Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context

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Hamburg, January 2017

CORE Working Paper 28

Acknowledgements

We would like to express our sincere gratitude to the Swiss Federal Department of Foreign Affairs, particularly to Ambassadors Heidi Grau, Angelo Gnädinger and Günther Bächler for the intellectual stimulation and financial support of this project.

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Executive Summary

1. Territorial conflicts in Southeastern Europe have hampered the implementation of international agreements on arms control and confidence- and security-building measures (CSBMs) in disputed territories under the effective control of *de facto* regimes. These grey areas have resulted in uncertainties about the capabilities and activities of irregular and stationed forces, produced unchecked risk perceptions and aggravated sub-regional instability and insecurity.

2. At the same time, disputes over the status of *de facto* regimes and *host nation consent* for the stationing of foreign forces in disputed territories have also obstructed the development of all-European arms control mechanisms and produced spillover effects detrimental to security and stability.

3. There is no unified opinion in international law about the position of *de facto* regimes. In ceasefire agreements and informal talks, *de facto* regimes are sometimes referred to as "parties to the conflict", with limited rights and obligations. It is an incontrovertible fact that, in the absence of international recognition, only recognized central governments are entitled to carry out state functions in international relations and to exercise the rights and fulfil the obligations of States Parties to international agreements, such as arms control treaties and CSBMs. However, *de facto* regimes can also be included in agreements if there is the political will to do so.

4. *De facto* regimes categorically reject central governments' claims to implementing these rights in territories under their actual control, such as acting as the host state for observations of or collecting and distributing data on armaments, which are subject to international information exchanges or limitations and are held by irregular forces. *De facto* regimes either want to exercise such rights themselves or deny that the disputed territories belong to the area of application of arms control and CSBM agreements.

5. Third states that have not recognized *de facto* regimes are not permitted by international law to neglect the positions of central governments seeking to implement such agreements in disputed territories, even if *de facto* regimes do not object to inspections on the spot. Thus, third states are not allowed to elevate their status by agreeing to procedures that would cede to their representatives state functions, such as the rights of a "host state" (e.g. determining the points of entry/exit, providing escort teams, signing inspection reports etc.).

6. Consequently, state-centric CSBMs can be implemented in disputed territories only if all sides involved are prepared to make compromises that value transparency and stability more highly than status-related positions. In practice, almost all attempts to bring about a compromise on mutually acceptable procedures have failed.

7. The recognition by certain states of the independence of breakaway regions and their claim that *de facto* regimes have provided "*host nation consent*" to the stationing of forces in such territories have complicated the situation. By contrast, central

governments of internationally recognized states categorically reject this interpretation and regard stationing in disputed territories as unlawful occupation in violation of their sovereignty and territorial integrity.

8. Ceasefire agreements usually have only limited transparency and limitation provisions, which are mainly confined to small, partially demilitarized, "security zones" or "restricted weapon zones". However, wider geographical areas, which are relevant to transparency and the restraint of military capabilities and activities in the sub-region, remain unrestricted and inaccessible. In the case of Abkhazia and South Ossetia, the EU Monitoring Mission (EUMM) has access only to areas controlled by the Georgian government adjoining the two breakaway regions.

9. Against this background, status-neutral arms control and CSBMs aim at enhancing sub-regional security in and around disputed territories and creating a peaceful and stable environment for talks without detriment to status-related positions of principle by parties involved and without pre-empting the outcome of conflict settlement processes, which will ultimately define the eventual political status of such territories.

10. To that end, status-neutral arms control and CSBMs avoid any procedures and terms that could be interpreted as providing political status, such as references to state functions or rights and obligations reserved for states ("inspecting"/"inspected state", "host state", official titles of persons, "borders" or contested geographical names of disputed territories, etc.).

11. Consequently, status-neutral arms control and CSBMs should be formulated beyond the existing framework of state-related international agreements. This requires facilitation by an impartial third party that is trusted by both sides, such as a neutral state, an international organization or a private enterprise. In such a framework, status-bound functions and personnel would be replaced by status-neutral functions and personnel.

12. Status-neutral arms control and CSBMs should provide for information, observation and, as far as possible, limitation of certain military capabilities and activities, particularly in areas close to the Lines of Contact. In such areas, *reciprocity* of rights and obligations may be an indispensable condition for an agreement, provided it can be attained without compromising government positions that reject *equality* vis-à-vis breakaway regions. At the same time, both sides may see the value of increasing trust and stability and, thus, enhancing security in a fragile political environment without relinquishing status-related positions of principle.

13. To ensure smooth implementation, avoid misunderstandings and prevent escalation, the establishment of an impartial coordination and conflict resolution mechanism is advisable. It can be linked to existing informal formats geared to enhancing the implementation of ceasefire agreements or other relevant mechanisms to prevent and respond to incidents.

14. This paper discusses the limitations of existing international arms control and CSBM agreements and outlines, in considerable detail, a status-neutral approach towards increasing security and stability in and around disputed territories. An illustrative example of how such an approach could be modelled is given in the annex.

1. Introduction: Reason for and Objectives of this Study

The number of what are known as *de facto* regimes in Europe has reached a significant level and will, potentially, grow further. By *de facto* regimes we mean quasi-states that exert effective control over a certain geographic area, but are not recognized as states by the majority of states. Accordingly, *de facto* regimes are not members of international organizations. In Europe, Transdniestria, Abkhazia, South Ossetia, Nagorno-Karabakh and Northern Cyprus qualify as *de facto* regimes.[1] If Eastern Ukraine were to acquire the characteristics of a *de facto* regime, it would comprise several times more people and territory than all other *de facto* regimes combined and this phenomenon would, thus, take on a qualitatively different relevance in Europe.

The fact that *de facto* regimes are not recognized, by the majority of states, as full subjects of international law significantly hampers any kind of international relations with them. In the last 15 years, it has become evident that this is particularly true of conventional arms control and Confidence- and Security-Building Measures (CSBMs). The implementation of internationally agreed arms limitations and information and verification measures in territories controlled by *de facto* regimes has been hampered because questions about the appropriate and acceptable roles and status of the parties involved could not be resolved. These grey areas have left uncertainties about the capabilities and activities of indigenous armed groups and stationed forces, produced unchecked risk perceptions and caused further sub-regional instability and insecurity. In addition, disputes over the principle of "host nation consent" to the stationing of foreign forces in such territories have impeded the development of all-European arms control and caused spillover effects detrimental to security and stability.

This paper has two objectives: *First*, it aims to examine the extent to which it is possible to also implement all-European arms control agreements in the territories of *de facto* regimes. *Second*, it aims to examine how status-neutral arms control could contribute to the containment of sub-regional conflicts and provide a stability framework for their peaceful settlement.

It should be stressed that nothing in this study should be interpreted as being directed against the territorial integrity of the states concerned. It bears emphasising that the present study represents a status-neutral approach.

1 Kosovo could be added because this entity is not recognized by all states and is not a member of international organizations. However, as Kosovo has, by now, been recognized by 111 UN member states, among them 23 EU member states, it constitutes a special case (cf. 'Who recognized Kosova as an independent state?' *www.kosovathanksyou.com*).

2. The Contradiction between a Status-Neutral Approach and the Usual Construction of Arms Control Agreements

While the international law literature does envisage a range of options for interacting with *de facto* regimes, almost all arms control agreements are conceptualized as agreements between sovereign and generally recognized States Parties that are, at the same time, members of international organizations.

2.1. Position of *de facto* regimes in international law

Most authors of the international law literature treat *de facto* regimes as partial subjects of international law. Jochen Abraham Frowein, one of the most influential international lawyers in Germany, writes:

> "State practice shows that entities which in fact govern a specific territory will be treated as partial subjects of international law. They will be held responsible, treaties may be concluded with them and some sort of intercourse is likely to take place with States." (Frowein 1992: 966).

In support of his position, Frowein quotes UN General Assembly Resolution (XXIX) of 1974, which links the term "State" neither to its recognition nor to UN membership:

> "United Nations General Assembly in Res. 3314 (XXIX) of December 14, 1974 contains an explanatory note according to which the term 'State' is used 'without prejudice to questions of recognition or to whether a State is a member of the United Nations'". (Ibid.: 966).

On this basis, *de facto* regimes interact and cooperate with states:

> "It is quite common for States to enter into relations with *de facto* régimes although such relations will frequently be kept on a level below that of normal treaties." [...] "Sometimes *de facto* régimes become members of multilateral treaties." (Ibid.: 967).

Thus, under international law, there are no compelling obstacles to including *de facto* regimes in international arms control agreements. This position is supported by Malcolm Shaw, who writes under the heading of "insurgents and belligerents":

> "International law has recognised that such entities may, in certain circumstances, primarily dependent upon the *de facto* administration of specific territory, enter into valid arrangements." (Shaw 2008: 245).

In practice, however, there are substantial differences in the behaviour of states from which *de facto* regimes want to secede. According to Pegg:

> "International society has traditionally chosen to respond to the existence of *de facto* states in three main ways: actively opposing them through the use of embargoes and sanctions; generally ignoring them and having no dealings with them; and coming to some sort of limited acceptance and acknowledgement of their presence." (Pegg 1998: 4).

These three approaches can be observed in the four conflicts in which the *Organization for Security and Co-operation in Europe* (OSCE) is active as a mediator:

— The *de facto* authorities of Nagorno-Karabakh are, in no way, recognized by the Azerbaijani government as negotiation partners. They are not part of the Minsk

Group format, the OSCE-led negotiation format for the conflict on Nagorno-Karabakh. Only the Personal Representative of the Chairperson-in-Office on the conflict dealt with by the OSCE Minsk Conference communicates with the *de facto* authorities of Nagorno-Karabakh and maintains an office in Stepanakert. Consequently, the *de facto* authorities of Nagorno-Karabakh are not part of any international mediation format and are, thus, largely isolated.

— The cases of Abkhazia and South Ossetia represent an intermediate position. There is no agreement over their status in the Geneva International Discussions. According to one point of view, they are parties to the conflict and, thus, to the negotiating format, while another point of view suggests that they are just an extension of the Russian delegation, Russia being a party to the conflict. To avoid this disagreement, the Geneva International Discussions created a status-neutral construct – working groups – in which participants from Abkhazia and South Ossetia participate together with other participants in an "individual capacity". This creative solution allows for the continuation of the talks while sidestepping the status of the participants. Nevertheless, some participants regularly attempt to hold the negotiations hostage to status-related questions. It should be noted that Abkhazia was more explicitly recognized as a party to the conflict before the 2008 conflict between Georgia and Russia than it has been since then. In the Geneva talks preceding this conflict, the UN Secretary General's Group of Friends regularly held separate talks with the Georgian and Abkhaz sides, effectively treating them as the parties to the conflict.

— Finally, the Transdniestrian authorities are fully recognized as a party to the conflict in the 5 + 2 negotiations (Moldova, Transdniestria, the OSCE, the Russian Federation and Ukraine, with the EU and the US as observers). But even in this case, the recognition of the Transdniestrian side as a party to the conflict has its limits. This was evidenced by the fact that a package of CSBMs and other arms control measures, elaborated in 2004/2005 by the OSCE Mission to Moldova with the support of Russian and Ukrainian experts, failed because it treated the Transdniestrian *de facto* authorities as equal, which was unacceptable to Western states.

These differences in the degree to which *de facto* regimes are officially recognized as parties to the conflict by the states from which they want to secede have a substantial impact on the actual possibilities of conceptualizing and implementing status-neutral approaches to security, confidence-building and arms control measures.

2.2. State-centric character of arms control and CSBM agreements

Arms control agreements are usually concluded by governments that represent internationally recognized states. Thus, the preamble of the *Treaty on Conventional Armed Forces in Europe* (CFE) starts by listing its States Parties: "The Kingdom of Belgium, [...] and the United States of America, hereinafter referred to as the States Parties". In the same way, the first sentence of the preamble of the *Vienna Document 2011* (VD 11) starts by listing the "participating States of the Organization for Security and Co-operation in Europe: Albania, [...], the United States of America and Uzbekistan have adopted the following Document on Confidence- and Security-Building Measures (CSBMs)." The term "States Parties" or "participating States" is

frequently repeated throughout these documents. But other terms also point to the status of an internationally recognized state.

At a *primary level*, this applies to all kinds of characteristics of "States Parties" or "participating States":

— The "area of application means the entire land territory of the States Parties" (CFE Treaty, Art. II (B)).
— "Borders" usually means the borders of States Parties or participating States.
— The "government" usually means the government of a State Party or a participating State.
— The notion of a "receiving State" (VD 11) or an "inspecting state".

All of these terms refer to key attributes of internationally recognized states and, consequently, have to be avoided in status-neutral approaches.

At a *secondary level*, other terms can also be given a status-related meaning in a specific historic context. In the Georgian context, this applies to the terms "region", "conflict zone/conflict region", "agreement/treaty", "side/party to the conflict", "border", "IDPs/refugees" and other terms with status implications. All of these terms are frequently used to describe the activities of and interactions between sovereign, fully recognized states. However, this does not mean that these terms have the same status-related meaning in other political contexts.

In addition to the conceptual terms, geographical terms are usually extremely problematic because of differing spellings and pronunciations (Sokhumi vs. Sukhum; Tskhinvali vs. Tskhinval, Akhalgori vs. Leningor, Gali vs. Gal, etc.). The same applies to the names of regions. Georgia usually prefers terms, such as Abkhazia, Georgia and Tskhinvali region/South Ossetia and Georgia, whereas Russia and the Abkhaz and South Ossetian counterparts prefer terminology highlighting the independence of the two entities.

3. Principles of Status-Neutral Arms Control and the Concrete Approach of the 1993 CSCE "Stabilizing Measures for Localized Crisis Situations"

Paragraph 3.1 outlines the fundamental principles and rules that must be observed in the pursuit of status-neutral arms control. Paragraph 3.2 presents examples for status-neutral approaches in different issue areas. Paragraph 3.3 introduces the only CSCE/OSCE document that explicitly addresses status-neutral arms control.

3.1. Conditions and principles of status-neutral approaches

By a status-neutral approach to tackling a substantial issue, we mean an approach that prioritizes the solution of this substantial issue to any deliberations related to the status of a governance structure, be it a state or a *de facto* regime. This means that the interest in reaching a solution to the substantial issue must be higher than the interest in defending or putting forward one's own status. A status-neutral solution is only possible if all parties agree to it and it cannot be unilaterally imposed. In this case,

status-neutral solutions are, in principle, always possible. In practice, however, status-neutral solutions are rare because states and *de facto* regimes usually consider their status to be a higher priority than solutions to practical problems. This is particularly true of *de facto* regimes, as their *raison d'être* and ultimate objective is to achieve secession from an existing state and, thus, to acquire the status of an independent, internationally recognized state. Consequently, achieving status-neutral solutions is an extremely complex endeavour.

Conditions for status-neutral approaches

One possible condition for a status-neutral solution can be a compelling interest of one or several parties that overrides all status deliberations. This was the case in the Georgian-Russian World Trade Organization (WTO) agreement. Here the Russian interest in WTO membership overrode all status questions, whereas Georgia was convinced that it should not block this Russian interest as long as Russia's membership in the WTO meant that the trade flows from Russia to Abkhazia and South Ossetia and *vice versa* would be internationally monitored and Russia removed the trade embargo it had imposed a few years earlier. Once these conditions were met, it became possible to find a mutually acceptable solution to a very complex and status-ridden conflict environment.

Another possible condition for a status-neutral solution is for the state from which the *de facto* regime wants to secede to adopt a generous and pragmatic approach. This was the case in Moldova, where it was possible to elaborate a comprehensive package of arms control and CSBM measures for Moldova and Transdniestria. Although this package was ultimately not adopted, the fact that it was elaborated shows how constructive a generous approach by the state vis-à-vis the *de facto* regime can be.

Finally, status-neutral solutions may yield positive results in cases where there are ambiguities or even open contradictions in the underlying assumptions. This is true for the OSCE Mission in Kosovo that operates from a "status-neutral position". It does so in a state that has declared independence, on the one hand, and on the basis of UNSCR 1244 that refers to Kosovo as a part of Serbia, on the other.

Principles of status-neutral approaches

If the constellation of interests allows for a status-neutral approach, the following three principles for constructing such a solution should be observed:

— *Replacement of status-oriented terms by status-neutral terms*. This can mean the replacement of the name of a state by the name of its capital ("OSCE Mission to Skopje" or "The Geneva Discussions [...] bring together participants from Tbilisi, Moscow, Washington, Tskhinvali and Sukhumi."), the replacement of a conflict area by a negotiation context ("Personal Representative of the Chairperson-in-Office on the conflict dealt with by the OSCE Minsk Conference"), or, in an extreme case, the replacement of the designation of local towns and villages by geographical coordinates, such as in the Georgian-Russian WTO agreement (cf. FDFA 2011; Petrosyan 2011). It could also mean the definition of the geographic areas through status-neutral maps that lack political denominations.

— *Replacement of status-bound personnel by status-neutral personnel*. In order to allow status-neutral approaches to work, government employees could be replaced by status-neutral staff. This can be staff from a third state that is seen as neutral in a given conflict context. Or it can be staff of an international organization, such as the OSCE. A third option could be the staff of a private company, possibly under the supervision of a neutral state. This option was used in the Georgian-Russian WTO agreement that foresees the use of staff provided by the private Geneva-based "Société Générale de Surveillance" (SGS).

— *Establishment of mediation mechanisms*. Finally, it is advisable to establish a coordination and conflict resolution mechanism that includes a neutral third party, as in the case of the Georgian-Russian WTO agreement. This could be a third state or the Secretariat of an international organization, such as the OSCE.

However, these more technical principles can only work if the underlying constellation of interests allows for a status-neutral approach.

3.2. Examples of status-neutral approaches in different policy areas

Status-neutral solutions can be found in many different policy areas. There is no indication that status-neutral solutions are limited to specific areas.

Status-neutral travel documents

Beginning in 1963, the authorities of West Berlin and the German Democratic Republic (GDR) negotiated several *travel permit agreements* [Passierschein-abkommen], in which a *provisional identity card* [behelfsmäßiger Personalausweis] replaced the normal identity card that attested to the German citizenship of the inhabitants of West Berlin – a citizenship that was not recognized by the GDR authorities. The United Nations Interim Administration in Kosovo (UNMIK) issued *UNMIK ID Cards* and *UNMIK Travel Documents* that were recognized by 39 states as international travel documents. Finally, a 'passport' issued by the *de facto* authorities of Northern Cyprus is recognized by Australia, France, the United Kingdom, Pakistan, Syria, Turkey and the United States as an international travel document, although only Turkey has recognized the Turkish Republic of Northern Cyprus as a state (cf. Herrenberg, Hofmann and Packer 2011: 20-31).

Status-neutral character and designation of OSCE and UN field operations

Status-neutral designations are used in several OSCE and UN field operations. "UNMIK has moved forward with its reconfiguration within the status-neutral framework of resolution 1244 (1999). The United Nations will continue to adopt a position of strict neutrality on the question of Kosovo's status." (UN 2009: 9). Subsequently, the OSCE also operated from a "status-neutral position" (OSCE 2015). The Minsk Group format has already been mentioned in Paragraph 2.1 (above). Another example from the OSCE is the "OSCE Mission to Skopje", which is not referred to as the 'OSCE Mission to Macedonia' because Greece does not recognize the designation "Macedonia".

Two cases of status-neutral approaches to arms control

The 1963 *Limited Test Ban Treaty* was the first important nuclear arms control agreement. The three signatory powers – the United Kingdom, the United States and the USSR – wanted both German states to sign the treaty in London, Moscow and Washington. However, two of the three signatory powers had not recognized the GDR. The proposed solution was that it was acceptable to sign the treaty in only one place, so the GDR signed in Moscow where it was recognized as a state (cf. Grabbe 1983). The status question was, thereby, bypassed.

The formulation of the Turkish exclusion zone in the mandate of the CFE Treaty

When the wording on the Turkish exclusion zone was almost completed, there remained only one problem: Turkey wanted to exclude the port city of Mersin that has important ties with (Northern) Cyprus. In this case, Greece threatened not to initial the mandate. The solution was that the boundaries of the Turkish exclusion zone were described as "[...] Gozne, and thence to the sea" (cf. Zellner 1994: 124). Thus, it was left open whether Mersin belonged to the exclusion zone or not and both Greece and Turkey were able to maintain their positions.

The Incident Prevention and Response Mechanisms (IPRMs)

These mechanisms were created in February 2009 by the participants of the Geneva talks (see Paragraph 4.3 below). The founding document states that representatives of structures with responsibility for security and public order are supposed to participate, together with the representatives of international organizations. This statement is also status-neutral as it does not make explicit what country, territorial unit or town representatives will participate. The IPRMs work with the participation of representatives of appropriate Russian and Georgian bodies as well as officers from Tskhinvali and Sokhumi and the *de jure* government agencies in exile.[2]

Georgia's obligation of non-use of force

In 2010, the President of Georgia assumed a unilateral obligation on the non-use of force in efforts to restore the territorial integrity of the country. This obligation was not only mentioned in his speech to the European Parliament on 23 November, but was also later expressed through letters sent to the heads of all international organizations participating in the Geneva discussions as well as the President of the United States. Although the content of the letters clearly attests to Georgia's status, the way in which the Georgian President assumed this obligation was evidently status-neutral. Georgia did not assume this obligation bilaterally by signing an international agreement or through memoranda with Tskhinvali and Sokhumi or by signing any other kind of legal or political document (which would have status-

2 Cf. Sergi Kapanadze, 'Let's agree to disagree! Positive aspects of status-neutral relations between Georgia and Russia', in *In search of ways for Russian-Georgian normalization*, edited by Jeffrey Morski, (Tbilisi: Georgian Foundation for Strategic and International Studies, 2014): pp. 89-96, *http://gfsis.org/media/download/library/articles/Russian-Georgian-Normalization_ENG.pdf*.

related implications), but through a unilateral declaration. It should be noted that this obligation was welcomed in Moscow and also in Tskhinvali and Sokhumi. Similar obligations have been assumed by representatives of Sokhumi and Tskhinvali. Georgia does not recognize the international legal validity of these obligations but, within the framework of the Geneva discussions, the Georgian delegation has openly stated its positive attitude about this fact.[3]

3.3. The 1993 CSCE "Stabilizing Measures for Localized Crisis Situations"

Although it has never been used in practice, it is important to note that the OSCE has drawn up a reference document that explicitly addresses status-neutral arms control and confidence-building measures, the "Stabilizing Measures for Localized Crisis Situations", adopted on 25 November 1993 by the Forum for Security Co-operation (FSC) of the Conference on Security and Co-operation in Europe (CSCE). The document starts from the consideration that "specific militarily significant stabilizing measures may be required for application in localized crisis situations" (CSCE 1993: preamble). The document consists of a "Concept and Principles of Application" and a "Catalogue" of concrete measures.

In the *principles section*, paragraph 9 reads as follows:

> "The parties involved in a particular crisis situation will be identified in each case in accordance with the relevant norms of international law and CSCE provisions. When such parties are not States, their identification and subsequent participation in a crisis prevention, management and/or settlement process does not affect their status." (CSCE 1993, para. 9).

This is an almost ideal-type description of status-neutral arms control in the only CSCE/OSCE document that addresses this issue. This is complemented by another paragraph on the role of third parties, which are almost always needed for efforts at status-neutral arms control:

> "The implementation of some of the measures may require the good offices or the mediation function of a third party, trusted by all the parties involved in a particular crisis situation. The role of the third party may be undertaken by the CSCE, by a State or group of States, or by organization(s) not involved in the conflict, acting under the terms of a CSCE mandate" (CSCE 1993, para. 10).

The catalogue section is structured in four points: "A. Measures of Transparency", "B. Measures of Constraint", "C. Measures to Reinforce Confidence", and "D. Measures for Monitoring of Compliance and Evaluation". Under each point, there is a differentiated menu of possible measures.

Under "A. Measures of Transparency" are the following options:

1. extraordinary information exchange
2. notification of certain military activities
3. notification of plans for acquisition and deployment of major weapon and equipment systems.

3 Ibid.

Under "B. Measures of Constraint" are the following options:

1. introduction and support of a cease-fire
2. establishment of demilitarized zones
3. cessation of military flights
4. deactivation of certain weapon systems
5. treatment of irregular forces
6. constraints on certain military activities.

Under "C. Measures to Reinforce Confidence" are the following options:

1. public statements on matters relevant to a particular crisis situation
2. observation of certain military activities
3. liaison teams
4. establishment of direct lines of communication
5. joint expert teams in support of crisis management
6. joint co-ordination commissions or teams.

Under "D. Measures for Monitoring of Compliance and Evaluation" are:

1. evaluation of data provided under extraordinary information exchange
2. inspections
3. observation of compliance with demilitarized zones
4. verification of heavy weapons
5. challenge inspections
6. aerial observation regime.

It is remarkable that irregular forces are explicitly mentioned twice, once under B.5, and once under A.1, which reads: "appropriate consideration of irregular* forces, if they exist." In a footnote, "irregular forces" are defined as follows: "The term 'irregular forces' refers to forces not under the command of the regular forces' command." (CSCE 1993: 3).

Under paragraph 3 there is a disclaimer to the effect that

> "[t]he catalogue does not commit any participating State to agree to the adoption of any of the measures contained therein in a given situation. It does not imply automatic application, or any priority in the selection of possible measures. However, it does indicate the readiness of participating States to explore in good faith the applicability of these measures in a specific situation."

However, this restriction refers only to the applicability of this or that measure in a concrete situation and not to the option of status-neutral arms control as such. With the "Stabilizing Measures for Localized Crisis Situations", the OSCE has a document that provides both the basic option of status-neutral arms control and a rich menu of measures to implement it.

There are reasons why the "Stabilizing Measures" instrument has never been used. The explicit recognition that a party "is not a State" already has a status-related implication and would probably not be accepted by the entity in question. It should also be noted that the delegation of the Russian Federation has consistently supported the application of the "Stabilizing Measures" instrument in the cases of Abkhazia and South Ossetia.

4. Limitations for Arms Control and CSBMs Ensuing from Protracted Conflicts

Paragraph 4.1 analyses the conceptual deficiencies of multilateral arms control and CSBM instruments dealing with paramilitary and irregular forces in disputed territories. Paragraph 4.2 looks at conceptual deficiencies of multilateral arms control and CSBM instruments related to *stationed forces* in disputed territories. Paragraph 4.3 tackles the issue of conceptual deficiencies of ceasefire-related CSBMs dealing with mutual and reciprocal obligations of conflicting parties. Finally, Paragraph 4.4 has the conclusions.

4.1. Conceptual deficiencies of multilateral arms control and CSBM instruments dealing with paramilitary and irregular forces in disputed territories

Legally binding international arms control treaties, such as the CFE Treaty, or political arrangements on CSBMs, such as the Vienna Document, are agreed upon by states and regulate the relations between states relating to restraint, transparency and verification of military forces in order to strengthen confidence and security. The Vienna Document describes the purpose of CSBMs

> "as a substantial and integral part of the multilateral process initiated by the Conference on Security and Co-operation in Europe, to undertake, in stages, new, effective and concrete actions designed to make progress in strengthening confidence and security and in achieving disarmament, so as to give effect and expression to the duty of the *participating States* to refrain from the threat or use of force in their mutual relations as well as in their *international relations* in general." (OSCE 2011, VD 11, para. 2).

The CFE Treaty also underlines the purpose of replacing confrontation by a new structure of security relations *between all States Parties* to the Treaty[4], in order to attain a secure and stable balance of conventional armed forces at a lower level and to eliminate capabilities to initiate surprise attacks and to launch large-scale offensive operations in Europe. The treaty refers exclusively to the rights and responsibilities of *states*.

However, such arms control and CSBM arrangements are not designed for and are less suited to dealing with situations emerging from non-international armed conflicts, i.e. internal conflicts *within* States and disputes over the status of certain territories involving secessionist action. Such instruments do not, therefore, give any role or status to non-state actors and non-recognized *de facto* entities and do not have any provisions on how to deal with them. Non-state actors and non-recognized *de facto* entities are neither parties to such instruments nor do they feel bound by their provisions even if they are familiar with them.

Consequently, the inter-state construction of arms control and CSBM instruments cannot be applied in disputed areas since their use rests on elements and terms that refer to the statehood, sovereignty and territorial integrity of internationally

4 Treaty on Conventional Armed Forces in Europe, preamble, paragraph 6.

recognized states. Against the backdrop of pan-European security co-operation and the willingness to make compromises, exceptions were made up to 1999 in Transdniestria and Abkhazia (see Paragraph 4.2 below). However, since the year 2000, attempts to implement traditional arms control measures and CSBMs in disputed areas have usually failed because they cannot adequately respond to the following challenges.

Positions held by de facto regimes of breakaway regions

De facto regimes of breakaway regions, claiming their own sovereignty or full independence, neither recognize nor tolerate the central authorities' role, rights and responsibilities as a State Party to arms control treaties or CSBM arrangements on the limitation of or information on holdings and verification of objects within disputed territories. Therefore, they do not feel bound by the overall limitations of holdings nor do they contribute to the collection of relevant data for international information exchanges nor allow for the presence of escort teams representing the central government for the purpose of inspections in disputed territories. Such positions have been held since the 1990s by the local authorities of Transdniestria, Abkhazia, South Ossetia, Nagorno-Karabakh as well as the "Turkish Republic of Northern Cyprus" (TRNC). This was strongly underlined when a German-led multinational observation team, operating under Chapter X of the Vienna Document 2011 at the invitation of the Government of Ukraine, was detained by rebel units in the vicinity of Slaviansk in April 2014.

Moreover, after a unilateral declaration of independence, *de facto* regimes usually claim that they are not parties to international arms control and CSBM agreements and, thus, are not obliged to adhere to national limitations or to deliver relevant information or accept inspections.

On the other hand, the interests of *de facto* regimes oscillate between keeping their military capabilities confidential and striving for status by participating in international mechanisms as sovereign subjects. Armenia has, therefore, repeatedly stated that it was not in a position to deliver relevant information on the military equipment held by the "Republic of Nagorno-Karabakh". Only by "providing status" could transparency be attained.[5]

Positions held by central governments of internationally recognized states affected by territorial status conflicts

In sharp contrast to the positions held by *de facto* regimes, central governments of internationally recognized states, directly affected by territorial status conflicts, do not recognize any sovereign status of such breakaway regions. In particular, they will not cede to or share with them the role, rights and responsibilities of a State Party to international agreements, such as collecting relevant data for international information exchanges, the obligations as an "*inspected state*" to determine the Point of Entry (POE), provide an escort team, define relevant information for briefings on

5 Statement of the Ambassador of Armenia during the Preparatory Committee's deliberations in the run-up to the OSCE Ministerial Council Meeting in December 2005 in Ljubljana.

the spot, decide on the exclusion of "*sensitive points*" or act as "*host state*" in cases of inspections of "*stationed forces*" or "*specified areas*" within the disputed territory.

In this context, central governments of internationally recognized states regard any single-handed action by third States Parties to international agreements, through carrying out inspections in the area of breakaway regions without *host nation consent*, as a severe breach of their obligations under international law and as illegal interference in internal affairs and a violation of the sovereignty and territorial integrity of an internationally recognized state. Third states that exercise *de facto* control in such areas by establishing formal links to them or station forces without the consent of the central government are considered to be parties to the conflict, which has occupied the territory of a neighbouring state. In the case of Abkhazia, the Georgian government believes that Russia has illegally occupied Abkhazia and exercises effective control over the region in violation of international law and the ceasefire agreement of 12 August 2008. Therefore, any arms control or confidence-building arrangement that will only concern Abkhaz forces, but leaves out the Russian military presence, will almost certainly be rejected by Tbilisi, as such an arrangement could be viewed as legitimizing the Russian military presence in Georgia's occupied regions.

Positions held by the third states which exert special influence on a de facto regime

In most cases, *de facto* regimes enjoy the political and military support of third states that are pursuing special interests in disputed territories. Their influence is maintained through political, military and economical means, their involvement in mandated peacekeeping operations or the stationing of regular forces. They usually claim that the consent of *de facto* regimes is required for delivering pertinent military information on irregular forces or for allowing their observation on the spot – even if they have not recognized the independence of such entities. Experience has shown that *de facto* regimes are not likely to agree to any CSBMs in disputed territories unless such influential states facilitate information exchanges and observation or exert some political pressure on their dependencies.

Positions held by third States Parties to international agreements

Third States Parties to international agreements are required, under international law, to respect the sovereignty and territorial integrity of other States Parties to such agreements. Therefore, when trying to inspect areas under the control of *de facto* regimes, they cannot ignore the role and responsibilities of the "*inspected*" or "*host state*" represented by the central government. Even if a breakaway entity has not objected, "*inspecting states*" are not in a position to verify objects and specified areas in disputed territories without the explicit consent of the central government. In every single case, tailor-made procedures have to be negotiated to that end, with the participation of all parties involved. Success is only possible if all participants regard transparency as more important than insisting on an uncompromising status position. In practice, most such attempts have failed.

Scope of arms control and CSBM agreements

The scope of the Vienna Document covers neither non-combat units of regular armed forces nor paramilitary nor irregular forces, such as armed militias, internal security

and armed police forces. Furthermore, regular quotas available for inspection or observation visits are far too small to allow for a steady observation of the situation in disputed territories, even if access has been granted. Currently, the passive quota for Georgia is limited to three inspections and one observation visit per year. The Vienna Document has, therefore, very limited value for dealing with military activities and the armament of non-state actors or non-recognized *de facto* regimes.

The CFE Treaty covers the *Treaty-Limited Equipment* (TLE) of all armed forces as well as internal security forces in order to prevent circumvention of limitations, although it does provide for some exceptions for internal security forces[6]. As for treaty-limited equipment of non-recognized *de facto* entities ("UTLE"[7]), it has not been possible to implement the CFE mechanism since it entered into force in 1992. National information about the types and numbers of UTLE in disputed areas has been provided by the governments of Georgia, Azerbaijan and Moldova, but international inspections have never been able to verify it.[8] Furthermore, the passive quota for CFE inspections in Georgia, Moldova and Azerbaijan is too low to allow for continuous observation of the situation in disputed areas even if access were to be granted. In 2013, the passive quotas for inspections, in accordance with the CFE Protocol on Inspections (POI), Section VII and VIII, was one for Georgia, one for Moldova and three for Azerbaijan.[9]

Consequently, existing international arms control and CSBM instruments cannot cover armed units of non-state actors or non-recognized *de facto* regimes. This leaves a serious gap in efforts to stabilize the fragile security situation in disputed areas unless special arrangements are agreed upon.

4.2. Conceptual deficiencies of multilateral arms control and CSBM instruments related to *stationed forces* in disputed territories

The implementation of transparency, verification and restraint of *stationed forces* in disputed areas, in accordance with multilateral arms control and CSBM instruments, poses similar, but not identical, challenges. Based on the principles of international law to respect the sovereignty and territorial integrity of states, the presence of foreign troops on the territory of another state requires explicit consent by the host state or a relevant resolution of the UN Security Council.[10] Explicit consent may be

6 CFE Treaty, Art. XII, no. 1 allows for limited exceptions to the holdings of Armoured Infantry Fighting Vehicles within internal security forces. Their APC holdings are not limited.

7 Unaccounted and uncontrolled Treaty Limited Equipment (UTLE).

8 Following the outcome of the First CFE Review Conference in 1996, the United Kingdom tried to inspect "UTLE" in Transdniestria and Abkhazia. Its attempts failed because the local authorities did not grant the inspection teams access to disputed territories.

9 Cf. the Annual Disarmament Report of the German Federal Foreign Office of 2013 (Auswärtiges Amt, Jahresabrüstungsbericht 2013, Tab. 3.b, p. 99, *http://www.auswaertiges-amt.de/cae/servlet/contentblob/673790/publicationFile/191188/140326_Jahresabruestungsbericht_2013.pdf*).

10 Article 2 No. 3 of the Agreement on Adaptation of the CFE Treaty (replacing Article I of the CFE Treaty) stipulates that TLE "shall only be present on the territory of another State Party in conformity with international law, the explicit consent of the host State Party, or a relevant resolution of the United Nations Security Council."

based on a Stationing of Forces Agreement (SOFA) or on an agreement to grant the right to "basic temporary deployment"[11] or relevant provisions of a ceasefire agreement.

Positions held by central governments of internationally recognized states affected by territorial status conflicts

In the absence of such an agreement, central governments of states directly affected by territorial disputes regard third states that station forces in such territories as parties to the conflict that have occupied the territory of a neighbouring state in violation of international law. They usually do not agree to inspection procedures of such forces because doing so could lead to the conclusion that their presence has been legitimized. This applies particularly if the inspection is carried out by states within the framework of international agreements and if local representatives assume the "host state" escort role.

Positions held by stationing states that are States Parties to arms control/CSBM arrangements and have not recognized the independence of breakaway regions

If "*stationing states*" are States Parties to conventional arms control and CSBM arrangements, forces stationed in disputed territories are, in principle, subject to agreed limitations, information obligations and verification rights if they are located in the area of application. Consequently, stationing states that have not recognized the independence of breakaway entities cannot, in principle, deny implementation of such measures. In particular, providing state-to-state information on stationed forces as part of regular information exchanges is not hampered by unresolved conflicts and is usually implemented.

In this context, the United Kingdom provides annual information on the deployment of forces in the Isthmus of Gibraltar (disputed by Spain) and in Cyprus in accordance with the Vienna Document and the CFE Treaty (though Cyprus does not belong to the CFE area of application). Until 2007, i.e. before its "suspension" of the CFE Treaty and recognition of independence of South Ossetia and Abkhazia, the Russian Federation provided regular information on stationed forces in Abkhazia, South Ossetia and Transdniestria, in accordance with CFE information requirements.

However, when it comes to *verification*, stationing states might point to practical difficulties in overcoming the resistance of non-state entities to granting access to disputed areas for central government escort teams representing the "*host state*". In such cases, inspecting states are usually not in a position to disregard the governmental position of the recognized state and, thus, have to decline offers by the stationing state to visit stationed forces in disputed areas.

It should be noted, however, that in the 1990s – in an atmosphere in which security cooperation in Europe was relatively unimpeded – states were prepared to make compromises at the cost of host nation rights. Thus, CFE inspections of Russian

11 Annex 14, No. 3. to the Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, Istanbul, 19 November 1999.

forces stationed in Abkhazia and Transdniestria were possible up to 1999. This practice changed from 2000 onwards as NATO states did not inspect these regions when local authorities rejected the presence of governmental escort teams in the disputed territories. Therefore, the withdrawal from Transdniestria of Russian TLE (2000/2001) and of ammunition up to early 2004 was observed by the OSCE Mission to Moldova, while a number of CFE States Parties only observed their arrival in Russia. In 2005, a German attempt to facilitate an inspection of the Russian base in Gudauta failed over the question of the presence of Georgian and/or Abkhaz escorts on the spot.

Positions held by stationing states that are States Parties to arms control/CSBM arrangements and have recognized the independence of breakaway regions

If "*stationing states*" are States Parties to conventional arms control and CSBM arrangements and have recognized the independence of breakaway entities, they can deny that the disputed territory belongs to the area or application. In this case, they may argue that arms control and CSBM obligations are not applicable to stationed forces in "states" that are not party to such instruments and, thus, are outside the area of application.

Even if such states provide general information on stationed forces,[12] they will, in all likelihood, claim that verification on the spot requires the consent of the "*host nation*", i.e., in the Russian view, the "republics" of Abkhazia and South Ossetia or, in the Turkish view, the "Turkish Republic of Northern Cyprus". However, such roles and responsibilities of *de facto* regimes cannot be accepted by the central governments or by inspecting states that have not recognized such entities.

Positions held by stationing states that have suspended arms control/CSBM arrangements and have recognized the independence of breakaway regions

If stationing states are not States Parties to conventional arms control agreements or have suspended their implementation and have recognized the independence of breakaway entities, attempts to increase the transparency of stationed forces become even more difficult. This is the case in the Georgian context: Russia has recognized the independence of Abkhazia and South Ossetia and has suspended the CFE Treaty. Consequently, the CFE Treaty cannot be used to increase the transparency of stationed forces. It is only within the framework of the 1994 OSCE *Global Exchange of Military Information* (GEMI) instrument that Russia provides limited information on stationed forces in Abkhazia, South Ossetia and Transdniestria since GEMI requires national information regardless of the status of territories in which the forces are stationed. Turkey also provides limited GEMI information on army units stationed in Northern Cyprus. However, GEMI does not provide for any verification measures.

12 Until 2010, even after the suspension of the CFE Treaty, the Russian Federation submitted an annual CFE-related matrix containing overall holdings, including information on combat forces deployed in the Kaliningrad and Pskov oblasts, the Leningrad Military District and Armenia, without, however, mentioning South Ossetia and Abkhazia.

4.3. Conceptual deficiencies of ceasefire-related CSBMs dealing with mutual and reciprocal obligations of conflicting parties

In the case of disputed areas in the Georgian context, ceasefire agreements and specific, but limited, conflict-related mechanisms are in place (see Paragraph 5 below). However, the open status question implies restrictions on the mutual obligations of conflicting parties with respect to limitations, information exchange and verification.

Status questions on the area of application and reciprocity of obligations

Central governments of recognized states do not always accept equal obligations or reciprocity of arms control measures and CSBMs in relation to *de facto* regimes and the state territory as a whole. This means that equal limitations of and reciprocal information exchanges on national forces, on the one hand, and militias labelled "illegal", on the other, may be just as unacceptable as reciprocal arrangements for a mutual verification quota and procedures, such as on-site or area observations and inspections. This is why the proposals made in 2004/2005 by experts of the OSCE Mission in Moldova, which put the central government of Moldova and the *de facto* authorities of Transdniestria on an equal footing, implying equal disarmament obligations, complete information exchanges and mutual inspections with equal rights and obligations, failed (cf. Aussedat 2010: 211-221). The need to avoid the impression of equal rights and obligations also extends to the form of the diplomatic exchange.[13] Consequently, mutual agreements on CSBMs pertaining to the *whole national territory*, as internationally recognized before the outbreak of hostilities and involving direct participation of representatives of the central government and breakaway regions, seem unrealistic. One way to sidestep this problem, however, would be to define the area in which the restrictions on the presence of certain or all armed forces could apply. This could be acceptable for the central governments in cases where regular armed forces of third states are present in the breakaway territories. Thus reciprocity might not be viewed only in terms of recognized state vs. unrecognized entity, but also in a wider context, including third states, which are perceived by central governments as parties to the conflict.

13 A good example of a possible solution is the arrangement for the UN Secretary General Special Representative to the Geneva International Discussions and the UN roving team. In the case of the UN representative to the Geneva Talks, there is a letter by the UN Secretary General to the government of Georgia informing the government about the modalities of the mission in question. In response to the letter, the government of Georgia wrote a reply in which it explicitly mentioned that it could consent to the deployment of such a mission. This correspondence was never made public nor is it an official part of the mandate of the Mission, but it was essential to paving the way for the UN Mission. The Abkhaz and Tskhinvali authorities, for their parts, could, presumably, also send letters to the head of the organization, which is deploying the monitoring operation, requesting that such operation be deployed. For the Georgian side, the red line would be whether such a request receives a reply. If it does not receive a reply, it is highly likely that the issue of the host nation consent will be solved.

Reciprocal CSBMs in a limited area of application or "security zone"

Against this background, ceasefire agreements usually define a *limited area* in which the conflict materialized and for which certain restrictions, CSBMs and control mechanisms, with the good offices and under the observation of third parties or regional/international organizations, apply ("*security zone*"). Usually, they contain equal and reciprocal commitments on both sides of the Line of Contact (LC), such as the prohibition of heavy weapons in "restricted weapons zones" or within minimum distances from the LC, combined with the prohibition of the stationing of professional army units in such areas, except for agreed peacekeeping units and law and order enforcement units. However, the latter offers plenty of opportunities to circumvent the rules for demilitarizing such zones by restructuring police units into military units and providing them with military equipment. Furthermore, no restrictions exist for preventing the destabilizing accumulation of weapons *outside* such restricted zones, which could be used for offensive operations at a later stage.

Stationed forces in disputed areas

Ceasefire agreements generally also regulate the stationing of foreign forces in restricted areas and beyond. In the case of Georgia, point 5 of the ceasefire agreement of 12 August 2008 states that "Russian military forces will have to withdraw to the lines held prior to the outbreak of hostilities. Pending an international mechanism, Russian peace-keeping forces will implement additional security measures." Section 1, point 2 of the Agreement of 8 September 2008 stipulates: "Russia will withdraw in full its peacekeepers from the zones adjoining South Ossetia and Abkhazia to the positions where they were stationed before the start of hostilities. This withdrawal will be carried out within ten days following the deployment of international mechanisms in these zones, including at least 200 observers from the European Union, no later than 1 October 2008, taking into account legally binding documents guaranteeing non-aggression against Abkhazia and South Ossetia."[14] Such stipulations might implicitly be interpreted, not only in a geographical sense, but also with respect to the numbers of Russian peacekeepers stationed in the disputed areas before the outbreak of hostilities on 7 August 2008, in accordance with earlier ceasefire agreements of Sochi and Moscow (1992/1994). In accordance with these agreements, one Russian and one "North Ossetian" peace-keeping battalion of 500 soldiers (plus 300 reserves) each was to be deployed in the Tskhinvali region, whereas in Abkhazia a force of up to 2,500 Commonwealth of Independent States peacekeepers was permitted, which could be augmented to up to 3,000 with the consent of the Georgian side. However, because there is no longer "host nation consent" on such provisions, the interpretation of point 5 of the ceasefire agreement of 12 August 2008 is contentious: while Georgia considers that all Russian forces must withdraw from Georgian territory, including from Abkhazia and South Ossetia, Russia argues that, after the recognition of the independence of Abkhazia and South Ossetia on 26 August 2008, its military presence in these two breakaway regions is

14 Agreement of 8 September 2008, quoted in Levon Isakhanyan, 'EUMM – Georgia: The European Union monitoring mission', in *La revue géopolitique* online (May 15, 2011), *http://www.diploweb.com/EUMM-Georgia-the-European-Union.html*.

legitimized by their granting of "host nation consent" without contradicting the cease-fire agreement. Thus, today, there are neither unequivocally agreed limitations of stationed forces nor an information regime nor a verification mechanism for the region under dispute.

Ceasefire related international monitoring mechanisms

Usually, ceasefire agreements entrust international monitoring and peacekeeping personnel with the observation of compliance with such stipulations, reporting breaches and bringing them to the attention of relevant control bodies. In the case of Georgia, the implementation measures of 8 September 2008 for international observation mechanisms envisaged the UN and OSCE monitoring missions continuing to carry out their mandates in their zones of responsibility, i.e. on both sides of the Lines of Contact within the respective security and restricted weapon zones, with, however, the caveat that this would be "*without detriment to possible future adjustments decided by the UN Security Council*" and "*the Permanent Council of the OSCE*".[15] Both mandates ceased in June 2009 due to disputes over the future status of the two breakaway regions after the recognition of their independence by Russia. Consequently, today, there is no mandate which allows observations in Abkhazia and South Ossetia. The EU Monitoring Mission in Georgia (EUMM, see Paragraph 5.1 below) is only allowed to monitor in the "zones adjoining Abkhazia and South Ossetia"[16], even though its mandate, issued by the Council of the European Union, provides for the monitoring of the whole territory of Georgia.[17]

Complementary security and stability arrangements

Although there is a mandate for international talks on security and stability arrangements in Abkhazia and South Ossetia[18], information exchanges and mutual observations between Tbilisi, Sukhumi and Tskhinvali – be they in the zones of conflict or involve the respective territories as a whole – are not regulated. However, an *Incident Prevention and Response Mechanism* (IPRM), co-facilitated by the EUMM and the OSCE, was introduced in the framework of the Geneva talks on 19 February 2009. This mechanism allows for direct links between representatives of Tbilisi, Sukhumi, Tskhinvali and the Russian military and even permits the EUMM, the UN and the OSCE, together with other participants, to conduct joint visits and even investigations to study the security situation in South Ossetia and Abkhazia. These mechanisms do not, however, provide for permanent inspection or verification modalities. The establishment of "security zones" along the Administrative Boundary Lines (ABLs) and of a "Provisional Arrangement on the Exchange of

15 Agreement of 8 September 2008, loc. cit., Section Two, Points One and Two.

16 Agreement of 8 September 2008, loc. cit., Section Two, Point Three.

17 Council Decision 2010/452/CFSP, Article 2. "EUMM Georgia shall provide civilian monitoring of Parties' actions, including full compliance with the six-point Agreement and subsequent implementing measures throughout Georgia"…

18 Agreement of 12 August, loc. cit., Point 6, and Agreement of 8 September 2008, loc. cit., Section Three. It should be noted that the French and the Russian texts of the latter agreement are not identical.

Information" were agreed upon only between the EUMM and Georgian governmental agencies. There is no similar arrangement on the side of the ABL not under the control of Georgian authorities. Furthermore, neither production nor holdings nor imports nor transfers of weapons to parties to the conflict are subject to these ceasefire agreements. In the past, this *lacuna* allowed for the destabilizing accumulation of arms and forces outside the restricted zones of conflict, which were later used for offensive operations in violation of the special status of such zones.

4.4. Conclusions

(1) Multinational arms control or CSBM agreements, such as the CFE Treaty and the Vienna Document, regulate rights and obligations between generally recognized states. Non-recognized *de facto* regimes have no status and are not entitled to participate in such agreements. With the status question unresolved, the CFE Treaty and the Vienna Document cannot be implemented to regulate armed units of *de facto* regimes without compromising positions of principle held by the parties involved. Moreover, the scope of the Vienna Document and, to a lesser extent, of the CFE Treaty, as well as the quotas available under these agreements, are too limited to cover paramilitary and irregular forces.

(2) There is a difference between *militias* of *de facto* regimes and *stationed* forces of States Parties to arms control and CSBM agreements. Stationing states are obliged to deliver information on stationed forces in disputed areas as long as they are bound by such arrangements and recognize the location of stationed forces as belonging to the area of application. Russia "suspended" the CFE Treaty in 2007, but did not categorically refuse to provide information on stationed forces in the area of application until 2010. It continues to provide limited information on stationed forces in disputed areas in the context of the "status-neutral" GEMI.

(3) However, while *information* on stationed forces in disputed territories does not require any contribution by *de facto* regimes, *verification* measures of such forces are hampered by the question of the involvement and responsibilities of local authorities. Such status questions have led to the failure of verification missions. Since Russia has recognized the independence of Abkhazia and South Ossetia, it does not accept verification measures for stationed forces in these areas unless they are carried out on the basis of prior "host nation consent" of those entities. However, this condition is unacceptable to the government of Georgia and to the vast majority of countries that recognize Georgia within the borders of July 2008.

(4) In the Georgian context, ceasefire-related arms control measures and CSBMs are either non-existent or too vague to allow for a meaningful observation of the security situation on both sides of the respective ABLs, especially with respect to military holdings and activities in the earlier security zones (valid until June 2009) or beyond. This implies an asymmetry of "security zones" and a lack of international monitoring in the regions of conflict beyond the areas under the control of the government of Georgia. Furthermore, there are neither transparency regimes nor limitations in place for heavy weapons or military units of the authorities in Sukhumi or Tskhinvali.

(5) In conclusion, special arrangements have to be formulated allowing for information on and observation of the military situation in disputed territories

without providing any indications that could be misinterpreted as pre-empting the outcome of negotiations on the eventual status of such territories.

5. Existing Conflict-Related Mechanisms in the Georgian Context

Paragraph 5.1 deals with the post-conflict setup in the Georgian context, including the international presence in Georgia and the role of the EUMM. The ensuing Paragraph 5.2 analyzes the related limitations of the post-conflict setup.

5.1. Post-conflict setup

With the CFE Treaty, the Vienna Document and the Treaty on Open Skies, an international framework for arms control and CSBMs, which includes both Russia and Georgia, is in place, but can only be applied to the territory under the control of the Georgian government. Regular inspections under the Vienna Document take place and Open Skies flights are being conducted in Georgia, but not in and over the conflict regions.

Furthermore, certain CSBM elements and security-related limitations are part of the international "post-conflict setup", as stipulated in the six-point ceasefire agreement of 12 August 2008 and specified in the implementation plan of 8 September 2008. These documents established the Geneva International Discussions, which started in October 2008, and focus on (a) "the modalities of security and stability in Abkhazia and South Ossetia", (b) "refugees and IDPs on the basis of internationally recognized principles and of the practice of post-conflict settlement" and (c) any other question agreed upon by the parties. The Geneva International Discussions are co-chaired by the EU, the UN and the OSCE. During each round, participants inform one another about the security situation on the ground – a practice which could be defined as a "transparency measure". But this practice is largely voluntary and there are no mechanisms to verify the "presentations" by the sides.

In February 2009, the participants in the Geneva International Discussions agreed on establishing "Incident Prevention and Response Mechanisms", which consist of monthly meetings of security actors at the ABLs in Ergneti (South Ossetian ABL) and Gali (Abkhaz ABL). The EUMM and the OSCE co-facilitate the IPRM in Ergneti. The EUMM and the UN co-facilitate the IPRM in Gali, which, however, has been suspended since April 2012. The role of the international actors in the Georgian conflict context is outlined in greater detail below.

International presence in Georgia

- UN and OSCE missions were discontinued in 2009. The UN Mission consisted of over 140 monitors, while the OSCE Mission consisted of 5 monitors located in Tskhinvali. 20 more monitors were added in August 2008. Both missions were discontinued because of the Russian veto.
- The EUMM was established after the war of 2008, but has no access to the conflict regions.

— The UN Representative to the Geneva International Discussions (UNRGID) and the EU Special Representative on the South Caucasus and Crisis in Georgia (EUSR) team have (limited) access to Abkhazia and South Ossetia.
— Various UN agencies, international humanitarian organizations and NGOs have semi-regular access and some even have a presence in Abkhazia.
— The ICRC has access to Abkhazia and South Ossetia, but does not handle security issues.
— Various international organizations have visited Abkhazia and South Ossetia since 2008 on a semi-regular basis. Among them are the High Commissioner on National Minorities (HCNM) and representatives of the UN and CoE human rights bodies.

Role of the EUMM

— The EUMM is currently the only international mission with a security-related monitoring mandate in Georgia. It consists of 200 unarmed civilian monitors from EU countries.
— Tasks:
  - "to ensure that there is no return to hostilities;
  - to facilitate the resumption of a safe and normal life for the local communities living on both sides of the ABLs with Abkhazia and South Ossetia;
  - to build confidence among the conflict parties;
  - to inform EU policy in Georgia and the wider region"[19].
— Basis:
  - "Provisional arrangement on the exchange of information" between EUMM and the Georgian MOD.[20]
  - "Provisional dispute settlement mechanism" between EUMM and GEO MIA.[21]
  - Based on the agreement with the Georgian MOD, "Security Zones" were established along the ABL on the territory controlled by Tbilisi.
  - A 24/7 hotline connects EUMM with the Georgian MIA, Russian border guards, the Abkhaz *de facto* security service and the South Ossetian *de facto* border guards.

5.2. Limitations of the post-conflict setup

Regular tensions at the ABLs show that the security situation remains fragile despite established international mechanisms, which do contain certain – albeit incomplete – transparency elements. Russia has deployed several thousand troops (military personnel and border guards) in each of the conflict regions, but does not allow them to be inspected by Georgia or in an international context. Nor is any agreement on numeric limitations in place.

19 European Union Monitoring Mission in Georgia, 'Our Mandate', *https://eumm.eu/en/about_eumm/mandate*.

20 *http://www.rrc.ge/law/Shetanx_2009_26_01_E.htm?lawid=2035&lng_3=en*.

21 *http://www.rrc.ge/law/MorigebebOrive_10_10_2008_E.htm*.

In the IPRM session, security actors announce planned military activities and explain activities observed by others. But this exchange of information is limited to activities taking place in the "vicinity of the ABL".

No international actor with a security mandate has access to Abkhazia or South Ossetia. International monitoring is only possible on the territory controlled by Tbilisi. In that sense, the "security zones" along both ABLs, as they are defined in the MoU between the Georgian Ministry of Defence and the EUMM of 26 January 2009, remain asymmetric. The EUMM intensively monitors the area defined in this agreement in which "the MOD shall refrain from any significant movement or re-deployment of its units of battalion strength or greater and all artillery and mortars with a caliber of 120mm or more, and more than 5 armored vehicles with a caliber more than 60mm but less than 120mm".

Due to the fact that military installations on both sides of the ABLs (including a NATO training centre in Tbilisi administered territory (TAT) opened in August 2015) are being perceived as threats by some of the stakeholders, it might be worthwhile to further explore the possibility of mutual visits or exchange of security-related information. Such visits are provided for in the mandate of the IPRMs agreed in Geneva in February 2009.

6. Construction of an Ideal-Type CSBM Arrangement and its Application to the Georgian Context

Paragraph 6.1 outlines the general purpose and objectives of an ideal-type CSBM arrangement and its application to the Georgian context. Paragraph 6.2 evaluates past practices and precedents. Paragraph 6.3 adds some conceptual considerations on the principles and elements of a status-neutral CSBM arrangement. Paragraph 6.4 taps into the issues of possible consultation processes, documents and the review of compliance. Paragraph 6.5 deals with definitions. Paragraph 6.6 outlines possible information and notification measures. Paragraph 6.7 looks at observation mechanisms. Paragraph 6.8 discusses limitations. Finally, Paragraph 6.9 assesses the likely feasibility and flexibility of the arrangement discussed here.

6.1. Purpose and objectives

In disputed territories, the application of multilateral (inter-state) conventional arms control and CSBM agreements has been impeded by irreconcilable contradictions between the status claims of the parties involved. Furthermore, existing ceasefire regulations and related agreements in the Georgian context imply an asymmetry in "security zones" and obligations of the parties involved and leave a serious gap in international monitoring efforts in the regions of conflict beyond the areas under the control of the government of Georgia. Furthermore, there are neither transparency regimes nor limitations in place with respect to the heavy weapons and military units of the authorities in Sukhumi or Tskhinvali.

An alternative CSBM arrangement should offer a way to enhance transparency and verification while avoiding becoming bogged down in fruitless status discussions.

For such an arrangement to be acceptable, it must adhere to a status-neutral approach. This means that it should promote information, observation and limitations (as far as possible) of military holdings and activities in disputed territories without giving any indications that could be misinterpreted as pre-empting the outcome of negotiations on their eventual status. The purpose of such arrangements is to secure a stable and peaceful environment in which status talks can be held with sufficient confidence that short-term military escalation is not an option.

6.2. Past practice and precedents

In the past, attempts were made by third parties, including States Parties to the CFE Treaty, to facilitate the observation of "*stationed forces*" in disputed areas, without compromising positions of principle held by the parties involved, but requiring compromises on the practicalities of observation procedures. To that end, parties were to agree on procedures which accepted the role of the "*host state*" as to the *point of entry*, *pre-inspection briefings*, *after-inspection briefings*, *inspection reports* and *point of exit*, but avoided the physical presence of central governments' *escort teams* in objects of verification of stationed forces in disputed areas.

At the same time, the presence of representatives of non-recognized *de facto* entities in such objects had to be ruled out as well. Consequently, only representatives of the *inspecting states* and escort teams of the *stationing state* would be present in the objects of verification. To rule out any organizational role of representatives of non-state entities, transportation was organized in such a way that the inspection teams could avoid checkpoints and controls on the territory under dispute. To that end, they were flown in by helicopters of the stationing state from its national territory (e.g. Sochi) directly to the object of verification in the disputed area. Such attempts were successful in the 1990s with respect to the Russian Military Base in Gudauta, but failed in 2005.[22]

With respect to Transdniestria, more compromises were accepted in the 1990s, when CFE and VD inspections and observations were carried out in the disputed territory without the presence of escort teams of the government of Moldova, while the presence of representatives of local authorities was not categorically ruled out. These policies changed after 2000.[23] Against this background, entrusting the OSCE with observation tasks outside existing multilateral arms control and CSBM agreements seemed more promising: the OSCE was accepted as an impartial third party and any references to state-to-state agreements, such as the CFE Treaty or the Vienna Document were avoided. In this context, the withdrawal of Russian TLE from Transdniestria (throughout the years 2000/2001) and of ammunition up to early 2004 was observed by the OSCE Mission on the spot, and its arrival in Russia was monitored by national observation teams of CFE States Parties, which were

22 Cf. Paragraph 4.2 above.

23 Ibid.

coordinated within NATO.[24] The two missions were generally assessed to have been successful, although the withdrawal of ammunition from Kolbasna was interrupted by Russia in 2004 when a negotiated solution for a future autonomous status of Transdniestria (the Cossack-Plan) failed.

On 15 June 2002, at the invitation of Russian military authorities, a team of four OSCE military experts visited the Gudauta base in Abkhazia at very short notice. The visit was regarded as a preparation for possible later inspection.[25] Although the mission was carried out unhindered, the results of that observation mission were subsequently contested by Georgia, which claimed that the mission lacked expertise and the conditions had been inadequate. It should also be noted that these visits were viewed by the Georgian side as steps towards the full withdrawal of the Russian military bases from the whole territory of Georgia. Moscow had agreed to meet this obligation in Istanbul in 1999 and partially implemented it by withdrawing its military bases from Georgia by 2006, except for the military base in Gudauta.

These examples show that observation missions have a better chance of being accepted by all the parties involved if they are carried out by an impartial third party and avoid any references to state-to-state agreements or other indications pre-empting the outcome of status talks. They could, thus, serve as a precedent for the construction of future status-neutral arms control and CSBM arrangements. It should be noted, however, that in all cases only stationed forces were subject to verification. As for indigenous armed units, such as irregular forces, militias and armed police forces, observations were possible only under demilitarization rules of ceasefire agreements which were confined to the agreed security zones.

6.3. Conceptual considerations: principles and elements of a status-neutral CSBM arrangement

(1) A status-neutral arms control and CSBM concept promotes information, verification and limitations of military capabilities and activities in the context of unresolved territorial conflicts, in order to increase stability, but without pre-empting the outcome of status talks or referring to the status claims of the parties involved.

(2) To that end, it minimizes all references to statehood, sovereignty and related concepts, institutions and titles of persons. It also avoids the procedures and terminology of multilateral arms control and CSBM agreements full of references likely to be controversial, such as "*inspecting state*", "*host state*", "*inspected state*" and related "*escort team*", national "*point of entry/exit*", national visa requirements, etc.

(3) The concept relates to existing ceasefire accords rather than to internationally agreed arms control and CSBM arrangements, although relevant "status-neutral" elements and experiences may be included. Instead of reopening negotiations on agreements on matters of principle enshrined in ceasefire accords, the concept aims

24 The Russian withdrawal obligations are contained in the CFE Final Act of the Conference of the States Parties to the Treaty of Conventional Armed Forces in Europe of 19 November 1999 in conjunction with paragraph 19 of the Istanbul Summit Declaration. In: OSCE. *Istanbul Document 1999*, Istanbul 1999, p. 235-251, pp. 45-53, *http://www.osce.org/mc/39569?download=true*.

25 Cf. OSCE. Annual Report on OSCE Activities 2002, Vienna, 2003, p. 40.

to stabilize the situation within the agreed framework of security talks in order to avoid misperceptions and enhance trust and confidence.

(4) Although a status-neutral approach must avoid the notion of "*equality*" of conflicting parties, realistically it has to accept a minimum of *reciprocity* of the agreed measures. This can best be achieved by confirming security zones in line with ceasefire agreements or agreeing on larger areas of application in which CSBMs are to be carried out. Reciprocity is more likely to be accepted if CSBMs are confined to such areas rather than covering the national territory or the disputed territories as a whole.

(5) A status-neutral CSBM arrangement in disputed territories should be militarily meaningful, i.e. provide the full demilitarization of the area of application or effectively prevent any destabilizing accumulation of forces or ensure transparency and provide for early warning of all participants in case of a breach. To that end, it should

— cover regular, paramilitary and irregular forces as well as stationed forces (taking into account their linkages to international agreements),
— limit military potentials with a focus on offensive combined (ground) battle armaments,
— restrict out-of-garrison deployments that could be used for surprise attacks or lead to misperceptions of mutual intentions,
— in this context, define an appropriate Area of Application (AoA),
— provide for special restrictions in sensitive areas adjoining ABLs (e.g., 30 km broad "security zones" on both sides) about the permanent deployment of heavy weapons/active units and unusual military activities, such as large-scale mobilization and field exercises,
— keep all participants continuously informed about the military situation in such areas through suitable transparency mechanisms, based on regular information, notification of significant changes and appropriate observation mechanisms, and
— allow for quick consultations in case of doubt through the establishment of permanent hotlines, Points of Contacts and a quick-reaction incident prevention mechanism.

(6) The construction of a status-neutral approach is facilitated by a third party, preferably the OSCE or a state or group of states, which do not act in their capacity as parties to international agreements. Representatives of conflicting parties indicate their consent in principle and restrictions applicable to the details of CSBM arrangements. Arrangements will be set out in political protocols, which are signed by the third party and the conflicting parties.

(7) The management of information gathering and distribution to the parties, as well as the observation of holdings in objects of verification and of military activities outside garrisons, will be entrusted to a third party, preferably the OSCE or a state or group of states acting in a "status-neutral" way. Alternatively, a private organization could be tasked, if it has a reliable record of acting professionally and impartially and enjoys the trust of the conflicting parties.

(8) The functioning of such CSBM arrangements and the compliance by the parties involved will be evaluated continuously by the third party in an impartial way and be the subject of consultation with participants on a regular basis or at their special request.

6.4. Consultation processes, documents and review of compliance

(1) The third party
- conducts exploratory (proximity) talks in order to ascertain mutual risk perceptions and security objectives,
- assesses complementary or compatible elements of such perceptions and objectives in order to define common grounds of interest in promoting stability and confidence by enhancing transparency and mutual contacts,
- suggests concrete measures related to information, observation and limitations of military capabilities and activities of regular, paramilitary, irregular and stationed forces as well as compliance and consultation mechanisms.

(2) Representatives of the parties indicate their consent in principle and restrictions applicable to
- the Areas of Application (AoA), possibly complemented by special restrictions in defined sensitive border areas ("security zones"),
- the kind of information on military structures and holdings of defined weapon systems they are willing to provide,
- limitations on the permanent stationing of units and weapons in the AoA/the "security zones",
- prior information and restrictions on unusual military activities in the AoA/the "security zones",
- conditions, quotas and procedures for observation visits,
- confidentiality requirements,
- consultation mechanisms.

(3) All agreements will be set forth in identical protocols, which are signed by the third party and – separately, if necessary – by the conflicting parties. They are of a political rather than legally binding character. Protocols can contain
- delineation of the area of application and, if applicable, of zones of special restrictions (including maps), referring to geographical coordinates rather than contentious names for certain regions,
- existing types of weapons,
- information/notification requirements and mechanisms,
- observation procedures,
- limitations of holdings,
- restrictions of unusual military activities,
- incident prevention mechanisms and
- regular consultations and review processes.

(4) The third party ensures the proper functioning of the CSBM arrangements and compliance by the parties involved through continuous monitoring and evaluation, regular impartial compliance reports and suggestions for how to improve the mechanisms. Consultations on assessments and proposals will be held with the participants on a regular basis or at their special request.

6.5. Definitions

Definitions will have to specify:
- the areas of application and, possibly, security zones with special restrictions and information requirements, referring to geographical coordinates rather than using contentious names for certain regions,
- military structures subject to information exchanges,
- categories of weapon systems subject to limitations and information requirements, complemented by a protocol on existing types of weapons,
- sites and objects of observation (garrisons, storage sites, maintenance facilities),
- specified areas for observation of military activities, preferably comprising the whole area of application, and, possibly with an enhanced regime in defined security zones.

6.6. Information and notification

Information and notification requirements should include:

(1) Semi-annual information on
- military structures (e.g. command levels and units down to regiments, battalions), locations of units and sites/objects of observation in the AoA/in the "security zone",
- overall numbers, types and locations of weapon systems subject to limitations, information requirements and observation rights in the AoA,
- weapons holdings in objects of observation (garrisons, storage sites, maintenance facilities);

(2) Short-term notification of significant changes to (1);

(3) Prior information on military activities outside garrisons above certain threshold values;

(4) Initial information on defence/procurement/withdrawal planning, with annual notification of changes;

(5) Rules and procedures on distribution and confidentiality of information, notification, observation reports and consultation records.

6.7. Observation

Rules on observations by the third party should include:

(1) Quota, general procedures and conditions for observation visits;

(2) Procedures for observations of holdings in objects of observation (garrisons, storage sites, maintenance facilities);

(3) Procedures for observations of notified military activities outside garrisons above certain threshold values;

(4) Procedures for challenge observations of specified areas at the request of a participating party or at the third party's own initiative;

(5) Content, distribution and confidentiality of observation reports.

6.8. Limitations

Limitations could pertain to:

(1) Permanent holdings of defined weapon systems and military personnel in the area of application;

(2) Sub-limits on the permanent stationing of such weapons and active military personnel in "security zones" (preferably a complete prohibition of heavy weapon systems);

(3) Upper limits on out-of-garrison deployments of such weapons and unusual military activities in the area of application;

(4) Special restrictions on out-of-garrison deployments of such weapons and unusual military activities in the "security zones", preferably a complete ban.

6.9. Feasibility and flexibility

Although further details of such an arrangement could be envisaged and proposed, this seems overly ambitious at this stage. Such an arrangement will rather be the result of an open consultation process that will depend on the prevailing political context. Furthermore, different military and geographical conditions in the Northern Area of Application (Abkhazia context) and the Eastern Area of Application (South Ossetia context) have to be taken into account.

Against this background, the purpose of this conceptual outline is confined to demonstrating that a status-neutral approach can enhance stability without compromising the positions of principle held by the parties involved and without pre-empting the outcome of status talks. Therefore, it discusses basic elements only in general and in a sufficiently flexible manner to respond to the positions of interlocutors on the details of an agreement.

With this caveat, an illustrative example of key provisions of a status-neutral CSBM arrangement in the Georgian context is annexed to this document (see below).

7. Potential Benefits of a Status-Neutral Approach for the Sides Concerned

Paragraph 7.1 provides some broad remarks about the general conditions for a status-neutral approach with respect to interests and potential incentives. Paragraph 7.2 lists possible direct incentives related to status-neutral arms control for the sides concerned. Paragraph 7.3 concentrates on indirect incentives for status-neutral arms control and CSBMs.

7.1. General conditions for a status-neutral approach

Any status-neutral arms control approach in the context of unresolved conflicts should start with the understanding that it is not an approach for resolving the

conflicts. Rather, status-neutral arms control is a potential tool for addressing specific problems related to these conflicts, namely the transparency and predictability of the armed forces of all actors involved.

Thus, status-neutral arms control does not occur in a political vacuum. The fact that it avoids all indicators of statehood, sovereignty and related concepts does not mean that it is apolitical. Rather, the instrument itself is always tied to the political interests that frame the overall situation. The constellation of the broader political, military, societal, economic, ethnic or religious interests behind the conflicts determines whether or not the instrument of status-neutral arms control can be employed. It also needs to be decided whether direct or indirect incentives are to be employed to encourage the parties to use a status-neutral arms control approach.

7.2. Direct incentives for status-neutral arms control

The essential precondition for the successful use of a status-neutral arms control and confidence-building approach is that the interest in establishing a regime is higher than the interest in emphasizing one's own status position. There are three scenarios where this is possible:

a. In the early phase of a highly promising negotiation process, the establishment of a status-neutral regime can represent a confidence-building measure to give the process additional impetus. At the same time, such a regime can limit the room for manoeuvre for spoiler forces on both sides.

b. In the late phase of a promising, but difficult, negotiation process, the establishment of a status-neutral arms control regime can produce the necessary mutual confidence to complete the process.

c. Finally, relevant external incentives, such as possible inclusion in an international free trade agreement or other significant economic incentives, can induce the parties to scale down the conflict and agree to a status-neutral arms control regime.

7.3. Indirect incentives for status-neutral arms control and CSBMs

The establishment of a status-neutral arms control and CSBM regime is most likely in conjunction with the enhanced presence of one or several international organization(s). If the parties have an interest in their presence and their use for other purposes, this can provide them with an indirect incentive to pursue status-neutral arms control.

a. An indirect benefit of the presence of international organizations is that it can help reduce the international isolation of certain conflict-affected areas. The Abkhaz authorities have, by and large, been more welcoming of an international presence than the South Ossetian authorities. This is mainly linked to the perception that, if there are many international organizations working in Abkhazia, the Abkhaz authorities will have more opportunities to interact with them. One of the goals of the Sokhumi authorities has been to ensure their participation in the Abkhazia-related discussions and events in the United Nations and the OSCE. It would be hard to expect the same of the Tskhinvali

authorities, which are generally against any international presence unless they receive international recognition.

b. Another indirect incentive is economic interests. All sides involved would most likely benefit directly from a restoration of mutual trade, assuming that all sides show a mutual interest in enhanced market access through increased business activities, transport communications and the free movement of persons. In the end, economic co-operation may even result in some joint business ventures. A very good example of this is a former economic rehabilitation programme financed by the EU and administered by the OSCE in South Ossetia. As a result of that programme, hundreds of families were engaged in mutually beneficial cross-ABL trade and economic activities. The programme was suspended in 2008 after the war.

c. Likewise, cultural or educational interests can also serve as an indirect incentive. Cultural and academic exchanges, joint vocational training programmes and educational co-operation in general stand to benefit from all sides having equal access to international education and cultural programmes. The Abkhaz authorities have, on numerous occasions, expressed an interest in sending Abkhaz students abroad. Abkhaz students are currently unable to study in Western universities on a systematic basis, although they are able to qualify for the Chevening Scholarships (offered by the United Kingdom) and several other ad-hoc opportunities offered by American and Swiss authorities and institutions.

8. Closing Remarks

This paper is complex in some respects because of the detailed technical concepts it contains. But its political background is quite simple. Status-neutral arms control approaches will only be successful when *all sides* have a greater interest in substantive solutions than in maintaining their own status positions. This is the *sine qua non* condition for any kind of status-neutral arms control.

The authors of this paper are well aware that the current political environment is not favourable for arms control, including status-neutral arms control. The purpose of this paper is to make available an instrument that can be used in a political situation that is ripe for its adoption.

Annex I

Illustrative Example of a Status-Neutral CSBM Arrangement in the Georgian Context

- Key Provisions -

1. "Areas of Application" (AoA) and "Security Zones" (SZ)

a. The "Areas of Application" (AoA) cover geographical zones adjoining the ABLs and extending 60 km on both sides of the ABLs.

b. The "Security Zones" (SZ) cover geographical zones adjoining the ABL and extending 30 km on both sides of the ABLs.

c. All geographical descriptions use geographical co-ordinates and avoid potentially contentious names for certain regions.

2. Definition of Armaments and Equipment Subject to a CSBM Arrangement

a. Categories of armaments and equipment subject to limitations (ASL)

(1) Battle tanks (>16.5 metric tons weight, 360° traversable canon of min. 75 mm cal.)

(2) Armoured Combat Vehicles (ACV) with sub-categories
- Armoured Personnel Carrier (APC) (transport of infantry group, often with organic or integrated direct firing weapon of <20 mm cal.)
- Armoured Infantry Fighting Vehicle (AIFV) (transport of infantry group with organic or integrated direct firing weapon of >20 mm cal.)
- Combat vehicle with heavy armament (HACV) (>6 metric tons weight, organic direct firing canon of min. 75 mm cal.)

(3) Artillery systems (indirect firing weapon systems of min. 75 mm cal., including artillery pieces, mortars and multiple-rocket launchers (MRL)

Note: Limitations on combat aircraft and combat helicopters (attack and combat support helicopters) have no effect in zones just 60 km in diameter. One could, however, agree on information about these categories and unarmed transport helicopters in an additional protocol covering a wider area of application.

b. Categories of armaments and equipment subject to information and notification (AESI)

(1) All categories of weapon systems subject to limitations (ASL)
(2) Armoured Bridge-Laying Vehicles (ABLV)
(3) ACV "look-alikes"
(4) Anti-aircraft guns of 20mm or above cal.
(5) Anti-aircraft missile systems
(6) Anti-tank canons of 75 mm or above cal.
(7) Anti-tank missile systems
(8) Ballistic missile systems

3. Limitations and Restrictions

a. Holdings of ASL in the AoA

(1) Battle tanks ……) numbers to be negotiated
(2) ACV ……) in accordance with the situation
(3) Artillery ……) in the AoA.

b. Holdings of ASL in the SZ to be generally prohibited.

c. Unusual military activities in the AoA
Mobilization, snap and field exercises or any other out-of-garrison deployments limited to

(1) 40 BT, 60 ACV, 40 artillery systems
(2) 1,500 personnel
(3) 5 days duration
(4) no more than once a year
(5) subject to prior notification.

d. No unusual military activities in the SZ

e. Stationing of substantial combat forces

(1) No permanent stationing of additional substantial combat or combat support forces or ASL in the AoA (= freeze of current status)
(2) No permanent or temporary stationing of any active combat or combat support forces in the SZ.

f. Measures to prevent circumvention with respect to paramilitary units

(1) applicable to border guards, internal security forces, police units, militias or any other armed formations
(2) their ASL holdings in the AoA are subject to limitations
(3) their ASL/AESI holdings in the AoA are subject to information and observation
(4) their presence in the SZ is generally permitted, but
(5) their personnel strength in the SZ is restricted to …. (e.g. 1000)
(6) armaments of such units in the SZ are restricted to SALW
(7) ASL holdings of such formations in the SZ are prohibited.

4. Information and Notification

a. Semi-annual information (due on 1 January and 1 July) on

(1) military structures and their locations (command levels and subordinate units down to regiments, battalions) in the AoA
(2) paramilitary structures as described under no. 3. f. (1) and their locations (command levels and subordinate units down to companies) in the AoA and platoons in the SZ
(3) locations of sites/objects of observation in the AoA and in the SZ (see no. 5. a.)
(4) overall numbers and types of armaments and equipment subject to limitations, information requirements and observation rights in the AoA (ASL/AESI see no. 2. a., b.)
(5) ASL/AESI holdings in every object of observation (see no. 5. a.).

b. Prior notifications of significant changes to information contained in no. 4.a.
   (1) 10 % changes of ASL holdings in objects of observation
   (2) 7 days in advance.

c. Prior notification of military activities outside garrisons
   (1) exceeding 10 BT, 15 ACV, 10 artillery systems, 600 personnel
   (2) 30 days in advance.

d. Defence planning pertaining to the AoA
   (1) Initial (one-time) information on defence, procurement or withdrawal planning
   (2) Annual notification of changes.

e. Rules and procedures on distribution and evaluation of information and notifications
   (1) All information and notifications will be submitted to the facilitator (e.g. the OSCE or other third party).
   (2) The facilitator distributes information and notifications to the parties to the CSBM arrangement.
   (3) The facilitator evaluates information and notifications and sends evaluation reports to the parties to the CSBM arrangement.
   (4) For further handling of or disputes about information, see consultations and dispute settlement mechanism (below, no. 6.).

5. Observation

a. Objects of Observation
   (1) All garrisons of armed formations in the AoA in accordance with no. 4. a. (1) and (2)
   (2) Training areas, storage sites and maintenance facilities attached to or used by these formations.

b. Specified Areas
   (1) Any area within the AoA in which unusual military activities take place after prior notification or
   (2) are suspected of taking place without prior information ("challenge observations").
   (3) The size of "challenge observations" is limited to … (e.g., 1,000 km²) if located in the AoA outside the SZ.
   (4) The size of "challenge observations" is unlimited if located in the SZ.

c. General observation rules
   (1) Observations in the AoA will be carried out exclusively by the facilitator and his support team unless parties agree to assign their own experts to such observation teams.
   (2) The facilitator's observation teams consist of internationally recognized experts acceptable to the parties to the CSBM arrangement.
   (3) The number of regular observations of notified Objects of Observation outside the SZ is limited to …... (e.g., 4 p.a. in the Eastern AoA, 8 p.a. in the Northern AoA).

(4) Unusual military activities outside garrisons exceeding 10 BT or 15 ACV or 10 artillery systems or 600 personnel, to be reported in accordance with no. 4. c., are subject to observations of Specified Areas.
(5) Unusual military activities outside garrisons not reported in accordance with no. 4. c., but suspected of exceeding thresholds or violating numerical or geographical restrictions, are subject to observations of Specified Areas. They may be triggered at the request of parties to the CSBM arrangement or at the facilitator's own initiative. Their number is limited to …. (e.g., 4 p.a. in the Eastern AoA, 8 p.a. in the Northern AoA) if the observation is carried out outside the SZ.
(6) Observations in the SZ are not limited by number or time. Access to all Objects of Observation and areas within the SZ has to be granted at any time. Observations in the SZ may be carried out at the request of parties to the CSBM arrangement or at the facilitator's own initiative.

d. Observation procedures
(1) Notifications
— Observations of Objects of Observation outside the SZ have to be reported by the facilitator to the party concerned 24 hours in advance.
— Observations of Specified Areas outside the SZ have to be reported by the facilitator to the party concerned 8 hours in advance.
— Observations within the SZ do not require prior notification by the facilitator.

(2) Duration of observations
— The duration of observations of Objects of Observation outside the SZ is limited to 36 hours on the spot.
— The time for observations of Specified Areas outside the SZ does not exceed the time in which notified unusual military activities are carried out or otherwise 48 hours on the spot.
— Observations within the SZ are not limited in time.

(3) Rules for and obligations of observation teams
— An observation team consists of 6 experts including interpreters.
— The objectives of observations are confined to verifying compliance with the stipulations of the CSBM arrangement.
— Observers are obliged to carry out their duties in an impartial way and strictly in accordance with the provisions of the CSBM arrangement.
— They maintain confidentiality about all information obtained during the observation.
— Observers will not interfere in routine activities of observed units.

(4) Rules for and obligations of observed parties
— Observed parties will facilitate and support observations and not invoke *force majeure* in order to prevent or delay them.
— They will grant observation teams free and quick access to Objects of Observation or Specified Areas.
— Observed parties will permit the use by the observation teams of: GPS, day and night vision binoculars, digital and photo cameras, PCs, maps and mobile phones.

- They will not declare "sensitive points", which could inhibit the freedom of movement of the observation teams, blur the actual situation on the spot or otherwise counteract the purposes of the observation.
- Local commanders will brief the observation team on the current status, tasks and activities of the units under observation and, in particular, on the numbers, presence and absence of ASL, AESI and personnel, together with pertinent explanations.
- Local commanders will submit a scheme of the facilities in the Object of Observation or, in Specified Areas, a map indicating the deployment, movements and tasks of units in the field.

e. Observation reports

(1) During the observation, observation teams will write an observation report indicating the numbers of ASL and AESI reported in information exchanges and notifications, briefed by the acting commander of the observed unit and verified on the spot.
(2) Explanations given during the briefings about any deviations and discrepancies will be duly noted in the report. The observation team will also indicate any other ambiguities, but refrain from any judgements on the spot or evaluations in the report.
(3) The draft report will be discussed between the observation team and the representatives of the observed unit. The commander of the unit observed may add explanatory remarks to the report.
(4) The report will be signed by the head of the observation team and the commander of the unit observed.
(5) The observation report will be submitted to the facilitator, who may evaluate the result and propose further measures to the parties to ensure compliance.
(6) The report will be distributed exclusively to the parties of the CSBM arrangement unless otherwise agreed.

6. Contacts, Consultations, Dispute Settlement and Incident Prevention

a. Points of Contact

(1) All parties to the CSBM arrangement and the facilitator establish and notify permanent Points of Contact (PoCs) at relevant politico-military decision levels, tasked with controlling the implementation of the arrangement.
(2) The PoCs must be accessible for communication among all participants of the CSBM arrangement at any time (24/7).
(3) The PoCs ensure proper and immediate distribution of information and notification.
(4) The PoCs enable direct communication between participants in urgent cases, such as clarifying any ambiguities that might arise in the course of the implementation or result from information, notifications or observation reports.

b. Joint Implementation Group (JIG): consultations and dispute settlement

(1) Parties to the CSBM arrangement and the facilitator establish a Joint Implementation Group (JIG).
(2) The facilitator convenes and chairs the meetings of the JIG, either routinely, twice every quarter, or, in urgent cases, on request by any participant.

(3) The JIG evaluates the functioning of the arrangement and discusses proposals for how to improve compliance, modalities and mechanisms.
(4) Parties and the chair may raise any point in conjunction with the implementation of the arrangement, express concerns about compliance or deficiencies of mechanisms, ask for explanations and clarifications or suggest specific modifications to the arrangement.
(5) Decisions are taken by consensus among the parties to the arrangement.
(6) In cases of disputes, the parties involved explain their actions and positions, submit relevant facts, documents or other evidence. The facilitator evaluates all relevant information and makes suggestions to help settle the dispute.
(7) The facilitator is entitled to carry out fact-finding missions should a settlement of the dispute not be possible in the first round of consultations. He/she will base further evaluations and suggestions relating to dispute settlement on the results of such fact-finding missions.
(8) The chair takes note and establishes records of the JIG proceedings and decisions and distributes them to the parties to the CSBM arrangement.

c. Incident Prevention Mechanism

(1) Participants of the CSBM arrangement establish an Incident Prevention Mechanism.
(2) Its purpose is to immediately clarify incidents or concerns about unusual military activities in the security zone in order to prevent misperceptions and escalatory military reactions based on misjudgements and false alarms.
(3) To that end and in addition to the PoCs, direct hotlines will be established between the command levels of military forces, border guards or other relevant paramilitary units on both sides of the ABLs.
(4) The facilitator will conduct an immediate visit to the site of the incident to clarify the facts. He/she will also call for a short-notice meeting of the JIG to de-escalate the situation.
(5) The police forces on both sides of the ABL will cooperate in combating organized cross-ABL criminality, in particular by releasing relevant information and coordinating countermeasures.

7. Confidentiality

(1) The facilitator and parties to the CSBM arrangement maintain confidentiality about information that has been distributed in line with information and notification mechanisms or obtained through observation and consultations in accordance with the CSBM arrangement.
(2) Any further distribution of such information requires the prior consent of the parties.

Annex II

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Abbreviations

ABL	Administrative Boundary Lines
ABLV	Armoured Bridge-Laying Vehicle
ACV	Armoured Combat Vehicle
AESI	Armaments and equipment subject to information and notification
AIFV	Armoured Infantry Fighting Vehicle
AoA	Area of Application
APC	Armoured Personnel Carrier
ASL	Armaments and equipment subject to limitations
BT	Battle Tank
CBM	Confidence-Building Measure
CEPS	Centre for European Policy Studies
CFE	Treaty on Conventional Armed Forces in Europe
CoE	Council of Europe
CSBM	Confidence- and Security-Building Measures
CSCE	Conference on Security and Co-operation in Europe
EU	European Union
EUMM	EU Monitoring Mission
EUSR	EU Special Representative
FSC	Forum for Security Co-operation
GDR	German Democratic Republic
GEMI	Global Exchange of Military Information
GEO	Georgia
GPS	Global Positioning System
HACV	Combat vehicle with heavy armament
HCNM	High Commissioner on National Minorities
ICRC	International Committee of the Red Cross
ID	Identity Document
IDPs	Internally Displaced Persons
IPRM	Incident Prevention and Response Mechanism
JIG	Joint Implementation Group
LC	Line of Contact
MIA	Ministry of Internal Affairs

MOD	Ministry of Defence
MoU	Memorandum of Understanding
MRL	Multiple-Rocket Launcher
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
OSCE	Organization for Security and Co-operation in Europe
PC	Personal Computer
PoC	Point of Contact
POE	Point of Entry
POI	Protocol on Inspections
SALW	Small Arms and Light Weapons
SGS	Société Générale de Surveillance
SOFA	Stationing of Forces Agreement
SZ	Security Zones
TAT	Tbilisi Administered Territory
TLE	Treaty-Limited Equipment
TRNC	Turkish Republic of Northern Cyprus
UN	United Nations
UNMIK	United Nations Interim Administration in Kosovo
UNRGID	UN Representative to the Geneva International Discussions
UNSCR	UN Security Council Resolution
US	United States
USSR	Union of Soviet Socialist Republics
UTLE	Unaccounted and uncontrolled Treaty Limited Equipment
VD	Vienna Document
WTO	World Trade Organization

About CORE

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