

The Adaptation of the CFE Treaty - Between Creeping Marginalization and a New Conceptual Definition of European Arms Control

The main political difficulty in adapting the CFE Treaty lies partly in the fact that the objectives for which the original Treaty of 1990 was designed have now for the most part been met, and yet there is no adequate consensus about new functions for conventional arms control in Europe under present conditions. Moreover, crises and wars nowadays emerge largely from domestic conflict situations, while arms control can only regulate military options at the inter-state level. In this connection, the conditions for the use of military force have undergone a fundamental change in comparison with the era of East-West confrontation. On the one hand, the opportunities to use military force internally, or, in disintegrating associations of states, also internationally, have expanded. On the other, the illegitimate use of military force within a state can today provoke a military reaction from the outside. As the example of Kosovo demonstrates, this can even be a unilateral reaction without a mandate from the United Nations. Thus, although the discipline imposed by the bipolar bloc structure has disappeared, every "political actor" who considers the internal application of military force must now reckon with the risk that the new European power centre - whether it appears in the form of the Western Alliance or as a coalition of individual countries - may employ military sanctions against such behaviour. All in all, this means that in comparison with the traditional methods of arms control based on inter-state relations, the domestic use of military force, along with unilateral military responses thereto, constitute a new intervening variable which until 1990 did not have to be taken into account and on whose operational parameters some consensus or compromise, at least tacitly, must be found - if arms control itself is not to be put at risk.

The "old" CFE Treaty provided the central point of reference for dealing with the military aspects of the dissolution of the Warsaw Treaty and of the Soviet Union. On the basis of CFE rules, the level of armaments in the area of application was lowered by more than 60,000 major weapons systems. Almost 4,000 on-site inspections and the exchange of detailed information brought about a degree of transparency hitherto unknown and a continuous flow of communications between the States Parties to the Treaty. This meant that an arms control regime came into existence of an intensity never seen in any other part of the world. This is what the OSCE Ministerial Council was referring to when at its seventh meeting on 2-3 December 1998 in Oslo it reaf-

firmed "the importance of the CFE Treaty as a cornerstone of European security".¹

Notwithstanding this kind of summit pronouncement, there is much evidence that a new discussion of the conceptual foundations of European arms control cannot be postponed much longer. The old consensus on arms control policy stemming from the final phase of the East-West confrontation, to which the CFE Treaty owes its origin, is working less and less well. A new treaty does not yet exist, not even within the Western Alliance - indeed, specifically not there. This is all the more important because the Western Alliance is no longer, as in the past, one of two main actors but, rather, the very centrepiece of European security. If the Alliance has no common concept, then none exists - at least not in terms of *realpolitik*. There has not so far been an open and publicly conducted discussion on the importance and functions of conventional arms control in Europe. But CFE adaptation - better than anything else, perhaps - gives us ideas about how this implicitly conducted discussion might affect negotiations and their results.

Negotiations on Adaptation of the CFE Treaty - a History of "Missed Deadlines"

The 30 States Parties to the Treaty have been negotiating since 21 January 1997 on the basis of a "document"² on adaptation of the CFE Treaty adopted on the margins of the Lisbon Summit in December 1996. After years of delay NATO gave in to Russian pressure in two main areas and negotiations on adaptation began. First, adaptation had become necessary because the central principle underlying the Treaty - the two "groups of States Parties to the Treaty" which originally were identical with the member states of NATO and the Warsaw Pact - had become meaningless, at the latest when Poland, the Czech Republic and Hungary joined the Western Alliance and Russia took the position that an enlargement of NATO without prior "modernization" of the CFE Treaty constituted a violation of the Treaty. Russian demands with regard to NATO enlargement are directed mainly at the centre of the area of application, i.e. Central Europe. Second, Russia has since 1993 been calling for the elimination of the so-called "flank rule" which imposes special limitations on the armed forces of States Parties to the Treaty in the north and south of the area of application. The early stages and the course of the CFE adapta-

1 Seventh Meeting of the OSCE Ministerial Council, Oslo, 2-3 December 1998, in the present volume, pp. 455-549: here p. 457.

2 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, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1997, Baden-Baden 1998, pp. 442-446.

tion negotiations³ have been characterized by the interplay between these two problem areas.

Since the beginning of CFE adaptation the target data fixed through consensus, which would have fulfilled the requirements of the Russian position, have not (quite) been met. The Lisbon Document contained an undertaking that the negotiations on adaptation should not last longer than the original negotiations of 1989/1990, i.e. approximately 20 months. Had this been realized, a conclusion would have been reached in the autumn of 1998, about half a year before Poland, the Czech Republic and Hungary actually entered NATO and this would have fulfilled Russian requirements. But this objective was missed just as was the intention, articulated in the NATO-Russian Founding Act, to "seek to conclude as soon as possible a framework agreement setting forth the basic elements of an adapted CFE Treaty".⁴ This vague formulation on timing tacitly referred to the NATO summit of 8 and 9 July 1997 where the decision to enlarge the Alliance had been made. But it was not until 23 July 1997 that agreement was reached on a "Decision (...) Concerning Certain Basic Elements for Treaty Adaptation"⁵ which contains the basic rules for adapting the Treaty. And the most recent consensus decision, the so-called "Decision Document"⁶ of 30 March 1999, which includes solutions for the most important issues, was not reached until after NATO membership of the three countries was an accomplished fact. This sequence of events may be regarded as coincidental but it does, in any event, reflect the NATO view that there is no legal connection between the enlargement of the Alliance and the adaptation of the CFE Treaty.

For the most part the tempo of the negotiations has been very uneven. Although it proved possible to solve key conceptual issues in the first half year, not much happened in the year and a half thereafter. This means, among other things, that in the few months that remain until the Istanbul Summit a new phase of intensive activity will be required to get a text ready for signature, even if it involves a minimalist approach that deals only with the most urgent issues.

Stability versus Flexibility at the Centre

With the adoption of the Document on Certain Basic Elements for the adaptation of the CFE Treaty, Russia gave up its original demands for the introduc-

3 On the early stages and course of the CFE adaptation negotiations until adoption of the decision on "Certain Basic Elements for Treaty Adaptation" of 23 July 1997, cf.: Wolfgang Zellner/Pál Dunay, When the Past Meets the Future - Adapting the CFE Treaty, in: OSCE Yearbook 1997, cited above (Note 2), pp. 281-298.

4 Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation. Issued in Paris, France, on 27 May 1997, in: NATO Review 4/1997, Special Insert - Documentation, pp. 7-10, here: p. 9.

5 Joint Consultative Group, Decision No. 8/97, Decision of the Joint Consultative Group Concerning Certain Basic Elements for Treaty Adaptation, 23 July 1997 (JCG.DEC/8/97).

6 Joint Consultative Group, Decision No. 3/99, 30 March 1999 (JCG.DEC/3/99).

tion of alliance sufficiency, a prohibition against stationing of armed forces in the new NATO member countries and a reduction of ceilings to the level of actual holdings at the end of the reduction period (16 November 1995), and accepted the basic *conceptual* structure of the NATO proposal. Under its terms the group ceilings and the regional system based on them (with the exception of the flank areas) would be replaced by a new system of national and territorial ceilings. A national ceiling in this sense limits the Treaty Limited Equipment (TLE) of a State Party in each of the five categories, regardless of where the equipment is stationed. A territorial ceiling limits the three categories of ground TLE in a territorial unit which is generally equivalent to the territory of a State Party. All in all, this new system, which in essence emerged from German proposals, allows for a significantly higher level of stability in arms control by tying heavy equipment - and hence armed forces - more closely to specific areas. Moreover, NATO had announced that the aggregate national ceilings of its 16 member countries in the three categories of ground TLE would be substantially lower than the past group ceilings; declarations along these lines by NATO countries during 1997 yielded an overall reduction of about 11,000 TLE. The Western Alliance tried to meet Russian concerns on an increase of the armaments level in the new NATO member countries by proposing a stability zone under which the territorial ceilings in Belarus, Poland, Slovakia, the Czech Republic, Hungary, Ukraine (without flank area) and the region of Kaliningrad would be frozen.

Relatively quick agreement on the decision of 23 July 1997 was followed, however, by almost a year of stagnation whose chief cause was a deep division within the Western Alliance over the relationship to be sought between arms control stability and military flexibility. These two objectives have a mutually exclusive relationship - the higher the level of arms control stability, the narrower the range of unilaterally employable options for military action. Thus neither can be given absolute priority; an optimal combination must be sought.

Beginning in autumn 1997 the United States, supported by Great Britain, Spain and, to some extent, also Poland, began to call for a level of military flexibility which in the view of Germany and other NATO states threatened to destroy the additional stability achieved by the new system of limitations. While the objective of the German government was "to use CFE adaptation (...) henceforth as a way of reliably preventing destabilizing concentrations of armed forces everywhere in Europe",⁷ it became clear that the US government valued the securing of options for military action more highly than an increase in arms control stability. The political and tactical reasons underlying the American demand for flexibility can be found in the existence of a growing minority in the US Congress who view conventional arms control in

7 Auswärtiges Amt [German Foreign Office] (Publ.), Bericht zur Rüstungskontrolle, Abrüstung und Nichtverbreitung [Report on Arms Control, Disarmament and Non-proliferation] 1997, Bonn 1998, p. 18.

Europe sceptically or reject it altogether. This lends support to groups within the administration, especially the Pentagon, who regard arms control in Europe after the demise of the Soviet Union as pointless and potentially dangerous because it imposes limits on military options. Occasionally one even gets the impression that it would not be unwelcome to these people if, under the pressure of NATO's demands, Russia were to withdraw from the Treaty. The strategic significance of this disagreement between the United States and a number of European NATO members lies in the fact that for the first time since the end of the Cold War it has become clear that the Western Alliance, while it can still agree on compromises in arms control, no longer has a consistent common philosophy with respect to European arms control.

Germany and the United States, then, represented the opposite poles in the long and occasionally intense debate within the Alliance which did not come to a (provisional) end until agreement was reached on the NATO proposal on "Certain CFE Treaty Mechanisms"⁸ without, however, removing the underlying differences between the positions. In this document the United States succeeded, for the most part, in putting its views across. The most important of the instruments of flexibility anchored in "Certain CFE Treaty Mechanisms" is so-called "temporary deployment" (TD), with a distinction being made between "basic" TD (BTD) and "exceptional" TD (ETD). Basic TD entitles every State Party to exceed its ceilings "temporarily" - this term is not defined, however, and is not meant to be defined - by 153 tanks, 241 armoured combat vehicles and 140 artillery pieces. This corresponds roughly to the equipment of a brigade. In an exceptional temporary deployment every State Party has the right to deploy "temporarily" three times this amount - hence 459 tanks, 723 armoured combat vehicles and 420 artillery pieces - roughly equivalent to two battle divisions. ETD cannot, however, be used in a flank zone. The German position is apparent in this proposal only in the formulation that before temporary deployments are made so-called "headroom" (i.e. the difference between ceilings and actual holdings) should be used, and in the objective of "preventing any potentially threatening broader or concurrent build-up of conventional forces". The latter did nothing, however, to alter the American view that even exceptional temporary deployment should be permitted to take place at the same time in every country. Apart from temporary deployment the NATO proposal of 22 June 1998 gave every State Party the right to raise its territorial ceilings by 150 tanks, 250 armoured combat vehicles and 100 artillery pieces (or by 20 per cent, whichever is lower) assuming a corresponding reduction by another State Party to the Treaty.

8 Proposal on Certain CFE Treaty Mechanisms by the Kingdom of Belgium, Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Hellenic Republic, the Republic of Iceland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Portuguese Republic, the Kingdom of Spain, the Republic of Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, 22 June 1998 (JCG.DEL/28/98).

Russia accepted the basic temporary deployment but not the exceptional. At a meeting of arms control experts in the framework of the NATO-Russia Council the Russian Admiral Kuznetsov calculated in mid-July 1998 that NATO, if it made maximum use of all the flexibility instruments it had proposed (use of headroom, altering of territorial limits, BTD and ETD) it would be permitted to increase its holdings in the three new member countries - Poland, the Czech Republic and Hungary - by up to 1,799 tanks, 4,142 armoured combat vehicles and 2,142 artillery pieces. In the course of negotiations, however, Russia modified its rejection of ETD. In October of 1998 the Russian representative stated his country's willingness to accept a doubled basic TD if headroom was used. Under certain conditions it might even be possible to discuss ETD.⁹ Germany tried thereafter to clarify that ETD would be based on lower holdings, not on ceilings, but failed as a result of objections from the United States and smaller NATO countries which feared for their reinforcement options. All that was achieved was a "Declaration on the CFE Treaty" in the North Atlantic Council which in entirely non-binding form promised to exercise restraint in the use of ETD.¹⁰

If under these circumstances CFE adaptation was not going to fail as a result of exaggerated NATO requirements for flexibility, there were three available solutions, or a combination thereof. First, NATO could reduce its demands for flexibility across the board, an unviable option owing to the tough US stand. Second, individual NATO countries might make unilateral statements renouncing the use of certain flexibility instruments. Third, the three new members of NATO could reduce their territorial limits to the point where, on this basis, even an undiminished range of flexibility instruments would to a sufficient degree lose its threatening potential for Russia.

The "Decision Document" of 30 March 1999 sets forth solutions for most of the fundamental issues of CFE adaptation which now must be translated into Treaty language. At the same time, all of the States Parties to the Treaty except Azerbaijan provided figures on the national and territorial ceilings that they would declare at the time of signature. The compromise reached on the flexibility issue is based on a combination of the second and third variants listed above. Russia accepts, in this document, the entire range of flexibility instruments proposed by NATO. In return, the Czech Republic, Hungary, Poland and Slovakia stated their willingness, by the end of 2002 or 2003, to reduce their territorial ceilings overall by 1,700 TLE. Because the national ceiling of States Parties to the Treaty with territory in the area of application may not exceed their territorial ceiling, the national ceilings of the four countries will likewise be reduced by 1,700 TLE. Belarus, the Czech Republic,

9 Cf. Statement by Mr. A.V. Grushko, Head of the Delegation of the Russian Federation for Questions of Military Security and Arms Control, to the Joint Consultative Group, Vienna, 6 October 1998 (JCG.DEL/45/98).

10 Cf. Ministerial Meeting of the North Atlantic Council, Final Communiqué, Brussels, 8 December 1998, Statement on CFE, in: NATO Review 1/1999, pp. 18-22. here: pp. 21-22.

Germany, Hungary, Poland, Slovakia and Ukraine made supplementary statements declaring their willingness to renounce any increase in their territorial ceilings. The fact that Germany, an "old" NATO member, participated in this step took away from it the odium of a limitation on "second-class States Parties to the Treaty" and thus modified the original NATO proposal for a stabilization zone significantly. Germany had originally tried to persuade Poland of the advantages of a unilateral limitation of its ETD volume, but failed in this owing to the objections of the United States, which clearly preferred a reduction of the ceilings. Poland itself had substantial initial reservations about agreeing to reduce its territorial ceilings (by 763 TLE) and only gave in after Belarus agreed to forego an originally planned 20 per cent increase in its territorial ceilings and Russia declared that it had no desire to station additional forces in the Kaliningrad area and in the district of Pskov. Moreover, it was important to Russia that the Czech Republic, Hungary and Poland declare their intention, until the entry into force of the adapted Treaty to base their ETD on their actual holdings and not on their territorial ceilings, which until then would be substantially higher.

This means that reductions of territorial ceilings announced by the four Višegrad states along with the commitment not to increase ceilings compensate for a good half of the overall volume of flexibility instruments. Thus it balances out at approximately the level which Russia in October 1998 characterized as acceptable. At least equally important is the fact that any future shift of territorial ceilings can no longer take place towards the east but only towards the west, south or south-east. The sum total of national ceilings in the area of application will go down by just about 11,000 TLE or around seven per cent. This amount will be provided by the 19 member states of NATO alone; insignificant reductions of the Russian ceilings (385 TLE) chiefly benefit Kazakhstan.

Appropriate Solutions for the Flank Problem?

Owing to the geo-political perspective of the East-West conflict, the original CFE negotiations of 1989/1990 focused on the central zone fundamental rearrangements. But after the Treaty entered into force the flank region was the centre of debate. The dissolution of the Soviet Union, the revaluation of the strategic importance of the Northern Caucasus and Transcaucasus which followed from it, the many conflicts between neighbours in the region - e.g. between Armenia and Azerbaijan - and wars of secession such as those in Georgia all have a direct bearing on this issue.

Nevertheless, the flank problem had no particular priority in the adaptation negotiations. There were two reasons for this. First, Russia's demand for "compensation" for NATO enlargement was related mainly to the centre and not the "periphery". Second, the Russian and Ukrainian demands with regard

to the flank had for the most part been met at the First CFE Treaty Review Conference in May 1996, not long before the beginning of negotiations on adaptation. Although there had been a promise to pay appropriate attention to the flank problem in these negotiations, the issue remained relatively unimportant for most countries with no territory on the flank. For the leading NATO countries this meant not endangering the successful conclusion of the negotiations and the cohesion of the Western Alliance by going beyond the "payment of a reasonable price" to Russia and other flank states.

Although the flank issue was certainly present throughout the negotiations, it was not dealt with as extensively as the central zone. More exactly, a discussion of it would flare up from time to time and then fade out again. The reason for this strange "oscillation" was that the agreement reached at the First Review Conference - which, to be sure, did not adequately solve the problem of Russian TLE on the territory of other flank states - did not enter into force until after the adaptation negotiations were under way, i.e. on 31 May 1997. It would have been absurd to reopen discussion of an issue that had just been solved. For that reason it was entirely appropriate when the first big "progress report" on the negotiations stated: "The States Parties agree that the substance of Article V as modified by the Document agreed among the States Parties (...) will be maintained but reconciled with the structure of the adapted Treaty as it emerges in detail through the negotiation, ensuring that the security of each State Party is not affected adversely at any stage."¹¹ This vague formulation on the one hand made it possible to have new requirements aimed at preventing future developments damaging the flank agreement of 1996; on the other hand, the main emphasis seemed to be on holding fast to the results of the First Review Conference.

Despite low expectations for another revision of the modified flank rule it turned out that for a variety of reasons none of the countries of the region directly affected was satisfied with the agreement. Russia wanted to get more leeway, i.e. either have the flank rule eliminated or the ceilings (once again) raised. Russia presented very clear arguments to support its desire for more flexibility on the flank. The chief Russian negotiator said, for example: "You are fully aware of our situation in the south: aggressive nationalism, separatist aspirations, armed provocations, unregulated inter-ethnic conflicts, the threat of dangerous destabilization. There are forces that are challenging Russia's unity and territorial integrity."¹² The Ukraine put forth different reasons. One part of its territory belongs to the flank region, another part to a zone for which the limitations are much less stringent. For that reason it felt "cheated" out of more flexibility. Other successor states to the Soviet Union raised demands relating to open conflicts, non-notified TLE and foreign troops on their territories and those of their partners in conflict. As an upward-striving

11 Decision of the Joint Consultative Group, cited above (Note 5), Point 16, p. 83.

12 Statement by the Head of the Russian Federation Arms Control Delegation, A.V. Grushko, at the Joint Consultative Group, Vienna, 15 September 1998, p. 2.

regional power, Turkey has special interests. Because it wanted to prevent Russian ceilings in the flank region from being raised, it was indirectly interested that tacit compensation to Russia for NATO enlargement in other locations be established, namely the central region. This same line of interest found expression on another level when Turkey opposed the stationing of large amounts of foreign TLE even in countries which, unlike Azerbaijan (which is supported by Turkey), showed an interest in it. It is hard to say whether Turkey really wants a peaceful solution of the Nagorno-Karabakh conflict or merely the most advantageous settlement possible for Azerbaijan. Recently other flank states have also raised claims, although not as emphatically as the ones already mentioned: Greece demanded more attack helicopters, obviously with an eye on Turkish stocks. In a later phase of the negotiations Romania began to call its status as a flank state into question. It argued that the impermissibility of an exceptional temporary deployment in the flank region would lessen its chances of joining NATO. But because NATO roundly denied this interpretation of a factor whose importance was in any event exaggerated, Romania agreed not to introduce the demand for revision of its flank status formally into the negotiations.¹³

If we take a closer look at the treatment of the flank issue since adoption of the Document on Certain Basic Elements for adaptation of July 1997, we can identify two periods when it assumed somewhat larger significance. One was in the first months of 1998 when the future treaty began to appear in vague outline, the other during the first half of 1999 when the flank issue first became an important topic and, a little later, turned into a significant stumbling block in the negotiations.

In January 1998 Russia presented some thoughts which tacitly amounted to a revision of the modified flank agreement of May 1996. The underlying idea was that the adapted treaty would be based on a system of national and territorial ceilings, replacing the old regional concept, and that this principle could also be applied to the flank region. Moreover, Russia did not want an arrangement in which its TLE stationed on the territory of other states would be counted "against the country's national and territorial levels and also against the territorial levels of the States where that TLE is stationed".¹⁴ If it proved impossible to eliminate the flank entirely, Russia wanted to return to the geographic features of the old flank region of 1990, but combined with the substantially higher ceilings of the modified flank rule of 1996. Finally, Russia insisted that non-combat-worthy TLE being kept in two large maintenance depots near St. Petersburg and Kushchevskaya should not be counted

13 It is interesting that Romania's elite in security affairs generally attributes great importance to strategic factors for NATO enlargement. It is not clear whether this stems from pressure applied by the Romanian defence establishment or from underestimation of the outstanding importance of political factors in the enlargement process. It is, however, a fact that political factors play a much larger role in relation to this issue than all other motives.

14 Statement by the Delegation of the Russian Federation to the Joint Consultative Group, Vienna, 20 January 1998, p. 1.

against the flank ceiling.¹⁵ After a rather long discussion the NATO countries noted a disagreement with Russia and declared that the Western Alliance did not intend to depart from the modified flank rule of 1996. It was only later, and after on-site inspections in the above-mentioned maintenance depots, that NATO said it would agree not to count the TLE there against the ceilings. At the beginning of 1999 there were again lively debates on the flank issue. By 25 January Turkey, on behalf of NATO, had negotiated an understanding with Russia which was consistent with the modified flank rule and reaffirms it while altering it in a number of respects. Under its terms there will continue to be a single flank ceiling for the territory of the Russian Federation, i.e. the northern and southern flank areas will be treated as a unit. This gives Russia more flexibility since it can reduce its TLE stocks in the north in order to strengthen its presence in the south for a time. As a result Norway, the only NATO country in the northern flank region, expressed concern that Russia could strengthen its holdings in the north at the expense of those in the south. However, in view of present and foreseeable turbulence in the south of Russia this seems highly unlikely. The geographic features of the flank region remain unchanged from the agreement of 1996 as do the ceilings, with the exception of the category of armoured combat vehicles, of which Russia may now station 2,140 in the diminished flank region rather than 1,380 as in the past. The transparency measures of 1996 will also continue to apply. Exceptional temporary deployments are not permitted in the flank region. One thing that is relatively new, at least in the CFE context, is the express statement that the stationing of Russian troops on the territory of other flank states is permissible only with the "free consent of the host States".¹⁶ This passage can also be found at a later point in the decision of the Joint Consultative Group of 30 March 1999.¹⁷

The process and the results of the negotiations on the flank issue merit attention. It was Turkey, a country with a strong interest in the flank, which negotiated the understanding with Russia - which was then confirmed by NATO. Turkey had to proceed flexibly because there are other issues that have priority for other countries. The fact that in the process Turkey was exposed in a somewhat unusual way to the complexity of the interests of other States Parties to the Treaty was undoubtedly one reason why it reacted with such astonishing flexibility to Russia's demand regarding armoured combat vehicles. A Western negotiator formulated this in the following way: "The Russians said: 'If you give us (armoured combat vehicles) in the (southern) flank, we'll

15 Cf. *ibid.*, p. 2.

16 A similar rule, which is not legally binding, can be found in the concluding document of the CSCE Summit Meeting in Helsinki in 1992. This is a matter which really ought to be taken for granted as the stationing of troops on the territory of another sovereign state without its agreement is an act of aggression.

17 It is interesting that the Russian-Turkish understanding of 25 January 1999 speaks of the "free consent" of the host country while the decision of the Joint Consultative Group of 30 March 1999 speaks only of "consent".

give you more room in the center (of Europe)."¹⁸ This led to a result that may well seem astonishing to those who are familiar with Turkey's traditionally tough position on flank issues.

One might think that after the decision of 30 March 1999 not much remained to be done, apart from clarification of the remaining "technical" issues, in order to be able to sign the adapted treaty at the OSCE Summit in Istanbul as scheduled by the OSCE Ministerial Council in December 1998. But the reality was different, not least because of flank-related issues. Azerbaijan blocked the appointment of the Italian diplomat, Umberto Zannier, as co-ordinator of the working group responsible for producing the text. Azerbaijan felt that its positions had not been adequately taken into account during the phase leading up to the decision of 30 March 1999. Because time was getting shorter and shorter in Vienna, a number of countries took action in Baku in an effort to convince the leadership of Azerbaijan that their uncooperative attitude was hurting the negotiations and placing their timely conclusion at risk. Even Turkey, which supports Azerbaijan's security requirements in many respects, called on Baku to adopt a more co-operative attitude.¹⁹ Two months were required to reach a "breakthrough" and get on with the negotiations. This delay made clear that there was not enough time for anything more than a "minimalist approach" to adaptation.

With regard to the flank issue there are still unsolved problems related to the presence of Russian troops and non-notified TLE on the territory of two GUAM countries, Georgia and Moldova. If there is no free consent of these sovereign countries to the stationing of Russian troops on their territory then the troops ought to be withdrawn. However, Russia traditionally views this as a bilateral issue. Since the Russian-Turkish understanding of 25 January 1999 explicitly mentions the matter, it cannot be allowed to fall by the wayside. On the other hand, it ought not be viewed too one-dimensionally either. There are cases in which certain countries believe that the stationing of foreign troops contributes to their internal stability and to the control of secessionist tendencies. This appears to have been the case in Georgia, at least some of the time. Russia has already announced that the withdrawal from Moldova will be very slow and for this reason the flank countries could try to make it into a multilateral issue in order to increase pressure on Russia. By contrast, those countries that have no direct interest in the flank are basically pursuing two objectives. First, they want, within a reasonable period of time, to achieve a settlement of the remaining unsolved problems concerning foreign stationing in the flank area. In the second place, however, they want to avoid a situation in which the entire adaptation process becomes hostage to this is-

18 Umit Enginsoy, *Russia, Allies to Alter CFE: Compromise Would Revamp Weapon Deployment Options*, in: *Defense News* 12/1999, p. 27.

19 Turkey is obviously motivated by one particular fear. As host of the Istanbul OSCE Summit in mid-November, it wants this event to be a success. There are unlikely to be any other important documents at the meeting and it hopes that the conclusion of the adapted CFE Treaty will give it a certain luster.

sue. In a number of States Parties to the Treaty there are foreign TLE holdings whose status is unclear and the problems have still not been solved. The most important of these problems concerns more than 300 armoured combat vehicles and approximately 300 tanks in Nagorno-Karabakh. Understandably, Azerbaijan is insisting on a solution and has made clear through its behaviour that it is prepared, if necessary, to block the process once again. But Azerbaijan is unlikely to succeed in persuading the other States Parties to the Treaty that CFE adaptation is a suitable instrument for solving the conflict over Nagorno-Karabakh. On the other hand, one cannot rule out the possibility that the majority of the States Parties to the Treaty will once again be taught the lesson that it is no longer enough to pay lip service to the solution of the flank issue, only to sacrifice it to other matters that are deemed more important. This leads us back to the conclusion that we reached two years ago: CFE adaptation cannot be carried out as a new, simplified version of the bipolar structure of international security. As a result of the flank issue, structures have become more complicated and new interests have come into play which it will be impossible to deny over the long term.²⁰

Another problem lies in the fact that Russia is violating the modified flank rule of 1996. On the basis of notifications supplied by Russia on 1 July 1999 the US delegation concluded that the active forces notified by Russia exceed the Russian maximum levels for holdings by 159 tanks and 1,512 armoured combat vehicles.²¹ It is clear that Russia has already set the modified flank rule aside, even though it just entered into force, and is now relying on the decision of 30 March 1999. The ceilings in this decision are being observed by Russia, but as to the foreign stationing of troops, they are not observing other ceilings and regulations also anchored therein.²² This inconsistency, which is a violation of the Treaty, may be of secondary importance and of course it is true that the value of the Treaty as a whole is incomparably greater than a militarily insignificant violation of that kind. On the other hand, one should bear in mind that the CFE Treaty, unlike certain American-Russian arms control treaties, does not provide the category of "technical" treaty violation and for that reason a distinction between "smaller" and "larger" treaty violations is problematic. If the Treaty is not to be undermined over the long term, the States Parties to the Treaty will have to take a position on such violations. What must in any case be avoided is a situation in which a treaty violation constitutes the basis for more extensive demands in later phases of negotiation.

20 Cf. Zellner/Dunay, cited above (Note 3), p. 298.

21 Cf. United States of America, Delegation to the Joint Consultative Group, Statement, Vienna, 6 July 1999, p. 1 (JCG.DEL/47/99).

22 Cf. *ibid.*, p. 2.

CFE Adaptation: an Inadequately Exploited Opportunity with Uncertain Prospects

The adaptation talks are likely to be successfully concluded by November 1999; in all probability the text of the adapted CFE Treaty will be signed at the OSCE Summit in Istanbul. What does this portend for the substance and the ongoing process of conventional disarmament in Europe?

As far as the substance is concerned, the CFE Treaty will be adapted to changed conditions, but without providing an adequately clear outline of a new conceptual framework for arms control in Europe. For that, the combination of national and territorial ceilings, oriented towards the future, is cloaked in too many layers of exceptional rules which in some cases are contradictory and to a considerable extent undermine the stabilizing effects of this concept and significantly weaken the political attractiveness of the adapted Treaty. This contradiction is primarily an expression of the ongoing and unsolved disagreement within the Western Alliance, which is often able to reach compromises, but remains unable to work out a durable arms control strategy for Europe. This circumstance will make it harder to harness arms control for the purposes of crisis prevention and management - fields which were of decisive importance for the politics of the nineties and will presumably continue to be so in the coming century. Moreover, the adapted Treaty will for the time being contribute barely enough, but not much more, to the solution of those specific problems that made adaptation necessary in the first place. This applies to the central region as well as to the flank, and certainly to the relationship between the two areas. In both Russia is unquestionably a difficult negotiating partner. But as long as the Western Alliance, as *the* centre of gravity of European security, has no promising common concept, it is fair to say that putting the blame on Russia is at least in part a pretext. In sum, CFE adaptation not only failed significantly in meeting the ideal expectations of scholars; after 34 months of negotiations everyone had a right to expect more. We must acknowledge that the opportunity to view the necessity of CFE adaptation as an avenue to a consistent new plan for European arms control was not well used. This leads to the somewhat disappointing conclusion that we have not (yet) been able to make the shift from an arms control approach based on limited confrontation to one based on co-operation. On the contrary, arms control does not start to play a role until the legacies of confrontation come to the fore. This problem affects three different levels: the concept, the political conditions and practical steps. At least on two of these there has been no breakthrough, on the conceptual level no more than a half-hearted one.

Depending on how minimal the "minimalist approach" becomes, there will still be a number of issues to deal with after signature of the adapted Treaty. The possibility of having parallel tracks for ongoing negotiations (even if only on "technical" issues) and the commencement of ratification proceed-

ings may well not be particularly helpful to the latter. This is particularly true because ratification in several States Parties to the Treaty, among them Russia and the United States, is likely to be very difficult.

The longer ratification and entry-into-force last, the longer will be the transitional phase in which the new treaty terms are provisionally applied while the substance of the old Treaty continues to be valid under international law. In view of varying interests and interpretations, this could lead to controversies over the validity of particular treaty provisions and at the same time give force to the arguments of those forces in a number of countries which want to prevent or delay ratification or impose new conditions. This is especially likely when executive branch and legislature hold different views.

We got a foretaste of this problem when Russia, with an (implicit) reference to the less restrictive rules of the agreement of 30 March 1999, failed to observe the modified flank agreement of 1996. If this sort of thing goes on during the process of ratification and provisional application that lasts for years, we cannot ignore the danger that the substance of the entire Treaty will be subject to a substantial amount of corrosion. Moreover, a long phase of uncertainty about the CFE Treaty would not only expose this central instrument of European arms control to a test of attrition across the board but, along with that, put a number of concrete functions at risk or postpone their effectiveness - functions which European arms control under today's conditions can and ought to fulfil.

First, the binding force of the reductions foreseen in the adapted Treaty would be postponed. Given current budget limitations this may not seem especially important. But it is important that this process takes place in an orderly, transparent and controllable manner which, to the extent possible, is not subject to revision.

Second, there would be a delay in opening the Treaty for accession by a number of states that have already shown an interest in it. This could affect security-sensitive regions such as the Baltic states whose accession to the CFE Treaty could have a stabilizing effect.

Third, harmonization of already existing sub-regional arms control treaties such as the ones under the Dayton Agreement, as well as the conclusion of new treaties, would become substantially more difficult. This holds true not only for the so-called Article V negotiations between the successor states to Yugoslavia and their neighbours, which have yet to be held, but also for the various groups of problems in the Caucasus region.

Fourth, every delay of entry-into-force also affects the codification of a number of bilateral force relationships, which is provided for in the adapted Treaty.

Fifth, in the event of a long period of uncertainty even regulations on transparency, information and inspection as well as the many co-operative contacts built upon them could suffer damage.

Sixth, finally, we must remember that the CFE Treaty is not only the heart of European arms control which, without it, would be a torso, but it also supplies the essential underpinning for security co-operation between the Western Alliance, Russia, Ukraine and a number of other countries. For example, the quality of relations foreseen in the NATO-Russia Founding Act would, without the CFE Treaty as a basis, be quite unimaginable.

Hence the failure of CFE adaptation and even a significant delay of its entry-into-force would have far-reaching negative consequences for security relationships in Europe, consequences the extent of which cannot yet be estimated. For that reason it is important, before signature of the adapted Treaty, to define as precisely as possible the objects and procedures of provisional application. Following signature, ratification will have to be seen as a very large political challenge, calling for a durable commitment on the part of the political leadership.