM and Slovenia) were not subject to any conventional arms limitations. The participating states with conventional arms limitations already in place frequently expressed their concerns about having additional obligations imposed. Hence the mandate for the negotiations specifically precluded any new agreement from lowering or raising conventional arms limitations already agreed to under other agreements.

As a result of these difficulties some of the aims of the mandate were not fully attained. The Regional Arms Control Agreement actually includes no arms control measures and no binding information exchanges. Instead, it provides for voluntary CSBMS, such as: exchanges of information on defence budgets; exchanges of information on national holdings of conventional armaments; expanded military contacts; and inspections of and evaluation visits to the parties' armed forces.

The July 2001 Concluding Document is politically rather than legally binding. Since it does not enter into force until 1 January 2002, it remains to be seen whether it will be effectively implemented.

## Conclusion

From the perspective of an inspector on the ground, three lessons can be drawn from the experience of implementing the CSBMS and arms control aspects of the Dayton GFA.

First, arms control treaties should be implemented according to their spirit, rather than just their letter. Verification regimes need therefore to be flexible,

since implementation according to the spirit can imply deviations from the letter. An example would be the timelines for inspection teams to reach inspection sites under both the Agreement on Confidence- and Security-Building and the Agreement on Sub-Regional Arms Control. According to the letter of the agreements, a team must arrive at an inspection site within nine hours after the site is declared. In reality, however, it might take up to 20 hours to reach the site and in some instances even longer. Strictly speaking, this means that almost every inspection conducted is in breach of the agreements. But such 'violations' have been accepted by the parties, which have, fortunately, taken a flexible approach.

A second lesson of the Dayton agreements is that a key component of arms control verification is the human factor. The effective implementation of all the Balkan agreements depends on a good relationship being established between the teams on the ground—the inspection team on the one hand and the inspected state party's representatives, the host or escort team, on the other.

Third, all arms control treaties should be living documents subject to change. Since they are entered into voluntarily and are thus 'owned' by the states parties themselves, it is they who should determine how the agreements are implemented. Even though it may be difficult to keep track of all the changes being made in the Dayton agreements, it is essential that they be communicated to all the individuals involved in a timely manner. Many changes are already being implemented but have unfortunately not yet been incorporated into the agreements themselves. Updated versions which are expected to be available in late 2001 will be helpful to both inspectors and assistants.

Overall, the future success of the Balkan agreements is inextricably bound up with the other Europe-wide CSBM and conventional arms control treaties, such as the OSCE Vienna Document 1999 and the CFE treaty. The Balkan agreements confirm many of the principles and commitments set out in these other documents and to that extent should be capable of successful implementation.

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## Endnotes

- <sup>1</sup> *OSCE Handbook 1999–2000*, third edition, OSCE Secretariat, Vienna, June 2000, pp. 116–132.
- <sup>2</sup> Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures, adopted by the Forum for Security Co-operation.
- <sup>3</sup> Agreement on Confidence-and Security-Building Measures, Annex I, Protocol on Inspection, chapter I: Inspections, section I: Definitions.
- <sup>4</sup> Figures provided by the Office of the Verification Co-ordinator, OSCE, Vienna, during M-63 Dayton Arms Control Course, NATO School, Oberammergau, Germany, 14–25 May 2001.
- <sup>5</sup> Personal communication with Senior Operations Staff Officer, Office of the Verification Co-ordinator, OSCE, Vienna, 3 April 2001.
- <sup>6</sup> For an analysis of the CFE treaty and its modifications, see Pál Dunay, 'Verification of Conventional Arms Control', in Trevor Findlay (ed.), *Verification Yearbook 2000*, Verification Research, Training and Information Centre (VERTIC), London, December 2000, pp. 101–114.
- <sup>7</sup> *OSCE Handbook 1999–2000*, pp. 116–132.
- <sup>8</sup> Vienna Document 1992 of the Negotiations on Confidence- and Security-Building Measures, adopted by the Forum for Security Co-operation.
- <sup>9</sup> Agreement on Sub-Regional Arms Control, Article v.
- <sup>10</sup> Agreement on Sub-Regional Arms Control, Protocol on Inspection, section I: Definitions.
- <sup>11</sup> Agreement on Sub-Regional Arms Control, Article I, para. 4.
- <sup>12</sup> Agreement on Sub-Regional Arms Control, Protocol on Inspection, section I: Definitions.
- <sup>13</sup> Figures provided by the Office of the Verification Co-ordinator, OSCE, Vienna, during M-63 Dayton Arms Control Course.
- <sup>14</sup> Figures provided by the Office of the Verification Co-ordinator, OSCE, Vienna, during M-63 Dayton Arms Control Course.
- <sup>15</sup> Figures provided by the Office of the Verification Co-ordinator, OSCE, Vienna, during M-63 Dayton Arms Control Course.
- <sup>16</sup> Draft Standing Operating Procedures, Agreement on Sub-Regional Arms Control, Office of the Verification Co-ordinator, updated version, 9 November 2000.
- <sup>17</sup> Draft Standing Operating Procedures, Agreement on Sub-Regional Arms Control, Office of the Verification Co-ordinator, updated version, 9 November 2000.
- <sup>18</sup> M-63 Dayton Arms Control Course, NATO School, Oberammergau, Germany, 14–25 May 2001.
- <sup>19</sup> Figures provided by the Office of the Verification Co-ordinator, OSCE, Vienna, during M-63 Dayton Arms Control Course.
- <sup>20</sup> O. Ibrahimacid, *Supremacy of Bosnia and Herzegovina Over its Entities*, Bibliotheka Posebna Izdanja, Sarajevo, July 1999, pp. 195–201.
- <sup>21</sup> Bulgaria, France, Germany, Greece, Hungary, Italy, Netherlands, Romania, Russia, Spain, Turkey, UK and US.

