

Article V of the Dayton Peace Accords: Review and Prospects

Article V of the Dayton Peace Accords presents an excellent opportunity to provide stability and security to the region of South-eastern Europe. The present ongoing Article V negotiations reflect the desire of the international community, and not just the countries of the region, to establish tranquillity in a post-conflict situation. The basic fact that Article V negotiations have been maintained in the wake of the Kosovo conflict underscores the importance placed thereupon by the participant nations.

Article V is the last of three measures mandated by the Dayton Peace Agreement to be negotiated and implemented. While that agreement ended the conflict in Bosnia in 1995, troubles still plague the region, as witnessed by the Kosovo crisis in 1998-99 and ongoing problems in other areas. The successful negotiation and implementation of Article V would not only complete the implementation of the Dayton Peace Accords, but also help establish a stable environment. Provided below is an examination of the history of Article V and a prospective of future development.

Background

Article V is but one part of the General Framework Agreement for Peace in Bosnia and Herzegovina.¹ This agreement which ended the war in Bosnia was initialled in Dayton on 21 November 1995. It consists of eleven articles and eleven annexes. One of the latter, Annex 1-B, mandates that the Organization for Security and Co-operation in Europe (OSCE) help develop and implement three separate instruments:

- Article II provided the framework for negotiations of an agreement on confidence- and security-building measures (CSBMs) in Bosnia and Herzegovina. Specifically named as participants were the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska;
- Article IV provided the framework for negotiations of a sub-regional arms control agreement. Specifically named as participants were the Republic of Bosnia and Herzegovina, the Federation of Bosnia and

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

- Herzegovina, the Republika Srpska, Croatia, and the Federal Republic of Yugoslavia (FRY);
- Article V provides for a regional arms control agreement applicable to "in and around the former Yugoslavia". Other than the "Parties" to the Dayton Peace Accords, there are no specified participants.

The Dayton Peace Accords were signed in Paris and entered into force on 14 December 1995. Time was a critical element and both Articles II and IV contained specific time constraints. Negotiations for Article II were to begin within seven days of Annex 1-B entering into force and an initial set of CSBMs was to be agreed upon within 45 days of entrance into force. Negotiations for Article IV were to begin within 30 days of Annex 1-B's entrance into force and agreement on numerical limitations of specified armaments categories was to be completed within 180 days after entrance into force. If the participants failed to agree to numerical limits within the prescribed 180 days, limits would automatically apply using a ratio of 5:2:2. This ratio (5 = FRY; 2 = Croatia as well as Bosnia and Herzegovina) was based on approximate population levels. Discussions for Article II and IV were begun in Vienna on 4 January 1996 under the auspices of the OSCE. The negotiations for each were led by a Personal Representative of the Chairman-in-Office: Ambassador István Gyarmati of Hungary for Article II negotiations and Ambassador Vigleik Eide of Norway for Article IV.

Article II

The negotiated product of Article II, the *Agreement on CSBMs in Bosnia and Herzegovina* ("Article II agreement"), was concluded in Vienna on 26 January 1996 and entered into force immediately. This agreement provides for a set of measures to enhance mutual confidence and reduce the risk of conflict. Some of the measures were mandated by the text of Annex 1-B of the Dayton Agreement and others were based on the Vienna Documents of 1992 and 1994. CSBMs in Article II include exchange of military information, notification and observation of certain military activities, restrictions on military deployments and exercises in certain geographic areas, and withdrawal of heavy weapons and forces to cantonments or designated emplacements. All measures are subject to inspection and verification. Issues regarding compliance were to be dealt with by a Joint Consultative Commission (JCC).

Article IV

The negotiated product of Article IV, the *Agreement on Sub-Regional Arms Control* ("Article IV agreement"), was concluded in Florence on 14 June 1996. This agreement established ceilings in five categories of conventional armaments (battle tanks, artillery pieces, combat aircraft, attack helicopters,

and armoured combat vehicles). These came into force on 1 November 1997. The 5:2:2 ratio for levels of forces was adopted, which limited the FRY to approximately 75 per cent of its 1996 holdings, and Croatia and Bosnia and Herzegovina 30 per cent each of the FRY's 1996 holdings. Within Bosnia and Herzegovina, two-thirds were reserved for the Federation of Bosnia and Herzegovina and one-third for the Republika Srpska. All reductions were to be completed no later than 16 months after 1 July 1997. The agreement provided for specific reduction methods, extensive exchange of information, and intrusive inspections. Implementation review was to be accomplished through a Sub-Regional Consultative Commission (SRCC).

Article V

Article V of Annex 1-B states:

"The OSCE will assist the Parties by designating a special representative to help organize and conduct negotiations under the auspices of the OSCE Forum for Security Co-operation ('FSC') with the goal of establishing a regional balance in and around the former Yugoslavia. The Parties undertake to cooperate fully with the OSCE to that end and to facilitate regular inspections by other parties. Further, the Parties agree to establish a commission together with representatives of the OSCE for the purpose of facilitating the resolution of any disputes that might arise."

A crucial difference between Article V and Articles II and IV is that Annex 1-B does not prescribe any specific time requirements for beginning Article V negotiations or for concluding an agreement. Without a specified time-line for completion and due to deference to various concerns, it was determined that discussions on Article V would not even begin until an acceptable Article IV agreement was reached and implemented. After conclusion of the Article IV agreement and successful completion of a sixteen-month implementation period, it was deemed that all Parties were in compliance with Article IV on 31 October 1997. The way was therefore cleared for Article V negotiations to proceed.

At the 1997 OSCE Ministerial Meeting in Copenhagen in December, the ministers approved Ambassador Henry Jacolin of France as the Special Representative of the Chairman-in-Office and invited him to start to develop a precise mandate and initiate negotiations as soon as possible.² In early 1998, Ambassador Jacolin organized his multi-national staff and began consulta-

2 Cf. Organization for Security and Co-operation in Europe, Sixth Meeting of the Ministerial Council, Copenhagen, 18-19 December 1997, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1998, Baden-Baden 1999, pp. 431-457, here: p. 442.

tions with prospective participants. Ultimately, twenty states agreed to participate in the Article V negotiations. While Croatia, Bosnia and Herzegovina, and the FRY were required by the Dayton Agreement to participate in the negotiations, seventeen other states have voluntarily chosen to take part. The seventeen are Albania, Austria, Bulgaria, France, Germany, Greece, Hungary, Italy, the Former Yugoslav Republic of Macedonia, the Netherlands, Romania, the Russian Federation, Slovenia, Spain, Turkey, the United Kingdom, and the United States of America.

After a long period of consultations and meetings, consensus was finally reached on a mandate for Article V negotiations in November 1998. This achievement was acknowledged at the 1998 OSCE Ministerial Meeting in Oslo and negotiations were scheduled to begin in January 1999. The opening plenary meeting, scheduled for 18 January, was postponed in the aftermath of the killings at Račak and the escalating crisis in Kosovo. An opening plenary was held on 8 March, but subsequent meetings were postponed due to the inception of military operations in and around the former Yugoslavia. Upon cessation of hostilities, the Article V participants agreed to continue negotiations. Negotiations were resumed in September 1999. Due to preparations of OSCE delegations (involving adaptation of the Treaty on Conventional Armed Forces in Europe and the Vienna Document 1999) for the November OSCE Summit in Istanbul, Article V negotiations proceeded at a slow pace during the autumn of 1999. After the Istanbul Summit, negotiations accelerated with the aim of concluding an agreement by the end of 2000.³

To briefly summarize the three Dayton Peace Accords, Article II is an agreement consisting of CSBMs that was required to be negotiated and concluded in the short-term. It was limited geographically to Bosnia and Herzegovina. Participation involved the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska. Article IV was an agreement for sub-regional arms control that was required to be negotiated and concluded in a mid-term period. Participation was limited to Croatia, the Republic of Bosnia and Herzegovina and the FRY. Article V, presently under negotiation, has no time period specified for negotiation and conclusion. The three Article IV participants were required to take part in the negotiations, but there were no other participatory limitations. While Article II and IV were required to include specified measures, Article V was given no specified requirements, other than to "establish a commission (...) for the purpose of facilitating the resolution of any disputes that might arise".

3 Organization for Security and Co-operation in Europe, Istanbul Summit Declaration, Istanbul, November 1999, in the present volume, pp. 413-424, here: p. 423.

Article V Negotiations State of Play

Pursuant to the practice in many post-conflict situations, Article V negotiations have begun with a discussion of CSBMs. As of this writing,⁴ over a dozen CSBM proposals have been presented by delegations and are in varied stages of evaluation and discussion. It is anticipated that more CSBMs will be proposed as the negotiations continue.

There are differing perspectives among the participants regarding the content of the final Article V agreement. Some think that an Article V agreement should be composed mainly of CSBMs. Others think that it should be made up of arms limitations and verification measures (sometime referred to as "hard arms control") on the lines of Article IV or the CFE Treaty. Still others hold that the optimum agreement should be a combination of CSBMs and "hard arms control" measures. This issue is fundamental to Article V and the respective differences will be resolved through future negotiations. The mandate requires that all decisions in the Article V negotiations be taken by consensus.

Further complicating the question are the respective arms control treaty situations of the participating States. As noted above, three are participants in Article IV, and thirteen are members of the CFE Treaty.⁵ Four participating States, Albania, Austria, the former Yugoslav Republic of Macedonia, and Slovenia (the "Four") are not subject to conventional arms limitations such as those imposed by Article IV or the CFE Treaty. All the participating States, with the exception of the FRY, are subject to Vienna Document CSBMs pursuant to their participation in the OSCE. The FRY's participation in the OSCE was suspended in 1992.⁶ Any Article V agreement will have to take Article IV, the CFE Treaty, and the Vienna Document 1999 into consideration.

The question of the Four presents another complicating factor. While they are participants in the Vienna Document, none are members of an arms control arrangement that limits their conventional arms. The Article V mandate calls for "consideration of (...) provisions related to the *holdings* of conventional arms and equipment" for the Four. This provides for a broad spectrum of measures to be considered through the negotiating process, but does not require that limitations or ceilings be placed upon the Four. Depending upon the course of the negotiations, as cited above, the Article V might be in a situation where CFE Treaty and Article IV limits on specified conventional arms are to be verified through some sort of verification regime. If that were the case, then, at a minimum, the holdings of the Four would appear to have

4 Summer 2000.

5 Germany, the United States of America, Bulgaria, Spain, France, the United Kingdom, Greece, Hungary, Italy, the Netherlands, Romania, the Russian Federation, and Turkey. Seventeen other CFE states are not Article V participants.

6 The FRY re-entered the OSCE as a participating State on 10 November 2000.

to be employed in developing measures that could be verified by the CFE Treaty and Article IV participants.

Participating States with conventional arms limitations imposed by the CFE Treaty or Article IV have stated concerns about having their obligations increased (or those of other states decreased) by an Article V agreement. Some object to the prospect of having limitations on certain categories of conventional arms lowered further. In response to these concerns, the Article V mandate specifically states that "the negotiations and agreement will not alter, nor add to, nor subtract from any of the rights or obligations, including limitations" of the CFE Treaty or Article IV. Nor would it affect right or obligations that result from the process of adaptation of the CFE Treaty. In like manner, the mandate specifically states that it will not "affect rights and obligations derived from the Vienna Document 1994, including those which result from the process of its revision" (i.e., Vienna Document 1999). Thus, the mandate specifically precludes any Article V agreement from lowering - or raising - conventional arms limits cited in either the CFE Treaty or Article IV.

Scope of Article V

The Article V mandate set the scope of the negotiations which will be concerned with:

- conventional armed forces, and equipment, armament and personnel;
- military activity; and
- any other forms of activity, which might be decided upon by the participating States.

The mandate further delineates five points for consideration:

- a regime for the exchange of military information and notifications which may draw upon existing agreements and treaties;
- a regime for verification activities which may draw upon existing agreements and treaties;
- provisions related to the holdings of conventional arms and equipment for those participating states not subject to either the CFE Treaty or Article IV (the "Four")
- co-operative measures for risk reduction and increase transparency, or any other CSBMs for the enhancement of security and stability in South-eastern Europe.
- provisions for a commission to facilitate implementation of the agreement.

For the purposes of the negotiation process, the above five points for consideration have been termed "areas". Beginning with the initial consideration of CSBMs, the negotiators will identify proposed measures for appropriate areas. The negotiations would then develop the proposed measures for the designated areas. The last area, the establishment of a commission, would likely lead to a review commission like the SRCC (Article IV) or the JCC (Article II).

Article V and the Stability Pact

The "Stability Pact for South Eastern Europe", founded in 1999, provides the international community with yet another instrument to help bring about greater stability in the region. Beforehand, Article V stood as the only international instrument that concentrated on security in the Balkan region. The Stability Pact, which promises both security and economic assistance, could prove to be an instrument of valuable mutual assistance with Article V. While they are separate entities and each stands on its own, they are positioned to be complementary to each other. The Stability Pact consists of three specified areas for consideration called "Working Tables": (I) Democratization and Human Rights, (II) Economic Reconstruction, Development and Co-operation and (III) Security Issues. Article V will have primary interaction with Working Table III, and specifically with its Sub-Table on Defence and Security Issues.

The main strategic goal of Working Table III is to help create a climate of confidence and security throughout the region. It is understood that there can be no true economic progress in the region in the absence of a more secure environment. The Stability Pact document states that, *inter alia*, Working Table III will "encourage continued implementation of the Dayton/Paris Article IV Arms Control Agreement and progress of the negotiations of Article V".⁷ The Table will further "receive regular information from the competent bodies addressing co-operation on defence/military issues aimed at enhancing stability in the region and among countries in the region, and facilitate the sustained engagement of all concerned to ensure regional security, conflict prevention and management".⁸ Another specified task for Working Table III is to "consider whether (...) further arms control, security and confidence building measures might be addressed by the competent bodies, taking into account existing obligations and commitments under the CFE Treaty".⁹

These goals complement or supplement those of Article V. Notably, one Working Table III goal is to "encourage the progress of the negotiations of

7 Stability Pact for South Eastern Europe, Cologne, 10 June 1999, in Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1999, Baden-Baden 2000, pp. 551-564, here: p. 563.

8 Ibid.

9 Ibid.

Article V". As of this writing, the Stability Pact is in the process of evaluating proposed projects for funding. While Article V will continue to be in negotiations for an undetermined time, at least some Stability Pact projects are anticipated to be initiated within the year. Thus it can be expected that Stability Pact projects will be underway and well in progress before Article V is completed. This in itself should not present problems, since there are numerous projects for Working Table III that can and should be conducted outside of Article V participation. Stability Pact projects could also provide a "test bed" for some Article V initiatives. Furthermore they could provide funding for specified Article V projects. In turn, Article V could provide information to Working Table III that might otherwise be unavailable or difficult to obtain.

One crucial difference between the Stability Pact and Article V negotiations is that the latter have included the FRY as a participant from the beginning. In fact, the Article V negotiations are virtually the only international forum that included the FRY as a negotiating partner. This presented both unique benefits and problems for the Article V negotiations. While the Stability Pact did not include the FRY as a participant, there were some potential initiatives that would benefit the region with the participation of the FRY via Article V. A key task will be to develop measures compatible with both the Stability Pact and Article V that can involve the FRY. Some Stability Pact initiatives were clearly intended to be completed without the Yugoslavian participation through Article V. Involving the FRY will enhance the value of others. The challenge will be to determine which measures both the Stability Pact and Article V can mutually undertake and then to co-ordinate their implementation. Meeting this challenge will enhance the chances for success of both the Stability Pact and Article V.

Conclusion

Any arms control negotiation that is initiated in the wake of armed conflict will have to weather problems related to the recent hostilities. Mutual confidence, generally a difficult first step in any negotiation, has to be established in partners that were combatants only a short time before. The issues which led to the conflict itself must be confronted. These further will likely have been exacerbated by the damage and casualties suffered during the conflict. Article V, as did Article II and IV, must surmount the problems particular to such a negotiation.

The very fact of the continuation of the Article V negotiations in the face of conflict is testimony to the importance placed upon it by its participants. It must be remembered that Article V is a "child of Dayton", the instrument that ended conflict in Bosnia. The Article V participants, after having laboured for almost a year developing the mandate, had to then subsequently delay the

start of actual negotiations due to the Kosovo crisis. Article V has persevered through these difficulties and is continuing at a steady, albeit measured pace. This perseverance underscores the value of the negotiations to the respective participants. Progress has not been quick or easy, and there are many differences among the participants. Notwithstanding these differences and the problems noted above, the participating States are continuing to negotiate with the hope of securing a successful agreement. The commonly perceived benefits of a successful Article V negotiation have kept hope alive during difficult times and can be expected to do so in the future. While a specific timeline cannot be set for expected conclusion of the Article V negotiation, the negotiations can be expected to continue with due diligence and perseverance.