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The Link between Conventional Arms Control and Crisis Management

Introduction

The unexpected Russia-Ukraine crisis has shown that new violent conflicts can arise in Europe very suddenly. But the existing conventional arms-control regimes (Treaty on Conventional Armed Forces in Europe, CFE Treaty; Vienna Document, VD; and Treaty on Open Skies) are currently not well suited to contributing to crisis management in such conflicts for several reasons: First, these regimes are agreements between states and cover only interstate conflicts. Yet the majority of new violent conflicts start as domestic conflicts and very often involve non-state actors who possess military means. Domestic conflicts and non-state actors are usually not included in interstate agreements.¹ Second, the current arms-control regimes were primarily created to support and preserve peaceful relations between states, and are less suited to stabilize a crisis, limit escalation or damage in a conflict, or strengthen disarmament and control of armed forces in a post-conflict situation. The term “crisis” is not mentioned in the text of the CFE Treaty. The same is true of the Vienna Document, though Chapters III (risk reduction) and X (regional measures) of the latter do contain measures that could be used in crisis situations.² The preamble of the Open Skies Treaty mentions that this regime could be further strengthened “for conflict prevention and crisis management” though this has so far not been realized.³

The Role of Arms Control in Crisis Situations

Arms control cannot prevent military conflict if one party is willing to use force to enforce its goals. However, arms control does create an additional

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- 1 The catalogue of measures contained in the 1993 document “Stabilizing Measures for Localized Crisis Situations” is a rare exception, as it also offers the opportunity to include non-state actors in such agreements. However, this opportunity has never been used. Cf. OSCE Secretariat, Conflict Prevention Centre/Operations Service, *Summary of OSCE Mechanisms and Procedures*, SEC.GAL/120/08, 20 June 2008, pp. 9-10, at: <http://www.osce.org/cio/32682>.
 - 2 The Vienna Document 2011 contains the following measures in chapter III: a) Mechanism for Consultation and Co-operation as regards unusual Military Activities, b) Co-operation as regards Hazardous Incidents of a Military Nature, and c) Voluntary Hosting of Visits to Dispel Concerns about Military Activities. Cf. Organization for Security and Co-operation in Europe, *Vienna Document 2011 on Confidence- and Security-Building Measures*, FSC.DOC/1/11, 30 November 2011, pp. 12-14, at: <http://www.osce.org/fsc/86597>.
 - 3 *Treaty on Open Skies*, p. 1, at: <http://www.osce.org/library/14127>.

barrier against war. It can contribute to preventing violent conflict in cases of unintended mishaps, misunderstandings, and failures in crisis situations where all or nearly all of the involved parties do not want to use military force. Crisis management can be divided into four phases:

- early warning;
- prevention of violent conflict/war;
- stabilization of military conflict through damage limitation, de-escalation, and the establishment of a ceasefire; and
- post-conflict stabilization by strengthening an armistice through a disarmament process and its verification.

In principle, arms control and CSBMs can enhance communication, transparency, and predictability and alleviate tensions, thereby reducing ambiguities in all four phases, but only under the premise that all parties involved support a common political settlement of a military conflict.

During the early-warning phase, arms control can provide very timely additional indicators that raise transparency and predictability regarding the possible use of military means, even where a war cannot be prevented.⁴ Depending on the circumstances, the degree of non-compliance and non-implementation of one or more of the three existing arms-control regimes can be used as early warning instruments for impending military conflicts.

These additional indicators can help prevent the use of military means and are indispensable instruments for the second phase of war prevention in a crisis. Here, arms control and CSBMs provide additional communication lines between potential adversaries.

The greatest scepticism about the value of arms control concerns the third phase, in which violence and the use of military means become a part of the conflict. Many say that arms control is no longer possible in this phase, as inspectors' lives would be at risk in areas of fighting, and the norms, constraints, rules, and procedures of an arms-control regime are no longer respected by the parties to the conflict, particularly if non-state actors are involved.⁵ Arms control no longer seems possible in a highly confrontational politico-military environment.

On the other hand, depending on the development of a violent conflict and on the political will of the conflict parties, there may be interest in damage limitation and preventing escalation; after all, violence has to stop at some point, and it cannot be brought to an end without some informal or formal arms-control and disarmament measures. These measures are usually not provided by existing regimes, but rather in the form of arrangements de-

4 I would like to thank Wolfgang Richter for clarifying this point.

5 Cf. Hans-Jürgen Hugenschmidt, *Rüstungskontrolle – Ein Beitrag zum Krisenmanagement* [Arms Control – A Contribution to Crisis Management], in: Götz Neuneck/Christian Mölling, (eds), *Die Zukunft der Rüstungskontrolle* [The Future of Arms Control], Baden-Baden 2005, pp. 72-88, here: pp. 80, 83-84.

signed to suit the specific crisis situation and adapted to the parties involved and the military means and structures used.⁶ By contrast to existing regimes, such measures also provide a better chance of including non-state actors. An example here is the creation of the Special Monitoring Mission to Ukraine (SMM) by the Permanent Council of the Organization for Security and Co-operation in Europe (OSCE)⁷ and the negotiation of the two Minsk ceasefire agreements for eastern Ukraine.

In the phase of post-conflict stabilization, an arms-control agreement is always part of efforts to support the ceasefire and disarmament efforts. Arms control can thus contribute to three of the four phases of crisis management. During the phase of fighting, its role generally depends on specific political initiatives designed to limit damage and escalation and to stop military violence.

Experience with Existing Arms-Control Regimes in Previous Crisis Situations

The Mechanism for Consultation and Co-operation as Regards Unusual Military Activities in Chapter III (Risk Reduction) of the Vienna Document was first invoked in 1991 by Austria and Italy, who were concerned about the deployment by the Socialist Federal Republic of Yugoslavia of armed forces in Slovenia close to their borders.⁸ But the answer provided by Yugoslavia was not really helpful, since it evaluated these hostilities as a domestic conflict and therefore offered little to calm the security concerns of its neighbours. Up to the war in Georgia in 2008, this mechanism had been used seven times, in most cases not to the satisfaction of the requesting parties.

After the 1995 Dayton Peace Agreement, the Agreement on Sub-Regional Arms Control between the Federal Republic of Yugoslavia (Serbia and Montenegro), Croatia, and Bosnia and Herzegovina and the Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina successfully contributed to post-conflict stabilization through additional communication, military transparency, predictability, and disarmament in this area. However, these two agreements were enforced and not based on voluntary political will.

In 1999, Russia and Belarus used CFE and VD inspections in a coordinated way to verify the military preparations being undertaken by NATO countries before the Kosovo war. NATO countries allowed this as a kind of

6 I would like to thank Andrei Zagorski for his assistance in developing this line of thought.

7 Cf. Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 1117, Deployment of an OSCE Special Monitoring Mission to Ukraine*, PC.DEC/1117, 21 March 2014, at: <http://www.osce.org/pc/116747>.

8 Cf. *Summary of OSCE Mechanisms and Procedures*, cited above (Note 1), pp. 7-8. This mechanism was invoked three times during the Yugoslavian crisis in 1991 and 1992 by Austria, Italy, Hungary, and Yugoslavia, once before the Kosovo war in 1999 by Belarus, and three times before the war in Georgia 2008 by Georgia and Russia.

“confidence-building measure”, although US forces initially feared that it might impose constraints on their operational room to manoeuvre. In 2000, Russia invited an inspection under the VD with Moscow’s military protection to Grozny during the ongoing second war in Chechnya. This somewhat reduced Western criticism that Russia had unilaterally excluded the Caucasus area from inspections since 1996. In 2001 and 2002, after the end of the second war in Chechnya, the CFE verification mechanism was used by Western countries in a co-ordinated way to verify whether Russia was once again complying with its CFE flank limits.⁹ Before the war in Georgia in 2008, an Open Skies flight in April and a CFE inspection in June in Georgia indicated unusual military preparations, but these were not taken seriously. In July 2008, after an incident between Georgia and South Ossetia, an OSCE mission arranged an exchange of prisoners and reduced tensions temporarily, but such efforts ultimately failed.

These experiences show that the existing regimes tend to have only a minor impact on crisis management and have been unable to prevent the use of military means in a single instance. Any trust they have built between the parties involved has been partial and limited, and tensions have only been reduced temporarily. The Sub-Regional Arms Control Agreement is the only exception here.¹⁰ It successfully helped to stabilize relations among Croatia, Serbia, and Bosnia and Herzegovina in the post-conflict phase. Many of these violent conflicts initially started as domestic conflicts with the strong involvement of non-state actors. Here, interstate arms control and CSBM measures are usually difficult to apply.

Current Experience in and around Ukraine

More recently, the Russia-Ukraine conflict has offered a new opportunity to use arms control and CSBMs as tools for increasing transparency and accountability and to reduce tensions, again, so far, with mixed results:

Some Good News

Throughout the crisis, all the European arms-control regimes continued to operate outside the areas of new and old unresolved territorial conflicts. The prevention by irregular forces on the Crimean peninsula of an inspection mis-

9 Contrary to the statement made by Prime Minister Vladimir Putin on 1 November 1999, Russia did not provide additional information on its forces in the flank areas, nor did it allow additional inspection quotas to enable verification of its claims.

10 Though it should also be mentioned that, after the Dayton Peace Agreement, three Open Skies missions were also conducted over Bosnia and Herzegovina, with the participation of the three entities, to support the process of military post-conflict stabilization: a Hungarian flight in June 1997, a German one in August of that year, and a Russian flight in July 1998. Cf. Hugenschmidt, cited above (Note 5), p. 85.

sion under Chapter III (visit to dispel concerns about unusual military activities) of the Vienna Document 2011, due to commence on 5 March, was an early indication that something had gone wrong in this specific area.¹¹ Ukraine volunteered to allow additional CFE and VD inspections (under Chapters III and X of the latter), to be paid for by the inspecting parties, to strengthen transparency and Kyiv's sovereignty. Early in the crisis, up to the presidential elections of May 2014, Western countries used these instruments as political means to support Ukraine's sovereignty and territorial integrity. The VD inspections further indicated that major Russian military manoeuvres, conducted in parallel outside the conflict area, were not directed against other countries. The Treaty on Open Skies, which allows for 42 observation flights over Russian territory and twelve over Ukrainian per year, was also used to increase military transparency to some degree. Russia even accepted a prepaid voluntary Open Skies flight by Ukraine in March 2014, but was no longer prepared to allow such measures after the suspension of the NATO-Russia Council in April 2014.

Some Bad News

The contribution of the Vienna Document to early warning and military conflict prevention was limited because the thresholds for the notification and observation of military activities under the Vienna Document are still oriented towards a Cold War military posture and not the current military structures.¹² They are therefore too high to provide sufficient early-warning indicators in the initial phase of a conflict, and the verification and evaluation measures allowed per year and country are too low to provide sufficient transparency during a long-term military conflict. The Vienna Document permits only three inspections of military activities per year and country, with two additional evaluation visits in Russia and in Ukraine. Even if military activities reach the thresholds for notification and observation, this can easily be circumvented by the misuse of the single command rule: Military activities must only be reported and may only be observed if they reach the thresholds under a single command. It is a common practice of many countries to subordinate major units involved in such activities to different commands, thereby keeping them below the thresholds. Furthermore, the permitted number of four inspectors may be sufficient for peacetime needs, but is

11 For further details, cf. Organization for Security and Co-operation in Europe, *OSCE response to the crisis in and around Ukraine (as of 1 June 2015)*, pp. 7-8, at: <http://www.osce.org/home/125575>.

12 Thresholds for notification (divisional level) are as follows: 9,000 troops, including support; 250 tanks, 250 artillery pieces, or 500 armoured combat vehicles; 200 air sorties; 3,000 troops involved in an amphibious landing, heliborne landing, or parachute assault activity. Thresholds for observation (corps level) are: 13,000 troops, including support; 300 tanks, 500 armoured combat vehicles, or 250 artillery pieces; 3,500 troops carrying out an amphibious landing, heliborne landing, or parachute assault activity. Cf. *Vienna Document 2011*, cited above (Note 2), pp. 20, 24.

too low in crisis situations. Finally, where unusual military activities are repeated and meetings are called to clarify them, nothing is done to reduce tensions if the responding party is unwilling to participate in these meetings.

During the current crisis, it was only possible to carry out CFE inspections on Ukrainian territory, as Russia had suspended the implementation of the CFE Treaty in December 2007. As a result, this regime could not be used for early warning or transparency measures relating to Russian forces operating nearby the border of eastern Ukraine. If the adapted CFE Treaty had been ratified by all States Parties and had entered into force, it would have offered a further 30 inspections per year on Russian territory. Unfortunately, Kyiv has not complied with all of its CFE obligations since March 2014.¹³ This has further weakened the outdated CFE regime.

After Ukraine started its offensive against separatist forces in eastern Ukraine in April 2014, the separatists soon stopped all regular international verification activities in this area, by taking hostage a VD inspection team, led by Germany, together with its Ukrainian escort team, whom they held from 26 April to 3 May. The separatists feared that, after the outbreak of fighting, the verification measures would be used to conduct reconnaissance against their forces. In addition, since the illegal annexation of the Crimea in March 2014, the peninsula has been completely excluded from arms control and CSBMs for status reasons.

Nor are Open Skies observation flights well-suited for enhancing transparency and accountability in situations such as the present crisis. Observation flights over areas of military concern using parallel flight paths are currently not permitted, and the time for national evaluation and interpretation of the flight pictures is based on peacetime needs and not on the much more rapidly moving needs in a crisis.¹⁴ In addition, the downing of a Malaysian civil passenger plane (flight MH17) demonstrated very clearly the high risks of Open Skies observation flights over an active conflict area.

Because of the growing tensions, both sides misused some inspections in order to make one-sided, politicized statements that were to their own advantage. This could undermine the validity and integrity of arms control and CSBM measures.¹⁵ It is therefore necessary not only to discuss future im-

13 Since March 2014, Ukraine has stopped the regular notification of military changes, and the information exchange at the end of the year 2014 (for 2015) mostly contained the previous years' figures. There may be several reasons for this behaviour: Kyiv wanted to show that the Crimean peninsula and the Luhansk and Donetsk regions are still part of Ukraine, while also avoiding giving Russian and separatist forces further information about their actual strength and restructuring. Another reason could be that Ukraine is currently unable to provide up-to-date figures.

14 Usually up to three weeks are necessary to assess and evaluate the images captured during an Open Skies mission.

15 See, for example, Statement by the Delegation of the Russian Federation, in: Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *771st Plenary Meeting of the Forum*, FSC.JOUR/777, 19 November 2014, Annex 1, at: <http://www.osce.org/fsc/128251>.

provements of the means, but also new procedures and rules that would lower the risk of possible misuse in future crises.

Nevertheless, the establishment of the SMM in March 2014 has helped to maintain communication between the adversaries, to provide additional transparency in this area, and has contributed to damage limitation and escalation control.¹⁶ The SMM has tried as much as possible to verify the obligations (stopping the fighting, providing information about all forces and their deployments, withdrawal of heavy weapons behind certain lines, gathering them in certain holding areas) of the Minsk ceasefire agreements. In contrast to regular arms-control inspections, SMM monitors are not escorted by Ukrainian officials. As impartial monitors, they omit all relevant information from their reports that could be used by the parties to the conflict to gain a military advantage in the area. In principle, the SMM would be able to verify the Minsk agreements, provided they had unhindered access to all locations, and could be supplied with well-trained experts, the necessary observation equipment, and the relevant information from the parties to the conflict. However, so far the SMM still lacks full access to all locations, the well-trained personal, the equipment, and the necessary information from the parties. It is therefore no surprise that the SMM has only been able to partially fulfil its mission in this area up until now. Should the armistice prove stable, the questions will arise of how far regular arms-control and CSBM measures can be re-established in eastern Ukraine and how far they can contribute to post-conflict stabilization.

Another aspect of this crisis is that tensions, mistrust, and confrontation have grown between NATO countries and Russia. Both have increased the scope and frequency of their military activities as a result. This has further reduced transparency, predictability, and stability between them, due to the weaknesses of the VD inspections as outlined above. Russia appears to be using out-of-garrison snap exercises to demonstrate its military strength, thereby exaggerating Western threat perceptions, while the US seeks to use its activities to demonstrate Russian inferiority, thereby exaggerating Russian threat perceptions.¹⁷ This promotion of misperceptions facilitates a vicious circle of growing mistrust and confrontation. This makes it an urgent matter to improve the measures available under the VD in order to provide more transparency and predictability for such activities for the overall benefit of security and stability in Europe.

16 For further details, cf. Claus Neukirch, *The Special Monitoring Mission to Ukraine in Its Second Year: Ongoing OSCE Conflict Management in Ukraine*, in this volume, pp. 229-239; Claus Neukirch, *The Special Monitoring Mission to Ukraine: Operational Challenges and New Horizons*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2014*, Baden-Baden 2015, pp. 183-197

17 Cf. Thomas Frear/Ian Kearns/Lukasz Kulesa, *Preparing for the Worst: Are Russian and NATO Military Exercises Making War in Europe More Likely?* ELN Policy Brief, August 2015.

What Can Be Done?

There are four major areas where improvements seem necessary. First, the ability of the SMM monitors to verify the armistice needs to be improved. This requires comprehensive access, better equipment, and more experts, as well as all the necessary information from the conflict parties about their forces and their deployments.¹⁸ A permanent ceasefire is a precondition for further arms-control and CSBM measures. Second, a priority should be increasing transparency regarding out-of-garrison military activities and concentrations of land forces near borders, for instance, by improving communication, early-warning indicators and transparency in crisis situations, and/or focusing on tension reduction and transparency between NATO countries and Russia. A more comprehensive approach would be too complex and time-consuming. Third, as a supplementary institutional measure, either the OSCE Secretary General or the Chairperson-in-Office could be given the right to initiate fact-finding missions autonomously and in co-operation with the potential conflict party, in cases where tensions between or within states might lead to the use of violence. This would enhance communication, early warning, and transparency and could contribute to the prevention of violence. The question here is whether the OSCE participating States would support such an institutional strengthening of the OSCE. Fourth, the negotiation of more complex measures for early warning and transparency in crisis situations within the context of a new conventional arms-control agreement and the modernization of the Vienna Document seems to be more of a long-term effort under the present political conditions. Currently, Russia is linking the modernization of the Vienna Document to parallel negotiations on conventional arms control.

Next year, Germany will have the Chairmanship of the OSCE, and the Vienna Document 2011 is due to undergo its first revision.¹⁹ This offers an opportunity to test how far initial immediate measures can be realized for the improvement of communication, early warning, and transparency in crisis situations, and/or for tension reduction and more transparency between NATO countries and Russia. Measures to improve performance in crisis situations should concentrate on establishing a new mechanism under Chapter III that would allow additional inspections beyond the annual quota in areas of special concern if the mechanism for consultation and co-operation does not provide adequate clarification or fails. This mechanism should in-

18 On 12 March 2015, the Permanent Council extended the mission to 31 March 2016 and doubled its strength from 500 to 1,000. But even this increase is not enough as long as fighting continues. Cf. Organization for Security and Co-operation in Europe, OSCE Special Monitoring Mission to Ukraine, *OSCE Chief Monitor in Ukraine welcomes the extension to the Special Monitoring Mission's mandate*, Kyiv, 13 March 2015, at: <http://www.osce.org/ukraine-smm/145001>. SMM members also now receive better training and a handbook to help them recognize the major weapon systems of the parties to the conflict.

19 Cf., *Vienna Document 2011*, cited above (Note 2), p. 2, para. 6.

clude the right to employ more inspectors (including support personnel) and to stay over a longer time in such areas. It should also allow follow-on inspections if necessary. Russia and Western countries proposed such a mechanism for the modernization of the Vienna Document in 2011.²⁰ Missions of this kind could be supplemented by the right of the OSCE (Secretary General or Chairperson-in-Office) to conduct independent fact-finding missions in cooperation with the state(s) concerned to further clarify the situation (see above).

In order to reduce tensions, mistrust, and confrontation between Russia and NATO countries and to enhance military transparency, the thresholds for notification and observation of military activities in the Vienna Document should be further lowered and adapted to current military structures, while the annual quotas for inspections should be significantly increased.²¹ The thresholds should therefore not only cover regular active and support units, but also logistical and command elements. Volunteer military units, contracted private forces, and paramilitary forces of the interior ministry should also be counted if they take part in relevant military activities. The “single command” rule for such military activities should be replaced by a new rule that would reduce the risk of circumvention. Thresholds for notification of military activities should be lowered to a point between battalion and brigade/regiment level and those for observation to somewhere between brigade/regiment and divisional level.

However, for negotiations in this direction to succeed, it would be necessary for Russia to temporarily shift its priority from conventional arms control to the modernization of the Vienna Document. The conditions that would make such a shift possible need to be clarified. Certainly, the fighting in Ukraine would have to have stopped permanently and Western sanctions to have been largely lifted.

20 Russia proposed the mechanism of a “Special OSCE Inspection” on 27 July 2011, and Western countries (the Netherlands et al.) proposed a mechanism known as the “OSCE Inspection for Clarification on Military Activities Giving Rise to Concern” (FSC.DEL/127/11 and FSC.AIAM/12/11/Rev.4, respectively). The Russian proposal reserves the right of stronger control by an individual state as the activation of the proposed measure and the nomination of the inspector team would need the approval of the FSC. Additionally, under the Russian proposal, only several states – and not one individual state as is currently the case – could express their security concerns about unusual military activities. Russia raises the qualification further by linking significant military activities to the preparation of offensive military operations. There are additional differences in detail, but both proposals allow more inspectors and follow-on inspections.

21 Cf. Wolfgang Richter, *Rüstungskontrolle und militärische Transparenz im Ukraine-Konflikt* [Arms Control and Military Transparency in the Ukraine Conflict], SWP-Aktuell 2014/A 59, September 2014, pp. 3-4.