

## Either Bring the Adapted CFE Treaty into Force or Do Not – But Face the Consequences<sup>1</sup>

### *Introduction*

The CFE Treaty is a document of peace – and not only in the sense that peace and stability, as well as high-level readiness to co-operate among the states participating in the process, were essential preconditions to launching negotiations on conventional arms limitations in Europe in the late 1980s. The Treaty can also be called a document of peace because its rules cannot cope with the challenge posed by *violent* conflict. It will suffice to mention that Treaty-related reductions cannot be carried out under conditions of war. Hence, it is violent conflict, inter-state and intra-state alike, which have posed a grave challenge to the Treaty both in the past and at present. The implementation of the Treaty also requires peaceful conditions. It was simply not created for the challenges of military conflict, as its rules can be enforced only when there is peace. Reductions are not carried out when Treaty-limited armaments and equipment are found to provide a strategic advantage. If reductions have been carried out, they have not been able to be verified when violence has continued to prevail.

The CFE Treaty has often been described as a cornerstone of European security. This is a speculative statement that may be just as right as it is wrong. It is impossible to know how military security would have evolved in Europe without the Treaty. If one examines the European armed forces, however, it can be concluded with certainty that the number of armaments and pieces of equipment limited by the Treaty would have remained significantly higher without it. Consider for example the countries that continually complained they would not be able to carry out reductions, like Belarus, Russia and the Ukraine. Had they kept thousands (in some cases tens of thousands) of weapons without any strategic rationale, it would have been catastrophic. It would have effectively made defence transformation impossible due to the prohibitive costs of maintaining the old military structure, facilities and weaponry. Furthermore, the development of conventional armaments in Europe would have remained unpredictable without the Treaty. Although the overall number of armaments in Europe may be significant to some, it is more realistic, as will be demonstrated below, to focus on the regional and local concentration of armed forces and weapons. In sum, the CFE Treaty has

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<sup>1</sup> An earlier version of this paper was prepared for the Institute for Applied International Research in Moscow and was presented at its conference “Russia and NATO: Prospects for Co-operation after the Prague Summit” held on 6 and 7 December 2002.

lost some of its importance due to the general decline in European arms control. However, even though the CFE Treaty is no longer a cornerstone of European security, it has some residual significance due to the symbolism attached to it, for one thing.

After an overview of the most important innovations of the adapted Treaty, this paper offers an analysis of the reasons that prevent its entry into force. It aims to present a balance sheet of the pros and cons of an early versus a belated ratification of the adapted Treaty.

### *Is the Never-Ending Adaptation Process Coming to a Close?*<sup>2</sup>

Since the signing of the CFE Treaty on 19 November 1990, by which time it was already outdated, there has been a constant necessity to adapt it. There were various reasons for this. If one were to present these in sequence it would be hard to decide which should be placed first: The *de facto* and later *de jure* dissolution of the Warsaw Treaty or the changed importance of the southern flank due to the disintegration of the Soviet Union. These upheavals of historical proportions and their long-term repercussions have resulted in two waves of revisions to the Treaty.

The *collapse of the Soviet Union* prompted the first wave of adaptation. Two successor states, Russia and the Ukraine, were of the view that they would be placed at a disadvantage by the change as regards certain provisions of the CFE Treaty. And, in fact, they were. For its part, Russia based its complaint on the fact that areas which were formerly of less strategic importance, particularly the North Caucasus, had now gained prime importance due to fact that the areas further to the south had achieved independence (Georgia, Armenia and Azerbaijan). The Ukraine, in turn, argued that an unacceptably large portion of its territory was subject to stringent limitations, that is, in both the southern and western parts of the country. The overwhelming majority of States Parties showed understanding towards Russia's and Ukraine's objections, even if they did not agree to the solutions recommended by these two countries. The idea of eliminating the flank limit was clearly unacceptable to those countries who would have been directly affected by a potential increase in Russian holdings in the flank areas. States like Norway and Turkey did not want to be exposed to the negative consequences of such a decision. Moreover, the elimination of the flank rule would have given a strange signal to the newly independent states adjacent to those areas of Russia: namely, that Moscow would have a freer hand to use coercion than hitherto. To make a long story short, rather than accepting the Ukrainian and Russian proposal to eliminate the flank rule, the States Parties opted for a less radical

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2 For further details on the innovations brought about by the adaptation of the CFE Treaty see: Zdzislaw Lachowski, *The Adapted CFE Treaty and the Admission of the Baltic States to NATO*, Stockholm 2002, pp. 6-15.

position.<sup>3</sup> Accordingly, the limitations became less stringent on the flank. Certain areas were taken out of the flank area and “reassigned” to a zone (dubbed “Zone IV.2” after the appropriate paragraph of the CFE Treaty of 1990) where less stringent limitations applied. The flank agreement revised at the First Review Conference of the Treaty was ratified by each Party to the CFE Treaty and entered into force in 1997. This was not the last word on the flank issue, however. During the adaptation talks, there were further requests for modification, which were aimed at the elimination of the flank rule. In the end, the flank rule was eliminated from the adapted Treaty and was retained only as part of Russian and Ukrainian national and territorial ceilings. In spite of this, the adapted Treaty has not yet come into force, although, the parties have accepted the newly agreed upon rules *de facto*.

The other wave of adaptation was kick-started by the fundamental rearrangement of the European security situation due to the *dissolution of the Warsaw Treaty Organization*. Strategically and politically, this meant the end of one of the two constituent elements of the Treaty.<sup>4</sup> Due to the readiness of the States Parties that drafted the Treaty to distinguish between alliances and “groups of States Parties”, however, this did not challenge its legal foundations. It was only a matter of time before the Treaty would contradict common sense. Some were of the view that the “moment of truth” came when some former members of the Warsaw Treaty were accepted as members of NATO. This meant that the *desire* of some former members of the Warsaw Treaty to join the Atlantic Alliance was not enough to make it apparent that the Treaty no longer reflected strategic reality. The legal fiction of the CFE Treaty of 1990, according to which groups of States Parties are not identical with alliances, was influential in postponing its adaptation. This had to happen, however, when NATO made clear it was ready to admit new members and named some former members of the Warsaw Treaty as candidates. This was the long-predicted moment when – as a high-ranking diplomat once put it – the “CFE Treaty was to become political science fiction”.

At an early stage of the adaptation process, the option of preserving one of the two groups of States Parties – namely the only alliance that was still in existence – and putting an overall cap on its arsenal was briefly considered. This would have meant that the arsenal in the five Treaty-limited categories of armaments and equipment would have been capped and redivided among the member states upon each NATO enlargement. One is tempted to say that this appeared as an obvious “cunning plan” that could eventually divide “old” NATO members from aspirants. It was clearly an unacceptable idea and died

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3 For more details on this see Wolfgang Zellner/Pál Dunay, When the Past Meets the Future – Adapting the CFE Treaty, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), OSCE Yearbook 1997, Baden-Baden 1998, pp. 281-298.

4 One should remember that the CFE Treaty of 1990 limited the armaments and equipment of two groups of States Parties, which were comprised of exactly the same states as NATO and the Warsaw Treaty, respectively. The countries within each group divided their block’s overall Treaty allocations among themselves by setting national limits.

a sudden death. Although the Russians had reservations about NATO enlargement, this did not overshadow the CFE adaptation process. The most important achievement of the adapted Treaty has certainly been the move away from a structure based on the axiom of a fictitious conventional military balance in Europe towards allowing other priorities to determine security relations. The adapted CFE Treaty puts forward a set of national and territorial ceilings for each State Party as well as certain mechanisms that make it possible for these limits to be exceeded to a limited degree when necessary. This is only possible for either clearly defined political purposes, such as UN or OSCE-approved peace operations, or for limited time periods, such as during exercises. Exceeding these limits in the long term is possible within the framework of certain quantitative constraints (up to 153 battle tanks, 241 armoured combat vehicles and 140 artillery pieces) or, under exceptional circumstances for armaments in the three categories above, to an extent equivalent to two NATO divisions. The final option may not be used to increase strengths in the flank area, however. This may have been contrary to the interests of Russia, but was an acceptable compromise.

Another important element of the Agreement on Adaptation of the CFE Treaty is that it confirms the consent of the host state as a precondition. It does so by declaring that the Treaty Limited Equipment (TLE) of a State Party “shall only be present on the territory of another State Party in conformity with international law, the explicit consent of the host State Party, or a relevant resolution of the United Nations Security Council”.<sup>5</sup> One can ask whether this is the agreement’s historical achievement. However, the right answer to this would have to be: “partly yes and partly no”. It is particularly important that the adapted CFE Treaty unambiguously and specifically addressed this matter with reference to Treaty-limited armaments and equipment. This may alleviate the concerns of countries who have “residual fears” due to asymmetrical security relationships with their neighbours. The fact that foreign troops can only be stationed with the consent of the territorial state stems from the basic principle of state sovereignty, which is part of universal international law. It is not surprising that a Russian expert comes to similar conclusion: “[...] an adapted CFE provides that a Russian military presence abroad is also subject to the consent of the host state with due respect for its sovereignty. It seems, however, that even without the treaty it would be difficult to disagree with this principle.”<sup>6</sup> Furthermore, the 1992 Helsinki Document of the OSCE already contained a similar requirement, although it was only politically and not legally binding and was confined to the Baltic states: “We express support for efforts by CSCE participating States to remove, in a peaceful manner and through negotiations, the prob-

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5 Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, Art. 2, CFE.DOC/1/99, 19 November 1999, at: <http://www.osce.org/docs/english/1990-1999/cfe/cfeagree.pdf>.

6 Vladislav Chernov, Notes on the CFE Treaty, in: *International Affairs (Moscow)*, 4/2002, pp. 46-52, here: p. 48.

lems that remain from the past, like the stationing of foreign armed forces on the territories of the Baltic States *without the required consent of those countries*. Therefore, *in line with basic principles of international law* and in order to prevent any possible conflict, we call on the participating States concerned to conclude, without delay, appropriate bilateral agreements, including timetables, for the early, orderly and complete withdrawal of such foreign troops from the territories of the Baltic States.”<sup>7</sup> It is also obvious that the consent of the host state is to be acquired in advance and not retroactively. Suffice it to mention the danger of retroactive consent and to recall the cases when countries were occupied and new governments “helped” to power, who then legitimized the presence of the occupation forces. In sum, the appearance of this rule in the adapted Treaty is an important but not a revolutionary step.

In the political declarations attached to the adapted Treaty, the issue of stability in Central Europe following the (first Eastern) enlargement of NATO is addressed. Throughout the adaptation talks, Russia demanded concessions in return for its consent to NATO enlargement. Even though demands were regarded as absurd by many, it was the understanding of NATO members – and less the aspirant countries – that some self-imposed limitation in Central Europe would be acceptable. Due primarily to Polish opposition to including a unilateral concession in the Treaty, five countries (Belarus, the Czech Republic, Hungary, Poland and Slovakia) in separate, politically binding declarations, stated that their national and territorial ceilings would equal their maximum national holdings. These five countries plus Germany and the Ukraine froze their territorial ceilings. There is no area of the Russian Federation included in the zone of stability. The importance of these measures was to reassure Russia that these countries would not host foreign Treaty-limited armaments on their territories without first reducing their national holdings. Since the same countries have retained the right to host exceptional temporary deployments, the significance of this political commitment should not be exaggerated.

It would be a mistake to assume that the adapted CFE Treaty does not contain any matters of strategic importance. Particularly in light of the difficulties in co-operation between the USA and Germany, primarily on the political-declaratory level in the second half of 2002 and during the first months of 2003, there were rumours that the US might be willing to redeploy some of its bases from Germany to Poland. Although Polish press reports on this were rebutted shortly thereafter, the Russian Federation reacted resolutely, if in a business-like manner. It invoked numerous political commitments, among others, the statement of the NATO Council of 8 December 1998, to which Poland had also acceded. A spokesperson of the Russian Foreign

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7 CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 701-777, here: p. 705 [author's emphasis].

Ministry stated: “It [the statement of the NATO Council, P.D.] says plainly that ‘we will carry out our collective defense and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial ground or air combat forces.’ [...] [A] bases and heavy weapons redeployment scheme – and this involves combat tanks, armored vehicles, artillery, warplanes and attack helicopters – is to be ruled out as being contrary to a whole series of major agreements in the sphere of military security and stability.”<sup>8</sup> It was furthermore stressed “that the complex of these obligations is an integral part of the adapted CFE Treaty [...]”.<sup>9</sup>

Alongside the move from “groups of States Parties” to a set of national commitments, the other fundamental difference is that the 1999 agreement breaks away from the closed nature of the Treaty of 1990. It makes accession possible for “[a]ny participating State of the Organization for Security and Co-operation in Europe whose land territory lies in Europe within the geographic area between the Atlantic Ocean and the Ural Mountains [...]”.<sup>10</sup> The request for accession must include information about the designation of a state’s existing types of conventional armaments and equipment, the proposed national and territorial ceilings, the related subceilings for each category of armaments and equipment limited by the Treaty of the country and any other relevant information.<sup>11</sup> After its entry into force, the adapted Treaty will be accessible to those 25 OSCE participating States that are not members of NATO or the Warsaw Treaty (or to their successor states) and who were therefore not parties to the CFE Treaty of 1990. However, the door has been fully opened only in a theoretical sense. First and foremost, the adapted Treaty will have to come into force before accession will be possible. Furthermore, the States Parties to the Treaty will decide on accession by consensus in the Joint Consultative Group (JCG). This makes it possible for a single State Party to veto the accession of any applicant, as occurred when Turkey blocked the accession of the Republic of Cyprus to the Open Skies Treaty. One may raise the question whether there is a danger that a similar non-cooperative approach would prevail in the case of the adapted CFE Treaty, too. One cannot fully exclude this, although there is a fundamental difference between the Open Skies and CFE Treaties. Whereas in the case of the former, blocking accession carries no particular risk, this is not true of the latter. If accession is not granted to a country, it follows that it is not subject to the rules of the Treaty. This means that the development of its armed forces remains unlimited. It can freely increase the size of its conventional armed

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8 Alexander Yakovenko, the Official Spokesman of Russia’s Ministry of Foreign Affairs, Answers a Russian Media Question Regarding Reports Alleging Plans to Redeploy US Military Bases from Germany to Poland, 14 February 2003, at: <http://groups.yahoo.com/group/RMSMC/message/1989>.

9 Ibid.

10 Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, cited above (Note 5), Art. 18, para. 1.

11 Cf. *ibid.*, para. 2.

forces in Treaty-limited categories. Hence, the more concerned a State Party is about the military capabilities of a country, the more it should advocate its accession to the adapted Treaty. It is highly likely that discussions in the JCG will centre more around the conditions of the accession of potential applicants (their proposed national and territorial ceilings) than on the mere fact their jointing.

The adapted Treaty enters into force only after it has been ratified by every signatory and the instruments of ratification deposited at the depositary (the government of the Netherlands). Three years after the signing of the Treaty in Istanbul, only two countries had ratified it (Belarus and the Ukraine); of these two, only one has completed the entire process, whereas the other has yet to deposit its instrument of ratification. At the Second Review Conference of the Treaty in 2001, Belarus stated 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 [...]”<sup>12</sup> The President of the Federal Assembly of Russia submitted the draft law on ratification of the agreement on 11 February 2002. Committees have already finished their debates; the completion of the ratification process by the Duma is a matter of political will. It seems at least part of the Russian establishment is of the view that it is now the NATO member states’ turn to drive forward the ratification process. However, there are experts, who have rightly observed that Russia would be in a far better position to argue for the ratification of other states if it had already completed the process itself.<sup>13</sup>

It is unlikely, however, that the adapted Treaty will enter into force before 2005. The reason for this can be gleaned from the Final Communiqué of the Atlantic Alliance at its Florence Council meeting in May 2000 which stated the following: “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 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

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12 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.

13 Cf. Yuri Fedorov, *Adaptirovannyi Dogovor ob obychnykh vooruzhennykh silakh v Evrope i interesy bezopasnosti Rossii*. in: Institute for Applied International Research (Moscow), *Analiticheskie Zapiski* 2/2002, p. 13.

Treaty and its associated documents remains crucial.”<sup>14</sup> This position has been taken not only by the 19 members of the Alliance but also by like-minded countries, many of them aspirants to NATO membership. At the Review Conference of the Treaty, it was the Head of the Netherlands delegation who expressed the view on behalf of a large group of countries that “they 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.”<sup>15</sup> The USA 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 Summit Declaration.”<sup>16</sup> The position of the US has not changed since then: “Ratification by NATO Allies of the Adapted Treaty is awaiting Russia’s compliance with adapted CFE flank provisions and continued fulfilment of its Istanbul summit commitments regarding withdrawals of Russian forces from Georgia and Moldova.”<sup>17</sup> At the Maastricht OSCE Ministerial Council meeting, the Secretary of State restated the US position virtually unchanged: “The United States stands by the Conventional Forces in Europe Treaty. Russia’s fulfilment of the Istanbul commitments is a prerequisite for us to move forward on ratification of the Adapted CFE Treaty, which all of us want to see enter into force.”<sup>18</sup> Russia has disagreed with this and emphasized the importance of keeping compliance with the Treaty separate from the political commitments undertaken in Istanbul. “We do not consider it right that these Istanbul obligations are linked to questions concerning the Conventional Forces in Europe Treaty and that there is foot-dragging because of this on ratification of an agreement on adapting the CFE.”<sup>19</sup> The Netherlands Foreign Minister Jaap de Hoop Scheffer, in his capacity as OSCE Chairman-in-Office, was fairly lukewarm about the ratification of the adapted CFE Treaty. He stated before the Permanent Council of the OSCE that “[...] it might be useful to mention

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- 14 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, at: <http://www.nato.int/docu/pr/2000/p00-052e.htm>.
  - 15 Second CFE Review Conference, Statement by Ambassador Johannes C. Landman, Vienna, 1 June 2001, p. 1.
  - 16 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.state.gov/r/pa/prs/ps/2001/3278.htm>.
  - 17 US on NATO Issues: Conventional Forces in Europe (CFE) Treaty. <http://www.nato.int/usa/info/cfe.html>.
  - 18 Remarks of the Secretary of State Colin L. Powell delivered at the 11th Ministerial Council of the Organization for Security and Co-operation in Europe, Maastricht, The Netherlands, 2 December 2003, p. 3 (distributed print version).
  - 19 Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, RIA Novosti Interview with Official Russian Foreign Ministry Spokesman Alexander Yakovenko about February 4 Visit to Moscow by OSCE Chairman-In-Office Jaap de Hoop Scheffer, 31 January 2003, at: [http://www.in.mid.ru/brp\\_4.nsf/0/c733ca5f467dd0fb43256cbf005ef5d8?OpenDocument](http://www.in.mid.ru/brp_4.nsf/0/c733ca5f467dd0fb43256cbf005ef5d8?OpenDocument).

the Conventional Armed Forces in Europe (CFE) Treaty. The revised version remains a cornerstone of European security. Ratification continues to be an active concern.”<sup>20</sup> Countries directly affected by alleged Russian non-compliance have made their position clear: “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.”<sup>21</sup> Moldova emphasized that “[t]he unconditional implementation of the Istanbul Decisions has a paramount importance for the earliest ratification and entering into force of the adapted CFE Treaty”.<sup>22</sup> It is interesting to note how rarely the point is raised that not only the political commitments undertaken in Istanbul have been violated but also those contained in the adapted Treaty. Russia continues to station forces – if not necessarily armaments limited by the treaty – on the territory of Moldova in violation of Article 2 of the adapted Treaty.

Thus, the bringing into force of the adapted Treaty and its subsequent implementation may well be the last step of the CFE process. Currently, the States Parties seem overwhelmingly satisfied with the result of adaptation; no consensus could be formed around fixing the minor shortcomings which disturb this view. Recently, Russian experts expressed the view that “the insufficiently tough limitations” on aviation are the main weakness of the CFE adaptation regime<sup>23</sup> – for technical reasons (the high velocities reached by aircraft), aviation is not subject to regional limitations. Russia has correctly recognized that aviation gained increasing importance in the wars of the 1990s while its own involvement in fighting those wars declined. Although Russia’s dissatisfaction is evident, it will not be satisfied by means of conventional arms control. Hence, neither the States Parties nor the experts are considering another round of talks.

#### *“Hot” and “Frozen” Intra-State Conflicts and the Future of the Adapted CFE Treaty*

The CFE Treaty of 1990 focused upon one central conflict: that between East and West. Others were considered in the framework of the Treaty only when they were linked with the central conflict. This is also how the structure of limitations is to be understood: The limitations were aimed at influencing the military means available in the central zone of potential conflict. The limitations on the flank were a corollary to the central conflict as these were areas

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20 Jaap de Hoop Scheffer, Address of the Dutch Chairman-in-Office to the OSCE Permanent Council, in: Helsinki Monitor 1/2003, pp. 7-10, here: p. 9.

21 Statement by the Delegation of Georgia at the Second Review Conference of the CFE Treaty, RC.DEL/24/01, p. 2.

22 Statement by the Delegation of the Republic of Moldova to the Second CFE Review Conference, RC.DEL/7/01/Corr.1, Vienna, 28 May 2001, p. 2.

23 Cf. Chernov, cited above (Note 6), p. 51.

where the two alliances were also in direct contact with each other. The importance of the flank gained a new lease of life when, after the end of the Cold War, its southern part became one of the least stable areas in Europe. Since then, events on the southern flank have had significant impact on the CFE process. This has not only been reflected in the adaptation of the flank rule mentioned above; conflicts in this area have also continued to impinge upon the future prospects of the adapted CFE Treaty. Since the signing of the Istanbul agreement and the adoption of the associated political commitments, there have been three conflicts<sup>24</sup> which have influenced the CFE perspective in a decisive manner: 1. the second Chechnya war, 2. Transdniestria, and 3. Georgia.

#### *The Second Chechnya War*

The war in Chechnya had a direct bearing and the same effect on the CFE Treaty both in 1995/6 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, and partly (mainly in 1995/6), because Russia was reluctant to provide relevant information. Third, security and personal safety concerns made it impossible to carry out inspections in the area where military activities took place, which meant that single-source information could not be confirmed by on-site inspections. It therefore remained difficult to get reliable information about compliance.

During the second war in Chechnya, the Russian Federation regularly provided information to the JCG about its excess armaments on the flank.<sup>25</sup> Three requests were directed towards Russia: It was to 1. in future, finally comply with the agreed force levels on the flank, 2. provide, or rather continue to provide information on the number of TLE items on the flank generally and in the zone of military activity specifically and 3. make the area accessible to on-site inspections in order to enable the gathering of first hand information on compliance.

There was no change in these requirements even after 11 September 2001 when the Russian President, in an insightful move, identified his country's position with that of the West. At the same time, it was emphasized that it had been the Russian Federation who had called the attention of the West to the dangers of terrorism and that Chechnya was an example of this. Since then, the Chechnya conflict and Russia's fight against terrorism have always

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24 This paper does not address the problem of uncontrolled Treaty-limited armaments, which was given so much emphasis by Azerbaijan in the dispute between Azerbaijan and Armenia, as the entry into force of the adaptation agreement does not depend upon this factor.

25 On Russia's approach to compliance with armaments levels on the flank between 1999 and the summer of 2001, cf. Pál Dunay, *The CFE Process after the Second Review Conference of the Treaty*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), *OSCE Yearbook 2001, Baden-Baden 2002*, pp. 297-314, especially pp. 301-303.

been referred to in the same context. Although this has resulted in a situation in which the foundations of the Chechnya conflict can no longer be challenged, it has not had any influence upon the assessment of the situation under the CFE Treaty. Russia continued to approach full compliance with the ceilings of its holdings and declared at the end of 2001: "In line with the parameters of the adapted CFE Treaty, Russia is keeping in the flank zone: 1,294 tanks with 1,300 allowed under the Treaty, 2,044 armoured combat vehicles (ACV) with 2,140 allowed, and 1,557 artillery systems, with 1,680 allowed. Moreover, Russia has the right to temporarily deploy 153 tanks and 140 artillery systems [...] NATO member states, in particular, the US, no longer have any reasons to refuse to ratify the agreement on adapting the CFE Treaty."<sup>26</sup>

In spite of this, we are not an inch closer to the entry into force of the adapted Treaty. Other States Parties have requested that Russia make the area available for a number of on-site inspections in order to verify reliably whether it really is fully complying with the adapted Treaty. No such inspections have yet been granted. In light of public knowledge about the situation on the ground, it is in the best interest of the countries that have expressed their willingness to inspect Chechnya not to carry out inspections. This arrangement serves the personal interests of would-be inspectors best, too, as their personal safety there can apparently not be guaranteed.

One may ask whether the non-fulfilment of this requirement is a sufficiently important reason or only a pretext for not ratifying the adapted Treaty. Two factors are worthy of consideration in this context: 1. Since 11 September 2001, it is no longer *à la mode* to challenge the legitimacy of the operation in Chechnya even though the conduct of the war regarding the disproportionate use of force has been criticized. 2. It is obvious that the fluidity of the situation in Chechnya means that it may be felt necessary to increase force strength again. When, for instance after the hostage-taking in Moscow by Chechen terrorists in the autumn of 2002, the Russian Minister of Defence Sergei Ivanov found it advisable to announce the launch of a larger operation in Chechnya, this again threatened a further increase in the number of armed forces in the region. As the President immediately denied there would be an escalation of military activity, it is not clear whether such an operation would have required violation of the flank CFE limits. However, this does indicate that the compliance level achieved may not be guaranteed forever.

In sum, the Chechnya war does not seem to be a good enough reason for not ratifying the adapted CFE Treaty – at least for the time being. Irrespective of the duration of the conflict and the indiscriminate use of force, the Russian Federation does not seem to be violating the rules of the adapted CFE Treaty in connection with the conflict. This was indirectly recognized by NATO at its Prague summit when the member states called upon Russia to fulfil its commitments with respect to other countries but no longer mentioned Chech-

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26 Russia Expects NATO to Ratify Adapted CFE Treaty, in: Interfax, 11 January 2002.

nya.<sup>27</sup> Hence, the fact that no on-site inspections could be carried out for the time being should not hold the States Parties back from ratifying the adapted CFE Treaty.

Russia has ascertained that some of its NATO partners, having exhausted the Chechnya argument, have begun to invoke other reasons: “[W]hen this pretext also did not work, they did their best to forget about the flank levels altogether, and now as a condition for ratification the question is being put forward of the observance of the Istanbul bilateral agreements of 1999 with Georgia and Moldova, which have no bearing on the CFE Treaty.”<sup>28</sup> It is not entirely clear why Russia has argued for keeping the Chechnya matter and the two political commitments separate from one another. Is it a formal separation of legally binding commitments, on the one hand, and politically binding ones, on the other? Or is it a pretext in order that the ratification of the adapted CFE Treaty and its extension to further States Parties may continue in spite of the unsolved political conflicts on the territory of Georgia and Moldova? It is probable that both play a role in the Russian thinking.

### *Transdnistria*

In contrast to the Chechnya war – which is obviously a Russian domestic affair, although it is subject to certain limitations under international law, primarily those of international humanitarian law – there is one conflict that has effectively continued since the dissolution of the Soviet Union. The frozen conflict in Transdnistria, an area controlled by separatists from the Republic of Moldova, is affected by both the Final Act of the Conference of the States Parties to the CFE Treaty and by the Istanbul Summit Declaration. In the former, the “commitment of the Russian Federation to withdraw and/or destroy Russian conventional armaments and equipment limited by the Treaty by the end of 2001”<sup>29</sup> was welcomed. 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”.<sup>30</sup> However, Russia made the withdrawal of its

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27 Cf. Prague Summit Declaration. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague on 21 November 2002, para. 15, in: NATO Press Release 2002(127), 21 November 2002, at: <http://www.nato.int/docu/pr/2002/p02-127e.htm>.

28 Alexander Yakovenko, the Official Spokesman of Russia’s Ministry of Foreign Affairs, Answers Russian Media Questions Regarding the Situation Around the Treaty on Conventional Armed Forces, 8 January 2003, at: <http://www.ln.mid.ru/Bl.nsf/arh/4117137D69998C7543256CA90035CC17?OpenDocument>.

29 Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, 19 November 1999, CFE.DOC/2/99, at: <http://www.osce.org/docs/english/1990-1999/cfe/cfe/inact99e.pdf>.

30 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,

approximately 2,500 troops conditional on the political resolution of Transdniestria's status.<sup>31</sup> Russia has often put forward the argument that the withdrawal of its troops from the territory would undermine stability and has pointed out the logistical problems of transporting huge amounts of ammunition through the Ukraine.<sup>32</sup> Furthermore, part of this ammunition has been stored there for a very long time and is rightly regarded as "unsafe", which means that not only the withdrawal but also the local disposal of ammunition must be dealt with. In reaction to this, Moldova asked for financial assistance from OSCE participating States to help solve the problem. The USA indicated at the beginning of 2000 that it would make 30 million US dollars available for a withdrawal if the local leadership in Tiraspol (Transdniestria) 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.<sup>33</sup> Russia 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 TLE by the end of 2001, and to withdraw its troops by the end of 2002, there was little progress on this issue.<sup>34</sup> Russia was still giving priority to meeting its obligations under the CFE regime. That is how it ensured that "the first deadline of the Istanbul commitments – withdrawal/reduction of the CFE Treaty-limited conventional armaments and equipment held by the Operative Group of Russian Forces stationed in Moldova – was completed ahead of

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here: p. 418. In the final phase of talks in Istanbul right before the Summit Meeting, Russia insisted upon a longer phase of withdrawal. It started with the assumption that the year 2005 would be the deadline for the completion of withdrawal. This idea was gradually "pared down" with the help of high-ranking foreign diplomats.

- 31 In spite of this, Moldova 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 had 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". 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 29).
- 32 Russia has made a formal statement that the reason for its troop presence in Transdniestria is to protect two major ammunition depots. It is known that the two depots together stock approximately 42,000 tons (!) of ammunition.
- 33 As it was pointed out by the US Ambassador to the OSCE at a meeting of the 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>.
- 34 On this see Zdzislaw 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.

schedule in November 2001.”<sup>35</sup> Russia was commended for this achievement. With regard to the commitment for full withdrawal, it has not been fully implemented as, according to my knowledge, only six trains of ammunition had left Transnistria by December 2002. If this pace is maintained, it may take *decades* to complete the withdrawal. Understandably, Russia has held others responsible for the slow pace of withdrawal and has regularly cited complicating factors in an apparent attempt to shift the blame to the Transnistrian authorities. Nevertheless, Foreign Minister Igor Ivanov used fairly mild language when referring to the delaying tactics of the Transnistrian authorities: “You know that the delays in withdrawal were not connected with the reluctance of the Russian side. They were connected with problems which arose locally.”<sup>36</sup> Moldova used the same language pointing to the fact that “the issue is still to get the weapons withdrawn, but you know with what problems the Russian side is faced here”.<sup>37</sup>

The completion of the withdrawal of Treaty-limited armaments took place before the deadline and thus before the Bucharest OSCE Ministerial Council. A year later, before the Porto OSCE Ministerial Council meeting, activity increased again – although it did not have any particular effect on the completion of the withdrawal of ammunition and military personnel from Transnistria. Negotiations intensified between the parties, although it has become obvious that Tiraspol – irrespective of the concessions made by sovereign states – is not particularly interested in giving up its “stateless” status. The US warned Tiraspol when it expressed in clear terms that it finds “entirely unacceptable the Transnistrian demand that further progress on ammunition withdrawal be conditioned on the Russian Federation’s acknowledgement of some sort of Transnistrian ‘economic sovereignty’. There is and there can be only one sovereign entity within the internationally recognised boundaries of the Republic of Moldova.”<sup>38</sup> The advantages of this kind of ambivalent situation under international law have been all too familiar to the international community for a long time, including its potential for enabling pursuit of activities closely linked with organized crime. In its draft resolution, the Porto Ministerial Council, in this context, pointed to “the risk of proliferation and illicit trafficking of arms, particularly small arms and light

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35 Organization for Security and Co-operation in Europe, Ninth Meeting of the Ministerial Council, Bucharest, 3 and 4 December 2001, Chairman-In-Office’s Activity Report for 2001, at: <http://www.osce.org/docs/english/1990-1999/mcs/9buch01e.htm>.

36 Transcript of Russian Foreign Minister Igor Ivanov’s Remarks at Press Conference on Outcome of CIS Foreign Ministers Council Meeting, Chişinău, 6 October 2002, at: <http://www.mid.ru/Bl.nsf/arh/F23291F0EE61CD5B43256C4C00333077?OpenDocument>.

37 Transcript of Joint Press Conference of Moldovan President Vladimir Voronin and Russian First Deputy Foreign Minister Vyacheslav Trubnikov, Chişinău, November 26, 2002, p. 1, at: <http://www.ln.mid.ru>.

38 Statement on the Report of Ambassador Swartz, Head of Mission in Moldova, Delivered by Political Counsellor Bruce Connuck to the Permanent Council, Vienna, 10 October 2002, at: <http://www.usosce.rpo.at/archive/2002/10/10moldova.htm>.

weapons”.<sup>39</sup> This was not repeated in the statement passed by the Council, however. It is obvious that many states, and not only those directly involved in the conflict are becoming increasingly less patient with those non-state actors who control a certain territory and are in danger of contributing to organized crime in its various forms. Recently, it seems priority has been given to re-establishing state sovereignty in order to reduce the chance of such risks spreading. If this remains a major concern and all the state actors of the process respect it, there is fair chance that the core of the conflict could be settled.

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. If one assumes that such events have become the main channel to exert pressure on Russia, the link is clearly established. On the eve of the Istanbul Summit, three trainloads of equipment were withdrawn and a further train-load of dual-use military equipment followed in time for the November 2000 OSCE Ministerial Council meeting.<sup>40</sup> The Second Review Conference of the CFE Treaty was not preceded by similar symbolic steps, though intensive diplomatic activity had characterized the previous few months. 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 US effort and, because the fund started to increase the potential of resolving the conflict, many of them found it appropriate to mention their contribution at the Review Conference.<sup>41</sup> 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.<sup>42</sup> A few weeks after the Conference, ten battle tanks belonging to the Russian forces in Moldova were destroyed.<sup>43</sup> Interestingly enough, in light of the new, post-September 11 environment, Russia was no longer pursuing the same pattern. Instead, it expressed its view that “to subject Russia to harsh criticism for not observing its voluntary commitments which we physically and through no fault of our own are unable to meet would be unjust”.<sup>44</sup> All the above facts have indicated that Russia does not want to appear as a country that openly violates its commitments and that it is trying to harmonize their fulfilment with its perceived national interests.

It is difficult to determine what has brought about the change in the Russian attitude. Certainly, major and energetic steps were taken to settle the

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39 Draft Statement by the Ministerial Council (3) CIO.GAL/100/02 of 29 November 2002, p. 1.

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

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

42 Cf. Statement of the Delegation of the Republic of Moldova, 28 May 2001, p. 2.

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

44 Transcript of Joint Press Conference, cited above (Note 37), p. 3.

dispute in 2000 and 2001. The change from Boris Yeltsin to Vladimir Putin as well as the change of the political course in Chişinău may have also played a role in leading Moscow to be more co-operative. The process seems to have been held up for a period due to the perceived interest of Russia in achieving a comprehensive political settlement, including the restoration of Moldovan sovereignty on its entire territory. While this will unquestionably be the outcome in the end, Russia is not indifferent to the timescale and conditions under which it will happen. For some time, there have also been indications that Chişinău may allow Russia to keep a military base in Moldova and station its troops legally on Moldovan territory.<sup>45</sup> It remains to be seen whether, in the long run, Russia will be able to legitimize its presence on the territory of Moldova.

In sum, whereas in the case of Chechnya, Russia has largely succeeded in eliminating the “CFE relevance” of the conflict, in the case of Transdnistria, it has effectively “de-CFE-ized” it. The only remaining relevance of the conflict for the adapted CFE Treaty concerns the rule that stationing troops can occur only with the consent of the host state. Without a doubt, Russia has complex reasons for stationing forces on the territory of Moldova. One of these is the unsolved conflict in Transdnistria, which, in turn, is attributable to the fact that the country that should legitimately control the area is suffering from weak statehood, to say the least. Unless one intends to lay the entire blame for the Transdnistria conflict on Moscow, however – a proposition that would be difficult to support – there is not enough reason to make the entry into force of the adapted CFE Treaty dependent on the long-term final resolution of the conflict.

Russia is in a peculiar situation, however. It has expressed its readiness to withdraw its forces from the territory of Moldova, though not unconditionally. Bearing in mind the non-co-operative attitude of the Transdnistrian authorities and their lack of interest in – if not outright opposition – to a resolution, it can be taken for granted that the conditions for withdrawal will not be met. Hence, it will be entirely up to the Russian Federation to decide on withdrawal. What should Moscow consider when taking a decision on this matter? I do not think the future of Transdnistria and the people there would play significant role in this. However, there are a number of other factors which really do matter. In particular, there is the question of whether those forces would prevail in Moscow that regard the Russian military presence in Moldova as a strategic advantage for two reasons: 1. The greater strategic significance such “forward deployment” gains in light of Romanian NATO accession. 2. The uncertain political course of Moldova proper, which is now pro-Russian, though this may change in light of steady and steep economic

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45 For a detailed account up until 2001 see 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; on the present situation, see Claus Neukirch, *The OSCE Mission in Moldova*, printed in this volume, pp. 149-161.

decline. For those forces that think in this manner, these factors have to be weighed against the damage such a policy causes to the country's relations with the West. Moscow has been faced with Western – first and foremost US – pressure to withdraw its forces and contribute to solving the matter once and for all. The amount of pressure has remained in proportion to the strategic importance of the conflict.

It is clear that Russia has not made up its mind about its long-term attitude towards the conflict. Documents speak of “a comprehensive settlement of the Transnistrian problem based on the observance of the principle of the territorial integrity of Moldova with maximum consideration for the interests of the whole population of the country and the ensuring for Transnistria of an agreed and reliably guaranteed status.”<sup>46</sup> This equivocating policy also continued at the OSCE's Porto Ministerial Council in December 2002. There, Russia seemed to have three objectives: 1. to achieve recognition of its efforts to withdraw its forces from Moldova, 2. to make the continuation of the process conditional on a comprehensive political settlement including the regulation of the constitutional status of Transdniestria and 3. to prevent setting a deadline for the completion of the withdrawal process.

If one takes a closer look at these objectives, it is clear that Russia is attempting to play a hegemonic role and coerce Moldova into a settlement which would reflect this. The Russian effort has remained only partly successful, however. This is due, among other factors, to the role of the United States as an “indispensable power”, which is understandable given the highly asymmetrical power relationship between Russia and Moldova. Russia has received *ambiguous recognition for its withdrawal*, which has been most clear cut with respect to armaments limited by the CFE Treaty: “We welcome timely completion of withdrawal of the Russian CFE Treaty limited equipment from [the] Transnistrian region of the Republic of Moldova”.<sup>47</sup> NATO member states made the same assessment, but only with respect to the so-called flank territory of the Russian Federation: “We welcome the significant results of Russia's effort to reduce forces in the Treaty's Article V area to agreed levels.”<sup>48</sup> Regarding the withdrawal of other military items, the formulation was more ambiguous. It was stated “that some progress was achieved in 2002, in the withdrawal/disposal of a certain amount of ammunition and other military equipment belonging to the Russian Federation.”<sup>49</sup> The participating States also found it necessary, however, to express their

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46 On an Extraordinary Meeting of the Political Representatives of Russia, Ukraine and the OSCE Co-Mediators in Transnistrian Settlement, 20 August 2002, at: <http://www.mid.ru/BI.nsf/arh/61E62684725ECD9243256C1B003105E8?OpenDocument>.

47 Organization for Security and Co-operation in Europe, Tenth Meeting of the Ministerial Council, Porto, 6 and 7 December 2002, printed in this volume, pp. 421-455, herein: Statements by the Ministerial Council, pp. 431-442, here: p. 435.

48 Interpretative Statement under Paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, in: Tenth Meeting of the Ministerial Council, cited above (Note 47), herein: Porto Ministerial Declaration, pp. 422-425, Attachment, p. 425.

49 Statements by the Ministerial Council, cited above (Note 47), p. 435.

concern “about the delay in the full and transparent withdrawal/disposal of Russian ammunition and military equipment due in part to the fact that the Transnistrian authorities have systematically created difficulties and obstacles, which are unacceptable”.<sup>50</sup> It has to be noted that the delay has been identified to be due only “in part” to the Transnistrian authorities. It can be thus concluded that it was also “partly due” to someone else. Although that actor has not been mentioned specifically, it is clear that the Russian Federation, which has not been particularly co-operative on this matter, is meant. As far as *conditions of completing the withdrawal process* are concerned, Russia succeeded in having the clause, “provided necessary conditions are in place” added to the text.<sup>51</sup> Moldova recognized the danger of this ambiguous formulation and defended its position in a unilateral statement: “[...] the mentioning of the ‘necessary conditions’ in the context of withdrawal refers solely to eventual technical arrangements and may in no way be applied to any political circumstances”.<sup>52</sup> The effort to gain the OSCE’s approval of an open-ended process could not but remain unsuccessful, but Russia did not want to have a time limit for the completion of withdrawal. When it was apparent this was clearly unacceptable to several OSCE participating States, Moscow wanted to postpone the deadline as long as possible (to the end of 2005). The joint efforts of the other actors resulted in the adoption of a far shorter time frame; the final wording stated that the participating States “welcome the Russian Federation’s commitment to complete the withdrawal of Russian forces as early as possible and its intention to do so by 31 December 2003 [...]”.<sup>53</sup> It was important for Russia to make the continuation of the withdrawal of its ammunition (and forces) from the territory of Moldova conditional as none of the other OSCE participating States could continue to refer to an unconditional Russian commitment. Moscow thus “confirms its intention to complete this process by the end of the year, given necessary conditions, as was fixed in the Porto documents. We hope to have the support of the international community, including both political measures, and additional contributions to the OSCE voluntary donation fund.”<sup>54</sup> Despite the existence of support, it was possible to imagine that time had stopped as far as the conflict in Moldova was concerned. The Russian Federation emphasized that it had done its utmost to achieve a political settlement and drafted a memorandum. “The Memorandum, prepared through the mediation of Moscow, was acceptable to the parties. In our conviction, its signing would have made it possible to resolve the Transnistrian problem within the framework of one state. Regrettably, the signing did not take place as a result of the pres-

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50 Ibid.

51 Ibid.

52 Interpretative Statement under Paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, in: Tenth Meeting of the OSCE Ministerial Council, Statements by the Ministerial Council, cited above (Note 47), attachment 1 to the Statement, pp. 438-439, here: p. 438.

53 Statements by the Ministerial Council, cited above (Note 47), p. 435.

54 RIA Novosti Interview, cited above (Note 19), p. 2.

sure from certain states and organizations.”<sup>55</sup> At the December 2003 Maastricht OSCE Ministerial Council meeting, which ended without a political declaration, the US Ambassador to the OSCE emphasized three elements: 1. support for the sovereignty and territorial integrity of the Republic of Moldova, 2. the indispensable role of close co-operation and co-ordination among the mediators in the five-sided format in achieving progress towards a comprehensive political settlement, and 3. a reiteration of the OSCE’s willingness to support a political settlement acceptable to all the people of Moldova, including by providing the mandate for a multinational force and unarmed observers to oversee the implementation of the settlement.<sup>56</sup> In light of the condition attached to withdrawal mentioned above, it is clear that Russia has retained some room to manoeuvre. It thus remains uncertain whether it will comply with its commitment.

### *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 2000 so “that they will not exceed 153 tanks, 241 ACVs and 140 artillery systems”,<sup>57</sup> i.e. the level of basic temporary deployment in the adapted CFE Treaty.<sup>58</sup> Russia committed itself further to withdrawing its TLE from the military bases in Gudauta and Vaziani and the repair facilities in Tbilisi no later than 31 December 2000 and to closing both bases by 1 July 2001.<sup>59</sup> 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 end [author’s note, i.e. by the end of 2000], and the closure of specific military bases by the middle of next year”.<sup>60</sup>

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55 Statement by Russian Minister of Foreign Affairs Igor Ivanov at the 11th OSCE Ministerial Council Meeting, Maastricht, 1 December 2003, at: [http://www.in.mid.ru/brp\\_4.nsf/0/4dbc8f940b12b6d243256df0003602bd?OpenDocument](http://www.in.mid.ru/brp_4.nsf/0/4dbc8f940b12b6d243256df0003602bd?OpenDocument).

56 Cf. United States Mission to the OSCE, Statement in Response to the Chairman’s Statement, As Delivered by Ambassador Stephen M. Minikes to the 11th OSCE Ministerial Council, Maastricht, 2 December 2003, p. 2.

57 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, in: Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, cited above (Note 29).

58 Cf. Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, Article VII, para. 1, B (1), cited above (Note 5).

59 Cf. Joint Statement on Adaptation of the Russian Federation and Georgia, cited above (Note 57), point 2.

60 Intervention by Secretary of State Madeleine K. Albright, OSCE Ministerial, Vienna, 27 November 2000, at: <http://www.osce.usia.co.at/albright27nov00.html>.

Russia fulfilled its commitment to reduce its TLE stationed in Georgia, withdrawing 35 tanks, 313 ACVs as well as 27 artillery systems within the stipulated period and destroying a further 24 tanks, 90 ACVs and two artillery systems. The Vaziani airbase was returned to the Georgian authorities on time by 1 July 2001. The base at Gudauta, however, fulfils “peacekeeping functions”, according to the Abkhaz leadership. Its closure would render the negotiated settlement of the conflict more difficult. The situation is made even more delicate by the Abkhaz leadership’s apparent reluctance to contribute to reconciliation. It suspended its participation in the peace process in the spring of 2001. According to the Georgian leadership, the tasks currently performed by the Gudauta base could be met in other ways. This view is apparently not shared by the Russian military, which has continued to station its forces at the base and has denied the UK access to conduct an on-site inspection there.<sup>61</sup> Russia also accused Georgia of making unrealistic demands with regard to handing over Gudauta. The Russian Ministry of Defence stated that “the timetable for Russia’s withdrawal did not allow time to build new accommodation in Russia for the hardware and troops stationed there”,<sup>62</sup> an argument familiar to many East-Central Europeans from the early 1990s.

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 greatly 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. Later, the language got tougher. Georgia was blamed for hosting Chechen terrorists and tolerating their activity. Moscow “convinced” Georgia to co-operate on catching terrorists in the Pankisi Gorge, an area adjacent to the Chechen border (by relinquishing state sovereignty in the border zone, for instance). Moscow’s dissatisfaction was also reflected in the fact 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 to as late a date 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 the smaller country. At about the same time, energy deliv-

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61 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>.

62 At: <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.

eries – primarily of gas – were suspended, demonstrating that Russia wanted to consolidate its superiority.

Given that the territorial integrity of Georgia has been facing challenges from within, it is difficult to predict the outcome of the process. It is hard to predict whether Russia will complete its withdrawal and also live up to the obligation in the adapted CFE Treaty which requires the consent of the Georgian government for it to station forces on the Georgian territory. Russian coercion is most probably aimed at obtaining Tbilisi's approval for Moscow to continue to station troops on Georgian territory. The fact that the government in Tbilisi is not in full control of the territory complicates the situation significantly. It would be thoughtless to demand the withdrawal of Russian forces without taking the aftermath of this into consideration. In contrast to the two other cases – Chechnya and Transdniestria – *it is impossible to disconnect the continuation of the process of troop withdrawal from compliance with the adapted CFE Treaty.*

An even more important difference is that the outcome of the process may have greater strategic significance than in the other two cases. Georgia, under the leadership of President Shevardnadze, has oriented itself towards the West, at least in terms of its goals. It is questionable, at best, whether it is realistic to assume that a straightforwardly Western-oriented policy can be pursued in that part of the world. Especially since the Georgian regime appears to be crumbling, this may lead to the further – and not only *de facto* – disintegration of the country. In this connection, the opinion of another former Soviet republic, Kazakhstan, is interesting: “What can non-constructive confrontation with the Kremlin result in [...] Georgia's example clearly shows. Mr. Eduard Shevardnadze's unlimited love for the West and NATO does not exempt him from the necessity to deport [...] Chechen separatists to Russia, as the Russian administration resorts to the maximal set of sanctions, from visa regime and cutting off gas supplies to the threat to break [...] Georgia's territorial sovereignty.”<sup>63</sup>

It is clear from the above that Russia has been reluctant to leave the territory of Georgia, whereas the latter would like to see the completion of withdrawal according to the Istanbul Final Act. Accordingly, the two sides made a commitment to conduct negotiations – but nothing further. It is well known how little a *pactum de negotiando* generally means. But in this case, that does not apply. The agreement states that: “During the year 2000 the two Sides will complete negotiations regarding the duration and modalities of the functioning of the Russian military bases at Batumi and Akhalkalaki [...]”<sup>64</sup> The deadline has long since passed. Russia's position is that it is ready to negotiate “in good faith” for an unlimited period of time. Russian officials con-

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63 Vladislav Yuritsin, Kazakhstan: Running with CST, hunting with NATO, in: The Kazakhstan Monitor, 22 November 2002, p. 1.

64 Joint Statement of the Russian Federation and Georgia, cited above (Note 57).

firm that negotiations will decide the fate of the bases at Akhalkalaki and Batumi. It is now up to Georgia, they say.<sup>65</sup>

The problem is far too complex to limit to the bilateral, interstate relationship between Russia and Georgia. Complicating factors include the separatist tendencies of certain regions of Georgia, the apparent inability of the Tbilisi government to provide for the territorial integrity of the country, and the Russian claim that it will “defend the interests and right of its citizens”. That is why – with reference to a “sacred duty” of Russia – Moscow intends to continue “to ensure the security of the citizens”<sup>66</sup> of Russia in Abkhazia. Beyond the obvious challenges of Abkhazia and South Ossetia, Russia has been concerned that Georgia is unable to guarantee that Chechen rebels do not find refuge on the Georgian side of the border. Thus it was once stated the problem is that “Putin does not control his army, and the Georgian army cannot control Georgia”.<sup>67</sup>

Nevertheless, this conflict is different from the other two. The difference is fundamental in the sense that, in the case of Georgia, outside players, particularly the United States, have demonstrated a keen interest. Consequently, any outcome is potentially subject to strategic interests that may collide. The USA made it clear that it would continue its train-and-equip programme in Georgia in spite of the persistence of some of the problems between Russia and Georgia.<sup>68</sup> The USA does not have high hopes that either the conflict in South Ossetia or the one in Abkhazia will be resolved soon. This is indirectly reflected in the statement that the “past year has shown that progress toward a political settlement in Moldova is possible”.<sup>69</sup> This implies, on the other hand, that there has been no progress in the conflicts in Georgia.

In Georgia – in contrast to Chechnya and Moldova – the territorial conflict is inseparable from the CFE process. As a result, no breakthrough can be achieved without a broad political settlement, which means that *Georgia is currently the key to the entry into force of the adapted CFE Treaty*. That this can be achieved through “a recognition of present realities and the existence

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65 Cf. interview with Russian Deputy Minister of Foreign Affairs Vladimir A. Chizhov, “Nasha tsel – Bevizovoe soglashenie s Evrosoyuzom”, [“Our Goal Is a Visa-Free Agreement with the European Union], in: Vremya Novostej of 4 December 2002, also at: [http://www.ln.mid.ru/brp\\_4.nsf/e78a48070f128a7b43256999005bcb3/e3a853c28b0d2de43256c860031c80f?OpenDocument](http://www.ln.mid.ru/brp_4.nsf/e78a48070f128a7b43256999005bcb3/e3a853c28b0d2de43256c860031c80f?OpenDocument).

66 Interview with Special Representative of the Russian President for Georgian-Abkhaz Settlement and Deputy Minister of Foreign Affairs Valery Loshchinin, “Specpreduprezhdenie dlya Gruzii” [Special Warning to Georgia], in: Itogi Magazine, 14/2002, p. 3; see also at: [http://www.itogi.ru/paper2002.nsf/Article/Itogi\\_2002\\_04\\_08\\_11\\_4454.html](http://www.itogi.ru/paper2002.nsf/Article/Itogi_2002_04_08_11_4454.html) (author’s translation).

67 Andrew Jack, Fallout from Russia siege felt in valley in Georgia, Financial Times of 2/3 November 2002, p. 3.

68 Cf. US Remains Committed to Conduct Train-and-Equip Program – U.S. Official Says, at: <http://www.mfa.gov.ge/cgi-bin/news/search.cgi?category=all&keyword=Russian+troop>.

69 Statement by US Undersecretary of State for Political Affairs Marc Grossman delivered at the Tenth Meeting of the OSCE Ministerial Council Porto, 6 December 6 2002, p. 3.

of these *de facto* states”<sup>70</sup> is, in my opinion, a premature and far-fetched conclusion. Due to the strategic importance attributed to Georgia by both Russia and the United States as well as the lack of any real hope for a resolution, *it is the case of Georgia that could cause the entry into force of the adapted Treaty to fail. If none of the parties exhibits flexibility, the adapted CFE Treaty may be taken hostage in the long run.* The opinion of a high-ranking US diplomat, which expresses a vague hope, is also telling in this respect: “We hope that [...] progress will be made on the Istanbul commitments respecting Moldova and Georgia, because there is still work to be done in that area. We hope that specific progress in the new year could enable us to move forward with the Adapted CFE Treaty.”<sup>71</sup> A year later, the Russian and US positions could not be further apart. The US Secretary of State urged “Russia and Georgia to resolve the remaining issues relating to the Russian military presence in Georgia”.<sup>72</sup> The Russian position is more elaborate. It emphasizes that the continuing irregularity of the withdrawal in 2003 was contrary to Russia’s intention. Moreover, Russia expressed the view that it sees no “particular need for setting a deadline, as no one should doubt the keen interest of the Russian side to finish this process as soon as possible”.<sup>73</sup> This position, as elaborated by Deputy Foreign Minister Chizhov, is both unfounded and cynical. As it is already clear to all that the Russian Federation has no intention of withdrawing from Georgia, it would have been far better to argue that Russia contributes in some way to stability in parts of Georgia. The fact that Moscow is also a factor in a number of Georgia’s conflicts is a separate matter. Russia is of the view that the closure of the two bases that remain open is still subject to further negotiations. The prospects of those talks have become more uncertain lately: “[I]n the context of the current political situation in Georgia, it is so far unclear how the negotiations will now proceed.”<sup>74</sup> The potential for resolving the continuing political conflicts seems as remote as that of the Russian withdrawal from Georgia being completed.

#### *NATO Enlargement and the Adapted CFE Treaty*

As was mentioned above, the CFE Treaty of 1990 made no further accession possible. The number of States Parties could thus only increase due to the coming into being of the successor states of the former Soviet Union and Czechoslovakia. The adaptation of the Treaty was necessary, among other

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70 Dov Lynch, *Frozen Conflicts*, in: *The World Today*, 8-9/2001, p. 38.

71 Grossman, cited above (Note 69), p. 3.

72 Powell, cited above (Note 18), p. 3.

73 Transcript of Russian Deputy Minister of Foreign Affairs Vladimir Chizhov’s Interview with RIA Novosti in Connection with the Upcoming Meetings of the OSCE Ministerial and Russia-NATO Councils, Moscow, 28 November 2003, p. 5, at: [http://www.in.mid.ru/brp\\_4.nsf/0/d17c406a73cc61b343256df20027b616?OpenDocument](http://www.in.mid.ru/brp_4.nsf/0/d17c406a73cc61b343256df20027b616?OpenDocument).

74 *Ibid.*, p. 6.

things, to accommodate the request of Russia that those countries that join the Atlantic Alliance also be subject to a structural conventional arms control regime. When the adaptation of the CFE Treaty was negotiated between 1997 and 1999, it was not yet clear how many states that had not been members of the Warsaw Treaty would be integrated into NATO. The issue could have already emerged in 1999 with the first Eastern enlargement of NATO, however the number of newly acceding countries then was confined to three former Warsaw Treaty member states. With the invitation to seven countries at the Prague NATO summit in November 2002 to negotiate their NATO membership, including four states (Estonia, Latvia, Lithuania and Slovenia) which are not parties to the 1990 CFE Treaty, the issue became urgent. One may conclude that *the first Eastern enlargement made the adaptation of the CFE Treaty indispensable, whereas the second wave of the same process made its entry into force a vital matter.*

In addition to this general request, the Russian Federation insisted upon the accession of the Baltic states, in particular, to the CFE Treaty. This is understandable in spite of the significant strategic asymmetry between Russia and each Baltic state, which does not require an arms-control regime on military grounds. The asymmetry favours Russia irrespective of the fact that the Leningrad military district is currently the least militarized in the country. Russia knows it would be unconvincing to argue in favour of the accession of the Baltic states to the adapted CFE Treaty on the basis of narrowly defined military force ratios. Hence, it broadened the argument, making it part of a broader political settlement: “[A] key question for Russia is that of accession by the Baltic states to the adapted CFE Treaty and the extension to their territory of measures of military restraint. Of no small importance is still the theme of ensuring the rights of our compatriots in the Baltic states. By assuming responsibility for the expansion decision, NATO simultaneously assumes a part of the responsibility for a positive settlement of these problems.”<sup>75</sup> It is interesting that Russia has concluded that integration does not only contribute to increasing the influence of these small countries but also, through the influence of other members, leads them in the direction of moderation, as a result of, among other factors, their increased self-confidence. It would be premature to conclude that the improvement of relations and easing of tensions between Russia and Poland after the latter’s accession to NATO are profound and can serve as an example.

The reaction of the three Baltic states was cautious, but co-operative. They have never ruled out their accession to the Treaty. Their readiness was, however, influenced by the fact that the adapted Treaty had not entered into force before their invitation to join NATO, and hence they had no chance to

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75 Interview with the Director of the Russian MFA Information and Press Department Alexander Yakovenko, “Filosofiya bezopasnosti” [The Philosophy of Security], in: Rossiiskaya Gazeta of 21 November 2002, available in English at: [http://www.in.mid.ru/brp\\_4.nsf/0/9a55df1e4f4e37c443256c78003e6da4?OpenDocument](http://www.in.mid.ru/brp_4.nsf/0/9a55df1e4f4e37c443256c78003e6da4?OpenDocument).

formally apply for accession. This has resulted in a strange asymmetry. While Russia played the role of the supplicant, the Baltic states could only emphasize that the request was premature. Russia pointed out that it “has taken on commitments to restrict its military presence in north-western Europe. If [...] the Baltic states do not sign this treaty [author’s note, i.e. the adapted CFE Treaty], and if they refuse to take on similar obligations after joining NATO, ‘it would be stupid and laughable for Russia not to react to this’.”<sup>76</sup> Shortly before NATO’s Prague summit, the Russian Defence Minister stated that “the only real objection Moscow has to NATO membership for Lithuania, Latvia and Estonia is that the three countries have not signed the Treaty on Conventional Armed Forces in Europe”.<sup>77</sup> If Sergei Ivanov has been quoted correctly, Russian consent was acquired fairly cheaply. An elementary rule of diplomacy, however, must not be forgotten: namely that a concession made no longer requires any compensation. Hence, no compensation is due to Moscow for its tacit consent to the second wave of NATO Eastern enlargement since the Prague summit of late November 2002.

If one takes a close look at the position of the three Baltic states on CFE accession, certain differences are noticeable among them. It would be unfounded, however to overemphasize their importance as they are of a merely tactical nature. In part they stem from the influence of certain great powers, primarily the USA, and in part, from the different expectations of the populations in the three countries. Lithuania seems to be most willing to placate Russia on this issue. This is understandable for a number of reasons. First and foremost, Lithuania hosts the smallest Russian minority among the three states and thus Lithuanian politicians’ rhetoric on Russia has been more restrained. Due to the fact Lithuania is the physical link between the Russian (Belarusian) “mainland” and the Kaliningrad area, Vilnius understands how delicate its situation is and is keen to avoid burdening it further. Last but not least, Lithuania’s border with Kaliningrad is the only boundary it shares with Russia. The President of Lithuania already stated at the Istanbul Summit in 1999 that: “We are considering the possibility of accession to the Treaty, provided the accession terms are in our national interests.”<sup>78</sup> The position has developed further; as NATO accession approached, Lithuania stated: “We will also seek to join the adapted CFE treaty after it comes into force and is open to all European democracies.”<sup>79</sup>

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- 76 Russian Defence Minister Worried About Baltic CFE Accession, in: *Baltic States Report* 32/2002.
- 77 Russian Defence Minister Again Calls for Baltic States to Join CFE Treaty, in: *Baltic States Report* 36/2002.
- 78 Statement by H.E. Valdas Adamkus, President of the Republic of Lithuania at the OSCE Summit in Istanbul, 18 November 1999, see also: [http://www.bbn.gov.pl/pl/obwe/mowa\\_adamkusa.html](http://www.bbn.gov.pl/pl/obwe/mowa_adamkusa.html).
- 79 Statement by H.E. Valdas Adamkus, President of the Republic of Lithuania at the UN General Assembly Session in New York, 12 September 2002, <http://www.un.org/webcast/ga/57/statements/020912lithuaniaE.htm>.

Estonia articulates its position more forcefully. This is reflected in both its more reserved early statements and its relative unwillingness, at later stages, to enter into concrete commitments. The Estonian Prime Minister Siim Kallas expressed the position of his country at a NATO meeting in spring 2002: "Let me reiterate that Estonia intends to join the adapted CFE Treaty, after the Treaty will be opened for new countries. As for different practical aspects of our future accession we see the necessity of having consultations with the NATO allies." Later, when Russia exerted pressure upon the Baltic states in order to foster their early accession, Estonia correctly drew attention to the legal situation: "Prior to the agreement entering into force, there is no way to join it."<sup>80</sup> Furthermore, "Estonia has repeatedly confirmed it is seriously considering joining the Conventional Forces in Europe Treaty in future, but at the moment the move is not on the agenda as the treaty has not been open to new signatories [...] As soon as the treaty opens to new contracting parties Estonia will make a responsible decision, proceeding first and foremost from national interests."<sup>81</sup>

The position of Latvia appears closer to that of Estonia. As Riga co-ordinates closely with the USA, the country that is in all likelihood largely responsible for the fact that the adapted CFE Treaty has not been ratified, its main effort has been to avoid committing itself prematurely on this matter. When the Latvian Foreign Minister Indulis Berzins declared at a late stage that his country "has never refused to accede to the adapted Treaty" Russia welcomed this and expressed the hope that the "new constructive position of Riga will soon be given effect [...]"<sup>82</sup>

There is no doubt whatsoever that the Baltic states, Slovenia and, at a later stage, a number of other European countries will join the adapted CFE Treaty when it enters into force. The Russia-NATO Council "welcomed the approach of those non-CFE countries who have stated their intention to request accession to the adapted CFE Treaty upon its entry into force, and agreed that their accession would provide an important additional contribution to European stability and security".<sup>83</sup> This may have a positive effect on Russia, as its long-standing request will be fulfilled. Although the expression of readiness to join is an important political gesture, it will also be important to find out under which conditions each state would join the arms limitation regime. They should determine in advance the size of arsenal they intend to

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80 Harri Tiido, Deputy Under-Secretary of the Estonian Foreign Ministry, in: *Baltic News Service* of 31 July 2002.

81 *Ibid.*

82 Alexander Yakovenko, the Official Spokesman of Russia's Ministry of Foreign Affairs, Answers a Question from Russian Media Regarding Statements by Latvian Foreign Minister Indulis Berzins Concerning Its Accession to the Adapted Treaty on Conventional Armed Forces in Europe, 2 October 2002, at: [www.ln.mid.ru/brp\\_4.nsf/0/1b8d37c1d1a0a79943256df200282f85?OpenDocument](http://www.ln.mid.ru/brp_4.nsf/0/1b8d37c1d1a0a79943256df200282f85?OpenDocument).

83 Russia-NATO Council Meeting at the Level of Foreign Ministers, Prague, 22 November 2002 Statement by NATO Secretary General Lord Robertson in his capacity as Chairman of the Russian-NATO Council, <http://www.nato.int/docu/pr/2002/p021122e.htm>.

possess upon accession. It would also be important to know the relationships between national and territorial ceilings of each newly acceding NATO member.

Russia acknowledges that there are no outstanding problems between it and the four countries that will join NATO in 2004, although – owing to the failure on the part of the thirty States Parties to the Treaty of 1990 to ratify the adapted Treaty – they will not become States Parties to it. The Russian legislature rightly pointed out that there are still problems with some large State Parties to the Treaty of 1990: “Considering that a part of these states<sup>84</sup> have already expressed a wish to join the adapted CFE Treaty after its entry into force, the State Duma expresses concern at the unconstructive position of certain NATO member states, especially the United States of America and Turkey, artificially delaying the ratification and entry into force of this major document.”<sup>85</sup> This change of emphasis – although it may not result in ratification of the adapted CFE Treaty soon – is definitely more logical and justified than the earlier position, which put the four future NATO members under pressure despite the fact that they had expressed their readiness to join the adapted Treaty whenever it enters into force.

### *Conclusion*

More than four years after the signing of the agreement on the adaptation of the CFE Treaty, it has not yet entered into force. The current number of signatories that have ratified it demonstrates that a few more years will have to go by before it enters into force. This is neither unusual, nor is it tragic. It occurs very frequently that major multilateral conventions come into force many years after they have been opened for signature. This means that, as accession to the CFE Treaty of 1990 is impossible, the regime of conventional arms limitations in Europe will continue to be confined to the (former) members of NATO and the Warsaw Treaty and their successor states. Hence, it is increasingly likely that after 2004, a number of the new members of NATO will not belong to the CFE regime, at least temporarily. It will also remain impossible for successor states of the former Yugoslavia to join the CFE regime despite the fact that some aspire to become members of NATO.

Ever since the signing of the agreement on adaptation in November 1999, its ratification has presented a dilemma. This stems from the complexity of the situation. On the one hand, the Russian Federation has not fulfilled

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84 As it was demonstrated above, the four countries Estonia, Latvia, Lithuania and Slovenia have without exception expressed their readiness to join the adapted CFE Treaty when it enters into force.

85 Russian State Duma Statement on the Situation Concerning NATO Expansion submitted by the International Affairs Committee and adopted with regard to Viktor Alksnis' amendments on 24 December 2002 (289 in favour), pp. 1-2, at: <http://www.ln.mid.ru/Bl.nsf/arh/07B2C4FFFFB75E0943256CA00041C230?Open Document>.

all of its commitments under the Treaty and the Final Act of the States Parties. Since NATO member countries made the political commitment not to ratify the adaptation agreement until full compliance had been achieved, Russia has tied its own hands. On the other hand, however, it has taken major steps to live up to the specific commitments it made both with regard to Georgia and Moldova and also in Chechnya, where it has fulfilled its obligations under the flank rule. Consequently, one can claim that the glass is either half full or half empty. The dilemma has become even more apparent since 28 May 2002 when the NATO-Russia Council, the Council of 20, was formed and Moscow was recognized as a major co-operative partner of the Alliance. NATO should decide what is more important: to base future political steps on the static approach that requires full and verified compliance with the obligations as precondition for ratification, or take a dynamic approach and ratify the adapted Treaty “up front”, thereby rewarding Russia for its commitments. Both approaches are defensible, both have their costs and benefits.

It seems NATO has decided in favour of the static approach, and for the time being, it stands united behind its original position taken in May 2000 at the Florence meeting of the North Atlantic Council. Although its unity on this matter is disintegrating, no breakthrough has so far been achieved. Bearing in mind the limited strategic importance of the CFE Treaty, it does not seem likely that this position will change soon. It is precisely because of the relative strategic insignificance of conventional arms control in Europe that the view is taken here that there is every reason to leave the static approach behind and opt for the dynamic. Even then, ratification would still take a long time, which would give NATO leverage to continue to exert gentle pressure on Russia to comply with the Treaty – not to mention the fact that it would be sufficient if one signatory state in one of the conflict zones did not ratify the adapted Treaty. This may well happen anyway, even if NATO and like-minded countries decided to ratify it. There is a danger, however, that if the ratification process is completed by every State Party to the CFE Treaty of 1990 except for those who would be disadvantaged by this, the pressure on these states would increase while the pressure on Russia to fulfil its Istanbul commitments in their entirety would decline. Bearing in mind the asymmetry between Russia on the one hand and Georgia and Moldova on the other, this would be unfortunate.

I have attempted here to prove that those unsolved conflicts which have prevented NATO countries from starting the ratification process have either vanished or become insignificant to the CFE process, at least when the analysis is based on NATO’s declared agenda. It is also possible, however that there is a hidden agenda behind this. That agenda is not based on enforcing rules and honouring values. It is the cold-blooded realist agenda of one state. It emerges from the need to contain Russia, particularly in its traditional zone of influence at a time when its relative weakness is apparent. However, this

policy of containment is being applied at a time when it may no longer be necessary. Moreover, there is reason to assume that the more Russia indicates it will coerce its smaller partners, the more other parties would be tempted to support them, particularly Georgia, which has shown a strong pro-Western orientation, at least at the level of political rhetoric. One manner of expressing support would be by not ratifying the adapted CFE Treaty. It is questionable, however, whether this would be adequate in light of the complications it may cause in the NATO enlargement process.

It is increasingly apparent that there is a contradiction between the cooperative attitude of Russia towards the West and its claim to some sort of hegemony in the area of the former Soviet Union. It is an open question how long the two can be maintained simultaneously without the latter damaging the former, i.e. without Russia colliding with some Western countries, notably the USA, who do not recognize Russia's claim. It is obvious that since Russia is a major partner, the West may be interested in postponing such a collision, if not avoiding it outright. However, it is far from certain that this attempt will be successful.

It took quite a long time for the Russian Ministry of Foreign Affairs to conclude that the problem was far too broad to be seen simply in terms of the adapted CFE Treaty. "One has the impression that some people do not like the adapted Treaty itself, just as they do not like the other binding disarmament accords – on ABM, biological, non-proliferation, the non-militarization of space, and so on. We must explain in this connection that if ratification continues to be put off, an erosion of the Treaty might occur that will create a threat to its very existence."<sup>86</sup>

In the end, Russia may conclude that it is not interested in pursuing the entry into force of the adapted CFE Treaty. Clearly, being put on the defensive in an often indefensible case is something that Russia finds increasingly uncomfortable. If Russia concludes that the Treaty's not coming into force would not represent a strategic threat, then it might consider this option. The difficulty for Russia stems from the fact that pursuing this course would require it to declare the end of the current stalemate surrounding the adapted Treaty – and would therefore require political courage. More importantly, one has to ask what Russia would gain from such a step. It would still not regain its freedom of action in the field of conventional arms, as the original CFE Treaty of 1990 would remain in force – unless Russia decided to unilaterally terminate it. That would be another step requiring great courage. Then the question arises as to what Russia would do with the freedom thus regained. Would it start a large-scale conventional rearmament programme? Bearing in mind the financial consequences as well as the political costs as-

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86 Yakovenko, cited above (Note 28), pp. 1-2. As there are at least three elements listed above, which refer exclusively to matters where the US played a major role, it is obvious who is considered increasingly responsible for the failure to bring the adapted CFE Treaty into force.

sociated with such a course, it must be considered highly unlikely. In sum, Russia's noticeably increasing dissatisfaction with the situation concerning the entry into force of the adapted CFE Treaty may be enough to test the determination of the West on a rhetorical level. It may not, however, prove sufficient to be the basis of decisive action.

The world has experienced a honeymoon in NATO-Russian relations since late 2001. However, honeymoons do not last forever – neither in private life nor in international politics. It is my impression that this intimate relationship may come to an end due to disagreements over regional policies. The current approach to the CFE process and to the underlying unsolved regional conflicts will not be too high on the list of potential spoilers. Still it would be worth making the list smaller by bringing the CFE Treaty into force. This would also make it possible to open the Treaty for accession and thus eventually to turn it into a pan-European instrument.