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The Implementation of Conventional Arms Control Agreements

The Treaty on Conventional Armed Forces in Europe (CFE I), the Concluding Act of the Negotiations on Personnel Strength of Conventional Armed Forces in Europe (CFE Ia), the Vienna Documents on Confidence- and Security-Building Measures (VD 90, 92, 94) and the Treaty on Open Skies, all concluded in the early nineties, are definitive agreements codifying military strength, forms of conduct and operational options. These treaty regimes, which were *inter alia* intended as the foundation for building a new European security order, have proved to be largely ineffective in the face of changed threats and/or threat perceptions, new types of conflicts, especially those which are ethnically or religiously motivated, and civil wars. They were unable to prevent the war in Yugoslavia and equally helpless in the face of the continuing strife in the Caucasus. The available treaty regimes did not - or do no longer - succeed in fulfilling the primary function of arms control, the prevention of war.

Under these circumstances, issues of conflict prevention, crisis management and peace missions seemed to call more urgently for answers and forced the traditional arms control approach into the background. The variety of ideas about the form of future security relationships in Europe, along with difficulties in implementing the complicated terms of arms control agreements which had resulted from significant changes in the security environment, brought the whole process to a standstill. The plan to harmonize the various arms control obligations failed as did the entry into force of the Treaty on Open Skies. And it was only through an energetic effort on the part of the Western countries that the centerpiece of conventional arms control, the CFE Treaty, could be sufficiently adapted to changed circumstances so that new negotiations could be avoided and the essential terms of the Treaty sustained and implemented.

The Implementation of the CFE Treaty

The CFE Treaty established equal ceilings for the Western and the Eastern group of States Parties with respect to their stocks of five categories of major weapons systems: battle tanks, armoured combat vehicles, artillery, combat aircraft and attack helicopters. Additional regional provisions, the suffi-

ciency principle, and the so-called maximum levels for holdings resulted in binding quotas for each country which could not be altered unilaterally.

Among the important obligations which the Treaty imposed on the 30 States Parties to it was the requirement that all necessary reductions of major weapons systems be carried out according to agreed procedures in three phases by 16 November 1995. Beginning on 17 November 1995, all limitations of stocks and deployments provided for in the Treaty must be carried out. In addition, every State Party is obligated to provide at regular intervals information on its ground and air forces - along with other notifications as necessary - and to permit its information to be verified by inspections.

Reductions as of 16 November 1995

The third and last reduction phase began in November 1994 under conditions promising a successful conclusion. In the previous two phases there had been little reason for criticism and more than 70 percent of all reductions, rather than the required 60 percent, had already been carried out. This meant about 35,000 major weapons systems according to the CFE definitions.¹

The tendency for the Western countries to fulfill their liabilities more rapidly than the Eastern ones continued in 1995. By the end of March 1995 the NATO countries had already made 90 percent of the reductions called for by the November deadline, the countries in the Eastern group only 70 percent. Germany, which as a result of unification and the related takeover of stocks from the National People's Army had the second highest reduction liabilities of all CFE countries (after Russia), announced the successful conclusion of these reductions at the end of May. Two points merit special attention here: first, that a substantial part of the reduction liabilities had been met not by destroying excess major weapons systems but by selling or giving them to NATO allies; second, that the costs of the whole process were estimated at more than 100 million DM.

The comparatively high costs of destruction methods in conformity with the Treaty provided a significant incentive to meet reduction liabilities by exporting surplus major weapons systems, as became evident not only here but in the cases of various Central and Eastern European countries. Disarming Europe by arming other regions may be consistent with the Treaty but it is at best a morally questionable undertaking and illustrates the urgency of rules on the transfer or export of conventional weapons.

Another version of this problem was seen in connection with Belarus which in February 1995 stopped the reduction process, appealing to economic

¹ Cf. Zdzislaw Lachowski, Conventional Arms Control and Security Dialogue in Europe, in: SIPRI Yearbook 1995, Armaments, Disarmament and International Security, Oxford 1995, pp. 761-790, in this case: pp. 761-765.

difficulties. A demarche by the NATO countries had no effect. Belarus said it would prefer to sell excess battle tanks rather than destroying them at a high cost, and besides it expected some financial support from the West. Only in October, after the German Foreign Minister had provided assurances in this regard and Belarus had received its initial technical assistance, were the reductions resumed. But there was no longer any chance of meeting reduction liabilities by the November deadline.

Along with Belarus, Kazakhstan, the Ukraine and Russia declared in the fall of 1995 that for various reasons they were unable to carry out the terms of the CFE Treaty on time. The difficulties for Kazakhstan resulted from weapons systems which the then Soviet Union had withdrawn behind the Urals before signing the Treaty (and which it later, in a binding political declaration, promised to destroy by 31 December 1995); the Ukraine and Russia referred to the still unsettled matter of dividing up the Black Sea Fleet, along with Marines and Coast Guard units. Russia also admitted that it had so far reduced only 2,500 of the 8,000 battle tanks and armoured combat vehicles which the USSR had withdrawn behind the Urals, and that it was not going to be able to destroy the remaining weapons systems there by the deadline. In this connection, Russia also referred to the related costs of about 30 million DM. Thus it was all the more astonishing - particularly in view of Russia's very strong military presence on its southern flank - when the Russian General Staff declared in November that it had met its Treaty liabilities by reducing far more than 10,000 major weapons systems. It remained unclear whether Armenia and Azerbaijan would carry out the provisions relating to them because of the difficulty of estimating the gains and losses for both sides from the fighting in and around Nagorno-Karabakh and the impossibility of verifying these on the scene.

Experiences with the Verification Regime

The problem mentioned above - not being able, for security reasons, to carry out inspections in those areas of the Caucasus affected by war or crisis - was one of the few limitations of a general nature which have so far had to be imposed on the implementation of the verification regime. Apart from isolated instances, no other serious difficulties or indications of Treaty violations have emerged from the 2,351 inspections² held between entry into force of the Treaty and the end of the last reduction phase. However, one expectation

² With regard to concrete figures, see: Bericht zum Stand der Bemühungen um Rüstungskontrolle und Abrüstung sowie der Veränderungen im militärischen Kräfteverhältnis (Jahresabrüstungsbericht 1995) [Report on the Status of Arms Control and Disarmament Efforts as well as Changes in the Balance of Military Strength (Annual Disarmament Report for 1995)], in: Deutscher *Bundestag*, 13. Wahlperiode, Drucksache 13/4450 [German Bundestag, 13th Electoral Period, Publication 13/4450], p. 49.

- one might say, fear - has been confirmed: on-site inspections carried out by one country alone, without coordination with the other States Parties (mainly from the same group), are more expensive, difficult to perform and less efficient than a procedure coordinated by a number of states. It is no coincidence that the countries of the Eastern group have on average had to accept more than twice as many inspections on their own territory as they have carried out; indeed, four countries in this group (Azerbaijan, Georgia, Kazakhstan and Moldova) have not carried out a single inspection of their own during the whole time. Precisely the opposite relationship prevails with respect to the NATO countries, which cooperate in the preparation and coordination of their verification activities and in the evaluation of the Eastern States Parties' implementation record.

One should note in favor of the Western countries, however, that they have taken a number of steps to try to reduce the large discrepancies between themselves and the Eastern States Parties. In 1994 the Easterners were offered access to the NATO data bank VERITY, in which all CFE data are stored, including the annual information exchanges as well as other notifications and inspection reports. All except Moldova have made use of this opportunity and, according to NATO, intensive use is being made of the data. NATO's offer of cooperation and training includes various workshops on the use of the data bank, seminars on cooperation in the verification and implementation of conventional arms control agreements and courses for inspectors.

The Western countries' practice of inviting guest inspectors from allied countries to participate in their inspections (done in 1,247 of 1,557 inspections) has been more and more expanded to include the Eastern States Parties. As a result, by the conclusion of the last reduction phase 165 guest inspectors from Eastern countries had participated in inspections conducted by NATO member countries. Conversely, inspectors from NATO countries have so far taken part in 20 inspections carried out by states of the Eastern group in another country of the same group.

The Flank Problem

Article V of the CFE Treaty imposes special limitations with regard to the flank zones. Russia and the Ukraine are the only States Parties which, on the basis of this provision, must observe regional as well as country limits on the stationing of their armed forces and their equipment. In an area larger than more than half of its European territory Russia, by the terms of these provisions, may station no more than 20 percent of its Treaty-limited major weapons systems - only one-sixth as many tanks and one-fifteenth as many armoured combat vehicles as, say, in the comparatively tiny region of Kalinin-

grad. The Ukraine is permitted to station in that part of the country that belongs to the flank zone region only 17 percent of its battle tanks, seven percent of its armoured combat vehicles and 25 percent of its artillery.

At least since the outbreak of the war in Chechnya, the other CFE states have had to assume that Russia, whose President, Boris Yeltsin, had already called for the abrogation of these provisions, would no longer observe the flank ceilings established in the CFE Treaty. The reserve with which Russia reacted to repeated offers by the Western countries to make use of every imaginable alternative and loophole in order to increase the number of its weapons in the Caucasus region, while at the same time avoiding violations of the CFE Treaty, justified the conclusion that the forces in this region were to be radically restructured so as to adapt them to the new military doctrine and to the requirements of modern warfare.³

In July 1995 Russia presented NATO with new figures for its proposal of a temporary exclusion zone, which it had already introduced in February of that year in the Joint Consultative Group of the CFE states. A short time later the NATO countries rejected the establishment of such a zone but at the same time announced that they would make their own proposal in September for a solution of the problem. It provided for the exclusion from the northern and southern flank zones of five Russian areas (Pskov, Novgorod, Vologda, Volgograd, Astrakhan) and one Ukrainian one (Odessa)⁴ but tied this to limitation measures and to additional rules on verification and information which were designed to meet the security concerns of other states in the affected regions.

Russia accepted this solution in principle but then, in October, came forward with another proposal of its own. The areas of Pskov and St. Petersburg were to be excluded from the northern flank and Volgograd, Krasnodar and Stavropol from the southern one. After a meeting with his American colleague, Perry, Defense Minister Grachev stated that the sides had reached a compromise according to which the area around St. Petersburg would remain in the northern flank but that the areas of Volgograd, Krasnodar, Stavropol and Rostov would be removed from the southern flank and assigned to the expanded central region. This compromise met with determined resistance within NATO from Turkey, and reservations were also expressed by the Baltic states and Finland; thus no solution of the problem was found by the end of the last reduction phase.

³ Especially problematic for Russia was the stipulation that only 580 armoured combat vehicles could be stationed in active units in the flank region. This would scarcely have permitted equipping enough fighting units to ensure maneuverability and flexibility, which are particularly important in unsettled areas and in situations of civil strife.

⁴ The Ukraine threw its support at an early stage behind the Russian demand for changes in the flank rules, pointing especially to the high costs associated with the transfer of military units. It accepted the NATO proposal.

The Situation as of 17 November 1995

Since 17 July 1994 the 30 States Parties have undertaken overall reductions of 18,295 battle tanks, 17,435 armoured combat vehicles, 9,349 artillery pieces, 2,096 combat aircraft and 249 attack helicopters. The total of 47,424 major weapons systems represents 95 percent of the reductions called for - not a bad result, even though a closer look at individual provisions of the CFE Treaty does reveal some highly dubious conduct which is obviously inconsistent with the Treaty. A number of countries, for example, in applying the counting rules set forth in Article III of the Treaty, made use of the option of declaring Treaty-limited equipment to be designated for export, thus reducing their reduction liabilities. In the most recent information exchange, Russia declared several hundred major weapons systems, most of them stationed in the flank zone, to be systems designated for removal from the area of application. But the Treaty contains no category that would permit such equipment to be excluded from reduction liabilities. Moreover, with regard to its holdings in the flank zone, Russia has not counted the weapons systems of the Marines and the Coast Guard, the equipment of a paratroop regiment with peacekeeping responsibilities or the Treaty-limited equipment in those areas which might, once the flank issue is clarified, be assigned to the expanded central region; as a consequence, it has, at least on paper, drastically reduced the surplus of major weapons systems in the flank zone. Apart from that, Russia has stationed forces on the territory of Moldova without obtaining the agreement of that country's government required by Article IV, Paragraph 5. Overall, however, Russia has fulfilled its mandatory reduction liabilities⁵, as has been emphasized by the Russian General Staff. The same cannot be said of Armenia, which has slightly exceeded its maximum levels for holdings, or of Azerbaijan and Belarus, which have exceeded theirs more substantially. The last two, however, have now started reduction programs to make their holdings consistent with the ceilings.

The Treaty provisions on exchange of information and other forms of notification have also created difficulties for some countries. Some required notifications have not been given and the deadlines for the annual exchange of information not met, and some of the information received has been inconsistent. The reasons for this, in most cases, were overburdened bureaucracies and/or difficulties in obtaining information from crisis areas. With regard to the Russian data on holdings in the flank zone, however, which were "prettified" to the level of almost 50 percent, these explanations were inadequate; in this instance a more serious problem had to be acknowledged.

⁵ This statement is, however, only correct if the holdings of the Black Sea Fleet are not counted. Counting them would put both the Russian and Ukrainian holdings above the ceilings provided for in the Treaty.

Nevertheless, most of the information provided has stood the test of on-site inspection.

In view of this situation, the goal of the Joint Consultative Group of the CFE States Parties at its meeting on 17 November 1995 was above all to find a *modus vivendi* on the flank question, as Russia had made itself formally guilty of a breach of the Treaty on the previous day. The solution which was finally found represented a compromise between the Russian concern to have its desired changes acknowledged as legitimate and necessary and the West's primary goal of avoiding a formal change (requiring ratification) of the Treaty text, but it was not a solution of the real problem. Rather, all 30 CFE States Parties issued a joint declaration setting forth principles for the settlement of the flank problem based on NATO's proposal of fall 1995, i.e. providing for a reduction in size of the flank zone. Which areas should be withdrawn from the flank zone, the period of time Russia would be given to adapt its holdings to the ceilings of the new, smaller flank zone, and what additional measures should be applied to promote transparency in the affected regions, were questions which remained open for the time being but were supposed to be further negotiated in the Joint Consultative Group, until the CFE Review Conference in May 1996. Until that time, according to the agreed terminology, Russia was guilty of (only) a technical violation of the CFE Treaty.

The CFE Review Conference from 15 - 31 May 1996

According to the CFE Treaty, this first of the regular Review Conferences, to take place every five years, was to be devoted to a review of the implementation of Treaty provisions to date. Thus problems of implementation through the end of the last reduction phase were the focal point of the consultations. Once Russia, surprisingly, had agreed to the American-Turkish proposal of March 1996 for a reduction in size of the flank zone⁶, it was finally possible to reach agreement among all States Parties. Accordingly, Russia's flank zone is to be reduced by the area of Pskov in the north and by the areas of Volgograd, Astrakhan, part of Rostov, and a corridor to the maintenance depot in Kushchevskaya in the south. With regard to the Ukraine, Odessa is to be excluded from the flank zone. For the remaining Russian flank zone, ceilings of 1,897 battle tanks, 4,397 armoured combat vehicles and 2,422 artillery pieces - figures which correspond roughly to what the Russians presently have in active units and depots in the flank zone - will remain effective until 31 May 1999. After that the quotas will shrink to 1,800 battle tanks, 3,700 armoured combat vehicles and 2,400 artillery pieces.

⁶ Surprising in the sense that this proposal scarcely differed from the last Western proposal of fall 1995 which Russia had rejected.

For the area of Odessa, the Ukraine will be allowed 400 battle tanks, 400 armoured combat vehicles and 350 artillery pieces. In addition, the Russian side has been granted the right to make the greatest possible use of the rules governing temporary deployment of major weapons systems and redistribution of the quotas between the successor states of the USSR.

These provisions are supplemented by an obligation on Russia's part henceforth to provide information on its holdings in the remaining flank zone every six months; indeed, for Kushchevskaya this information will have to be given every three months. The Ukraine will be required to give notice of any changes in the area of Odessa which exceed five percent. Russia has accepted ten additional inspections per year in the areas removed from the flank, the Ukraine one.

In a separate statement, the Russian government also gave assurances that the destruction or conversion of 14,500 major weapons systems which the USSR had withdrawn behind the Urals before Treaty signature would be continued and completed by the year 2000. In actual fact, Russia was supposed to have completed these reductions by the end of 1995 but objected repeatedly to the disproportionately high cost of the prescribed reduction methods and managed to meet only about a third of its liabilities by the deadline. Its concerns have now been met to the extent that in the future leaving equipment in the open air with raised hoods - in other words, simple decay - will under certain conditions be accepted as a reduction method. Another arrangement, which is a novelty not just in the CFE context, provides that if, despite good intentions, the destruction and conversion liabilities cannot be met a substitution rule taking into account the availability of financial resources may be applied.⁷ The other States Parties which had not yet fulfilled their reduction liabilities joined Russia in giving assurances that they would soon implement the Treaty provisions pertaining to them.

The Final Document of the Review Conference contained, in addition, a compilation of Treaty details on whose interpretation and application agreement had been reached, a list of issues requiring further discussion in the Joint Consultative Group and a summary of the matters which had been discussed in the course of the two-week Conference (Annexes B, C, D). These three sections reflect above all the experience of those offices which have been concretely involved in implementation of the Treaty at the national or international level.

At the conceptual level - and here the Final Document goes beyond the actual objectives of the Conference - the Joint Consultative Group, immediately fol-

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The Chairman of the Conference felt compelled to make a statement of his own pointing out that this action in no way prejudiced other arms control obligations. Cf. Final Document of the First Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiations on Personnel Strength, Vienna 15-31 May 1996, p. 19.

lowing conclusion of the Conference, is to begin laying out the scope and parameters of the process needed to adapt the CFE Treaty to the changed situation in Europe. Initial results and recommendations are to be ready for the OSCE Summit in Lisbon.

The subject of adaptation and modernization of the CFE Treaty was put on the agenda mainly under pressure from Russia, which had presented a detailed position paper in advance of the Conference. The relationship to possible NATO enlargement was unmistakable in it and it can be seen as an initial accommodation by the Western countries that they have departed from their rigid view that the CFE Treaty is not legally affected by NATO's Eastern enlargement at least to the extent of acknowledging a political connection between the two. At the same time there was a clear statement, according with Western interests, that the CFE Treaty will retain its validity until such time as any new measures and adaptations which may be necessary have entered into force.

CFE Ia, Vienna Document 1994 and the Treaty on Open Skies

The implementation of the Concluding Act of the Negotiations on Personnel Strength of Conventional Armed Forces in Europe took place largely without difficulties. Since signature, almost all States Parties have undertaken significant restructuring and changes in their force levels but given the nature of the Annex to the Concluding Act, which merely records ceilings declared by the individual states, these are largely in the discretion of those states. As far as is known, Azerbaijan is the only one which, according to the data in the exchange of information of November 1995, has exceeded its personnel limitations, but it corrected this error in the exchange of January 1996. Altogether, the States Parties have reduced the personnel strength of their conventional armed forces by substantially more than one million men, as was noted with satisfaction by the CFE Review Conference in May 1996 - a success, however, which is attributable less to the effectiveness of the Concluding Act than to the budgetary constraints in which the States Parties find themselves.

As was the case with the CFE Treaty, it has been primarily the smaller former Soviet Republics which have had difficulty fulfilling the requirements of the Vienna Document 1994 calling for annual exchanges of military information and for information on their defense planning. To put it another way, the implementation of these provisions has been unsatisfactory even though, all in all, a positive trend is discernable. Another trend which has lately become stronger is the small amount of military activity subject to notification and observation. There are various reasons for this (reduced presence of armed

forces, simulation of training scenarios, financial problems, etc.) but one primary effect: the significance of this classic CSBM (Confidence- and Security-Building Measure) has, as was accurately noted in the last Annual Disarmament Report of the German Federal Government, been "(...) to a large extent offset and covered over by a large number of other, more modern measures".⁸

Among these measures is the inspection of certain areas. In 1995 there were altogether 23 inspections which, in comparison with previous years (twelve in 1993 and 20 in 1994) represents a further increase and at the same time shows that these inspections are increasingly being used as a substitute for the other verification measure mentioned, the review. Reviews have the purpose of verifying the data provided on military forces and units. Even though this technique remains an important element of Treaty implementation, considering that there were 60 reviews in 1995, it is obvious that the figures have sunk in recent years along with the reduction of forces. It is particularly the Western states which have made use of the review option. The similarity to developments in connection with the implementation of the CFE Treaty's inspection regime is no coincidence. The reasons are the same: in terms of both money and personnel, the smaller countries, particularly those from the area of the former Soviet Union, are scarcely able or simply unable to implement complex Treaty provisions or even to make active use of their rights. An added factor is that many of them no doubt take a different view of the necessity of these expenses than do the Western countries.

There has been little progress in implementation of the Treaty on Open Skies. Contrary to what many observers expected, Russia, Belarus and the Ukraine have still not ratified the Treaty, thus continuing to delay its entry into force. Even the initiative of a number of Western states to permit more overflights on a voluntary basis has not eased or accelerated the ratification process in those countries in any decisive way.

Nevertheless, work in the Consultative Group of the States Parties has continued. One important result was the agreement to establish a central data bank in Budapest. Bilateral test observation flights have been the essential means of keeping the Treaty alive, and will continue to be until its entry into force. For this purpose Germany, in April 1995, put a Tupolev 154M into service which has already been used to carry out observation flights over Russia, the Ukraine and Poland. It is to be hoped, however, that this path

⁸ Bericht zum Stand der Bemühungen und Rüstungskontrolle und Abrüstung sowie der Veränderungen im militärischen Kräfteverhältnis, cited above (Note 2), p. 33.

breaking Treaty⁹, which is highly innovative in the arms control field, can before long move such overflights from a voluntary to a more formal basis.

Implementation - and then?

It is not without good reason that recent years have been described as the era of arms control implementation.¹⁰ If we take into account the military and political changes and upheavals, it can be viewed as a real success that the most important arms control provisions have for the most part been put into effect. On the other hand, there are more and more unmistakable signs that the adaptation of arms control or of the arms control concept to new circumstances has only partially succeeded, while its urgency has increased.

Arms control is not an end in itself, nor is its implementation. The less existing arms control agreements reflect the political reality (as well as the realities of crises, wars and armaments) in Europe, the more difficult it will become to understand pressure for strict observance and implementation of treaties. So far, however, conflicts at a low level of military technology are covered no more effectively by existing treaties than is the tendency to employ high technology as a force multiplier for the armed forces of the future. NATO's eastward enlargement is also throwing a long shadow, but there has so far been no indication of a clear concept for dealing with its implications, including those related to arms control. That is not surprising because a number of vital questions concerning the building of European security relationships are in play. How should the relationship to Russia be developed in the future? What role will be assigned to the United States, to the alliances and to other international organizations?

Without an answer to these questions there will be no basis for planning and defining the new functions of conventional arms control. The anticipated adaptation or modernization of the CFE Treaty will at best provide solutions for a part of the problems discussed here relating to security, armaments and arms control. CFE I can establish force levels and can serve as a point of reference for sub-regional or as a basis for pan-European arms control; it might even be possible to use the Treaty as a basis for some kind of compensation for Russia in view of NATO's eastward enlargement. But it will not alone be enough to get the qualitative arms race under control or to come to terms with the changing nature of war. Rather, this will call for a broad arms control approach, founded on an overarching concept of security policy which

⁹ Cf. Jörg Wallner, *Das Open-Skies-Regime [The Open-Skies-Regime]*, in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH [Institute for Peace Research and Security Policy at the University of Hamburg/IFSH] (Ed.), *OSZE-Jahrbuch [OSCE Yearbook] 1995, Baden-Baden 1995*, pp. 321-330.

¹⁰ Cf. Lachowski, cited above (Note 1), pp. 710-739, in this case: p. 710.

aims more at the political thinking and behavior of the most important participants than at their military potential, but which might also call for self-imposed limitations by the West. It will be interesting to see whether the consultations of the OSCE countries on a new framework for arms control will lead to agreement on these matters.