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Military Confidence-Building and Conventional Arms Control in Europe against the Background of the Ukraine Crisis

Introduction

For more than 14 years, the OSCE has existed largely in the shadows. This has changed as a result of the Ukraine crisis. The Organization once again finds itself at the centre of public attention.

In the crisis, the OSCE has proven that it is able to act. The use of the Organization's arms-control instruments for the co-operative creation of an objective overview of the situation and for de-escalation has played a central role in this. Nevertheless, the implementation of the measures defined in the Vienna Document for crisis situations has shown that the OSCE comes up against its limits where the necessary level of co-operation for effective action among the parties involved is absent.

It is by no means certain that the OSCE will be able to meet the high expectations placed upon it. Once again, the current debates are confrontational in character; there is a tendency towards disassociation, military reassurance, and containment. Consequently, no one is now talking about realizing the OSCE's goal of creating a security community on the basis of shared values. On the one hand, this is understandable: The forcible annexation of Crimea and the ongoing hybrid warfare in the east of Ukraine call into question the OSCE's core role as a collective security organization whose purpose is to prevent the threat or use of force and to resolve security problems solely by means of co-operation on the basis of agreed principles. At the same time, however, there is no alternative to the OSCE's approach to security policy based on co-operation and the balancing of interests if we do not wish to return to the patterns and strategies of conflict typical of the 19th century and the first half of the 20th.

A division of Europe and a return to confrontation between East and West must not be options. To prevent this, more attention once again must be paid to military confidence-building and arms control as indispensable elements of an effective conflict-prevention and conflict-settlement mechanism.

Note: The views contained in this contribution are those of the author. They do not necessarily represent the views of the government of the Federal Republic of Germany.

Towards a Revival of Military Confidence-Building and Efforts to Revitalize and Modernize Conventional Arms Control in Europe

The Western states are united in the view that, following the break with fundamental principles and commitments, particularly with the annexation of Crimea, business as usual cannot be an option. At the same time, however, the growing tendency for a number of states “East of Vienna” to distance themselves from and/or fail to comply with the values jointly defined in the OSCE context in the 1990s has been diagnosed for some time. This makes it very hard to return to work on co-operative relations based on shared values. As a result, the process of preparing for the 40th anniversary of the signing of the Helsinki Final Act (“Helsinki +40”) was ill-omened from the start, and this year it has almost stalled completely.

Nevertheless, in view of the growing tensions in East-West relations and the elevated risk, as demonstrated in the Ukraine crisis, that conflicts will again be resolved by military means, it is all the more urgent that arms-control policy efforts are strengthened at precisely this time.

Arms control must not fall hostage to the dispute over upholding the central values of the OSCE. It would be wiser to revert to the original goals and functions of conventional arms control in Europe. The “dual-track approach” of NATO’s 1967 Report on the Future Tasks of the Alliance, better known as the Harmel Report, should again come into focus. This established the pursuit of *détente* (as a means to increase stability) as the Alliance’s second function alongside the maintenance of effective defence capabilities. The policy was formulated in full awareness of the gulf between East and West, which appeared almost unbridgeable, at least in the short and medium term. The dual-track policy proposed in the Harmel Report prepared the way for initiatives that led to negotiations on balanced force reductions between NATO and the Warsaw Pact with the rational goal of creating military stability and preventing war.

Today, we are no longer concerned with creating a balance between two alliances, but rather with pan-European stability in a more complex, less predictable, and increasingly deregulated security environment. This entails a stronger emphasis on both entirely new types of challenges, as well as regional and sub-regional security issues, conflict prevention, and crisis management. As shown not just by the Ukraine crisis, but also previously in the context of the unresolved protracted conflicts in the OSCE area, this requires the adaptation of the existing instruments and agreements of European arms control.

Nevertheless, the fundamental principles of arms control as they have developed over the last few decades remain key: security, stability, verification. For instance, despite the transformed security environment, it remains true that no state can be allowed to establish a destabilizing position of military supremacy. This was already taken into account in the original CFE

Treaty in 1990 by means of the sufficiency rule. Intrusive verification also has a key role to play – especially given recent blows to trust; commitments to military restraint must be verifiable.

The much-needed revitalization of conventional arms control should now not focus primarily on the abstract goal of building a security community. It should rather be driven by the rational and hard-nosed interest in preventing armed conflict and in effective crisis management. Furthermore, it should be guided by the realization that sustainable security in Europe can ultimately only be achieved with the involvement of Russia. A “New Deal” in arms-control policy should be built on the foundations that were put in place during the Cold War, overcoming the fruitless debates of recent years, avoiding the instrumentalization of arms control to achieve unrelated goals, and adapting the arms-control *acquis* to the changed conditions and requirements.

New Challenges for Arms Control?

The Ukraine crisis has focused political awareness on the importance of arms control, particularly for co-operative fact-finding and de-escalation. The OSCE has proved in the crisis that it is capable of taking action, not least through the application of the tools provided in the Vienna Document. At the same time, however, the limits of this ability to act have become clear:

On 26 February 2014, Russia gave notification of a major exercise involving 38,000 soldiers. As the troops involved had not been given advance notice of these manoeuvres, they were not subject to the standard notification period of 42 days as set out in the Vienna Document (para. 41). Nor did Russia invite observers to monitor the exercise, as the number of troops involved in each individual exercise scenario did not exceed the threshold requiring the invitation of observers according to Chapter VI of the Vienna Document. In the tense climate, the exercise inevitably triggered serious concern and questions regarding Russia’s aims. As expected, therefore, it led to a request for inspections under Chapter IX of the Vienna Document. The inspections carried out by Switzerland, Lithuania, and Ukraine during March 2014 revealed no evidence of infringements of arms-control commitments. At the same time, these three inspections exhausted Russia’s passive quota for 2014. Moscow refused to allow additional inspections on a voluntary basis.

If this illustrates the limits of the Vienna Document’s regular instruments, the Ukraine crisis has also focused attention on the deficits of Chapter III (Risk Reduction), which was specifically created to be applied in crisis and conflict situations. As tensions around Ukraine grew and separatist forces intensified their activities in Crimea, the Chapter III mechanisms for the clarification of unusual military activities (para. 16) was activated on several occasions from late February 2014. Russia denied Ukraine’s requests on the

grounds that the military activities it was carrying out did not fall under the stipulations of Chapter III. Ukraine invoked the stipulations in Chapter III on voluntary hosting of visits to dispel concerns about military activities (para. 18) to invite a mission, consisting of more than 50 inspectors from over 30 OSCE participating States. While this mission, which was deployed from 5 to 20 March, was able to make clear the extent of the crisis and note the presence of Russian/pro-Russian separatists in Crimea, it was prevented from entering Crimea on several occasions. Nor did the application of Chapter III help when the situation in eastern Ukraine escalated; Ukrainian requests for information were turned down by Russia on the basis that Ukraine had not provided information on the so-called anti-terror operations being carried out by Ukrainian regular units and voluntary militias.

The crisis has consistently illustrated the problem of applying arms-control instruments to intra-state conflicts and hybrid warfare. The Vienna Document was designed for conflict between states; moreover, it does not concern itself with paramilitary forces and internal security forces. Ukraine's attempt to use the request for additional voluntary inspections to create an ongoing arms-control presence in eastern Ukraine that would gather information on the activities of non-state actors and, hence, could contribute to de-escalation or provide a kind of international guarantee was a makeshift measure at best. It was futile in any case, as became abundantly clear when an inspection team was kidnapped in Sloviansk on 25 April.

Alongside the Vienna Document, another applicable instrument was the Treaty on Open Skies. It was used, above all, to clarify the alleged strengthening of Russian forces near the Ukrainian border. The ongoing – and contentious – debates over whether Russian forces have been reinforced and, if so, by how much raise the question of whether overflights undertaken under the treaty could be used to establish the facts on the ground in a mutually agreed manner.

With its sophisticated verification regime, which, in contrast to the Vienna Document, focuses on major weapon systems, the Treaty on Conventional Armed Forces in Europe (CFE Treaty), could have been a useful instrument in the crisis. It could have been used, for instance, to generate a clearer picture of how Russian troop deployments have changed in recent months (via routine and challenge inspections). This would have been even more effective had efforts to ratify the 1999 CFE adaptation agreement not failed, as its more stringent notification regime would have introduced greater transparency, including at least some requirement to report on the location of units deployed outside their peacetime locations and on movements of major weapons systems. However, the CFE regime played no role, not least as a result of its unilateral suspension by Russia in 2007. Nonetheless, the CFE regime is once again moving into the centre of attention, as it, like the NATO-Russia Founding Act, has provided the framework for politically binding

agreements on restraint; for instance, Russia agreed not to station additional substantial combat forces in areas adjacent to the Baltic states.

Experiences such as the above should provide an impetus for tackling the long overdue revitalization and modernization of conventional arms control. The Ukraine crisis has demonstrated many of the needs that must be addressed. Nevertheless, the challenges that have to be tackled are not new. The consultations on updating the Vienna Document in recent years have shown that there is an awareness of the need for change; this has been influenced not only by visible changes in force postures and activities but also by the experience with the protracted conflicts. In part, at least, existing proposals can be built upon. However, in the past, there was a lack of willingness to address the need for modernization with the necessary courage (which may also partly explain why the proposals often called for gradual progress, renouncing thoroughgoing change in the name of negotiability). This must change.

Elements of a Modernization Agenda

At heart, revitalizing conventional arms control is about catching up with the long overdue task of adapting existing arms-control instruments and practices to the dramatic changes that have occurred in force postures and activities, and in European security as a whole. In this context, strengthening arms control with regard to its role in conflict resolution and crisis management is of particular significance. In view of the growing importance of mobility and flexibility in force postures, greater stress needs to be placed on non-static aspects and on transparency and verification.

For reasons of negotiability and practicability, these new initiatives need to build on existing arms-control instruments, which, taking account of their complementarity, must be substantially modernized; the creation of a comprehensive regime, such as was once proposed under the heading of “harmonization” in the Programme for Immediate Action for the OSCE’s Forum for Security Co-operation (FSC) adopted at the Helsinki Summit in 1992, would be desirable, but appears too ambitious, at least at the present time. Consequently, there is a need for parallel modernization efforts to be pursued by the OSCE (FSC), the CFE states (e.g. in the established Group of 36, comprising the 30 States parties to the CFE Treaty and the six NATO member states who are not parties to the Treaty), and the member states of the Treaty on Open Skies.

A detailed modernization agenda for updating the Vienna Document could encompass the following key items:

- adjusting the thresholds for notification and observation of military activities;

- raising quotas of inspections and evaluation visits;
- reviewing verification modalities (sizes of inspection/evaluation teams, duration of inspections/evaluation visits, notification requirements and deadlines, and content and format of inspection reports);
- reviewing the forces and weapon and equipment systems included in the exchange of information (possibly expanding to include non-combat units, paramilitary forces, and internal security forces);
- reviewing the prior notification regime, particularly with regard to military activities covered in para. 41 of the Vienna Document;
- overhauling the risk-reduction mechanisms (e.g. defining the concept of “unusual military activities”, strengthening the role and possibilities of the requesting state, making acceptance of requests for consultation and verification obligatory);
- examining the possibility of enhanced transparency and new and tighter measures on deployments and exercises of military forces outside their peacetime locations and close to international borders;
- considering specific measures of restraint in crisis situations;
- establishing a clarification and verification mechanism to be used by a neutral party (e.g. the OSCE Secretariat) in crisis situations;
- creating explicit means of applying Vienna Document measures to intra-state conflicts.

If updating the Vienna Document, which should be undertaken in the OSCE context as a matter of priority, is to be more than a piecemeal measure, it needs to be complemented by targeted modernization of other aspects of European arms-control. Key goals should include the following:

- adapting conventional arms control to take into account changes in force postures (including enhancing provisions for transparency and verification, taking account of changing military structures, possible inclusion of new weapons/equipment categories, verifiable thresholds for exceeding ceilings on a temporary basis, a stricter notification regime for the movement of notifiable weapons and equipment, regional constraints on deployment and stationing);
- reaching an agreement on the use of the observation capabilities established by the Treaty on Open Skies for conflict prevention, crisis management, and conflict resolution (using simplified procedures, possibly also review/enhancement of sensors);
- reaching (political) agreements to guarantee sub-regional stability (restraint agreements);
- forging regional and sub-regional arms-control agreements, particularly in areas of elevated tension and where there are major disparities in force strength (additional confidence-building measures and disengage-

- ment/withdrawal agreements in defined geographical areas; specific border-related regimes);
- promoting status-neutral arms-control agreements in cases where de facto regimes or non-state actors need to be included in order to stabilize a crisis situation or to prevent outbreaks of violence (cf. the situation in the Caucasus; the Stabilizing Measures for Localized Crisis Situations from 1993 provide a catalogue of relevant measures);
- developing a politico-military code of conduct for crisis situations;
- negotiating dedicated agreements on new capabilities and capacities for use in military conflicts (cf. the OSCE's initial set of confidence-building measures on cyber-security from 2013);
- improving the implementation of existing agreements through increased co-operation between affected parties and possibly integration/"collectivization" of national implementation capacities;
- creating a common body of facts via (regime-specific) agreements on procedures for the co-operative evaluation of verification results (cf. e.g. the disputes over the findings under the Open Skies Treaty on the presence or absence of Russian troop reinforcements in the area near the Ukrainian border);
- agreeing possible consultation procedures in case of declarations of "force majeure" and alleged misuses of arms-control measures.

Arms Control in the Helsinki +40 Process

This "menu" of necessary and reasonable steps for the revitalization and modernization of arms control is many-sided and demanding. Whether it can be realized – in whole or at least in part – depends on the political will of those involved. At present, despite assurances to the contrary, there appears to be no interest in entering into negotiations aimed at a thoroughgoing improvement and/or adaptation of the existing arms-control regimes.

Politically, the Ukraine crisis should be seen as an opportunity to create new momentum and restore arms control to its deserved place at the heart of the OSCE's work. This should coincide with the best interests of all participating States and should be a common concern of them all not despite but precisely because of the deterioration in East-West relations.

The Helsinki +40 Process is a framework that can give the revitalization and modernization of arms control a powerful boost, while outlining how it can be achieved. This work should draw on key OSCE documents, whose central statements remain valid. These include, in particular, the 1992 Helsinki Document, which established the mandate of the OSCE Forum for Security Co-operation, and the Framework for Arms Control adopted at the OSCE's Lisbon Summit in 1996.

These two documents were the starting point for the work of the Helsinki +40 subgroup on military confidence-building and arms control at the start of 2014. As the Co-ordinator of this group, the current author proposed re-examining the role of arms control in light of the rapidly changing security situation. Based on a strategic approach, this was to focus on challenges, principles, and priorities, and the development of a programme for action. The goal was to produce a consensus-based document to be adopted on the occasion of the 40th anniversary of the signing of the Helsinki Final Act in 2015. This aimed to create much-needed momentum for an active arms-control policy and a framework for concrete negotiations in the FSC (specifically with a view to updating the Vienna Document).

Informal consultations held by the Co-ordinator in January 2014 showed broad support for the approach outlined here. As the Ukraine crisis intensified, however, the work of the Helsinki +40 Process as a whole came to a standstill, and the willingness to engage in dialogue on arms control evaporated. To what extent and under what conditions it can be restored is being examined. The Helsinki +40 Co-ordinator for arms control has announced that, alongside the continuation of the strategic approach outlined here, consultations will also be held to draw lessons from the Ukraine crisis for the further development of existing arms-control instruments. He has also proposed reviving the dialogue on military matters, including the changes in force postures and doctrines, at the political level. A dialogue of this nature has the potential to be a motor of arms control, especially if it aids in generating the necessary awareness that arms control must not be the victim of renewed confrontation but – viewed rationally and realistically – serves the interests of all states in security and stability.