

When the Past Meets the Future - Adapting the CFE Treaty

Since the limitation of conventional armed forces, through the conclusion and implementation of the CFE Treaty of 19 November 1990, took on importance for European security it has had to struggle to adapt itself to rapidly changing circumstances. An instrument that was negotiated at the very end of the East-West conflict and reflects the logic of the Cold War between hostile blocs might have been regarded on the very day of its signature as a relic of the past. Nevertheless, the CFE Treaty has a number of valuable accomplishments to its credit. First, by eliminating 58,000 weapons systems it contributed to a lessening of the level of armaments in the area of application. Second, it brought a significant increase in transparency as a result of by now about 3,000 on-site inspections and an intrusive exchange of information. Third, the Treaty's fora and mechanisms made a major contribution to one of the traditional objectives of arms control - helping to ensure smooth communication between the States Parties on questions of European security.

Problems of the CFE Regime

The obligations of the CFE States Parties are based mainly on the construction of two "groups of States Parties". Although these were identical with the two military blocs, NATO and Warsaw Pact, at the time of signature they were characterized as groups of States Parties because, in anticipation of the dissolution of the Warsaw Pact, it was no longer possible to talk about alliances. Almost all of the basic provisions of the Treaty - ceilings, regional limitations, the inspection system - are related to the groups of States Parties. It was up to each group to decide how to divide up the obligations amongst its member states, or - to put it another way - how national claims and treaty obligations were to be weighed against each other. Given the differing character of the two alliances this was relatively easy for the Western side, while the countries that were still members of the Warsaw Pact and later the successor states to the Soviet Union fought lively battles within their group over the question of allocation. As a result the CFE process, from the time of signature in 1990 on, was confronted with a problem of asymmetry. On the one side there was a genuine military alliance, on the other a group which existed only as a fictitious unity. The legal arrangements could leave this asymmetry out of consideration as long as they did not become politically unbearable for some States Parties. Thus the group principle persisted beyond the formal demise of the Warsaw Pact and the

dissolution of the Soviet Union.¹ Neither of these things altered the structure of treaty obligations in any way. The "withdrawal" from the treaty of several areas controlled by the Soviet Union (Estonia, Latvia and Lithuania) was dealt with pragmatically by the Joint Consultative Group. Only when the idea of enlarging NATO through the addition of former member states of the Warsaw Pact was actively pursued, not just by the self-appointed candidates but by the Atlantic Alliance itself, did it become clear that the treaty structure could not survive the implementation of such a decision. The necessity of adapting the Treaty became obvious. In this situation there were three options available:

First, the treaty structure based on the continuing existence of two groups could be retained. In this case the groups would be comparable to units that are maintained exclusively for treaty purposes. Under this option the Treaty would not have to be adapted in the event of NATO enlargement. Politically, however, what one negotiator in Vienna said is obviously correct: If countries that join NATO can keep their membership in the other group the result is a kind of political science fiction. For this reason, and also owing to Russian resistance, this option was abandoned early by the Group of 16. The first formal proposal of the Alliance stated: "The States Parties agree that this process of improving the operation of the CFE Treaty (...) will include (...) a review of the group structure (...)"²

The *second* option would be to adapt the group principle completely to the new political realities. That would mean conforming the treaty structure to the existence of just one Alliance. That in turn would mean the establishment of a group "cap" for NATO and national ceilings for countries that do not belong to the Alliance, but without any collective obligation for the non-NATO side. This, understandably, was Russia's position, as the first Russian proposal made clear. According to it, the "(...) term 'group of States Parties' means two or more States Parties that, in accordance with agreements concluded between them, have joint military command structures".³ By this definition NATO would be the only group because it alone has an integrated command structure, which does not apply to the CIS. On this basis, Russia called for the introduction of a sufficiency rule for the Alliance. As the Russian Deputy Foreign Minister,

1 Strictly speaking the group principle persisted only in part because the Concluding Act on Personnel Strength, agreed on in 1992, contains national ceilings. This early departure from the group principle is often overlooked because the Act itself is widely regarded as unimportant. (See: Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe, 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. 1255-1269).

2 Delegation of Greece to the JCG, Proposal Presented by the Delegations of Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, United Kingdom and the United States of America on Scope and Parameters of the Process for Improving the Operation of the CFE Treaty, Vienna, 8 October 1996, Point 5, p. 2.

3 Statement by Mr. V.N. Kulebyakin, Head of the Delegation of the Russian Federation to the Joint Consultative Group, Vienna, 23 April 1996, p. 6.

Mamedov, said, the adaptation of the treaty required "(...) changing its system of limitations from the one based on groups into the national one, the introduction of the 'sufficiency rule' for the armed forces of the members of military-political alliances (...)".⁴

Viewed against the background of the forthcoming enlargement of NATO, the Russian position is obviously designed to limit NATO's capacity for collective defence and its ability to take in new members. A collective sufficiency rule could prove to be a very contentious issue between the present and future members of the Alliance. If NATO were to take in new members in more than one round the national ceilings would have to be redistributed repeatedly. All of the present members of NATO would reject a reduction of their national assets beyond a certain level so as not to damage their national security interests. Thus it would be unlikely that the first wave of enlargement would be followed by others.

The *third* and last option was to eliminate the group structure entirely and base the new treaty exclusively on national obligations. In view of the objective asymmetry between the parties Russia would have to regard this as a one-sided advantage in favour of NATO. A system based on individual obligations was the starting position of the Atlantic Alliance, although it contained certain conditions designed to meet Russian objections.

Early Stages of the Adaptation Negotiations

It is easy to get the impression that NATO enlargement is the only factor that led to negotiations on CFE adaptation, but that is not the case. The so-called flank issue presents a separate group of problems. The early history of negotiations on CFE adaptation revolves around the relationship between two demands that Russia has presented again and again since early 1993: "modernization" of the CFE Treaty and elimination of the flank rule under Article V of the Treaty. Since the US government shifted in mid-1994 to a position of support for rapid NATO enlargement Russia has argued that this calls into question the operative basis of the Treaty; there can be no NATO enlargement without "modernization" of the Treaty. The Russian demand for elimination of the flank rule began to take form in March 1993. In September of that year President Yeltsin wrote a letter along these lines to Western Heads of State, followed by a demarche.⁵ In the so-called "harmonization debate"⁶ Russia tried to tie these two objectives together and

4 Statement by the Head of the Russian Delegation, Deputy Foreign Minister of the Russian Federation, G.E. Mamedov, at the CFE Treaty Review Conference, Vienna, 15 May 1996, p. 4.

5 Text of the Russian demarche in: The Arms Control Reporter 11/1993, p. 407.D.85-D.86.

6 To be harmonized, in accordance with the decision of the CSCE Summit Meeting at Helsinki in 1992, were the CFE Treaty with 30 States Parties and the Vienna Document with all (at that time) 52 participating States (Cf. CSCE Helsinki Document 1992: The Chal-

proposed in March 1993 that the CFE Treaty, the Concluding Act on Personnel Strength and the Vienna Document be replaced by a unified CSCE arms control regime based on national ceilings and without a regional system - a proposal which, like the whole harmonization project, failed.⁷ NATO held these Russian demands off for years; in both fields Russia was clearly in the role of the petitioner. This seemingly clear situation only began to change when Russia, faced with imminent NATO enlargement, failed to conform to the flank ceilings prescribed by the CFE Treaty which it ought to have reached by the end of the reduction period (16 November 1995). This put NATO in a difficult situation as well. If the Alliance, as it had always claimed, really wanted to combine its enlargement goal with the maintenance and even strengthening of a co-operative relationship with Russia then it, too, was dependent on finding a solution for the two related problem complexes in the CFE Treaty. A solution of the flank problem was found at the first CFE Treaty Review Conference (15-31 May 1996). The new agreement reduces the size of flank zone and permits Russia to station 8,716 TLE (Treaty Limited Equipment) in the previous flank zone until 31 May 1999, after which 7,900 systems will be allowed - this in lieu of the 4,360 TLE originally permitted, i.e. about a doubling of the previous regime.⁸ The new flank agreement was provisionally put into force immediately. The States Parties were to deposit their documents of confirmation of approval (mostly ratification) by 15 December 1996. As only twelve of the 30 CFE countries had ratified by then, the deadline was extended by five months. By that time all of the States Parties had deposited their agreement so that the arrangement could enter legally into force.

The so-called GUAM countries (Georgia, Ukraine, Azerbaijan, Moldova) have repeatedly expressed their dissatisfaction with certain provisions of the flank agreement. This feeling is closely related to the issue of the stationing of foreign troops on the territory of these four countries. In the view of the GUAM countries, the flank agreement allows Russia to station treaty-limited equipment in the flank zone of the former Soviet Union without the agreement of the affected states. The four countries want the document to be revised in such a way as to make clear that Russia's rights do not extend beyond its borders. For this

lenges of Change, Helsinki, 10 July 1992, Programme for Immediate Action, in: Bloed (Ed.), cited above (Note 1), pp. 701-777, here: pp. 739-743).

7 Cf. Wolfgang Zellner, Anfang vom Ende oder neue Chance kooperativer Sicherheit? Zur Krise europäischer Rüstungskontrolle [The Beginning of the End or a New Chance for Co-operative Security? On the Crisis of European Arms Control], in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg [Institute for Peace Research and Security Policy at the University of Hamburg]/IFSH (Ed.), OSZE-Jahrbuch [OSCE Yearbook] 1995, Baden-Baden 1995, pp. 289-306, here pp. 300-302.

8 Cf. Final Document of the First Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength, Vienna 15-31 May 1996, in: The Arms Control Reporter 1996, pp. 407.D.87-100.

reason, the four did not at first want to ratify the flank agreement. But the NATO states argued that there is nothing in the new flank rule which says that foreign troops and TLE can be stationed without the agreement of the affected state. Some told the four states quite openly that they had misunderstood the flank agreement. But Russian troops were in fact stationed on the territory of these countries and whenever this subject came up in the Joint Consultative Group Russia always gave the same answer: these issues must be handled bilaterally and not in the Joint Consultative Group.⁹ Ultimately the four did ratify the flank agreement but as an expression of their discontent they did not give way to the growing pressure until the last minute.¹⁰ In addition, both the GUAM states and Russia included statements and reservations with their ratification documents. The objective of the four was to prevent the entry into force of the flank agreement from legitimizing the presence of Russian troops on their territory. Thus Ukraine stated that "(n)othing in the Document can be construed as the expression of the consent of Ukraine for the presence of stationing of the TLE of the Russian Federation on the territory of Ukraine (...)".¹¹ Moldova worked out a similar statement.¹² The Russian statement attempted to achieve three objectives. First, it stressed that the agreement is "without prejudice to bilateral negotiations and agreements on stationing of the Armed Forces of the Russian Federation beyond its territory in the flank zone". Second, it tried to "neutralize" the statements of those flank countries that wanted to obtain the withdrawal of Russian forces from their territory. Russia declared that "(...) any reservations as well as any interpreting statements of other States Parties which directly or indirectly modify the substance and meaning of the Document do not entail any consequences as to the rights and obligations of the Russian Federation arising from the Document". Third, Russia again demanded that the flank rule be eliminated in the course of adaptation but made the following proposal (to NATO): "In this connection the Russian Party expresses its readiness to consider a possibility to ensure restraint in relation to the present levels of its conventional armed forces in the flank area (...). The scope, status and duration of such provision on restraint will correspond to the scope, status and duration of provisions on limitation on overall ceilings for military alliances and on limitation on additional permanent stationing of conventional armed forces of the States Parties beyond their territories."¹³ Since Russia knows that the second

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- 9 The issue was discussed at various times in the Joint Consultative Group, most thoroughly on 8 April 1997.
- 10 Azerbaijan, Moldova and Ukraine deposited their documents of ratification on 15 May 1997, Georgia two days earlier, on 13 May 1997.
- 11 Delegation of Ukraine to the Joint Consultative Group, 15 May 1997, Point 1, p. 2.
- 12 Cf. Ministry of Foreign Affairs of the Republic of Moldova to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, 15 May 1997.
- 13 The notification of the Russian Federation to the Delegations of the States Parties to the Treaty on Conventional Armed Forces in Europe, 15 May 1997, Points (B), (C), (D), pp. 2-3.

part of this deal is unacceptable to NATO, the first would have to be so as well - the flank rule would be invalid. Russia would be free to act in the flank zone - also vis-à-vis the GUAM countries. Russia's assumption in connection with this proposal was that NATO enlargement was the West's primary objective and that the West would be prepared to make concessions on other issues, among them ones in which the sovereignty of some countries of second-rate strategic importance might be affected.

The solution of the flank issue was - at least as the West viewed it - a condition of addressing the second problem, CFE adaptation. The review conference of May 1996 agreed on the beginning of a process whose goal was to determine the "scope and parameters" for improving "the operation of the Treaty in a changing environment".¹⁴ Then talks could begin on a mandate for negotiations on the adaptation of the CFE Treaty. These talks were finished by the time of the Lisbon OSCE Summit of 2-3 December 1996. The Lisbon Document 1996 contains, in an annex, a document approved by the 30 CFE countries (the expression "mandate" was avoided so as not to give the impression of new negotiations) which establishes the "scope and parameters" of the adaptation negotiations.¹⁵ Instead of full-scale new negotiations only "such new elements" should be introduced and "adaptations, revisions or adjustments to existing elements"¹⁶ undertaken as are considered necessary. The five categories of treaty-limited armaments and equipment (battle tanks, armoured combat vehicles, artillery, combat aircraft, attack helicopters) should be retained and their overall numbers in the area of application should in no case increase. All provisions having to do with information and verification should also remain unchanged, as should the area of application of the Treaty. On the other hand, adaptations and changes should be possible in the system of maximum levels for holdings, including the possibility to establish national ceilings, in the provisions on overall ceilings and zonal limitations, in the central redistribution mechanisms for weapons quotas (Article VII), in the provisions on stationing forces on foreign territory (stationed forces), in temporary deployment, and in the provisions on designated permanent storage sites (DPSS). The mandate also makes it possible to include new or expanded categories of conventional armaments. New provisions are to be drawn up to ensure the functioning of the Treaty in cases of crises or conflict and to facilitate co-operation in peacekeeping operations under a UN or OSCE mandate. Moreover, the Treaty is to be opened up for additional states to join. The Joint Consultative Group of the Treaty was chosen as the forum for negotiations. Finally, the 30 countries obligated themselves to

14 Final Document, cited above (Note 8), p. 407.D.91.

15 Document Adopted by the States Parties to the Treaty on Conventional Armed Forces in Europe on the Scope and Parameters of the Process Commissioned in Paragraph 19 of the Final Document of the First CFE Treaty Review Conference. Appendix to the Lisbon Document 1996, reprinted in this volume, pp. 419-446, here pp. 442-446.

16 *Ibid.*, p. 442.

complete the adaptation negotiations just as quickly as the original negotiations in 1989-90 - i.e. within 20 months - and to keep the other OSCE participating States informed on a regular basis.

The Vienna Negotiations on the Adaptation of the CFE Treaty

The negotiations on the adaptation of the CFE Treaty began on 21 January 1997 in Vienna. Because the Joint Consultative Group must continue to deal with treaty implementation issues a special group was set up for the negotiations, the so-called negotiating group. In a departure from normal procedures, the Representative of Great Britain, Hain-Cole, was made permanent Chairman in order to ensure continuity in the work.

Alliance Sufficiency and Prohibition Against Stationing in New NATO Member States: Russia's Starting Position

Because the CFE adaptation originated with Russian demands we shall first recall what these were. The Russian starting position, which was presented to the Joint Consultative Group back on 23 April 1996 and reaffirmed there on 22 April 1997,¹⁷ contains three main elements. First, as explained above, Russia called for the introduction of alliance sufficiency on the basis of a new definition of groups of States Parties which would only apply to NATO. Second, Russia insisted on lowering the ceilings to the actual levels of holdings at the end of the reduction period (16 November 1995) with the result that the ceilings for the NATO states in the various categories would sink by a magnitude of between 18.94 and 35.53 per cent while Russia's would only be reduced between five and 14.22 per cent. Third, Russia demanded a prohibition against the stationing of forces on foreign territory anywhere where there were none on 16 November 1995. That would rule out NATO stationing in the new member states while Russian troops stationed abroad - say, in Armenia, Georgia or Ukraine - could remain there.

National and Territorial Ceilings: NATO's Starting Position

After a difficult internal discussion which in essence revolved around the relationship between military flexibility and the stability provided by arms control as well as the extent of reductions that might be achieved on such a basis,¹⁸ NATO

17 Cf. Kulebyakin, 23 April 1996, cited above (Note 3) and Basic Elements of an Adapted CFE Treaty (Position of the Russian Federation), 22 April 1997, printed in: *The Arms Control Reporter* 5/1997, p. 407.D.108-D.109.

18 Cf. Wolfgang Zellner, *Anpassung des KSE-Vertrags - nur an die Erweiterung der NATO?* [Adaptation of the CFE Treaty - Only to the Enlargement of NATO?], in: Friedhelm Solms/Reinhard Mutz/Bruno Schoch (Ed.), *Friedensgutachten 1997*, Münster 1997, pp. 266-268.

tabled its proposal in the Vienna negotiations on 20 February 1997.¹⁹ It seeks to eliminate the group structure and the existing regional system (with the exception of the flank agreement of 31 May 1996) and to replace them with a new system of national and territorial ceilings. Every *State Party* would be assigned national ceilings at the level of the previous maximum levels for holdings regardless of where the weapons are stationed. For every *territorial unit* there would be territorial ceilings (only for the ground force armaments) at the level of the ceilings already notified for this unit and these would apply to both national and stationed forces. National quotas would be exchangeable between all states under the condition that raising the national ceiling of one state would be accompanied by a corresponding lowering on the part of another state. Territorial ceilings should be capable of revision according to the same principle. The NATO proposal contained no detailed information on a mechanism for altering national and territorial ceilings.

NATO tried to meet Russian concerns with two specific messages. First, it announced in its proposal that the aggregate national ceilings of the 16 NATO states in the three categories of ground forces would be "significantly" lower than the current group ceiling. Although no specific numbers were mentioned it is clear that the announced reductions would involve only the so-called "head-rooms", i.e. the difference between the present ceilings and actual holdings, whichever is lower. The political purpose of announcing this unilateral reduction is to make the Russian demand for an alliance sufficiency superfluous by offering in quantitative terms what that demand seeks to achieve structurally. Another point in the NATO proposal is relevant in this connection: designated permanent storage sites may be either maintained or eliminated; in the latter case, 80 per cent of the depot quota would lapse and the other 20 per cent could be applied to active forces. It remained an open question whether the 80/20 rule was only to apply overall or would also be applicable to individual categories of armaments and equipment.

In addition, the NATO proposal provides for specific stabilizing measures for the Visegrád countries, Belarus, the region of Kaliningrad (which is thus defined as a territorial unit) and the territory of Ukraine without the flank portion. These measures would consist mainly in the provision that the territorial ceilings of these units could not exceed the present maximum levels for holdings for the three categories of ground TLE, i.e. that they could not be raised. This would by no means rule out the stationing of forces from NATO countries in the new member states, however. If the latter were to reduce their national ceilings below the territorial ceilings that apply to them, space would be created for such a

19 Cf. Basic Elements for Adaptation of the CFE Treaty, printed in: The Arms Control Reporter 2/1997, p. 407.D.105-D.107.

stationing. Other rules in the NATO proposal provide that territorial ceilings may be exceeded for the purpose of notified military exercises, in the event of peacekeeping operations under a UN or OSCE mandate, and for temporary deployment; the meaning of "temporary", which is not defined in the present CFE Treaty, was left open here as well.

The Positions of the Visegrád Countries and Ukraine

The Visegrád countries had no desire to create the impression that they were rejecting any element of the NATO proposal - an understandable attitude in view of the impending decision on their future membership in NATO. But on closer examination it is clear that there were substantial reservations about the stabilization zone. Political considerations were in the foreground, arguing, in effect, that this zone created a special class, a kind of arms control singularization. But the relatively low level of military flexibility is also viewed with concern. For Poland, in particular, the inclusion of Belarus, Ukraine and Kaliningrad in the stabilization zone was a condition for its agreement to the NATO proposal. Hungary emphasizes that the NATO proposal is a coherent whole which cannot be altered at will; an additional prohibition against stationing would, in particular, be unacceptable. Thus the Visegrád countries wanted to keep their storage sites in order to make room for NATO reinforcements. Poland and Hungary, at least, showed little inclination to reduce their national ceilings and, in contrast to a number of NATO states and the Czech Republic, chose to make no announcement on this (see below).

The NATO proposal of 20 February 1997 largely ignored the needs of Ukraine and the smaller CIS countries. Ukraine may be in the most difficult situation of all because it lies right in the middle between the (enlarged) NATO and Russia. Although Ukraine has come to support most elements of the NATO proposal it does not accept being assigned to the stabilization zone, even though this would amount to a "zonal" separation from Russia. As the Ukrainians see it, the NATO proposal looks too much like a buffer zone and one of the biggest concerns Ukraine has is that NATO and Russia might reach agreement over its head. The fear that Russia might respond to NATO enlargement with a military alliance in the CIS framework was so strong in Ukraine that it was at first inclined to support the Russian proposal for an alliance sufficiency - but with a view to Russia, not NATO. And there are, in addition, the above-mentioned concerns about the flank agreement. For that reason Ukraine would like the flank rule abolished or, at a minimum, a change in the flank agreement.

The Russian-American summit meeting in March 1997 in Helsinki did not accomplish much for the adaptation of the CFE Treaty; it also dealt with other matters, from NATO enlargement, generally, to strategic nuclear weapons. The Presidents expressed their determination to reach a framework agreement on the basic elements of an adapted CFE Treaty by early summer. The US leadership assured Russia that NATO enlargement would not lead to a potentially threatening build-up of permanently stationed combat forces in Russia's vicinity.²⁰

Between the American-Russian summit and the signature of the NATO-Russia Founding Act there were important discussions in Vienna which, however, led to no results. They had to do with the establishment of national and territorial ceilings, specific stabilizing measures and stored equipment.

With regard to national ceilings there was a consensus that the national ceilings of a state should not exceed its existing maximum levels for holdings. Most delegations became convinced that there would be a general downward trend. The Russian delegation stressed that the ceilings after adaptation could not be allowed to be higher than previous holdings. Altering national ceilings, in the Russian view, ought to depend on the agreement of all States Parties - which would make flexible redistribution of holdings within NATO impossible. This requirement, unacceptable to NATO members, represented one of those elements of the Russian position which Moscow could use to make concessions in a later phase of the negotiations. The Russian delegation continued to regard an alliance sufficiency as necessary "to forestall any destabilizing accumulation of forces by (a) particular military-political alliance".²¹

Discussions continued on territorial ceilings as well. In contrast to national ceilings the category of territorial ceilings continued to be unacceptable for Russia, but not for Ukraine.²² The Russian position, as before, was that the stationing of forces on foreign territory should not be allowed in areas "where they do not exist at present and we must not increase holdings in areas where they do exist".²³ That meant that the whole system of limitations would rest on the national ceilings alone. The members of the Group of 16, on the other hand, viewed territorial ceilings as a further development of the regional system in the CFE Treaty whose effects, to be sure, would only be felt by certain States Parties.

20 Cf. Joint Statements of the Helsinki Summit, Joint U.S.-Russian Statement on European Security, in: *Arms Control Today* 1/1997, pp. 20-21.

21 Basic Elements, Position of the Russian Federation, cited above (Note 17), p. 407.D.109.

22 Cf. On the Basic Elements of the CFE Treaty Adaptation, Delegation of Ukraine, 20 May 1997, pp. 2-3.

23 Basic Elements, Position of the Russian Federation, cited above (Note 17), pp. 407.D.109.

This leads to another subject on which the Russian position differed from those of most other countries but where, in contrast to the issue discussed above, it was close to that of Ukraine. Both countries were of the view that the flank rule and other zonal arrangements were superfluous. For different reasons, Moscow and Kiev strongly opposed the idea of a central stability zone. Their opposition to the flank rule, even as revised by the first Review Conference, stems from the same cause: if the flank rule were eliminated, both countries could station their forces more flexibly and alter these deployments as necessary. On the other hand, elimination of the flank rule would seriously compromise the adapted Treaty in terms of the perceived security interests of other flank countries, especially Russia's neighbours. Moreover, it would look odd to eliminate a provision that had only recently been re-negotiated and had just entered into force.

In its proposal of 20 May Ukraine suggested a kind of double membership. NATO and, possibly, other alliances, would get a collective membership in the Treaty in addition to the individual membership of the States Parties. This would amount to additional limitations for the Western Alliance, *inter alia* in the form of collective ceilings and an alliance sufficiency.

The NATO-Russia Founding Act and the Struggle for a CFE Framework Agreement

The NATO-Russia Founding Act²⁴ is a document of historic importance that solves many controversial questions. These do not, in the first instance, have to do with the CFE Treaty; the result is that, although the Founding Act deals with the Treaty in detail, it does so in a way which offers little specific orientation for the adaptation negotiations. The Founding Act says that the adapted Treaty is to be based on binding national ceilings. Beyond that, the signatories of the Founding Act share the expectation that there will be a significant lowering of the ceilings, compatible with the legitimate defence requirements of each State Party. In 2001, and thereafter every five years, the Treaty should be subject to revision. It must have been a source of satisfaction for Russia that a phrase frequently used by the Russian delegation in Vienna to the effect that the objective is "to prevent any destabilizing increase of forces in various regions of Europe and in Europe as a whole",²⁵ was used in the document. With regard to procedure, NATO and Russia agreed in the Founding Act to "seek to conclude as soon as possible a framework agreement setting forth the basic elements of an

24 Cf. Founding Act on Mutual Relations, Cooperation and Security between the NATO and the Russian Federation, issued in Paris, France, on 27 May 1997, in: NATO review 4/1997, Documentation, pp. 7-10.

25 Ibid. p. 9.

adapted CFE Treaty"²⁶ It is clear that, without explicitly naming it, this referred to the Madrid NATO Summit of 8 and 9 July 1997.

On the day the Founding Act was signed Russia presented new ideas in Vienna that represented some further development of its starting position. First, in harmony with the Founding Act, the Russian side emphasized that the Treaty was to be based on the establishment of national ceilings. Second - and this was an important step - Russia declared, although still somewhat vaguely, its willingness to "examine the possibility of introducing a web of territorial ceilings as an alternative to the zonal limitations (...)"²⁷ Third, an equally important step was Russia's announcement that it was prepared "to consider the possibility of a strictly limited stationing of forces on those territories where they are not present today".²⁸ Russia was thinking initially of limiting stationed forces to five per cent of the national ceiling (the US view was 20 per cent) but dropped this idea later, presumably with a view to the Caucasus.²⁹ Fourth, Russia agreed to specify "conciliatory flexibility mechanisms to deal with changes in the ceilings and with cases where they are temporarily exceeded".³⁰ These concessions may appear insignificant but they do reveal that Russia was prepared to take the positions of other countries, especially NATO members, into account. There was some optimism in Vienna and the expectation that a Framework Agreement could be completed by the NATO Summit on 8 and 9 July - the tacitly accepted deadline - or at least by the summer recess of the negotiations ten days later. A few days later the Russian delegation again raised the issue of collective alliance ceilings.

The statement made by the US Secretary of State at the meeting of the North Atlantic Council in Sintra at the end of May was of significance in defining the limits of Western ability to compromise. She said that Western CFE policy would have to be based on two principles: "First, we must not take any step in CFE that would undermine NATO's ability to fulfill its future commitments, prejudice its political evolution, or relegate any future members to second class status. Second, any CFE agreement must take into account the interests not just of NATO's 16 allies or any individual country, but of all 30 CFE states."³¹ Here, Albright formulated the central dilemma facing the Western Alliance and, in particular, the United States, with regard to the CFE process: on the one hand to

26 Ibid.

27 Statement by Mr. A.V. Grushko, Head of the Delegation of the Russian Federation, on Matters of Military Security and Arms Control at the Plenary Meeting of the Joint Consultative Group, Vienna, 27 May 1997, p.2.

28 Ibid., pp. 2-3.

29 Cf. *The Arms Control Reporter* 5/1997, p. 407.B.565.

30 Grushko, 27 May 1997, cited above (Note 27), p. 3.

31 Secretary of State Madeleine Albright, Remarks to North Atlantic Council Ministerial Meeting, Sintra, Portugal, 29 May 1997, in: U.S. Information and Texts, June 4, 1997, p. 12.

ensure the effective functioning of NATO as a collective defence organization; on the other, to improve the general security situation in Europe.

There was scarcely any progress towards a Framework Agreement in June. Russia displayed a co-operative attitude at a high political level but this was not reflected at the negotiating table in Vienna. On a number of key issues the Russian government appeared to have returned to its original position. First, it rejected any permanent stationing in countries where this had not previously existed. Second, it insisted on the introduction of an alliance sufficiency rule. Third, it intended to limit military infrastructure on the territory of the new NATO member states. Fourth, it demanded zonal limitations for combat aircraft and attack helicopters and not just for the three categories of ground forces. Fifth, it insisted on the principle of "one country, one ceiling", which is of central importance for the aim of eliminating the flank rule. Sixth, Russia was, as a consequence, also not prepared to agree to the inclusion of Kaliningrad in the stability zone foreseen by NATO. Russia is opposed to having territory of its own in this zone because it believes, probably rightly, that the purpose of the zone is to allay Russian security concerns and it should therefore comprise areas west of Russia but not Russian ones.

Russia's attitude, again hardening, and also the absence of any new impulses from the NATO countries led by the middle of June to a situation in which the negotiations were obviously marking time. It was against this background that the *High Level Task Force* (HLTF), the NATO body responsible for arms control, decided on 19 June 1997 to give the negotiating process new impetus. This was to be achieved by making good (in part) on the announcement of 20 February that the NATO states would significantly lower their ceilings. The HLTF proposal had three elements. First, NATO said it would be willing to make use of the option contained in its own proposal and give up 80 per cent of its DPSS entitlements (7,360 items) with the remaining 20 per cent (1,840) to be turned over to active units. NATO had let Russia know months earlier of its willingness to do this but now it was to be announced officially. However, the depot proposal is of limited interest to Russia because the Russian Federation wants to turn over 100 per cent of its depot stocks to active units. Second, NATO wants to relinquish unused quotas (756 items). Third, the NATO countries decided to declare in Vienna their intention to reduce their ceilings by five per cent. All three of these measures, taken together, add up to about 10,000 TLE and thus barely half of NATO's "headroom". Beginning on 26 June a number of NATO states issued statements along these lines; the US and Great Britain presented concrete figures for all five categories, France and Italy declared their willingness to reduce their ceilings by five and six per cent respectively, and even the Czech Republic announced that it wanted to lower its ceiling for battle tanks

from 952 to 700.³² It is noteworthy that these announcements, expanding on the original NATO proposal, also included the air categories. Germany was the only one of the five large NATO countries that did not make a concrete statement on reductions.

However, this initiative, presented rather late, was not enough to make possible the completion of a Framework Agreement by the time of the Madrid NATO Summit. It was impossible to achieve any results at the Summit itself, not least because there were no arms control experts in the Russian delegation. Right afterwards, however, the US Secretary of State, Albright, and her Russian colleague, Primakov, reached a breakthrough on two core issues at a meeting in St. Petersburg on 12 July 1997. First, the Russian government gave up its demand for collective alliance ceilings; second, it agreed that the modified Flank Agreement of 31 May 1996 could be made part of the adapted Treaty. On three other issues - the definition of territorial ceilings, the limitation of stationed forces and the permanent stationing of combat aircraft and attack helicopters - no agreement was reached. At the next round of American-Russian consultations in Vienna from 18 to 20 July 1997 it again became clear how strongly the element of traditional bilateralism was making itself felt in these negotiations. *First*, Russia abandoned the demand it had so far insisted on that a revision of the national ceilings should be undertaken at every one of the review conferences held at five year intervals and that this should only be done on the basis of consensus. This demand would have deprived NATO of all flexibility which is why the Western Alliance took the position that changes in the ceilings had to be possible during the intervals and that the task of the review conference was only to provide a periodic evaluation of the general situation with respect to ceilings. *Second*, Russia defined its agreement to the modified flank rule in a way that permits it to be put into the adapted Treaty. And *third*, a formulation on territorial ceilings was found that does not rule out one part of the territory of a State Party being defined as a territorial unit.

With that there was a sufficient basis between Russia and the United States (and most of the NATO states) to conclude at least a partial framework agreement on *certain* fundamental elements of treaty adaptation. Before that came about, a few days later, reservations on the part of Poland, Turkey and Azerbaijan had to be dealt with. Poland was, for one thing, opposed to any mention of Central and Eastern Europe in connection with the stabilizing measures proposed by NATO; in addition, the Polish delegation demanded that the option of intermediate ceilings for stationed equipment be removed. Turkey was against any flexibility

32 Cf. Statement by the Delegation of the United States of America at the Joint Consultative Group, Vienna, 26 June 1997; UK Statement to the Joint Consultative Group, 1 July 1997; Statement by the Delegation of France at the Joint Consultative Group, Vienna, 26 June 1997; Statement by the Delegation of Italy at the Joint Consultative Group, Vienna, 26 June 1997 (Italy excepted attack helicopters from the reduction); Statement by the Delegation of the Czech Republic at the Joint Consultative Group, Vienna, 26 June 1997.

on the flank rule and took the position that the precise text of the agreement of 31 May 1996 must be retained. Azerbaijan also had concerns about the inclusion of the flank rule and about the (possibly) excessively high ceilings of some of its neighbours, particularly Armenia and Russia. The objections of these three countries hardly made a difference, however. Contrary to Polish wishes, the agreement reached on 23 July 1997 on "Certain Basic Elements for Treaty Adaptation"³³ leaves open the possibility of intermediate ceilings for stationed equipment and also mentions Central and Eastern Europe in connection with stabilizing measures, although the latter is mitigated by the general reference to "particular regions and areas".³⁴ Nor could the Turkish desire to hold to the text of the modified flank rule of 31 May 1996 succeed. Instead, the Agreement says "that the substance of Article V (of the CFE Treaty in its modified form of 31 May 1996, W.Z./P.D.) will be maintained but reconciled with the structure of the adapted Treaty (...)".³⁵ Azerbaijan was the only one to get a concession. In the section on the flank rule an assurance was provided "that the security of each State Party is not affected adversely at any stage".³⁶ All in all, the Agreement on Certain Basic Elements for Treaty Adaptation makes clear that the bloc-to-bloc approach of the old CFE Treaty has been replaced by a system of national and territorial ceilings. Thus the negotiations will go on in the fall on the basis of a NATO initiative; Russia has abandoned its call for collective limitations and a complete prohibition of the stationing of foreign military forces in the new NATO member states.

The success of the Agreement lies above all in the fact that following the summer break the negotiations can be pursued on a common conceptual basis and that this common understanding, codified in a politically binding paper on fundamentals, will not be easy to revise. On the other hand, it should not be overlooked that not one of the key problems of treaty adaptation has yet been solved in substance. Thus the negotiations on the real substance of the Treaty are still to be held. Just how different the positions still are emerges clearly from a statement of 23 July 1997 by the 16 NATO countries. In it they, *first*, hold firmly to their view that territorial ceilings apply only to the three categories of ground forces and not to combat aircraft and attack helicopters. *Second*, NATO persists in the view that the "substance" of the flank rule refers to its numerical limitations, the geographic scope, the schedule and the agreed transparency measures. And, *third*, the Western Alliance points out that the "agreed procedures" for the still-to-be-negotiated central distribution mechanism refer to "procedures that

33 JCG, Chairman's Final Proposal, Draft Decision Adopted by the States Parties to the CFE Treaty Concerning Certain Basic Elements for Treaty Adaptation, 23 July 1997.

34 Ibid., Sections 15 and 13.

35 Ibid., Section 16.

36 Ibid.

would be derived as needed from those now in place".³⁷ This covers the two problem areas which will presumably lead to the toughest debates: the flank issue, where the interests of Russia, NATO and the GUAM countries collide, and the central distribution mechanism, whose nature will largely determine whether treaty adaptation will achieve its goal - more arms control stability for every State Party.

CFE Adaptation as a Test Case for the Ability to Co-operate

The fact that the Framework Agreement could be achieved only with great difficulty and yet contains no more than "certain" basic elements indicates that CFE adaptation is conceptually, and probably also politically, more complicated than the original negotiations of 1989/1990 were.

There are two core problems at issue: *First*, the objectively existing structural asymmetries between different groups of States Parties have to be embodied in categories of equal rights and obligations for arms control purposes. Formally speaking, a bipolar negotiating structure has evolved into a multilateral one. Today there are no longer two more or less equal interest groups but three groups of States Parties which differ significantly from one another, not only in their power potential and interests but also in their internal coherence.³⁸ Even though the relationship between NATO and Russia will remain the most important one under the CFE regime, greatly influencing all the others, it is also true that other relationships - such as the one between Russia and the GUAM countries - have acquired significance and can no longer be seen simply in terms of NATO-Russia. An added factor is that interests within the (old) NATO have also become more heterogeneous, a trend which will accelerate with enlargement as has been demonstrated by the self-confident behaviour of Poland, which sees itself as a central power in Europe. It follows from this that the ability of the main actors to guide events will tend to dwindle over the long run, even though the resurgence of American-Russian bilateralism in the most recent phase of negotiations may seem to point in another direction. Substantively, the differing quantities of Treaty Limited Equipment in the possession of the various groups of states represent asymmetrical options for military action and, related to that but by no means synonymous, asymmetrical options for building security. Both

37 Statement on behalf of Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States of America. JCG, 23 July 1997.

38 New member states which might adhere to the Treaty when it is opened are likely to formulate interests which are either close to the NATO position (the Baltic countries, Austria, Slovenia) or ones (such as Sweden and Finland) that have a specific interest profile characterized by problems with the transparency rules of the Treaty and the flank issue. Thus these countries are unlikely to constitute a group in the sense of sharing a more or less unified field of interests.

on the level of military options and on that of security policy options - as well as between these two dimensions - a balancing of interests is needed, not between two but at least three groups, before a result can be achieved in arms control. The fundamental fact is that NATO, with its enlargement process, has taken the first significant step since 1989/1990 towards a new definition of European security structures. The asymmetry of options finds expression in the fact that enlargement is a unilateral act and the disagreement over it could only be contained, with great difficulty, in the NATO-Russia Founding Act. Moreover, the enlargement process remains open in every respect, including the possibility that the co-operative relationship with Russia will once again be damaged. In sum, what is needed is to find an arms control framework within which three sets of interests involving sharply asymmetric and dynamically developing military and political options can be balanced. This calls for a high level of co-operation. The *second* core problem is that the relationship between (an enlarged) NATO and Russia will continue for a long time to be characterized by the need for reassurance *vis-à-vis each other* and by efforts towards co-operation *with one another*. As the parallels between NATO enlargement and the Founding Act show, the balance between these two elements is still very sensitive and subject to disruption, even though the co-operative aspect is clearly dominant. The task of CFE adaptation is to connect these two functions - reassurance and co-operation - in such a way that there will be a gradual, long-term shift towards co-operation and the above-described asymmetries in military and security matters will be bridged over. Thus the capacity for co-operation is a key to the successful adaptation of the CFE Treaty just as a successful adaptation, or lack thereof, will be a central indicator of the quality of relations between NATO and Russia. The first half year of negotiations was strongly influenced by the debate over the basic structure of the adapted Treaty. The initial positions of Russia and NATO reflected their differing military and security options. The Russian position towards NATO is defensive. It aimed at a collective limitation on the military options of the Alliance and, even more importantly, on its security options in connection with enlargement. Both things show a substantial need on Russia's part to find reassurance *vis-à-vis* NATO by means of arms control. Russia combines this defensive principle in the centre with offensive objectives on the flanks. Elimination of the flank rule is intended to provide new military options as well as more latitude for security policy. By contrast, NATO's main interest is in using arms control to enlarge the scope of its security options in the centre of Europe through an approach based on national ceilings. Military options are a subordinate matter in the sense that the new members will be included as equal Alliance partners but no enlargement of military options against Russia is being sought. Only a few NATO members have interests relating to the flank problem but not necessarily the Alliance as a whole. The common denominator of the

GUAM countries, on the other hand, is the search for whatever insurance arms control can provide against undesired Russian stationing plans.

With the decision on certain basic elements of treaty adaptation Russia has given up its collective structural approach and joined the individual approach of NATO, but without abandoning the substance of its demands, which it will continue to pursue on a new conceptual basis. In terms of security policy this means the acceptance of NATO enlargement, but within certain limits. In the framework, and on the basis of its structural approach, NATO has paid a price in military policy terms by forgoing a number of military options that would have been a "natural" result of an enlargement not tempered by arms control. The most important trade-off of the negotiations to date appears to be that Russia has accepted an enlargement of NATO's zone of influence in security matters in return for limitations on its military options. This arrangement, if it lasts, represents a legitimate balancing of interests which does no harm to third parties. Things would look different, however, if a second trade-off proposed by Russia - so far without success - should come about: acceptance of NATO enlargement in return for freedom of action on the flanks. This option, whether one admits it or not, would amount to sacrificing the interests of the GUAM countries (in an extreme case, their sovereignty) to NATO enlargement. That has not happened yet; but continuing Russian pressure on the flank issue makes clear that Russia has not abandoned this objective. Unlike most NATO countries, Russia has vital interests tied up with the flank issue. Thus it continues to be in a good position, in return for NATO enlargement, to obtain concessions that would affect the GUAM countries, which are strategically less important to NATO. NATO, therefore, has to face over the medium term a dilemma which is not just limited to the field of arms control. On the one hand, it has solemnly declared that the enlargement process is open; Romania and Slovenia have already been designated for the next round. But hand in hand with that goes a rising need for substantial arms control compromises, and the question of where these will be found grows increasingly urgent. It is hardly consistent with the Western Alliance's democratic claims to make political deals at the expense of third parties - sovereign participating States of the OSCE. It is not possible to see how this dilemma could be solved if enlargement went beyond five new NATO members. Thus we will not be able to call CFE adaptation a success until a balance of interests between all relevant groups of states has been found.