

Principles Governing Conventional Arms Transfers

Introduction

Helsinki: 1975 and 1992

The signing of the Helsinki Final Act by the Heads of State or Government of the participating States of the CSCE in 1975 put in motion a process of stabilizing security in Europe through ten principles that would guide the behavior of states, including their attitude towards human rights.¹

During the CSCE Review Conference and the preparations leading up to the CSCE Summit in Helsinki in 1992 new ways and means were discussed to meet the new challenges in Europe stemming from the end of the Cold War. The negotiations resulted in the Helsinki Document 1992: "The Challenges of Change". In this document, the participating States expressed - amongst others - their commitment "to give new impetus to the process of arms control, disarmament and confidence- and security-building, to the enhancement of consultation and co-operation on security matters and to furthering the process of reducing the risk of conflict".² To this end participating States agreed upon a Programme for Immediate Action, to be worked out in the Forum for Security Cooperation (FSC) and its working bodies (the Special Committee and the Working Groups).

Programme for Immediate Action

In the Programme for Immediate Action (PIA) participating States decided to give early attention to "Arms Control, Disarmament and Confidence- and Security-Building", "Security Enhancement and Co-operation" and "Conflict Prevention". In the framework of the PIA many measures have been negotiated from 1992 onwards. The most detailed agreement is a set of confidence- and security-building measures: the Vienna Document. Twice this document has been further developed and improved, the latest being the Vienna Document 1994.³ Included in this document is a chapter on Defence Planning.

¹ Final Act of Helsinki, Helsinki, 1 August 1975, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972 - 1993*, Dordrecht/Boston/London 1993, pp. 141-217, here: Declaration on principles guiding relations between participating States, pp. 143-149.

² CSCE Helsinki Document 1992: *The Challenges of Change*, in: Bloed (Ed.), cited above (Note 1), pp. 701-777, here: p. 706.

³ Reprinted in this volume, pp. 431-482.

Other documents agreed within the PIA are:

- Code of Conduct on Politico-Military Aspects of Security;
- Global Exchange of Military Information;
- Stabilizing Measures for Localized Crisis Situations;
- Principles Governing Non-Proliferation;
- Principles Governing Conventional Arms Transfers.

All these documents are agreed by consensus, which means that they - inevitably - contain compromises. Furthermore, they are politically binding (as opposed to legally binding like e.g. treaties). As a result, the impact of the measures varies. Most progress in this regard has been accomplished with the Vienna Document, which recently has shown its value in the successful negotiations on military confidence-building measures in Bosnia.

Multilateral Non-Proliferation Regimes

In the PIA the importance of "co-operation in respect of non-proliferation" is underlined twice, in Section A (Arms Control, Disarmament and Confidence- and Security-Building), paragraph 5, and Section B (Security Enhancement and Cooperation), paragraph 9: "Co-operation in respect of the strengthening of multilateral non-proliferation regimes, including the transfer of sensitive expertise, and the establishment of a responsible approach to international armaments transfers".⁴ This text has encouraged participating States to negotiate and adopt two norm-setting documents: "Principles Governing Conventional Arms Transfers" (November 1993) and "Principles Governing Non-Proliferation" (December 1994). This article will describe the negotiating process of the document on conventional arms transfers and will devote attention to the follow-up within the OSCE, in particular a seminar held in Vienna to further the implementation of the principles and identify problem areas.

Principles Governing Conventional Arms Transfers

Negotiations - History

At an early stage (in November 1992) a draft on "Non-Proliferation and Arms Transfers" was presented on behalf of 24 participating States, including the 16 members of NATO. In preparation of the Ministerial Council Meeting in Stockholm in December of that year, however, part of the propos-

⁴ Helsinki Document 1992, cited above (Note 2), p. 741.

al was used for a Ministerial Statement in which the quick accession to the Non-Proliferation Treaty was one of the key issues. Furthermore, in February 1993, the FSC's Special Committee decided that participating States would not only commit themselves to submit their data on imports and exports to the UN Register on Conventional Arms, but also to circulate copies of that information in Vienna amongst CSCE delegations.

From then on, the subject of conventional arms transfers was treated separately from other non-proliferation issues. The United States of America proposed to organize a special meeting of the Forum for Security Cooperation which would concentrate solely on this particular item. This proposal was adopted and a special meeting took place on 17 and 18 March 1993. During this meeting most participating States explained their national approach to conventional arms transfers and it soon became clear that specific CSCE action would be advisable.

At the same time the European Union (EU) - then still 12 members - was working on "Principles Governing Conventional Arms Transfers" on the basis of then already existing texts. After some informal discussion in Vienna, agreement was reached to present the EU text as a new proposal for this subject on behalf of 23 participating States (the twelve EU plus eleven co-sponsors). Negotiations within the CSCE started in July 1993 under the chairmanship of the UK representative, Alan Huckle, and were successfully concluded on 25 November 1993, when the document was adopted by the FSC's Special Committee.

Negotiations - Sensitivities

The negotiations on the document "Principles Governing Conventional Arms Transfers" have not been easy. The commercial interest in this subject is evident: together the OSCE participating States are responsible for about 90 percent of the total quantity of international conventional armaments transfers. There were significant differences of opinion between the "moralistic" and the "pragmatic" countries. A number of participating States (especially in Central and Eastern Europe) did not (yet) have a national policy concerning conventional arms transfers.

However, because of these difficulties, it is all the more noteworthy, that the (then) CSCE was able to conclude in a relative short period of time a politically binding document which contains guidelines for a subject as sensitive and important as conventional arms transfers. After adoption of the text by the Special Committee in November 1993, Interpretative Statements were made by three delegations, namely Sweden, Poland and France.

Sweden stressed the point that export of military equipment from Sweden is prohibited unless the government waives the prohibition and issues, on a case

by case basis, an export permit. Furthermore, it was stated that Sweden would have liked to see more strict and compelling guidelines concerning the control of transferred arms. The respect for human rights in the recipient country is seen by the Swedish government as an essential condition for the granting of a licence to export military equipment.

Poland agreed in its statement to the consensus on this document, which it considered a very important contribution to stability in Europe and beyond. However, Poland felt many significant provisions of the document to be too general in nature and therefore favoured in future efforts to achieve a common and more specific interpretation of the present provisions.

France clarified in its statement its understanding of a number of notions contained in the document regarding French practices with respect to conventional arms transfers.

Follow-up of the Document on "Principles Governing Conventional Arms Transfers"

The purpose of the document "Principles Governing Conventional Arms Transfers" is to enhance transparency. Together with the UN Register of Conventional Arms it introduces greater openness and makes it easier for the international community to monitor excessive arms build-ups in any one country.

In order to ensure proper implementation of the "Principles" the EU stressed on 23 March 1994 the importance of the commitment of the participating States to cooperate in respect to non-proliferation in a broad sense. As far as conventional weapons were concerned, participating States were urged to supply data to the UN Register of Conventional Arms and to circulate them amongst CSCE delegations. Furthermore, the EU suggested holding a seminar on the implementation of the "Principles", i.e. the commitment to "reflect, as necessary, the principles (...) in its national policy documents governing the transfer of conventional arms and related technology"⁵ as well as the commitment to exchange information within the FSC on national legislation and practices, including mechanisms to control conventional arms transfers.⁶

⁵ Principles Governing Conventional Arms Transfers, 1993, chapter III, paragraph 5a, in: FSC Journal 49/1993.

⁶ Cf. *ibid.*, paragraph 5c.

Budapest Summit 1994

The idea of a seminar on this subject was generally welcomed, but delegations felt - in the spring of 1994 - it would not be feasible to organize an OSCE-wide seminar before the CSCE Review Conference, which would start in early October 1994, in preparation of the Summit in Budapest. This meant that the follow-up would have to be pursued as soon as possible in 1995.

One of the decisions of the Budapest Summit (December 1994) concerned the future tasks of the CSCE Forum for Security Cooperation. Apart from the continuation of the FSC's work in accordance with its mandate, it should develop new approaches to the items therein and to a framework for arms control. The FSC "will give increased attention to the improved *implementation of existing CSCE commitments* relating to confidence- and security-building".⁷ The plan to organize a seminar on conventional arms transfers was perfectly in line with the Budapest decision to devote increased attention to implementation issues.

Preparation of the Seminar on Principles Governing Conventional Arms Transfers

In January 1995 the EU, at the request of the Netherlands, held its first coordination meetings on the preparation of the reintroduction of the proposal to organize a seminar on conventional arms transfers as a follow-up to the document that was agreed upon by participating States in November 1993.

The focus of the seminar would be on the exchange of information and experience regarding the implementation of the "Principles" in national laws, regulations and practices and on the mechanisms to control armaments transfers. Such an exchange would be mutually beneficial and identify different ways of implementation in view of the general nature of the "Principles".

Apart from a discussion on the agenda and modalities, the EU also debated the desirability of a questionnaire, to be sent to participating States well in advance of the planned seminar. The responses to the questionnaire could then be used by the delegations while preparing for participation in the seminar. It was decided that the draft questionnaire of the United Kingdom would be used as a basis for discussion. The questions were related to the policy and procedures of participating States for the export of conventional arms and related technology, including national legislation, licence applications, control lists, enforcement, etc. The agenda of the seminar followed the questionnaire closely.

⁷ CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era, in: Helsinki Monitor 1/1995, pp. 79-106, here: p. 92 (emphasis added by J.v.V.).

The proposal to hold a seminar and send out a questionnaire was eventually introduced in the FSC on 29 March 1995 and a decision was taken on 26 April 1995. The seminar took place on 20 and 21 June 1995.

The Seminar

For two days experts in the field of conventional arms transfers from most OSCE participating States debated ways and means to give further impetus to the document "Principles Governing Conventional Arms Transfers". Responses to the questionnaire were provided by 28 participating States. On the first day the main issue was: *Discussion on the implementation requirements contained in the OSCE-document "Principles Governing Conventional Arms Transfers" with a focus on transfer of knowledge and experience on export law, control lists, licences and enforcement practices and procedures.*

Regarding the sub-item on *export control law*, delegations concluded that countries with economies in transition were faced with special difficulties in passing effective national legislation. Cooperation in this respect with other OSCE participating States could prove useful. In order to enhance transparency and democratic control, it was felt desirable that all guidelines governing conventional arms transfers in OSCE States be published nationally and that such publication become standard in all participating States.

As for *control lists*, delegations stressed that duplication of efforts should be avoided and participating States were urged to support the international efforts already underway to develop consistent control lists for conventional arms and related technology in order to provide an organizational background for multilateral and bilateral consultations to encourage transparency and a consistent treatment of arms exports. It was agreed that the national control lists would be circulated amongst OSCE States and that a delegated representative of the new post-COCOM forum would be invited for a briefing on decisions taken by that body on the arms control list, once negotiations were completed.

It was agreed that *export-licences* should contain at the minimum the following elements: the nature of the licence (temporary, permanent, renewal), the nature of the transaction (export, import, transit), the name of the licensee (and possibly the exporter), the country of destination, possible transit countries, the addressee, an indication of the equipment and its value, an end-user-certificate and, if needed, the advice of the ministries consulted. In order to enhance transparency and harmonization of national systems, it would be useful to consider at a future date the possibility of adding further elements to the minimum list.

The need for improvement of cooperation was felt in the field of *enforcement practices and procedures*. More specifically, in order to facilitate international cooperation, the early establishment of national points of contact by the participating States was recommended. During the discussion, delegations concluded that special attention should be given to the control of transfers of know-how through the various methods of telecommunication.

During the second day of the seminar discussions focused on two subjects:

a. Increased transparency through international efforts and possibilities for better international cooperation in preventing undesirable or unauthorized transfers in some categories.

A lively debate took place on the trade in light arms and small weapons. The trade in these categories of weapons, both legal and illegal, was perceived to be of great concern, in particular with respect to regional conflict and tensions. The necessity to increase transparency in this field was acknowledged. The suggestion to widen the scope of the UN Register of Conventional Arms, however, was met with caution, mostly on practical grounds.

b. Coordination in the field of control agencies and combating illegal conventional arms transfers.

The need to establish a list of contact points was reiterated. Furthermore, the issue of illegal conventional arms transfers was debated at length. The suggestion was made to establish a Code of Conduct for Conventional Arms Transfers.

Follow-up of the Seminar

In order to ensure continued attention for the subject of conventional arms transfers the FSC decided on 19 July 1995 on follow-up action concerning a number of related items. The recommendations that resulted from the discussions during the seminar were used to define proper activities towards the implementation of the measure. These activities included:

- the exchange of national points of contact in enforcement agencies,
- an update of the questionnaire based on the responses received so far,
- distribution and completion of the questionnaire on a yearly basis,
- consideration of setting up workshops for experts,
- circulation on an annual basis of the national contributions of the participating States to the UN Register of Conventional Arms,

- inviting a delegated representative of the new post-COCOM forum for a briefing about decisions taken by that body, when negotiations are completed.

The ongoing process of monitoring implementation activities is the responsibility of the FSC through the monthly implementation meetings of a Working Group.

Concluding Remarks

In pluriform democratic societies controversial weapons transfers are under constant scrutiny by parliaments, non-governmental organizations and the media. The transfer of weapons to Turkey, for example, is followed closely by these institutions because of Turkey's policy concerning human rights and the use of arms in the fight against the Kurds. It is therefore essential to achieve greater openness and transparency in transfers.

One way of achieving this would be to create an OSCE Conventional Arms Register whose scope would go beyond the seven categories of arms of the UN Register (which are battle tanks, armoured combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers). One could think of including smaller arms in an OSCE Register. The immediate problem, however, is verification. How can the transfer of these smaller weapons be verified? A permit system would be too costly and labor-intensive, if it would work at all.

Another way of establishing greater transparency is making available to the OSCE participating States all information that is provided by national governments to their parliaments, non-governmental organizations and other interested parties (including producers of armaments). In the Netherlands, for example, the government reports to parliament yearly by providing the Dutch entries into the UN Register of Conventional Arms, as well as a survey of the total number of licences, and their value, issued for export of military goods from the Netherlands.