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The CFE Process after the Second Review Conference of the Treaty

Since its inception, the CFE process has kept the arms control experts of the States Parties to the Treaty on the go. CFE-related activities have been carried out on two parallel tracks: First, negotiations have been going on almost continuously since the signing of the Treaty in late 1990 to deepen and broaden the scope of commitments as well as to adapt the Treaty to constantly changing realities. Second, commitments were implemented by carrying out the following four groups of activities: The incorporation of the Treaty and its implementation regulations into the national legislation of the signatories; the exchange of information as stipulated by the Treaty; verification, primarily on-site inspections; reductions of Treaty Limited Equipment (TLE) set forth by the Treaty or contained in other legally or politically binding, multilateral, bilateral and unilateral documents. All these task fields are interrelated.

Important junctures in the CFE process included the signature of the CFE Treaty in November 1990 and of the Concluding Act of the Negotiations on Personnel Strength in July 1992, the entry into force of the Treaty in November 1992, the completion of the reduction phase in November 1995, the First Review Conference in May 1996 and its most important achievement, the modification of the flank rule as well as the adaptation talks starting in February 1997 and leading to the signature of the adapted Treaty in November 1999 at the Istanbul OSCE Summit Meeting.

It would be possible, however, to set up another list of events, which were not directly related to the existence and operation of the Treaty, but have had a major impact on it. The end of the East-West conflict had a significant impact on the strategic relevance of the Treaty, the dissolution of the Soviet Union complicated its entry into force considerably, and the first wave of NATO's Eastward enlargement undermined the original strategic rationale of the Treaty, its bloc-to-bloc structure. This led to the fact that the goals set forth in the preamble of the Treaty, i.e. to prevent surprise attack and large scale offensive action, have today become only marginally relevant. New objectives have gained *de facto* prominence. These include regulating bilateral and subregional military balances of power, maintaining a historically unparalleled measure of transparency in military matters achieved in the last decade and creating a conventional arms control regime that extends throughout Europe by opening the Treaty to all OSCE participating States whose territory is located in the area where the Treaty applies.

There are two important structural changes that have affected the CFE process mentioned less frequently: First, the common threat perception shared by

the states that negotiated the CFE Treaty had become irrevocably outdated by the time the Treaty was signed. As there was no longer a shared threat that the Treaty could protect against, it addressed a security matter, which had little importance for the States Parties. It could be applied to address matters which in of themselves were important, but affected the interests of the States Parties to the Treaty in completely different ways. This is a reflection of the fundamental change in the European security landscape away from a common threat to dealing with specific threats linked to the unresolved conflicts in Eastern Europe and the Caucasus. Second, this meant that the 1990 CFE Treaty, which started from the existence of two opposing groups, has become increasingly based on fiction. As long as the 1999 Treaty adaptation does not enter into force this fiction will remain the basis of the Treaty. In reality, most of the 30 States Parties to the CFE Treaty belong to NATO or are aspiring to gain membership in this organization. Some of the non-NATO countries regularly align their policies with NATO, often in the hope that NATO will support them in balancing their asymmetric security relationship with Russia. This has been the case recently with Azerbaijan, Georgia and to some extent the Republic of Moldova. Consequently, a large group of States Parties have been pursuing similar interests, which have been resisted by a few States Parties with counter-interests.

This article deals with the current situation and the prospects of the CFE process also by examining the following three topics: First, the general assessment of the Treaty made by the Second Review Conference; second, the compliance record of the Treaty; and third, the perspectives of the entry into force of the adapted Treaty.

The Assessment of the CFE Treaty Made by the Second Review Conference

The CFE Treaty set forth that at "five-year intervals (...) the Depositary shall convene a conference of the States Parties to conduct a review of the operation" of the Treaty (Article XXI, para. 1). The First Review Conference took place in 1996, and in light of the changed strategic conditions, focused primarily on the adaptation of the flank rule. There was no similarly prominent item on the agenda of the Second Review Conference. The States Parties gave a generally positive overall assessment to the Treaty and concluded "that in general the CFE Treaty was operating and being implemented in a satisfactory manner".¹ Beyond certain non-compliance concerns, there were very few observations made on the general functioning of the Treaty. It was agreed that the Treaty continued to contribute to European security generally

1 Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiations on Personnel Strength, in: CFE Treaty Review Conference, Vienna 2001, CFE-TRCS.JOUR, 28 May-1 June 2001, Annex 2, point 4.

and the States Parties to the Treaty viewed it as "a cornerstone of European security".² However, one could also say that the Treaty was a "dormant" cornerstone. Because, on the one hand, the decline in the significance of the military dimension of security led to the fact that the CFE Treaty, which structures this security dimension through limitations and transparency measures, has also lost importance. On the other, the Treaty reinsures against a remilitarization of European foreign policy. For although one can argue about the extent to which the CFE Treaty has led (among others) to the current security structures in Europe, the Treaty, as will be demonstrated below, will be an important point of reference in the case the States Parties again turn towards a foreign policy which relies more on military means.

Only on three points criticism on the non-implementation of Treaty provisions was formulated. On the one hand, the States Parties noted "that certain numerical limitations established by the Treaty were being exceeded" and expressed their expectation "that the remaining excess (would) be eliminated as soon as it (was) possible".³ Although this passage was clearly directed at the Russian Federation, it was not mentioned by name. On the other, the States Parties made the problem of TLE "unaccounted for and uncontrolled within the area of application" a subject of discussion and noted "that this situation adversely affects the operation of the Treaty".⁴ Also in this case, no one is mentioned by name. In the "Formal Conclusions", it is stated in relative detail that the Joint Consultative Group (JCG) had not completely fulfilled the mandate assigned to it by the 1996 First Review Conference to update the Protocol on Existing Types of Conventional Armaments and Equipment (POET). Of course, the States Parties have modernized their arsenals during the last decade and thus decommissioned certain types of conventional weapons as well as purchasing and putting into service new ones. This would have required that regular updates of the lists be made, a task the JCG apparently did not fulfil adequately. Thus the lists have become inaccurate as discarded types, models and versions of conventional armaments and equipment have not been removed from them. In the document, it was recommended that the JCG consider updating the lists annually as well as creating an electronic version of the lists in all official languages of the Treaty.⁵ The fact that this minor technical matter was mentioned by the States Parties at all in the concluding document of the Review Conference makes clear that the States Parties wanted to address non-controversial issues where it was easy to find common ground. Of the eleven presentations addressing the POET topic, in ten its shortcomings were mentioned without adding more controversy to the argument. Only the delegation of Norway stated a bit more clearly that the "lack of clarity as to which weapon systems are actually covered by the

2 Ibid., point 2.

3 Ibid., point 4.

4 Ibid.

5 Cf. *ibid.*

Treaty will hamper the work of our inspectors for years to come and cause unnecessary frictions and ambiguities".⁶ Furthermore the States Parties only raised certain implementation issues in general without explicitly addressing the problems linked to these, which the JCG was to deal with further including limitations and related Treaty obligations, interpretation of Treaty counting rules, notifications and exchange of information as well as verification issues.⁷ All in all, one could say that the Second CFE Review Conference was a far more classical exercise in diplomacy than the first conference. Criticism on the inadequacy of Treaty implementation was simply presented in a problem-oriented manner within the framework of a balanced general assessment without naming specific states.

The Compliance Record in Light of Current Developments

Despite the fact that review conferences provide an excellent opportunity to analyse the effects of treaties, the Second CFE Review Conference made little use of this option. This may well be due to the fact that there has been a high level of compliance during the nearly ten years since the Treaty entered into force. Nearly 94 per cent of inspections left no doubt that States Parties were complying with the Treaty. When there were violations, they were of relatively little strategic importance and did not aim at affecting the strategic relationship of the States Parties. They did, however, have a significant impact on some conflicts, domestic and international alike. However, these subregional conflicts only affect a small number of States Parties.

In one of my earlier studies, I established the following categories of analysis: 1. Causes of violation due to: a) changes in the strategic importance of a part of the area of application; b) obligations to fulfil military requirements for pending (burning) conflicts; c) inability to carry out reductions set forth under the Treaty. 2. Time frame in which non-compliance occurs, divided into three phases: a) events that occurred before the signature of the Treaty; b) events that occurred between the signature and entry into force of the Treaty; c) events that occurred after the entry into force of the Treaty. 3. State Party committing the violation and/or attitude of the State Party not complying with the Treaty: a) recognition of the Treaty violation; b) denial or non-recognition of the violation.⁸ Each of these three approaches may prove useful tools in drawing conclusions about compliance with the Treaty. The primary focus of the following section, however, is on the causes of violation.

6 Statement by Norway at the Opening of the Second CFE Review Conference, Vienna 28 May 2001. Delivered by Mr. Jan Arve Knutsen, Deputy Director General of the Ministry of Foreign Affairs, p. 2. The other delegations that referred to the POET problem were Canada, the Czech Republic, Germany, Greece, Hungary, Poland, Portugal, Slovakia, Spain and Turkey.

7 Cf. Formal Conclusions of the Second Review Conference, cited above (Note 1), point 4.

8 Cf. Pál Dunay, *The CFE Compliance Record a Decade After Treaty Signature*, in: *Vierteljahresschrift für Sicherheit und Frieden (S+F)* 4/2000, pp. 327-333, p. 328.

It has been necessary to modify the focus of the earlier study for the following reasons: First, this analysis is to focus exclusively on current compliance problems. Second, it should not be forgotten that some compliance problems are related to the Treaty signed in November 1990 and others to the political commitments taken upon the signature of the adapted Treaty nine years later at the Istanbul OSCE Summit. Although this differentiation is significant, it is not mentioned in the official statements. The former are political violations accompanied by violations of international law whereas in the case of the latter it is impossible to speak of a breach of international law. Because this difference, however, does not necessarily affect the strategic relevance of a specific Treaty violation, even the violation of a political commitment could be cause for concern.

The war in Chechnya has had a direct bearing and the same effect on the CFE Treaty both in 1995/1996 as well as since 1999. First, in both cases Russia exceeded its flank ceilings in the three land categories of Treaty limited armaments. Second, during the hostilities no reliable information exchange was possible partly due to the "fluidity" of the situation, partly due to the reluctance of Russia to provide relevant information. Third, due to security and personal safety reasons it was impossible to carry out inspections in the area where the military action took place so that one-sided information could not be checked by conducting on-site inspections. Thus it remains difficult to get reliable information about compliance.

During the second war in Chechnya, the Russian Federation provided information to the Joint Consultative Group on 19 October 1999. It reported the possession (on 10 October) of 1,493 battle tanks, 3,534 armoured combat vehicles (ACVs) and 1,985 artillery pieces in its flank area. This exceeded the flank sub-limit, agreed upon by the negotiating group on 30 March 1999, by 193 battle tanks, 1,394 ACVs and 305 artillery pieces.⁹ After achieving their most important military objective, the occupation of Grozny, Russia indicated its willingness to station a division-strength unit north, and a regiment-strength unit south of the Terek river in Chechnya. On 1 July 2000, the excess armaments in Chechnya were reduced to 150 battle tanks, 885 ACVs and 317 artillery pieces. Although there was a decrease in two categories, this was still a significant violation of the flank rule.

The Russian Federation updated this information regularly. For both tactical and strategic reasons, the Second Review Conference offered another opportunity to do this. Strategically, this was to make it clear that Russian intentions coincide with those of the other States Parties. Tactically, it was to prevent suspicion and to avoid that because of pressure from its partners, Russia would be obliged to provide information. It was clear the discussions at the

9 It is interesting to note that the States Parties were ready to measure Russian compliance against a document agreed upon at the adaptation talks, although it had no legal status whatsoever. This took place a month before the signature of the adapted Treaty that in fact incorporated this agreement. Cf. Decision of the Joint Consultative Group on CFE Treaty Adaptation, JCG.DD/4/99/Rev.4, 30 March 1999.

Review Conference would centre on the conflict(s) Russia has been involved in as well as their effect on the Treaty. Russia has in a masterly manner prevented this development or rather steered it in a non-confrontational direction. In a notification issued upon the first day of the Review Conference it stated that "as of May 25 (three days before the Conference opened, P.D.) (...) Russia has in the flank area 1,304 tanks, 2,246 ACVs and 1,609 artillery systems".¹⁰ In the official notification further details were provided. It was pointed out that during the period between 1 January and 25 May 2001 the number of ACVs counted against flank ceilings decreased by 544 pieces. Furthermore, it was mentioned that of the TLE in the flank area, 18 battle tanks, 352 ACVs and 93 artillery systems were stationed there temporarily.¹¹ The head of the Russian delegation emphasized that "the trend towards a full compliance with the flank obligations is obvious".¹² Russia substantiated its position with a dynamic analysis emphasizing that it is gradually achieving compliance. Other countries, some at the Review Conference, some on other occasions, based their statements on the actual situation: "Presently Russia is not in compliance with certain aspects of the Treaty, in particular current or adapted Treaty limits in the so-called 'flank' area, which includes Chechnya."¹³ In spite of the above-mentioned reductions, one month after the end of the Review Conference the number of Russian TLE still exceeded the permitted level by 143 pieces on the flank and has since then actually increased by 31 ACVs and two battle tanks.¹⁴ With this approach, Russia wanted, on the one hand, to demonstrate that it intends to comply with the Treaty. On the other, it does not want to jeopardize its security interests and in fact no country would place compliance with arms control over its vital security interests. Or as Russian officials stated, they will not comply with Treaty limits until Moscow completes its self-described "anti-terrorist operations" in Chechnya.¹⁵ It seems that even though setbacks may occur, these two tendencies can be harmonized at least temporarily in Chechnya. Going inch by inch, Russia will be able to achieve full compliance with the flank regulation. At the same time, the Russian government also intends to demonstrate the difficulty in complying with the Treaty when the security situation is fragile and when, as Moscow formulates it, there have been separatist tendencies in southern Russia. The conflict around Chechnya may abate tempo-

10 Statement of Yury S. Kapralov, Director of the Department for Security Affairs and Disarmament of the Ministry of Foreign Affairs of the Russian Federation at the Opening Ceremony of the Second CFE Review Conference, Vienna, 28 May 2001, p. 3.

11 Cf. Clarifications to notification CFE/RU/01/174/F00.RC.DEL/29/01, p. 1, and Uvedomlenie F00.CFE/RU/01/174/F00/O.

12 Statement of Yury S. Kapralov, cited above (Note 10), p. 3.

13 Press Statement of Richard Boucher, State Department Spokesman on Conventional Armed Forces in Europe (CFE) Review Conference, Washington, D.C., 5 June 2001, at: <http://www.usinfo.state.gov/topical/pol/arms/stories/01060603.htm>.

14 I am grateful for this piece of information to Hans-Joachim Schmidt of the Peace Research Institute Frankfurt (PRIF).

15 Cf. Wade Boese/Christopher Fischer, Pragmatism in practice: CFE seeks to secure Europe's future, in: *Jane's Intelligence Review* 2/2000, p. 18.

rarily but it cannot be resolved under the current conditions. This argument not only reflects reality but also illustrates that the Russian government is aware that attaining full compliance is on shaky ground and may therefore not be lasting.

As was already the case with the outbreak of hostilities in 1999, the Russian position has had fair acceptance by other States Parties. Countries, which have been fiercely opposed both to the first and the second Chechnya operation, expressed their reservations about the repercussions on the CFE Treaty. However, they have approached this problem similarly to the Russians and expressed their critique in a professional diplomatic manner on the arms control policy level. Those delegations, who gave their opinion on the information provided by Russia at the beginning of the Review Conference emphasized the same issues. The States Parties welcomed the information provided and more importantly its content which reflected further progress towards compliance with agreed flank levels and thus the gradual ending of Treaty violations. The US delegation emphasized that without "a great deal more information, without increased transparency and access, we will necessarily remain in doubt as to the extent of the reductions and as to whether Russian forces have indeed returned to agreed levels".¹⁶ Russia was reminded that the other States Parties "look forward to the indispensable transparency measures with regard to these reductions, as promised on many earlier occasions".¹⁷ The British delegation, which was among the States Parties who put Russia under gentle pressure throughout the Review Conference, entered into more details. "We look forward to hearing from the Russian delegation (...) further details and explanations of those figures which will enable us to better understand their significance and how they relate to their stated commitment to reduce their holdings to agreed levels. We look forward to the earliest possible *verifiable compliance* with those agreed levels."¹⁸ On the whole, it seems Russian compliance with flank levels may be achieved soon. In this process, external actors could influence domestic developments at least marginally by using arms control as an instrument.

In contrast to the primarily domestic Chechnya conflict, there are a number of interstate conflicts, which have had a bearing on compliance with the CFE Treaty. One of them is directly related to the CFE Treaty of 1990 whereas two others involve the political accords on the adaptation of the CFE Treaty achieved in November 1999 in Istanbul. The former deals with the case of the Russian presence in Armenia and its involvement in the conflict over Nagorno-Karabakh.

16 United States of America Delegation to the Second CFE Treaty Review Conference, Opening Remarks of Assistant Secretary of State Avis T. Bohlen, Vienna, 28 May 2001, p. 2.

17 Second CFE Review Conference, Statement by Ambassador Johannes C. Landman, Vienna, 28 May 2001, p. 2.

18 CFE Review Conference: Text of General Statement by Mr. John de Fonblanque, Head of United Kingdom Delegation to the OSCE, RC.DEL/8/01, Vienna, 28 May 2001, p. 2 (emphasis in the original).

Russia has supported Armenia's position during the entire period of the conflict over Nagorno-Karabakh. It has been co-operating closely with Armenia, which has deployed troops there, including battle tanks, ACVs and heavy artillery. In order not to lose its edge over the Armenian forces, Azerbaijan in turn has also violated some limitations. The Russians supplied armaments secretly to the Armenian troops stationed on the occupied territory of Azerbaijan between 1994 and 1996, a fact that former Russian Minister of Defence, Rodionov, later admitted. These armaments included 84 T-72 battle tanks, 50 BMP-2 armoured infantry fighting vehicles and 72 artillery pieces of the D-1, D-20 and D-30 types.¹⁹ Since then Azerbaijan has repeatedly expressed the view that the military co-operation between Russia and Armenia threatens subregional stability and that Armenia has continually violated its CFE commitments. Most recently in connection with the withdrawal of Russian forces from Georgia, Azerbaijan aired the demand that Russia should not only withdraw its forces from Georgia but from the whole Trans-Caucasus. An Azeri source claimed that the Russian armaments withdrawn from Georgia have been re-deployed in Armenia and thus pose a direct threat to the security of Azerbaijan.²⁰

The Review Conference focused on one specific aspect of the conflict, namely the so-called UTLE (unaccounted and uncontrolled TLE) problem. One can differentiate between three groups of States Parties in relation to this issue. The first group is made up of those states, which are participating in the conflict and where therefore the UTLE problem is a central issue, namely Azerbaijan and Armenia. The second group consists of states, which are involved in other conflicts where this issue has also been present, like Moldova and Georgia, or of states like the Russian Federation, which is engaged in them in one capacity or the other. The third and largest group consists of States Parties, which the UTLE problem does not affect and for this reason either have not expressed their view on it at all or for various reasons shown their solidarity with one party or the other. The greatly differing ways in which the UTLE problem affects the States Parties and the corresponding perceptions on it is just *one* example of how difficult it is to speak about indivisible security in Europe on the basis of the CFE Treaty. This is reflected in the common statement by the delegations from Azerbaijan, Georgia, Moldova and the Ukraine, which emphasizes that "(w)hile Azerbaijan fully shares the view of its CFE partners that the Treaty should play a central role in promoting stability and security in Europe we still have to state that a blatantly non-complied Treaty could hardly become a cornerstone of security of my country, as well as security of the South Caucasus in general".²¹

19 Cf. The Arms Control Reporter, 2 April 1997, p. 407.B.558.

20 Cf. L.E. Mamedolj, 'Azerbaijan dolzhen vistupit' protiv militarizatsii Armenii, in: Zerkalo, 26 October 2000, at: <http://www.zerkalo.az>.

21 Delegations of Azerbaijan, Georgia, Moldova and Ukraine, Statement at the CFE Treaty Review Conference opening plenary meeting, RC.DEL/6/01, Vienna, 28 May 2001, p. 3.

Azerbaijan took the position that "the CFE community has been obliged to tolerate the situation when hundreds of pieces of TLE belonging to a State Party have been illegally deployed in the territories of Azerbaijan in gross violation of the Treaty provisions. Quite obviously, these weapons and military equipment must be counted against maximum levels for holdings of that State Party which for many years has been concealing these TLEs from the CFE community in the occupied territories of Azerbaijan (...) The issue of UTLE was identified as a serious problem and put into agenda of the CFE Treaty implementation process, and the JCG was accordingly tasked to deal with this challenge. However, no real progress has been achieved so far (...) Regrettably, the adaptation process also failed to look thoroughly into specificity and complexity of the South Caucasian region in terms of its place in the evolving European security architecture."²² The carefully formulated description of Nagorno-Karabakh as occupied territory illustrates the depth and nature of the problem. Armenia took a similarly resolute position: "We must address the statements of a certain State Party that continue in a manner and language contrary to the spirit of the present (...) Treaty documents, concerning so-called questions related to UTLEs (...) They also put forward so-called facts that are unfounded and unsubstantiated, they refuse to recognize that certain issues are dependent on the solution of pending political conflicts. UTLEs can neither be used to anticipate and to predetermine political solutions, nor shape those outcomes through the backdoor. Our Government will resist any attempt to force by way of technical and definitional tricks the matter of the status of territories, entities and interstate relations (...) Some of these unresolved issues affect the other non-State Party [sic!] to the conflict, besides the Republic of Armenia and our immediate neighbour. Our delegation unequivocally is of the opinion that UTLE related questions are not the same in all conflict-affected areas. Therefore, we do not believe that a single format and single paradigm apply to all cases. Our position is about the unique features of a situation more relevant to us, we do not want to be implicated in models that we consider inapplicable to our situation. 'U' means unaccounted for, and 'U' means uncontrolled. We do not know in this case where others try to implicate us, that they are not uncontrolled. Therefore, they remain simply an accounting problem to be resolved once it is determined whose account it is."²³ For understandable tactical reasons, Armenia wanted to singularize the issue and thus separate it from other conflicts where the UTLE problem has also been present. Thus it was able to prevent the formation of an "anti-UTLE coalition" by parties facing the same problem. It was interesting to observe that Russia, who has stationed TLE in the area, did not find it necessary to react at all to the UTLE problem in the Nagorno-

It is clear that the part of the text was presented by the Azeri delegation in its national capacity.

22 Ibid., p. 2.

23 Opening Statement by the Armenian Delegation, RC.DEL/25/01, Vienna, 28 May 2001, p. 2.

Karabakh conflict. It is possible that this is part of the adaptation of the Russian policy towards the Trans-Caucasian area taking a more balanced approach to the two parties. Another explanation however seems more persuasive, that is, Russia does not want to engage in a multilateral debate about this issue and intends to address the delicate UTLE matter bilaterally. This would be in accordance with the Russian position during the CFE adaptation talks where the Russian government did not want to discuss sensitive matters, like the fact that Russian troops were stationed on the territory of other countries, and instead always referred these issues to bilateral fora.

The Second Review Conference offered a perfect opportunity to address compliance. This made clear that in the cases of Chechnya and Nagorno-Karabakh as well as the cases of Georgia and Moldova, which will be dealt with in the following, violations of the CFE Treaty were a symptom and not the cause of the problem. Without a lasting political solution, sustained observance of CFE rules will remain inconceivable.

The case of the Russian presence in Armenia has been different from the Georgian and Moldovan cases in the following respects. First, whereas the latter two states have successfully made the process of dealing with their problems with Russia multilateral through CFE adaptation talks, which resulted in the political commitments in the "Final Act of the Conference of the States Parties to the Treaty on Conventional Forces in Europe" of 19 November 1999, Armenia has not been able or willing to achieve this. Both the establishment of the GUAM group (Georgia, Ukraine, Azerbaijan and Moldova) - all those countries that had encountered somewhat similar problems with Russia - and the discussion within the framework of CFE fora have been a part of making the process more multilateral. However, Armenia has kept the issue of Russian TLE at the bilateral level. Second, in the cases of Georgia and Moldova, Russia has become involved in domestic conflicts, whereas the case of Armenia is an inter-state dispute with Azerbaijan. Third, in the cases of Georgia and Moldova the so-called UTLE problem has played a less central role than in the case of Armenia. Fourth, in the cases of Georgia and Moldova, there are already political commitments that could lead to a conflict settlement whereas this is not the case with Nagorno-Karabakh.

Georgia

A formal but only partial solution was achieved at the Istanbul OSCE Summit in November 1999. Russia made the commitment to reduce its levels of TLE in Georgia by 31 December 2001 so "that they will not exceed 153 tanks, 241 ACVs and 140 artillery systems",²⁴ i.e. the level of basic tempo-

24 Joint Statement of the Russian Federation and Georgia, Istanbul, 17 November 1999, point 1, Annex 14 of the Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, CFE.DOC/2/99.

rary deployment in the adapted CFE Treaty.²⁵ Russia committed itself further to withdraw its TLE from the military bases in Gudauta and Vaziani and at the repair facilities in Tbilisi no later than 31 December 2000 and to disband both bases by 1 July 2001.²⁶ Russia was forced to acknowledge that the international community was giving constant attention to whether the above commitment was being fulfilled. This was reflected at the November 2000 Vienna OSCE Ministerial Council meeting. There the outgoing Secretary of State, Madeleine Albright emphasized that her country "looks for continued progress on Russian withdrawal from Georgia, including completion of the first phase of equipment withdrawal by year's (i.e. the year 2000, P.D.) end, and the closure of specific military bases by the middle of next year".²⁷

Russia fulfilled its commitment to reduce its TLE stationed in Georgia and within the stipulated period withdrew 35 tanks, 313 ACVs as well as 27 artillery systems and destroyed a further 24 tanks, 90 ACVs and two artillery systems. The Vaziani airbase was returned to the Georgian authorities in due course and time by 1 July 2001. The base in Gudauta, according to the Abkhaz leadership, however fulfils "peacekeeping functions". Its closure would render the negotiated settlement of the conflict more difficult. The situation is rendered more delicate, as the Abkhaz leadership is apparently reluctant to contribute to reconciliation. It suspended its participation in the peace process in spring 2001. According to the Georgian leadership the tasks of the Gudauta base could be fulfilled in other ways. This view is apparently not shared by the Russian military. It has continued stationing its forces at the base and denied the UK access to conduct an on-site inspection there.²⁸ Russia also accused Georgia of making unrealistic demands with regard to handing over the Gudauta military base. The Russian Ministry of Defence said "the timetable for Russia's withdrawal did not allow time to build new accommodation in Russia for the hardware and troops stationed there".²⁹

Georgia granted Russia the right to continue stationing TLE at two other bases, in Batumi and Akhalkalaki, up to the level mentioned above. Both sides made the commitment to "complete negotiations regarding the duration and modalities of the functioning of the Russian military bases at Batumi and Akhalkalaki" during the year 2000.³⁰ Because the Akhalkalaki base is the biggest employer in a southern region of Georgia predominantly inhabited by Armenians, its closure could pose additional problems.

25 Cf. Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, CFE.DOC/1/99, Article VII, para. 1, B (1).

26 Cf. Joint Statement of the Russian Federation and Georgia, cited above (Note 24), point 2.

27 Intervention by Secretary of State Madeleine K. Albright, OSCE Ministerial, Vienna, 27 November 2000, at: <http://www.usembassy.ro/USIS/Washington-File/100/00-11-27/eur104.htm> and <http://www.prop1.org/nucnews/2000nn/0011nn/001127nn.htm>.

28 Cf. Ambassador David T. Johnson, Statement on Georgia to the Permanent Council, Vienna, 4 July 2001, p. 1. at: <http://www.usosce.rpo.at/archive/2001/07/4georgia.htm>.

29 [Http://news.bbc.co.uk/1/hi/english/world/europe/newsid%2014180000/1418260.stm](http://news.bbc.co.uk/1/hi/english/world/europe/newsid%2014180000/1418260.stm), cited in: News-Press-Reports@bits.de, 6 July 2001, p. 1.

30 Joint Statement of the Russian Federation and Georgia, cited above (Note 24), point 5.

The issue of Russian withdrawal of its troops from Georgia seems to have attracted more attention than the UTLE issue in the conflict between Armenia and Azerbaijan. This could be due to several different factors, for example the importance Georgia has attributed to the faithful and timely implementation of the accord. In the joint statement of the GUAM countries, they did not elaborate upon the withdrawal of Russian forces from Georgia. However, the Georgian delegation addressed this matter in detail at the Review Conference. Like the evolution of the process their statement was characterized by "on the one hand - on the other hand" assertions. Georgia acknowledged that in the year 2000, significant progress was achieved in Russian TLE reductions and noted the timely and transparent withdrawal of TLE and the withdrawal/closure process of the Vaziani base with satisfaction. On the other hand, the Georgian delegation expressed a number of concerns: First, the Gudauta base closure/withdrawal that should have been started on 3 May 2001 was not yet launched at the time of the Review Conference. Second, the talks to determine the duration and conditions of the operation of the two Russian military bases in Batumi and Akhalkalaki were not yet concluded. The Georgian side emphasized that talks on this issue "could not last forever" and Tbilisi expected to resolve the issue by 1 July 2001. Third, Georgia complained about the lack of transparency during the withdrawal of equipment and closure of the bases. Fourth, the UTLE problem was mentioned as an issue of special importance in the two most important conflict areas, those of Abkhazia and the Tskhinvali region in South Ossetia where the self-proclaimed regimes were completely dependent on the existence of UTLE in the zones.³¹

The withdrawal of Russian troops and TLE raises a number of questions both with respect to the bases and in view of the broader political constellation. It is apparent that Russia heavily dislikes the idea of fully withdrawing its forces from Georgia, evidence for which was provided after the formal resolution of the matter in Istanbul. During the second Chechnya war, the Russian government criticized Georgia for not being able to adequately control the common border of the two countries. Consequently, according to Russia, "Chechen terrorists" received supplies and reinforcement from Georgia.³² Moscow's dissatisfaction was also reflected in that the withdrawal of Russian forces did not even start until August 2000. Later withdrawal activities focused on land forces and Russia postponed the reduction of its air force as much as possible. To put pressure on Georgia, the Russian government took measures that were not closely related to the base closures. At the beginning of 2001, Russia introduced a visa regime for Georgian citizens. Because many Georgians work in Russia and their income is an important part of the Georgian economy, this measure created serious problems for Georgia. At

31 Cf. Statement by the Delegation of Georgia at the Second Review Conference of the CFE Treaty, RC.DEL/24/01, pp. 2-3.

32 In connection with this it is necessary to call attention to the fact that Chechnya is part of the Russian Federation and therefore the Russian government could have attempted to control the border between Georgia and Chechnya from its side.

about the same time energy deliveries, primarily of gas, were suspended, which demonstrated that Russia wanted to consolidate its superiority. In light of the fact that the territorial integrity of Georgia is being faced with challenges from different directions, it is difficult to predict whether the withdrawal of Russian troops and TLE will be completed or whether Georgia will consent to their continued but limited presence. Georgia's current determination gives evidence of the former, though this may still change. Georgia used the Review Conference to flag this problem and thus direct the attention of other States Parties towards a question which is regarded as central to its sovereignty. The fact that many States Parties expressed their support for the Georgian agenda reconfirmed that Georgian assumptions had been correct. It should not be overlooked, however, that Russia did not make any additional commitment with regard to Georgia during the Review Conference. Apparently the Russian government wants to negotiate these issues bilaterally in the hope that it will be able to place greater pressure on Georgia.

Moldova

Here, Russia made fewer commitments than it had to Georgia in the Istanbul Summit Document. In the Final Act of the Conference of the CFE States, Russia committed itself to withdrawing its TLE from Moldova by the end of 2001, and in the Istanbul Summit Declaration the OSCE States welcomed "the commitment by the Russian Federation to complete withdrawal of the Russian forces from the territory of Moldova by the end of 2002".³³ However, Russia made the withdrawal of its approximately 2,500 troops conditional on the political solution of Trans-Dniestria's status.³⁴ Russia has often put forward the argument that the withdrawal of its troops from the territory would undermine stability and pointed out the logistical problems of transporting huge amounts of ammunition through the Ukraine.³⁵ In reaction to this Moldova asked for financial assistance from OSCE participating States to help settle the problem. The U.S. indicated at the beginning of 2000 that it

33 Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, cited above (Note 24), and Organization for Security and Co-operation in Europe, Istanbul Summit Declaration, Istanbul, November 1999, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 2000, Baden-Baden 2001, pp. 413-424, here: p. 418.

34 In spite of this Moldova has interpreted the Russian commitment made in Istanbul to withdraw its TLE as "unconditional". Cf. Statement of the Delegation of the Republic of Moldova to the Second CFE Review Conference, RC.DEL/7/01/Corr.1, Vienna, 28 May 2001, p. 1. To give support to this position, the Republic of Moldova at the Istanbul Summit Conference in 1999 already made a unilateral statement renouncing "the right to receive a temporary deployment on its territory due to its Constitutional provisions which control and prohibit any presence of foreign military forces on the territory of Moldova"; cf. Statement on behalf of the Republic of Moldova, Annex 13 of the Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, cited above (Note 24).

35 Russia has made a formal statement that the reason for its troop presence in Trans-Dniestria is to protect two major strategic ammunition depots.

would make 30 million US dollars available for a withdrawal if the local leadership in Tiraspol (Trans-Dniestria) were co-operative. However, it took several months to get out of the stalemate caused by the inability of OSCE participating States to finalize the financial arrangement.³⁶ The Russians used this stalemate as a pretext and did not begin any substantial withdrawals of Russian TLE until late 2000. Despite the Russian promise to complete the withdrawal of Russian TLE by the end of 2001 and withdraw its troops by the end of 2002, there was little progress on this issue.³⁷

It is interesting to note that there has been a direct link between high profile OSCE events addressing withdrawal and demonstrative action taken by Russia to signal progress on the matter. On the eve of the Istanbul Summit three train-loads of equipment were withdrawn and as of the November 2000 OSCE Ministerial Council meeting one train-load of dual-use military equipment followed.³⁸ The Second Review Conference of the CFE Treaty was not preceded by similar symbolic steps, though intensive diplomatic activity had characterized the months before. Before the opening of the Conference, the Head of the OSCE Mission to Moldova signed a document in Moscow on the use of the so-called voluntary fund. Several countries had joined the U.S. effort and because the fund started to contribute to the potential to settle the conflict many of them found it appropriate to mention their contribution at the Second CFE Review Conference.³⁹ A little over a week before the opening of the Review Conference, high level consultations were held between Russia and Moldova on the concrete modalities regarding the withdrawal of Russian TLE with a view to meeting the established deadlines.⁴⁰ A few weeks after the Conference ten battle tanks belonging to Russian forces in Moldova were destroyed.⁴¹ These facts indicate that Russia does not want to appear as a country that violates its commitments and tries to harmonize their fulfilment with its national interests.

36 As it was pointed out by the U.S. Ambassador at a meeting of the OSCE Permanent Council: "The United States has long been willing to help with the costs associated with the Russian military withdrawal process through the OSCE voluntary fund. But conclusion of an exchange of letters on the procedures for use of the fund remains a vital prerequisite for reimbursement of expenses associated with these withdrawals. It seems to us that completion of this exchange of letters would be both a practical first step towards completion of the withdrawal process and an action which would be in Russia's own best interest." Ambassador David T. Johnson, Statement on Moldova to the Permanent Council, Vienna, 3 May 2001, p. 1, at: <http://www.osce.usia.co.at/mold3may01.html>.

37 On this see Zdzisław Lachowski, *Conventional Arms Control Agreements: Issue of Compliance*, in: Ian Anthony/Adam Daniel Rotfeld (Eds.), *A Future Arms Control Agenda: Proceedings of Nobel Symposium 118, 1999, Oxford 2001*, p. 234.

38 Cf. Statement on Moldova Delivered by Ambassador David T. Johnson to the Permanent Council, Vienna, 7 December 2000, p. 1, at: <http://www.osce.usia.co.at/moldova7dec00.html>.

39 Cf. for example, statements of the Czech Republic and the United Kingdom.

40 Cf. Statement of the Delegation of the Republic of Moldova, cited above (Note 34), p. 2.

41 Cf. Statement on Moldova Delivered by Ambassador David T. Johnson to the Permanent Council, Vienna, 4 July 2001, at: <http://www.usosce.rpo.at/archive/2001/07/4moldova.htm>.

It is difficult to determine overall what has brought about the change in the Russian attitude. Certainly there have been major and energetic steps taken recently to settle the dispute. The change from Boris Yeltsin to Vladimir Putin as well as the change of the political course in Chişinău after the recent elections may also have played a role making Moscow more co-operative. There have also been indications that Chişinău may allow Russia to keep a permanent military base in Moldova and to station its troops legally on Moldovan territory.⁴² In spite of these welcome changes, it may be premature to conclude that the settlement of the Trans-Dniestria conflict has already been achieved without considering the possibility that setbacks may occur. Russia expressed its intention to set some seventy TLEs aside and continue to station them within the framework of peacekeeping operations to be agreed upon in future. In view of the fact that there is no agreement on monitoring a future peace agreement, this was a questionable claim. Moreover, neither the CFE Treaty, nor the Final Act of the Conference of the CFE States mentioned this option. Thus in the absence of an accord to the contrary it does not seem feasible.⁴³

The Second CFE Review Conference took place at a time when important developments were occurring in certain conflict areas, which have had negative repercussions on the Treaty regime. Even though the CFE Treaty does not change the course of events in these cases it contributes to conflict settlement by setting certain standards. For some of the States Parties it represents an important instrument to measure the performance of others against the CFE Treaty as well.

The Perspective of the Entry into Force of the Adapted Treaty

The adapted CFE Treaty makes the accession of any OSCE participating State whose territory lies within the area of application of the CFE Treaty between the Atlantic Ocean and the Ural Mountains possible. It shall enter into force ten days after the instruments of ratification by all States Parties are deposited.⁴⁴ This means that all the 30 signatories have to ratify the Treaty. This would be an important step moving beyond the CFE Treaty of 1990 whose structure still reflects the East-West conflict. Consequently, it is in the best interest of each State Party to bring the adapted Treaty into force.

In light of the Russian Federation's non-compliance with the flank rule and the doubts concerning compliance with respect to its commitments in Moldo-

42 For a detailed account cf. Claus Neukirch, *Moldovan Headaches: The Republic of Moldova 120 Days after the 2001 Parliamentary Elections* (CORE Working Paper 3), Hamburg 2001, especially pp. 24-25.

43 Cf. Special Envoy Dunkerley, *Statement on Moldova to the Permanent Council*, Vienna, 17 July 2000, p. 2, at: <http://www.osce.usia.co.at/dunkmold17july00.html>.

44 Cf. *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe*, cited above (Note 25), Article XVIII, para. 1, and Article XXXI, para. 3.

va and Georgia, in May 2000, NATO stated the following in its final communiqué: "We remain concerned about the continued high levels of Russian Treaty Limited Equipment in the North Caucasus in relation to the Treaty's Article V ('flank') limits. These levels must be brought into line with Treaty limits, in a manner consistent with agreed counting rules and procedures, if entry into force is to be possible. We have noted Russia's assurances that this breach of CFE limits will be of a temporary nature and expect Russia to honour its pledge to reduce to CFE limits as soon as possible and, in the meantime, to provide maximum transparency regarding its forces and equipment in the North Caucasus. It is on this basis that Allies will continue to work towards bringing the adapted Treaty into force. Pending the completion of this process, the continued implementation of the existing Treaty and its associated documents remains crucial."⁴⁵ Since then this has been the basis of NATO policy concerning the ratification of the adapted CFE Treaty. Many non-NATO countries have shared this position. Despite the fact that Russia has gradually moved closer to compliance as far as the flank rule of the 1990 CFE Treaty is concerned and has taken steps to live up to its political commitments in the withdrawal of its TLE from Georgia and Moldova, the common NATO position remained unchanged.

At the Review Conference, the signatories of the adapted Treaty were able to ascertain the following: First, two countries have ratified the Treaty: Belarus and Ukraine. Belarus stated at the Conference that it had "completed internal procedures for ratification (...) on 18 July 2000. The ratified documents were deposited on 6 October 2000 with the Depositary of the Treaty (...)"⁴⁶ Second, Russia declared at the Review Conference "its intention to introduce this document (i.e. the adapted Treaty, P.D.) for ratification to the State Duma in the nearest future, and calls on all other participants of the CFE Treaty not to create artificial obstacles in the way of its entry into force".⁴⁷ Third, NATO member states, including the Depositary, and a number of like-minded countries, reiterated their position that "(t)hey would like to see entry into force of the adapted Treaty as soon as possible. We therefore call upon all States Parties to rapidly fulfil the conditions that make ratification by all States Parties possible."⁴⁸ The U.S., who held a reserved attitude at the CFE Review Conference, left no doubt about its resolve on ratification: "The United States and other NATO members stated that ratification of the Adapted Treaty will be possible only in the context of full and verifiable compliance with agreed limits, consistent with the agreements contained in the Istanbul Final Act and

45 NATO, Final Communiqué, Ministerial Meeting of the North Atlantic Council held in Florence on 24 May 2000, Press Release M-NAC-1(2000)52, 24 May 2000, para. 51.

46 Statement by the Head of the Delegation of the Republic of Belarus, Ambassador V.A. Gaisenak, at the Opening Session of the Second CFE Treaty Review Conference, RC.DEL/2/01, Vienna, 28 May 2001, p. 2.

47 Statement of Yury S. Kapralov, cited above (Note 10), p. 3.

48 Second CFE Review Conference, Statement by Ambassador Johannes C. Landman, Vienna, 1 June 2001, p. 1.

Summit Declaration."⁴⁹ Fourth, those States Parties, in which non-compliance would significantly affect their security perception, have reiterated their position and expressed their views concerning the prospect of entry into force bluntly: "Without full implementation of Russian commitments taken in Istanbul the possible outcome of the ratification process in Georgian Parliament could easily be envisaged - the adapted Treaty will not be ratified."⁵⁰ Moldova emphasized that "(t)he unconditional implementation of the Istanbul Decisions have a paramount importance for the earliest ratification and entering into force of the adapted CFE Treaty".⁵¹ Fifth, Russia also expressed its opinion concerning the broader implications of the current situation and warned about a grey area, which, "(w)hile the Agreement on Adaptation is in general in line with today's realities, but has not yet formally entered into force, will start to threaten the viability of the Treaty regime and, in the long run, the stability in Europe".⁵² For the prospects of the CFE process the Russian Foreign Ministry declared that "the possible entry of the Baltic countries into NATO would have destructive implications for the key CFE provisions, concerning, in particular, the flank limitations, and the area of stability in Central and Eastern Europe".⁵³

These statements obviously present certain dilemmas. A year and a half after the signing of the adapted Treaty and under the condition of improving Russian compliance with the Treaty, it is open to question whether non-ratification by NATO serves any useful purpose. It is clear that full compliance with the Treaty would be the best possible scenario. However, a further delay of the ratification process may not foster compliance. It seems some of the major Western European countries understood this more clearly than e.g. the United States. In addition the NATO states have apparently been more severe towards Russia than towards other states whose compliance also leaves a bit to be desired.⁵⁴ The very small number of ratifications makes it easier for those states, which due to their direct involvement in conflicts in the area of application are determined not to ratify the Treaty. Furthermore, accession to the adapted Treaty will only be possible after its entry into force.⁵⁵ This is of practical importance for the Baltic states or Slovenia, who would like to join NATO. In the end, the longer the time period that has passed between signature and entry into force the less viable the CFE process will be. As was correctly stated by the Hungarian delegation at the CFE Review Conference: "The prolongation of the ratification process has the danger of eroding a cur-

49 Press Statement of Richard Boucher, cited above (Note 13).

50 Statement by the Delegation of Georgia, cited above (Note 31), p. 2.

51 Statement on behalf of the Republic of Moldova, cited above (Note 34), p. 2.

52 Statement of Yury S. Kapralov, cited above (Note 10), p. 3.

53 Press Release of the Russian Ministry of Foreign Affairs in connection with the completion of the work of the second Conference on Review of the Treaty on Conventional Forces in Europe, 4 June 2001, at: <http://www.in.mid.ru/website/b.../3090b13eda127bff43256a62003c0fbc?OpenDocument>.

54 I would like to thank Hans-Joachim Schmidt of PRIF for his thoughts on this.

55 Accession to the 1990 CFE Treaty is not possible.

rently effectively functioning arms control and disarmament regime, and gradually downgrading its importance."⁵⁶ The Formal Conclusions of the Second Review Conference could only voice "the hope that the third such Conference would review operation and implementation of the adapted CFE Treaty".⁵⁷

Conclusions

The CFE Treaty has functioned adequately since 1990. The States Parties thus held their Second Review Conference under favourable circumstances. Even though they had reason to be critical of the insufficient progress made in a number of crucial areas there was no reason to portray this as a crisis. The best reflection of this is the diplomatically formulated and sometimes all too smooth concluding document of the Review Conference.

In spite of its adaptation, the CFE Treaty has partly lost its relevance. The most important reason for this is the fact that European security has become increasingly fragmented. Security phenomena affect different parties quite differently. Those security problems, which can be dealt with through classical means of arms control are concentrated in the area of the former Soviet Union. Other signatories of the adapted Treaty have only been affected indirectly by them.

The majority of the States Parties are members of NATO or would like to become members. This leads to a situation in which the common position of the Atlantic Alliance must be harmonized primarily with the major external, i.e. non-NATO State Party to the Treaty, the Russian Federation. This seems to be in contradiction with the fact that in the absence of a common military threat smaller States Parties have a better chance of representing vital national interests. As national interests have become more highly valued in the CFE process, the task of bringing an agreement like the adapted CFE Treaty into force has become more demanding.

It will be necessary to consider thoroughly the right moment for the ratification of the adapted Treaty in order not to lose momentum in the process. It will be necessary to be flexible in order to give adequate recognition to the improvement in Russian compliance with the Treaty. Ratification by NATO member countries should open the way for the accession of interested OSCE participating States to the adapted Treaty in the foreseeable future.

56 Statement by Dr. Ferenc Gazdag, Head of Department for Security Policy and Arms Control at the 2nd CFE Review Conference, RC.DEL/13/01, Vienna, 28 May 2001, p. 2.

57 Formal Conclusions of the Second Review Conference, cited above (Note 1), point 7.