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A Framework for Arms Control

Current Status of and Requirements for Conventional Arms Control in Europe

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Executive Summary

The year 2021 marks the 25th anniversary of the "Framework for Arms Control", which was adopted in Lisbon in December 1996 by States participating in the Organization for Security and Co-operation in Europe (OSCE). Thereby, they recognized the relevance of conventional arms control as well as Confidence- and Security-Building Measures (CSBM) for a co-operative and comprehensive security order in the OCSE area without dividing lines. They agreed that the Framework is the conceptual basis for implementing, enhancing and further developing arms control and CSBMs in the OSCE area. Special emphasis was placed on the Treaty on Conventional Armed Forces in Europe (CFE Treaty), the Vienna Document (VD) and the Treaty on Open Skies (OST).

The Framework requires OSCE participating States to regularly review existing arms control instruments in order to examine their impact on stability and security in the OSCE area, and take measures to improve their operation or devise new instruments if so required. To that end, the document sets up objectives, norms and principles for future arms control measures with a view to creating an interwoven net of instruments to ensure the security of all participating States, irrespective of whether they belong to politico-military alliances or not. However, whilethe arms control and CSBM architecture was able to strengthen and stabilize security co-operation in the 1990s, it has eroded dramatically since then.

Since 2014, Europe has faced the most serious security crisis since the end of the Cold War. Russia's illegal annexation of Crimea and intervention in East-Ukraine in support of armed non-state actors have wider repercussions for the security in the OSCE space and have caused tensions between NATO and Russia. Mutual trust is at its lowest point since decades ago. Both sides accuse one another to have violated principles of international law and the agreed European security order. Reciprocal threat perceptions have been fortified by restructured force postures, the stationing of combat forces in the vicinity of international borders, large-scale military exercises and unannounced readiness drills as well as significantly multiplied numbers of reconnaissance patrols in international airspace and European marginal seas.

NATO reacted on security concerns of Central- and East-European allies by adopting a policy of military reassurances. Allies increased the number of exercises throughout Europe, enhanced readiness and reactivity of NATO Response Forces and, for the first time, established a rotating forward presence of four multinational battalion-size combat groups in Poland and the Baltic States. At the same time, NATO ceased regular military expert dialogue with Russia. Moscow has reformed its armed forces, enhanced its armaments and readiness, established new division-size formations in Southwest-Russia and increased the size of its stationed forces in Crimea. It also regularly conducts large-scale military drills, unannounced readiness checks and snap exercises rotating through all its military districts.

While the political rhetoric has sharply escalated and scenarios of open armed conflicts are being discussed in political, military and academic quarters, CSBMs of the OSCE are insufficient to maintain military stability. The most important conventional arms control instrument, the CFE Treaty of 1990, which has been labelled the "cornerstone of European security", does not unfold any stabilizing effect where it is most needed, namely in the Baltic Sea and Black Sea Regions. Its bipolar limitation regime is outdated as it still focuses on former troop accumulations in Germany and adjacent Central European countries and establishes a balance of forces between NATO with its member states of 1990 and the former Warsaw Treaty Organization (WTO), which ceased to exist three decades ago. Already in 2008, the attempt had failed to adapt the CFE Treaty to the geopolitical changes in Europe resulting from the dissolution of the WTO, the collapse of the former Soviet Union and NATO's enlargement to Central and Eastern Europe. NATO member states declined to ratify the CFE Adaptation Agreement of 1999 claiming that Russia had not withdrawn all stationed forces from disputed territories in Georgia and Moldova, Russia suspended the CFE Treaty in December 2007 and the Baltic Republics had left the CFE area of application in 1991 claiming that they were no successor states of the Soviet Union.

In view of the security crisis in Europe and the defunct CFE Treaty, the former Foreign Minister of Germany and Chairman of the OSCE in 2016 proposed to renew conventional arms control in Europe in order to de-escalate military risks emanating from political tensions. He recommended to focus on limitations and increased transparency in sensitive regions such as the wider Baltic Sea Region, to consider new military capabilities and technologies and enhance verification in crisis situations with a special emphasis on areas of unresolved territorial conflicts. In December 2016, at the occasion of the 20th anniversary of the OSCE Lisbon Document with the "Framework for Arms Control", OSCE participating States committed to initiating a "Structured Dialogue" in order to discuss the conditions for a re-launch of conventional arms control. This dialogue was established under Austrian OSCE chairmanship in 2017. Although such discussions were informally conducted throughout the following years up to 2021, no unity could be achieved among OSCE participating States on the question if, how and under which conditions conventional arms control could be revitalized.

While many states in Western Europe welcomed the initiative, it also met with reservations, especially by the United States and a number of NATO allies, in particular in Eastern and Central Europe. They seem to distrust conventional arms control and put emphasis mainly on military deterrence. They also recall that NATO allies have decided to refrain from "business as usual" with Moscow. Accordingly, security co-operation with Russia should not be resumed unless Moscow withdraws all Russian troops from contested territories in the post-Soviet space. At the same time, all NATO member states deplore the lack of transparency of Russian forces and exercises, which has resulted from the erosion of conventional arms control instruments. Therefore, they promote "modernizing" the Vienna Document 2011 (VD 11) on CSBMs to redress perceived shortfalls of and "loopholes" in this document, which is geared to provide transparency of major military activities and exercises for all OSCE participating States. However, the inclusive politically binding VD with its narrow scope was not designed nor is it suited to replace the CFE Treaty with its wider scope, legally binding limitations and far more intrusive information and verification provisions.

This policy is also inconsistent because of the claim that security co-operation with Russia was not possible as the VD is the principle and inclusive OSCE instrument on security cooperation in the military field. Any changes can only be decided by consensus, which includes agreement by Russia. Consequently, "modernizing" the VD requires a certain degree of security co-operation with Moscow if this approach is meant to achieve substantive results.

In contrast, Moscow rejects negotiating any modifications of the Vienna Document as long as NATO stations additional forces at her borders, seeks to deter and contain Russia and blocks the renewal of conventional arms control. Russia does not only regard NATO's enhanced Forward Presence and military support by allies to Ukraine as strategic risks, but also efforts by the United States to enhance missile defence and develop precise long-range conventional strike systems. While NATO is concerned about the sub-regional balance of forces in the Baltic Sea area, Russia assesses the strategic balance in Europe and globally as being in jeopardy.

The imminent demise of the Open Skies Treaty (OST) will destroy another pillar of the European co-operative security architecture and further reduce military transparency. The OST with its high observation flight quota used to be an excellent instrument to ensure additional options of verifying arms control agreements and observing large-scale military exercises as well as unusual military activities. It has proven its value also in context with the crisis in and around Ukraine. With the withdrawal of the United States from the OST in November 2020 and the imminent withdrawal of Russia by December 2021, the OST will lose its operational value in regard to NATO-Russia relations. The demise of the OST accelerates the erosion of the arms control architecture in the OSCE space to the detriment of the security of all OSCE participating States.

Opposing NATO and Russian positions in regard to threat and risk assessments and political narratives on the root causes of the security crisis in Europe will not easily be overcome in the foreseeable future. However, below this level of a controversial political discourse a policy seems necessary, which keeps the risks and dangers of deterrence relations at bay and prevents the security situation in Europe from further deterioration. To that end, an arms control and CSBM concept needs to be designed that ensures strategic restraint and military predictability. To be politically acceptable it must entail a sufficient amount of provisions that could satisfy mutual security interests. The 1996 OSCE Framework for Arms Control provides guidance on the ways, means and principles of such an endeavour.

Against this background, this study attempts to discuss the following issues:

1. What was the political and strategic background at the time the current arms control and CSBM architecture was designed, and to what extent were such instruments appropriate to respond to changing risks and new challenges after the end of the Cold War?
2. To what extent are these instruments still suited to respond to current risk and threat assessments and to provide stability and predictability in view of fundamental geopolitical changes in Europe? What are the implications for European security of their obvious erosion or shortfalls and deficiencies resulting from a lack of adaptation?
3. What could be done to redress this situation, in particular by adapting arms control and CSBM instruments to geopolitical changes and new weapon technologies and military capabilities in order to prevent further escalation, stabilize critical geographical areas in Europe and enhance security for all OSCE participating States?

It is less likely that NATO and Russia, like in the 1990s and with the acceptance of all OSCE participating States, will negotiate a new pan-European "one fits all"-arms control instrument, which would also include areas of unresolved territorial conflicts, particularly in the Black Sea Region. However, an attempt should be made to enhance incident prevention and response mechanisms in the whole OSCE space and its adjacent sea areas. In the Baltic Sea Region, where no territorial conflicts exist, it seems possible to consider strengthening and enhancing existing agreements in order to reduce the dangers and hedge the military risks of mutual deterrence relations. A sub-regional stability regime could be based on reciprocal restraint commitments agreed upon in the 1990s, including the NATO-Russia Founding Act of 1997 and the CFE Final Act of 1999 and on experiences made with CFE transparency and verification provisions. It should be complemented by a politically binding aerial observation regime, which could take the form of a political stand-alone document or be connected to a sub-regional stability regime or an improved and modified VD.

Within a sub-regional military stability framework, offensive weaponry should be limited and verified in order to diminish the capabilities for launching surprise attacks or building up military potentials for major offensive action. Military capabilities to ensure individual and collective defence need to be retained based on the principle of sufficiency as foreseen in the OSCE "Framework for Arms Control". In order to reach political acceptance, the principle of reciprocity must be enshrined in such an agreement as far as possible, taking into account geostrategic asymmetries. Maximum levels of military holdings should be defined for permanently or temporarily stationed armaments in the area of application. This geographical area must be large enough to avoid the political isolation of countries or districts located therein, ensure the coherence of alliance defence and have real relevance for the conduct of military operations.

In the Baltic Sea area of application, such criteria could be met if NATO countries or parts thereof with Baltic Sea coastlines as well as Belarus and Russia with parts of its Western Military District extending over an operationally meaningful geographical depth participated in such a sub-regional regime. Restraint commitments would need to be monitored and verified by transparency and inspection provisions, which must be far more intrusive than those of the VD and rather resemble CFE provisions. In order to reflect modern weaponry and today's military capabilities, the scope of regulations should be enlarged. For example, precise long-range strike-systems stationed in or in strike distance to the region as well as rapid reaction forces in operational reach to the region should be subject to transparency and verification measures.

Such a stability regime could be established under the VD chapter X on Regional Measures. It could represent the nucleus of an interwoven net of other regional arms control and CSBM agreements in the OSCE space as soon as political conditions allow for further progress. While this regime would certainly not solve the political root causes of conflict, it could hedge the military risks of deterrence relations and provide for verified mutual strategic reassurances. Such conditions might also facilitate political discussions on conflict settlement as solutions to local territorial conflicts could be negotiated more easily if their significance for questions of the larger geopolitical competition is diminishing.

1 Introduction: Purpose, relevance and guiding questions of the study

In December 1996, the Heads of States or Government of OSCE participating States adopted a Framework for Arms Control in their Lisbon Summit Document.[1] It underlines the relevance of conventional arms control and confidence and security-building measures (CSBM) for a co-operative and comprehensive security order in the OCSE area without dividing lines. It also states the necessity to take into account the legitimate security interests of each OSCE participating State irrespective of whether it belongs to a politico-military alliance or not.

The Framework requires OSCE participating States to regularly review existing arms control instruments in order to examine their impact on stability and security in the OSCE area, and take measures to improve their operation or devise new instruments if so required. To that end, the document sets objectives, norms and principles for future arms control measures.

In accordance with such norms and objectives, some of the then existing arms control instruments became subject to modifications and adaptations in the 1990s. However, in the past two decades the security landscape in Europe changed significantly. OSCE participating States, however, failed to adapt and modernize arms control instruments accordingly. Thus, the goal of an interlocking and mutually reinforcing web of arms control measures was not attained. Quite to the contrary, arms control eroded. Today, military confrontation and local armed conflicts are back in Europe while key arms control instruments were weakened or neglected. Therefore, they lost their relevance for ensuring stability and security in the OSCE area. Despite these challenges, all OSCE participating States have recognized the Framework for Arms Control to be the conceptual basis for implementing, enhancing and further developing arms control and CSBMs in the OSCE area. On the occasion of the 20th anniversary of the Framework in 2016, OSCE participating States mandated a Structured Dialogue in order to explore how these negative trends can be reversed and conventional arms control be revitalized.[2] The OSCE commemorates the 25th anniversary of the document in the third trimester of 2021 under the Austrian chairmanship of the Forum for Security Co-operation (FSC). It

1 OSCE Lisbon Summit 1996, Lisbon Document 1996 (DOC.S/1/96) of 3 December 1996, III. A Framework for Arms Control (FSC.DEC/8/96), Lisbon 1996, pp. 17–22 https://www.osce.org/files/f/documents/1/0/39539.pdf

2 OSCE Ministerial Council, Hamburg 2016, “From Lisbon to Hamburg. Declaration on the Twentieth Anniversary of the OSCE Framework for Arms Control”, MC.DOC/4/16, 9 December 2016 https://www.osce.org/files/f/documents/3/e/289496.pdf

continues OSCE discussions devoted to arms control and CSBMs, which were conducted in the first half of the year 2021, such as the Security Dialogue of the FSC on 26 May 2021 under Armenian chairmanship, a respective OSCE security chat (webinar) on 16 June 2021 and topical discussions during the first Session of the OSCE Informal Working Group of the Structured Dialogue on 17 June 2021.

In view of the latest developments, which accelerate the erosion of conventional arms control in Europe, the Austrian Chair deemed it urgent to address this topic in more depth. That provides an opportunity to analyse the implementation of the Framework for Arms Control in view of the changes to the security environment since 1996, examine the impact of existing arms control instruments on ensuring politico-military stability among OSCE participating States in today's security context, and review deficiencies that have emerged since then. Such analyses might help to devise potential measures and action by States to redress this situation and improve predictability and restraint of military activities in the OSCE space. It might also give incentives for the Structured Dialogue of the OSCE and could lead to conclusions for the OSCE Ministerial Council in December 2021.

Against this background, three Security Dialogues in the third trimester of 2021 were devoted to the following issues:

1. Politico-military situation at the time the Framework for Arms Control was issued, with a special emphasis on the purposes, scope, participants, structure and implementation of the Treaty on Conventional Armed Forces in Europe, the Treaty on Open Skies and the Vienna Document, and their significance for promoting security and stability in the OSCE area
2. Assessment of the relevance of existing arms control instruments for maintaining stability and security in view of today's risks and challenges to the security and stability in the OSCE area with a particular emphasis on modern warfare, new weapons technologies and geostrategic changes to the security landscape in Europe
3. Conclusions for new approaches and future initiatives to revitalize and strengthen conventional arms control in Europe

This study aims at supporting the security dialogue and provides further food for thought on the main issues to be addressed there. However, it contains the analysis, perception and conclusions of the author only and does not represent official governments' views. Its ambition is to examine the following guiding questions:

1. What was the politico-military situation at the time the Framework for Arms Control was issued?
2. Which risk assessments informed about the purposes, scope, structure and provisions of and participation in arms control instruments existing in 1996, in particular the CFE-Treaty, the Treaty on Open Skies and the Vienna Document?

3. Which changes to the security landscape in Europe have occurred since then?
4. Which conclusions were drawn from such changes and which attempts were made to adapt conventional arms control instruments and enable them to keep their relevance for maintaining security and stability in the OSCE area?
5. Which politico-military risks and challenges to security and stability are OSCE participating States facing today regarding geostrategic changes, modern warfare methods and new weaponstechnologies?
6. How relevant are existing arms control instruments for addressing such new developments and maintaining their role in ensuring security and stability, especially regarding their structure and scope, transparency and restraint measures, participation and implementation?
7. Which conclusions can be drawn for new approaches and future initiatives to revitalize and strengthen conventional arms control in Europe?

2 Role of arms control for the co-operative OSCE security order in the 1990s

2.1 OSCE security situation and risk assessments in the 1990s

2.1.1 A co-operative OSCE security order and the contribution of arms control

From 1986 onwards, nuclear and conventional arms control were essential elements for the North Atlantic Treaty Organization (NATO) and Warsaw Treaty Organization (WTO) member states to overcome the Cold War and the division of Europe. As cornerstones of a new comprehensive security concept arms control agreements formed the basis for balancing strategic security interests and replacing confrontation by security co-operation. Thus, arms control helped to pave the way for political transformation towards a co-operative security order in Europe with the Conference on Security and Co-operation in Europe (CSCE, renamed OSCE in 1995) as its core organization.

In fall 1990, several parallel agreements on arms control, together with the "Two-plus-Four Treaty" on the unification of Germany[3], the Charta of Paris for a New Europe,[4] the Declaration of Friendship between the member states of NATO and the WTO,[5] and the establishment of permanent structures of the CSCE ensured that former adversaries henceforth observed strategic restraint and respected each other's legitimate security interest. Conventional arms limitation concepts still followed the paradigm of the past bipolar confrontation in order to prevent its return. Therefore, offensive force potentials of the then existing military blocs were limited without undermining the capabilities of the states to defend themselves, including through collective defence arrangements.

Among the ground-breaking successes were the complete elimination by 1991 of U.S. and Soviet land-based medium- and intermediate-range ballistic and cruise-missiles

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3 Treaty on the Final Settlement with respect to Germany (Vertrag über die abschließende Regelung in bezug auf Deutschland), 31 August 1990, in: Bundesgesetzblatt, 1990, Teil II v. 13.10.1990, pp. 1317–1329

4 CSCE Summit in Paris 19–21 November 1990, Charter of Paris for a New Europe, Paris 21 November 1990 https://www.osce.org/files/f/documents/0/6/39516.pdf

5 Joint Declaration of 22 States, 19 November 1990 https://www.upi.com/Archives/1990/11/19/Text-of-NATO-Warsaw-Pact-declaration/9721658990800/

in accordance with the INF-Treaty (1987)[6], the complete withdrawal of Russian (former Soviet) armed forces from Germany, East-Central Europe and the Baltic States by 1994, and the unprecedented reduction and transparency of conventional land and air forces in Europe in accordance with the Treaty on Conventional Armed Forces in Europe (CFE Treaty)[7]. This treaty was signed on 19 November 1990 by sixteen NATO and six WTO member states. At the same time, the implementation of the Vienna Document[8] contributed to enhancing transparency of conventional land and air forces in the whole of CSCE Europe in regard of their personnel, armaments, deployment and manoeuvres.

The geopolitical status quo in fall 1990 – after the unification of Germany – determined the military effectiveness of the CFE limitation regime. It was based on a bloc-to-bloc parity concept both in terms of overall numbers of limited armaments and equipment and regional sub-limits for land forces, which specified geographical distances relevant for their redeployment. However, in summer 1991 the WTO ceased to exist and in December 1991 the Soviet Union collapsed after the 15 Soviet Socialist Republics, which had formerly constituted the Union, had declared independence. In addition, in October 1991 the three Baltic States stated that they had not joined the Soviet Union voluntarily and, therefore, were no successor states. Accordingly, they announced not to belong to the area of application of the CFE Treaty.[9] They did not change this position after acceding to NATO in 2004.

Given such fundamental geopolitical changes, the question arose what the future purpose of the CFE Treaty should be as its ratification was still pending. In particular, in East and Central Europe doubts were voiced since implementing the treaty required political cohesion of a bloc that was not in existence anymore. However, the United States, Germany and other West European States held that the CFE-concept needed to be maintained since it required defining maximum levels of national holdings (MLNH) of armaments and equipment limited by the treaty (TLE) and, thus, guaranteed military stability in Europe. The Russian Federation supported this approach for different reasons: the treaty provided for numerical limitations of NATO member states within their

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6 Treaty between the United States of America and the Union of the Soviet Socialist Republics on the Elimination of their Intermediate-Range and Shorter-Range Missiles (INF Treaty), Selected Documents No. 25, Department of State Publications 9555, Washington D.C., December 1987

7 Treaty on Conventional Armed Forces in Europe (CFE Treaty), Paris 19 November 1990 https://www.osce.org/files/f/documents/4/9/14087.pdf

8 CSCE Vienna Document 1990 of the Negotiations on Confidence- and Security-Building Measures Convened in accordance with the Relevant Provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-operation in Europe. Vienna, 17 November 1990 https://www.osce.org/files/f/documents/9/e/41245.pdf (modified in 1992 and 1994, see below section 2.3.3.)

9 Cf. Declaration of the Chairman of the Joint Consultative Commission (on the implications of the independence of the Baltic States) of 18 October 1991, in: Deutscher Bundestag. Drucksache 12/1445, Anlage, Bonn, 31.10.1991

geographical boundaries of 1990 and, in consequence, guaranteed sufficient distance from Russian borders, particularly for ground force operations.

Special diplomatic efforts were necessary for NATO allies and Russia to convince the group of former Soviet, now independent states within the area of application of the CFE Treaty to (re-)join the treaty under changing conditions. In particular, Azerbaijan, Georgia and Moldova – facing territorial conflicts in Nagorno-Karabakh, Abkhazia, South Ossetia and Trans-Dniester – saw little value in acceding to the treaty and keeping a fictional balance of forces between NATO and a non-existing Eastern bloc. Only in May 1992 was it possible for eight post-Soviet states to divide the military heritage of the former Soviet Union in accordance with CFE rules (Treaty of Tashkent)[10] and to join the CFE Treaty. On this basis, 29 States Parties agreed to accede to a modified CFE Treaty in July 1992 in Oslo.[11]

After a short period of provisional implementation, the CFE Treaty entered into force on 9 November 1992. Already in 1996, most of the reductions required by the treaty had been fulfilled with the Russian Federation and Germany bearing the brunt of the necessary cuts. Thus, the CFE Review Conference in summer 1996 could report that more than 58,000 TLE were reduced in line with treaty requirements. This achievement was unprecedented in European peacetime history.[12] As the CFE transparency and verification regime was also implemented by most States Parties in conformity with treaty rules, threat perceptions of the Cold War could be overcome and the security situation in Europe was generally regarded as calm and stable, though with the exception of remaining local territorial disputes.

The Treaty on Open Skies,[13] which had been concluded in 1992 but had not yet entered into force, was another example of co-operative security. Once all necessary ratification processes were accomplished, it would provide for a high number of observation flights over the territories of States Parties covering the area of application between Vancouver and Vladivostok. Thereby, it would increase military transparency among all States Parties.

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10 Agreement on the Principles and Procedures for the Implementation of the Treaty on Conventional Armed Forces in Europe, Tashkent 15 May 1992 (Original Russian), unofficial German translation in: Zentrum für Verifikationsaufgaben der Bundeswehr (ed.), Vertrag über Konventionelle Streitkräfte in Europa (KSE-Vertrag) – Textsammlung – Vol. 2, pp. 55–68

11 Final Document of the Extraordinary Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe. Oslo, 5 June 1992 http://nuke.fas.org/control/cfe/text/osloa.htm

12 Final Document of the First Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiations on Personnel Strength. Vienna, 15–31 May 1996, No. 5. https://www.osce.org/files/f/documents/5/b/14099.pdf

13 Treaty on Open Skies. Helsinki, 24 March, 1992 https://www.osce.org/files/f/documents/1/5/14127.pdf

2.1.2 New security concerns: sub-regional and local conflicts

It was in this very period of the immediate aftermath of the Cold War that sub-regional and local territorial conflicts appeared to be the sole residual security concerns within a largely united Europe at peace with its new co-operative security order. Conflicts at the southern periphery of the multi-ethnic USSR had erupted since 1989/90, when the end of the Union was looming. Local actors invoked national self-determination rights that were rooted in the Soviet federal state structure.[14] Not only the 15 Soviet Socialist Republics (SSR) that constituted the Union, but also the subordinated Autonomous Soviet Socialist Republics (ASSR), Autonomous Regions and Districts were represented with own members in the Nationality Council, i.e., the second chamber next to the State Duma within the Supreme Soviet.[15] The "Law on Secession from the USSR" of 3 April 1990 stipulated that such autonomous entities had the right to determine by plebiscite whether they wanted to stay in the Soviet Union or acquire independence or leave the Union together with the SSR they were subordinated to.[16]

Various interpretations and ambitions of local representatives led to a sequence of declarations of sovereignty and independence that ignited political and military reactions by the titular Republics soon to become independent states. From 1990 to 1994, after violent riots and ethnic clashes, full-fledged local wars developed over Nagorno-Karabakh, Abkhazia, South Ossetia and Trans-Dniester to be followed by militant uprising in Chechen autonomous areas inside the Russian Federation. To quell the rebellion, Moscow resorted to massive use of military force. In all other cases, Moscow intervened politically and militarily based on decisions made by the newly founded post-Soviet Commonwealth of Independent States (CIS). After enforcing ceasefire agreements, Russia dispatched lightly equipped peacekeeping forces (PKF) to Abkhazia, South Ossetia and the Trans-Dniester region. While in the latter cases Russian PKF battalions were complemented by Georgian and local Ossetian respectively Moldovan and local Trans-Dniester battalions, the "CIS Peacekeeping Force" in Abkhazia consisted of a Russian brigade only.

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14 For an overview see: Gerard Toal, Near Abroad. Putin, the West, and the Contest over Ukraine and the Caucasus, New York 2017, in particular pp. 58–69

15 In the Nationality Council each of the 15 SSR was represented by 32 delegates, each of the 20 ASSR by 11, each of the 8 Autonomous Regions by 5 and each of the Autonomous Districts by one delegate. Cf. Brockhaus Enzyklopädie, 17. Aufl., Vol. 17, Wiesbaden 1973, p. 590

16 Law on Secession from the USSR. Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR, 3 April, 1990 http://soviethistory.msu.edu/1991-2/shevardnadze-resigns/shevardnadze-resigns-texts/law-on-secession-from-the-ussr/

Such Russian and other PKF operated with the approval of the OSCE[17] and, in the case of Abkhazia, also that of the UN Security Council.[18] Within these sub-regions, the OSCE established missions in the capitals of the new independent states and offices in local conflict areas. For monitoring the operations in and around Abkhazia, the UN dispatched unarmed observers (UN Observer Mission in Georgia/UNOMIG) while the OSCE monitored PKF and local militias in the security zone around Tskhinvali. PKF were tasked to maintain the ceasefire provisions in a status-neutral way and enable peaceful political solutions to the conflicts, including the determination of the eventual political status of the conflict areas. To that end, negotiations took place under the auspices of the OSCE and, in the case of Abkhazia, the UN. For conflict resolution in the Trans-Dniester region, a special negotiation format was set up with the OSCE, Russia and Ukraine as mediators, Chisinau and Tiraspol as parties to the conflict, and the U.S. and the EU as observers.

While Western states principally recognized the sovereignty and territorial integrity of the independent states in their former SSR boundaries, they reacted positively on Russian interventions and recognized Moscow's mediation and the contributions of peacekeepers in maintaining stability in conflict areas.[19] As to the conflict in and around Nagorno-Karabakh, where no PKF were deployed, OSCE participating States agreed on a special negotiation format chaired by France, the Russian Federation and the United States ("Minsk Group"). In its statements, the Minsk Group maintained a status-neutral language underlining both the integrity of states and the right to self-determination of people.

To the West, such negotiation formats and peacekeeping arrangements for local conflicts at the southern periphery of the former Soviet Union seemed to flow logically from the geopolitical situation and appeared to be acceptable and practicable solutions. Shortly after the Cold War had ended and Russian forces had left Central Europe, the West had no ambition to compete with Moscow in the post-Soviet space, all the more common OSCE action was rooted in a co-operative political environment. That was demonstrated

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17 Cf. Agreement on the Principles of Settling the Georgian-Ossetian Conflict. In: Secretariat of the Conference on Security and Co-operation in Europe. Prague, 5 August 1992. Report of the CSCE Fact-Finding Mission to the region of Georgian-Ossetian Conflict, 25-9 July 1992 (CSCE Communication No. 228), Annex II; cf. also CSCE Budapest Summit 1994, Budapest Document 1994 towards a Genuine Partnership in a New Era (corr. Version 21 Dec 1994), Budapest Decisions, II. Regional Issues, Intensification of CSCE action in relation to the Nagorno-Karabakh conflict, No. 1. (p. 5); Georgia, No. 2, 3. (pp. 7, 8); https://www.osce.org/files/f/documents/5/1/39554.pdf; OSCE Istanbul Summit 1999, Istanbul Document 1999, II. Istanbul Summit Declaration of 19 November 1999, No. 18 (PCOEW389, January 2000, p. 49) https://www.osce.org/files/f/documents/6/5/39569.pdf

18 Cf. Agreement on a Cease-Fire and Separation of Forces signed in Moscow on 14 May 1994. In: Letter dated 17 May 1994 from the Permanent Representative of Georgia to the United Nations addressed to the President of the Security Council, Annex I. UN Security Council S/1994/583 17 May 1994

19 See FN. 17

in 1994, when the OSCE approved the ceasefire agreement on Nagorno-Karabakh that was brokered by Russia, and in 1996, when Russia applied status-neutral policies in Georgia and triggered CIS sanctions against Abkhazia on the grounds of ethnic cleansing. Such action and Russian mediation found the blessing of all OSCE participating States.[20]

Also the special situation of Sevastopol and Crimea in Ukraine with the former Soviet Black Sea Fleet and a strong ethnic Russian element seemed to head towards a consensual solution, to which both Moscow and Kiev could agree. After the peninsula was granted an autonomous status, local independence movements were kept at bay. Bilateral negotiations were under way aiming at a Treaty of Friendship, division of the Black Sea Fleet and the stationing of Russian navy vessels, naval air and naval infantry units as well as command, control, communication and logistic installations in Sevastopol and more than 80 other locations on the peninsula.[21]

For NATO allies and Russia, securing the non-nuclear status of Ukraine, Belarus and Kazakhstan were of particular importance as they sought to keep the integrity of the international non-proliferation regime enshrined in the Treaty on Non-Proliferation of Nuclear Weapons (NPT). To that end, the three post-Soviet states agreed to end the stationing of former Soviet nuclear weapons on their soil and to hand them over to Russia. In return, the Russian Federation, the United Kingdom and the United States in 1994 promised not to use or threaten to use nuclear weapons against them and to respect their sovereignty and territorial integrity ("Budapest Memorandum").[22]

Furthermore, Western security interests focused on global crises such as the 1991 coalition campaign against Iraq after Bagdad's forces had occupied Kuwait, and the large military conflict that had erupted in the Western Balkans after the collapse of Yugoslavia. This conflict developed into the most ruthless and bloody war in Europe after World War II. Only in 1995, and with the military assistance of NATO, could the international community enforce an end to the war and initiate the Dayton Peace Agreement (DPA)[23]

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20 OSCE Lisbon Summit 1996, Lisbon Document 1996 (DOC.S/1/96) of 3 December 1996, I. Lisbon Summit Declaration No. 20, Lisbon 1996 https://www.osce.org/files/f/documents/1/0/39539.pdf

21 Agreement between Ukraine and the Russian Federation concerning the stationing of the Black Sea Fleet of the Russian Federation in the territory of Ukraine of 28 May 1997, in: The Diplomatic Bulletin. 1997. B"-8. With. pp. 29-31

22 Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Budapest, 5 December 1994 https://treaties.un.org/Publication/UNTS/No Volume/52241/Part/I-52241-0800000280401fbb.pdf (cf. UNGA A/49/765*S/1994/1399* 19 Dec 1994, Annex I)

23 The Dayton Peace Accords. General Framework Agreement for Peace in Bosnia and Herzegovina . Signed on 14 December 1995 in Paris. Text as released on the U.S. Department of State Foreign Affairs Network by the Office of Public Communication, Bureau of Public Affairs, U.S. Department of State https://dosfan.lib.uic.edu; OSCE, Dayton Peace Agreement, 14 December 1995 https://www.osce.org/files/f/documents/e/0/126173.pdf

among five parties to the conflict to be implemented under international supervision. It entailed specific arms control and CSBM provisions, for which the CFE Treaty and the Vienna Document served as blueprints (Article II- and Article IV-Agreements / "Florence Agreement" 1996).[24] NATO and the OSCE were tasked to monitor the agreements with an international stabilization force (IFOR) in Bosnia-Herzegovina and OSCE missions dispatched to the region.

During the war in former Yugoslavia, the powers in Europe refrained from exploiting the crisis for geo-strategic competition. Instead, France, Germany, Italy, the Russian Federation, United Kingdom und United States formed the "contact group" to search for a peaceful solution. In order to ensure common UN action and conflict resolution, security cooperation between the West and Russia was indispensable and far more important than any particularities of arrangements for local disputes at the southern fringes of the post-Soviet space. Thus, Russia joined the other five "witness states" in order to monitor collectively the implementation of DPA arms reduction, transparency and verification obligations. All successor states of former Yugoslavia joined the OSCE and adhered to the agreed CSBMs.

These developments demonstrated that future OSCE security concerns had to focus on containing sub-regional instability, which also involved non-state actors. As they did not represent internationally recognized entities, international state-to-state agreements could not be applied in these cases. Instead, special status-neutral arrangements were necessary to maintain ceasefire agreements, prevent new military escalation and, thus, create conditions for political solutions in an unstable environment. The OSCE document Stabilizing Measures for Localized Crisis Situations reflected such objectives.[25]

At the same time, CFE States Parties had to realize that local territorial disputes in the area of application of the CFE Treaty had created small grey areas in which central governments of three OSCE participating states did not exercise political control. In these areas, CFE States Parties could implement transparency measures on and verification of CFE-relevant armaments and equipment only if central governments had given their consent and non-state actors did not oppose. Thus, armaments and equipment

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24 Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina, Article II, Annex I-B General Framework Agreement for Peace in Bosnia and Herzegovina, published by the OSCE, updated version of 12 December 2001; Agreement on Sub-Regional Arms Control, signed in Florence on 14 June 1996. Informal Consolidated Version published in: OSCE, Handbook For Implementation of the Agreement on Sub-Regional Arms Control, Article IV, Annex 1-B General Framework Agreement for Peace in Bosnia and Herzegovina, November 2008

25 CSCE. Stabilizing Measures for Localized Crisis Situations, adopted by the 49th Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Vienna on 25 November 1993 (DOC.FSC/2/96) https://www.osce.org/files/f/documents/7/b/42314.pdf

limited by the CFE Treaty (TLE) in the hands of non-state actors were not controlled and unaccounted for by CFE States Parties ("UTLE").[26] This situation was aggravated as central governments rejected international monitoring, even if that could have been carried out in a status-neutral way. However, the amount of weapons in question was rather small compared to the overall CFE group ceilings. While such armaments under the control of local actors could be significant in the view of states concerned, they did not undermine the general objectives of the CFE Treaty to keep a balance of forces in Europe and prevent large-scale offensive operations.

This conclusion was also drawn with respect to Russian wishes to station more forces in its unstable Northern Caucasus region, where uprisings had erupted in 1994. That region belonged to the "flank area" of the CFE Treaty, where special sub-ceilings had to be observed. In a spirit of cooperation, all CFE States Parties agreed at the first CFE Review Conference in summer 1996 to reduce the Russian flank area in the Caucasus region geographically. This second adaptation of the treaty allowed Russia to increase the number of armoured personnel and infantry fighting vehicles in the hot spots of the uprising in exchange for higher verification quota in the areas excluded from the Russian flanks.[27]

2.1.3 New geopolitical challenges: NATO's enlargement to East-Central Europe

In 1996, negotiations on the accession to NATO of four former WTO member states in East Central Europe, namely Poland, the Czech Republic, Hungary and Slovakia, entered its operational stage. The NATO Summit in January 1994 had stated that the Alliance would accept new member states and that such enlargement would "reach to democratic states to the east of NATO".[28] Last Russian forces were just about to leave Germany and the Baltic States, and President Yeltsin had committed to withdraw the 14th Russian Army from Moldova.[29]

Now, Moscow was concerned about a new bloc building and renewal of geopolitical competition to the detriment of Russian security interests as NATO's territory and

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26 Final Document of the First CFE Review Conference, loc. cit. (Fn. 12), No. 9. Central governments estimated the numbers of UTLE to amount to 830 in Nagorno-Karabakh, 124 in Abkhazia, 29 in South Ossetia and 100 in the Trans-Dniester Region. Cf. Notes Verbal of Azerbaijan of 22 January 1997, Georgia of 18 February 1997 and Moldova of 4 February 1997

27 Final Document of the First CFE Review Conference, loc. cit. (Fn. 12), Annex A

28 NATO. Declaration of the Heads of State and Government participating in the meeting of the North Atlantic Council ("The Brussels Summit Declaration") of 11 January 1994 (updated 26 August 2010), No. 15, Press Release M-1(94)003, 11 Jan. 1994 https://www.nato.int/cps/en/natohq/official_texts_24470.htm?mod=pressrelease

29 Cf. CSCE Budapest Summit 1994, Budapest Document 1994 towards a Genuine Partnership in a New Era (corr. Version 21 Dec 1994), Budapest Decisions, II. Regional Issues, Moldova (p. 9)

defence commitments would come closer to the Russian homeland and the alliance would become the dominant organization for maintaining security and conflict resolution in Europe. Therefore, Moscow proposed to develop the CSCE to a full-fledged, treaty-founded and dominant collective security organization with its own security council, legal personality and a new security charter. Although that did not materialize due to U.S. and UK opposition, the 1994 CSCE Summit in Budapest decided to rename the CSCE to become the OSCE and strengthen its organizational foundations.[30]

Such discussions were continued at the OSCE Lisbon Summit in 1996 and, eventually, led to the adoption of the politically binding OSCE Charter for European Security at the 1999 OSCE Summit in Istanbul.[31] Accordingly, States have to ensure that the evolution of multinational military and political organizations is fully compatible with the OSCE's comprehensive and co-operative concept of security, and is also fully consistent with arms control goals and objectives. Reiterating the formula agreed upon in the 1996 Lisbon Summit, the Charter states that no participating State, organization or grouping should strengthen its security at the expense of the security of other States, claim any pre-eminent responsibility for maintaining peace and stability in the OSCE area or regard any part of it as a particular sphere of influence.[32]

For conventional arms control in Europe, NATO's political enlargement to the East had significant consequences. It changed the geostrategic context on which the bipolar CFE concept of a military balance in Europe was based. While NATO's numbers of military armaments and equipment limited by the treaty (TLE) increased, holdings of CFE Eastern Group States remaining outside NATO decreased by equivalent numbers. Even more important for military operations, geographical limitations that constrained the permanent stationing of forces of the two groups lost their relevance. With the accession of Poland, the Czech Republic and Hungary in 1999 as well as Slovakia in 2004 the geographical line separating NATO forces from the Russian Federation moved 600 to 700 km to the East.

As a result, the whole CFE central limitation region, which was originally construed to reduce and balance force concentrations in Germany and its neighbouring countries, was controlled exclusively by NATO countries. In consequence, all space and time calculations, on which CFE limitation concepts rested, became obsolete. And for the first time after the Cold War, NATO territory directly bordered Russia, namely the Kaliningrad region. It contains one of the two most important sea bases of the Russian Baltic Fleet.

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30 Cf. CSCE Budapest Summit 1994, loc. cit., Budapest Decisions, I. Strengthening the CSCE

31 OSCE Istanbul Summit 1999, Istanbul Document 1999, I. Charter for European Security, Istanbul 19 November 1999 (PCOEW389, January 2000, p. 1-13) https://www.osce.org/files/f/documents/6/5/39569.pdf

32 Ibid., No. 8 (p. 3)

In Moscow, such a geopolitical change caused suspicion about the strategic purpose NATO pursued as it obviously brought Russia in a more disadvantageous geopolitical position compared to the situation before. Obviously, NATO's enlargement had the potential to derail the path of co-operation between the Alliance and the Russian Federation. In contrast, allies underlined the political significance of the OSCE principle that all states enjoy the right to be members of security alliances or stay non-aligned. This principle had been accepted by the Soviet Union in the case of the German unification, which took effect on 3 October 1990. However, the Two-plus-Four Treaty of 12 September 1990 contained legally binding restrictions for German and allied forces, which assured that this agreement did not result in geopolitical and strategic disadvantages for Moscow. Germany committed not to station foreign forces, nuclear weapons or nuclear-capable delivery systems on the soil of the former GDR and Berlin and accepted special personnel ceilings for her armed forces.[33]

While states aspiring NATO accession sought better protection and political advantages in the alliance, the U.S., Germany and other allies claimed that anchoring Central Europe firmly in the West served to stabilize the region politically and were not directed against Russian security interests. The principles "restraint and flexibility" would continue to guide future NATO policies. Therefore, allies offered Russia to develop closer security cooperation with NATO, strengthen the OSCE as the common security arrangement and negotiate a new arms control agreement that would adapt the CFE Treaty to the new situation. They also stated that there was no reason, no intention and no plan to move nuclear weapons forward to new NATO member states. Assuring them of collective defence commitments would not be done by additional permanent stationing of substantial air and ground combat forces. Following these guiding principles, NATO and Russia negotiated the "NATO-Russia Founding Act", which was signed by NATO member states, the three acceding states and the Russian Federation in Paris on 27 May 1997.[34]

Two years later, Poland, the Czech Republic and Hungary acceded to NATO, and all CFE States Parties signed the CFE Adaptation Agreement on 19 November 1999 during the OSCE summit in Istanbul.[35] The preceding crises in 1999 had put the diplomatic path towards such outcome under stress as new disputes had arisen about NATO's military intervention in remaining Yugoslavia. Aiming at the prevention of a humanitarian disaster in Kosovo it enforced an end to internal fighting and the withdrawal of Serbian security forces from the former province. Russia held that such intervention violated international

33 Treaty on the Final Settlement with respect to Germany, loc. cit. (Fn. 3), Article 5 (3); Article 3 (2), pp. 1322-1324

34 NATO/Russian Federation, Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation, Paris, 27 May 1997 https://www.nato.int/cps/en/natolive/official_texts_25468.htm

35 OSCE Istanbul Summit 1999, Istanbul Document 1999, VI. Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, Istanbul 19 November 1999 (PCOEW389, January 2000), pp. 118–234 https://www.osce.org/files/f/documents/6/5/39569.pdf

law as it was not mandated by the UN Security Council. At the same time, Western states accused Russia of violations of international humanitarian law when Russian forces mounted an internal campaign to quell the second uprising in Chechnya. For a short period of time, NATO-Russia consultations were interrupted.

However, the Istanbul summit demonstrated that it was possible to advance arms control and keep security cooperation despite the fact that relations between NATO and Russia had cooled down. The signing of the CFE Adaptation Agreement and the launch of an enhanced NATO-Russia consultation mechanism contributed to a period of renewed security cooperation. One of the most significant political guidelines that shaped such developments was agreed upon by consensus at the OSCE 1996 Summit in Lisbon, namely the "Framework for Arms Control".

2.2 Purpose, objectives and norms of the OSCE Framework for Arms Control

With the Framework for Arms Control, OSCE participating States drew the lessons from the mechanisms that helped to overcome the Cold War and build a new co-operative security order. In view of remaining territorial conflicts and upcoming new geopolitical frictions, the Framework aims at maintaining and enhancing such a comprehensive security concept through confirming and advancing arms control in Europe and beyond. Furthermore, it takes note of local conflicts that were and are the causes of sub-regional instability and entail the risk of wider repercussions.

In view of this security context of 1996, the Framework describes the risks and challenges to the OSCE security order. It mentions particularly

- military imbalances that may contribute to instabilities,
- inter-State tensions and conflicts, in particular in border areas, that affect military security,
- internal disputes with the potential to lead to military tensions or conflicts between States.

It specifies the requirements to enhance transparency and predictability as regards the military intentions of States, and to ensure democratic political control of military, paramilitary and security forces by constitutionally established authorities and the rule of law.[36]

By adopting the document, States have committed to ensure that the evolution of multinational military and political organizations is fully compatible with the OSCE's

36 A Framework for Arms Control, II. Challenges and Risks, No. 7., loc. cit. (Fn 1), p. 18

comprehensive and co-operative concept of security, and is also fully consistent with arms control goals and objectives. Accordingly, no participating State, organization or grouping should strengthen its security at the expense of the security of others, or regard any part of the OSCE area as a particular sphere of influence. The presence of foreign troops on the territory of a participating State must be in conformity with international law, the freely expressed consent of the host State, or a relevant decision of the United Nations Security Council.[37]

Furthermore, participating States agreed to full implementation of arms control agreements at all times, including in times of crisis, and to ensure through a process of regular review undertaken in the spirit of co-operative security, that arms control agreements continue to respond to security needs in the OSCE. This includes full co-operation in combating terrorism.

As to arms control agreements existing in 1996, the Framework mentions the following nine treaties and documents[38]:

- Treaty on Conventional Armed Forces in Europe (CFE)
- Treaty on Open Skies (OST)
- Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe (CFE 1a-Agreement)
- Stabilizing Measures for Localized Crisis Situations
- Principles Governing Conventional Arms Transfers (CAT)
- Global Exchange of Military Information (GEMI)
- Vienna Document 1994 (VD 94)
- Code of Conduct (CoC)
- Principles Governing Non-Proliferation

For the future, the Framework for Arms Control sets the objective to create a web of interlocking and mutually reinforcing arms control obligations and commitments that gives expression to the principle that security is indivisible for all OSCE participating States. To that end, states committed to enhance existing arms control instruments and to further develop them in order to cope with emerging risks and maintain political and military stability.[39]

For negotiating enhanced and new instruments, the Framework for Arms Control specifies the following guiding principles:

- sufficiency of armed forces commensurate with legitimate individual and collective defence needs,

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37 Ibid.

38 A Framework for Arms Control, Annex, loc. cit. (Fn 1), p. 22

39 A Framework for Arms Control, II. Challenges and Risks, No. 6., V. Building a Web of Arms Control Agreements, No. 11., loc. cit. (Fn 1), pp. 18, 20–21

- military transparency through information exchanges on the size, structure, location and activities of forces as well as military doctrines,
- verification sufficiently intrusive to assess the reliability of military information provided by participating States, and
- limitations on forces, including where appropriate, reductions.[40]

According to the Framework, future arms control should aim at further developing the OSCE area as an indivisible common security space, strengthening security and stability, and increasing transparency, co-operation and confidence among all OSCE participating States. Based on continuing evaluation of their effectiveness, it should

- improve existing OSCE-wide measures and develop as appropriate new ones, to deal with future and continuing security challenges,
- devise measures to reduce regional instability and military imbalances between OSCE participating States and examine the issue of limitations on armed forces and constraints on their activities,
- devise arms control measures for stabilizing specific crisis situations,
- develop transparency, consultation and co-operation in the evolution or establishment of multinational military and political organizations,
- ensure greater transparency by providing information to all participating States on the implementation within the OSCE area of regional or other agreements not binding on all OSCE participating States,
- improve existing verification provisions and develop new ones, as necessary.[41]

2.3 Relevance of arms control instruments existing in 1996

2.3.1 Treaty on Conventional Armed Forces in Europe (CFE)

The CFE Treaty pursued the objective to eliminate capabilities for launching large-scale offensive operations in Europe or regional surprise attacks. To that end, member states of WTO and NATO as “Groups of States Parties” agreed to reduce their force levels significantly and establish military parity at lower levels of conventional ground and air forces in the area of application between the Atlantic and the Urals, except for the South-Eastern part of Turkey.[42]

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40 A Framework for Arms Control, III. Negotiating Principles, No. 8., loc. cit. (Fn 1), pp. 19–20

41 A Framework for Arms Control, IV. Goals and Methods for the further Development of Arms Control, No. 9., loc. cit. (Fn 1), p. 20

42 CFE Treaty, loc. cit. (Fn. 7), Preamble paragraph 8 and Article IV 1. Accordingly, no Group of States Parties is entitled to hold more than 20,000 battle tanks, 30,000 armoured combat vehicles, 20,000 artillery systems, 6,800 combat aircraft and 2,000 attack helicopters in the Area of Application as described in Article II 1. (B)

Moreover, CFE States Parties recognized that for conventional arms control to have a real effect on the military situation in Europe five elements were crucial: limitations, transparency and verification as well as reductions and definitions. Agreement on equal group limitations necessitated significant and asymmetric reductions down from actual holdings in late 1990. Ceilings at lower levels of decisive armaments required agreed definitions on what constituted offensive capabilities.

With this concept, the treaty responded to the threat perceptions emanating from the military confrontation between NATO and the WTO during the Cold War. NATO allies were concerned about the WTO's numerically superior ground forces and the high Soviet force concentration in East-Germany. NATO perceived that this potential would provide the Soviet Union with the capability to mount a major attack towards the Rhine River and continue offensive operations with strategic second echelon forces to seize the Atlantic coast. In turn, Moscow was particularly interested in limiting West-German and U.S. stationed forces including reinforcements that could be shipped from North America to Europe in times of crisis.

Against this background, limitation concepts had to take into account geostrategic asymmetries. While the Soviet Union could dispatch reinforcements from the depth of a coherent land mass between the Urals and the Elbe River towards the frontlines in Central Europe, NATO had to operate at the European periphery, which was geographically scattered and interrupted by a number of sea areas. Furthermore, NATO's defence in Europe relied on logistical support and reinforcements by strategic reserves that were stationed in the U.S. homeland in peacetime. As they had to be carried over the Atlantic in times of crisis, keeping open the Trans-Atlantic communication lines was vital for West-European allies. For this very reason, NATO rejected the Soviet proposal to make naval assets subject to CFE limitation, transparency and verification provisions.

Within Europe, limiting the option of large-scale aggression after preparation was as crucial as preventing surprise attacks that could be conducted by forward-stationed forces. To that end, also second echelon forces stationed in rear areas had to be prevented from fast movements forward to the lines of contact. Due to its geographical and political position and high force concentrations on her soil, the divided Germany was situated in the centre of gravity of a potential military conflict. Therefore, states recognized that the CFE Treaty could make a difference in operational terms only if it provided for significant reductions of force levels in the centre of Europe. At the same time, reserve forces in rear areas had to be reduced as well and special measures applied suitable to delay their short-term return to the frontline.[43]

43 For a detailed account of the history of CFE negotiations see Rüdiger Hartmann/Wolfgang Heydrich/Nikolaus Meyer-Landrut, Der Vertrag über konventionelle Streitkräfte in Europa. Vertragswerk, Verhandlungsgeschichte, Kommentar, Dokumentation. Baden-Baden (Nomos), 1994

The CFE Treaty responded to such operational necessities by a sophisticated limitation regime. It does not only set overall ceilings for crucial armaments in the whole of the European area of application between the Atlantic and the Urals, but also provides for regional sub-limits for peacetime deployments of ground forces. In consequence, it created four different limitation zones for both groups of states. Its most central limitation area focuses on Germany and her immediate neighbour states including Hungary.[44] The extended limitation area includes Denmark, France, United Kingdom and Italy in the West and the Soviet Baltic, Belarusian, Carpathian and Kiev Military Districts where second strategic echelon forces were located.[45]

The third limitation ring also includes those areas from where further strategic reserves could have been dispatched, namely Spain and Portugal in the West and the Soviet Moscow and Volga-Ural Military Districts in the East.[46] Such regional and sub-regional limitations were suited to scale down concentrations of opposing military forces at former frontlines, ensure geographical distances between them and prevent their rapid redeployment. With this “dynamic balance of forces” concept, a stabilization zone was created in the middle of the area of application, which extended from the Atlantic to the Urals with a centre of gravity in Germany and her Central European neighbour states.

In order to prevent new concentration of forces at the outer periphery of the two alliances, all other areas adjacent to the contact lines in Northern Europe, the Balkans, the Caucasus region and Turkey (except for Southeast-Anatolia) combined constitute the “flank area” with specific sub-ceilings.[47] These provisions were of particular interest to “flank states” such as Turkey, Norway and other Scandinavian states that were no NATO member states and, therefore, did not take part in CFE negotiations.

During the negotiations, the question as to which categories and types of armaments and equipment constituted offensive capabilities and therefore needed to be limited, caused intensive and often controversial discussions. All participating States agreed, however, that offensive operations could be carried out only if involved ground and air forces had sufficient capabilities at their disposal to conduct combined arms battles at the tactical and operational levels. Eventually, a compromise was achieved that such offensive capabilities were based on the synergetic effects of five crucial weaponry categories, namely main battle tanks, armoured combat vehicles, artillery systems, combat aircraft and attack helicopters.[48]

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44 CFE Treaty, loc. cit. (Fn. 7), Article IV 4
45 CFE Treaty, loc. cit. (Fn. 7), Article IV 3
46 CFE Treaty, loc. cit. (Fn. 7), Article IV 2
47 CFE Treaty, loc. cit. (Fn. 7), Article V 1. In this “flank region” Iceland, Norway, Greece and Turkey (except for its Southeast part) belong to the “Western Group” of CFE States Parties; Romania, Bulgaria and the former Soviet Union with its Military Districts of Leningrad, North-Caucasus, Odessa and Trans-Caucasus to the “Eastern Group”.
48 CFE Treaty, loc. cit. (Fn. 7), Preamble paragraph 10 and Article I 1

In consequence, the treaty defines such assets as "armaments and equipment limited by the treaty" (TLE) and sets numerical ceilings for every category in the whole of the area of application together with sub-ceilings for the three ground TLE categories in every geographical limitation zone. Further sub-ceilings specify the various tasks and combat values of armoured combat vehicles and distinguish between armoured personnel carriers, armoured infantry fighting vehicles and heavy armament combat vehicles.

In addition, the treaty includes other operational factors that affect capabilities to carry out offensive operations. As many rivers hamper fast offensive operations from East to West and vice versa, bridge-laying equipment was necessary for river crossing. Therefore, the treaty limits the number of armoured bridge-laying vehicles in active units.[49] It also requires states to keep a certain amount of TLE in a non-active status in Designated Permanent Storage Sites (DPSS).[50] This rule helped to prevent surprise attacks since mobilizing such TLE for mounting offensive operations provided warning time for detection and countermeasures.

Beyond such numerical and operational factors, the CFE Treaty considered qualitative minimum requirements for accountable armaments by defining TLE in terms of their weaponry (calibres of guns, anti-tank systems, rockets, guided missiles etc.), weight and mobility of armoured vehicles, their capacity to carry infantry squads, and other criteria.[51] Furthermore, it made conventional armaments and equipment subject to the treaty (CAEST), which did not fall under the limitation criteria but supported operations or looked similar ("look-alikes") and, therefore, needed to be made transparent and verified as well.[52] In dealing with qualitative criteria for limitation, States Parties had to take into account that inside the two alliances the quality of armaments varied considerably. Therefore, they assumed that the quality edge of a number of states would be balanced by lower quality equipment of other allies.

In sum, the treaty regulations demonstrated that states had a "dynamic" understanding of the term "offensive capabilities". They realized that arms limitations can impact on

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49 CFE Treaty, loc. cit. (Fn. 7), Article XI

50 CFE Treaty, loc. cit. (Fn. 7), Article II 1. (H), Article IV 2., Article X. Accordingly, 10–15% of ground TLE need to be stored in DPSS.

51 CFE Treaty, loc. cit. (Fn. 7), Article II 1. (C), (D), (K)-(P) Lightly armed reconnaissance vehicles are not covered by the treaty. Armoured combat vehicles are subordinated to the sub-category "heavy armoured combat vehicles" if they carry a gun for direct targeting with a 75 mm calibre or more but otherwise do not fall under the category of battle tanks. Combat helicopters without capabilities for launching guided missiles are not limited by the treaty but are subject to information and inspection obligations and categorized as "combat support helicopters".

52 CFE Treaty, loc. cit. (Fn. 7), Article II 1. (S); Protocol on Existing Types of Conventional Armaments and Equipment, Section II; Protocol on Notification and Exchange of Information, Section III (D); Protocol on Inspection, Section VI. 24–32

offensive operations only if the determining factors of geographical space and time are taken into account.

In contrast, States Parties to the CFE Treaty regarded the overall personnel strength of national armed forces a less important factor in operational terms. However, in particular Germany wished States Parties to agree on limitations of their military personnel. The reason was that German armed forces are subject to personnel limitations enshrined in the Two-plus-Four Treaty on the unification of Germany. The government in Bonn wanted to avoid Germany to have a singularized status in Europe. Thus, the Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe (CFE 1a-Agreement)[53] sets personnel ceilings for ground and air forces of all States Parties though in a non-legally binding form.

As transparency, verification and reduction were regarded crucial elements of a functioning arms control regime, detailed rules specify related rights and obligations of States Parties.[54] They assure all participants that agreed limitations are observed and necessary reductions carried out in conformity with treaty provisions. Consequently, States Parties have to reveal their force structures in annual information exchanges and give detailed information on all units that hold TLE and CAEST, including their location, numbers and composition as to category, sub-category and type.[55] Any changes that could occur to TLE within such units during a calendar year, involving deviations in numbers of 10% or more compared to previous information, need to be notified separately.[56]

All TLE-holding units of CFE States Parties form inspection sites and objects of verification (OOV). The overall number of OOV on the territory of a State Party (including stationed forces) within the area of application between the Atlantic and the Urals determines how many on-site inspections can be conducted per calendar year in a particular country ("passive quota"). The treaty permits to verify 15% of the reported number of OOVs on the territory of a State Party.[57] Up to 23% of such "passive quota" can also be used for challenge inspections of "specified areas" if and when not reported TLE are assumed to be present there.[58] This rule can also be applied for TLE that are held outside the structures of armed forces, e.g. by internal security, coastal defence and naval infantry units or land-based naval air forces.

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53 Concluding Act of the Negotiations on Personnel Strength of Conventional Armed Forces in Europe (CFE 1a-Agreement), https://www.osce.org/files/f/documents/8/b/14093.pdf

54 CFE Treaty, loc. cit. (Fn. 7), Article XIII, XIV, XV

55 CFE Treaty, loc. cit. (Fn. 7), Protocol on Notification and Exchange of Information

56 Ibid., Section VIII (B)

57 CFE Treaty, loc. cit. (Fn. 7), Protocol on Inspection, Section II, 10. (D) No State Party may conduct more than five inspections annually within the same group of States Parties. Ibid., Section II, 24

58 Ibid., Section II, 11. (B)

Special rules apply for reductions of TLE[59], re-categorization of attack helicopters or re-classification of combat aircraft.[60] In the latter cases, aircraft or helicopters lose their TLE qualification through technical changes to their combat equipment. Furthermore, special counting rules aim to account for TLE that were decommissioned and earmarked for destruction or export or held outside the structures of armed forces.[61]

The first CFE Review Conference in 1996 recognized the generally satisfying implementation of the treaty with several thousand notifications exchanged, hundreds of inspections carried out and more than 58,000 TLE reduced since its entry into force in November 1992. It mentioned, however, the need to solve the problem of grey areas in zones of local conflicts where TLE were operated by non-state actors and not accounted for by central governments (UTLE).[62]

Moreover, responding favourably to Moscow's demands the conference agreed to reduce the Russian part of the CFE "flank region" by excluding areas between the Volga and Don rivers in the North-Caucasus Military District and the Pskov Oblast in the Leningrad Military District. That allowed Russia to concentrate more armoured combat vehicles in the areas of the Chechen uprising. In turn, Moscow had to accept ten additional on-site inspection quota per calendar year in those areas that had been excluded from the flanks. In addition, also the Southern-Ukrainian part of the flank area was revised.[63]

Moscow also agreed to destroy more battle tanks and armoured combat vehicles beyond the Urals to compensate for some delay in fulfilling reduction obligations due to force concentrations in the Caucasus. Such obligations were accomplished by the time of the second CFE review conference in 2001.

As described in the 1996 Lisbon Framework for Arms Control, the CFE Treaty was the pillar of conventional stability in Europe and, therefore, in the interest of all OSCE participating States. Since the CFE negotiations began, the CSCE, later OSCE, was kept informed by negotiating NATO and WTO member states, later to become States Parties to the CFE Treaty, at all stages of progress and implementation.

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59 CFE Treaty, loc. cit. (Fn. 7), Article VIII; Protocol on Reduction; Protocol on Inspection, Section X

60 CFE Treaty, loc. cit. (Fn. 7), Article IX; Protocol on Re-classification of Aircraft; Protocol on Re-categorization of Helicopters

61 CFE Treaty, loc. cit. (Fn. 7), Article III, IX, XII

62 Final Document of the First CFE Review Conference, loc. cit. (Fn. 12), No. 9

63 Final Document of the First CFE Review Conference, loc. cit. (Fn. 12), Annex A

2.3.2 Adaptation Agreement to the CFE Treaty and CFE Final Act 1999

In 1996, the CFE Treaty was still suited to attain its objectives, namely to keep a group-related balance of forces at lower and equal levels, and, in this context, to prevent large scale or surprise attacks in Europe. However, as negotiations on the enlargement of NATO were underway, such concepts would soon lose its relevance. The bloc-related parity concept became obsolete as soon as several CFE States Parties belonging to the CFE "Eastern Group" became members of the Western alliance with all political and military implications.

Thus, the overall numbers of TLE entitlements related to "Groups" of CFE State Parties became meaningless as did the carefully crafted "dynamic force balance", which rested on geographical distances and regional limits. In particular, the space and time calculations determining CFE limitation areas became obsolete. The central limitation zone, which originally was construed to reduce and balance force concentrations in Germany and its neighbouring countries, would be controlled exclusively by NATO countries. For the first time, NATO territory directly bordered Russia, namely the Kaliningrad region.

Taking account of the changing geopolitical landscape, and as agreed in the NATO-Russia Founding Act, CFE States Parties negotiated an Adaptation Agreement to the CFE Treaty (ACFE) between 1996 and 1999. It was signed by all 30 CFE States Parties[64] on 19 November 1999 during the OSCE Summit in Istanbul[65] together with the CFE Final Act, a political document, which contained further stabilizing measures for the periods before and after the ACFE would enter into force.[66]

The ACFE maintained the definitions of TLE and the area of application between the Atlantic and the Urals (ATTU) as enshrined in the 1990/92 CFE Treaty. It replaced, however, the obsolete bloc-related limitation regime by national and territorial TLE ceilings. While national ceilings would define the maximum levels of TLE every State Party was entitled to hold in the whole area of application in ATTU[67], territorial TLE ceilings would limit the

64 With the separation of the Czech Republic and Slovakia in 1993 the number of CFE States Parties rose to 30.

65 OSCE Istanbul Summit 1999, Istanbul Document 1999, VI. Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, Istanbul 19 November 1999 (PCOEW389, January 2000), pp. 118–234 – labelled "ACFE" in the following text and footnotes – https://www.osce.org/files/f/documents/6/5/39569.pdf

66 OSCE Istanbul Summit 1999, Istanbul Document 1999, loc. cit., Final Act of the Conference of States Parties to the Treaty on Conventional Armed Forces in Europe, pp. 235–251

67 ACFE, loc. cit. (Fn. 65), Article 5 (on CFE Treaty, Art. IV), 1., Protocol on National Ceilings for Conventional Armaments and Equipment Limited by the Treaty on Conventional Armed Forces in Europe

numbers of the three ground TLE categories within their national territories.[68] For nine West-European states such territorial ceilings were higher than national ceilings in order to allow for the stationing of allied forces without infringing on national holdings.[69] CFE "Eastern Group"-states were not given such headroom as concentration of stationed forces at the periphery of Russia was not in the interest of Moscow.

Furthermore, Moscow insisted that NATO member states after enlargement should not be entitled to hold more TLE than before. Therefore, ten NATO member states lowered their national ACFE entitlements compared to the previous Maximum Level of National Holdings that had been agreed upon within the groups of CFE state parties.[70]

The agreement on territorial ceilings changed the CFE stability approach. Replacing the regional group parity concept of the CFE Treaty, it focused on sub-regional stability by preventing force concentrations in a fragmented political landscape of more and smaller states and remaining territorial disputes. Due to particular interest of NATO's "flank states" the former CFE flank limitation regime was partially retained, and specific territorial sub-ceilings were agreed upon for the former Russian and Ukrainian flank region.[71]

For most of the area of application, the ACFE allowed for temporarily exceeding territorial ceilings by 459 battle tanks, 723 armoured combat vehicles and 420 artillery systems for exercises or crisis management, though under special information and verification obligations. For Russian and Ukrainian territorial sub-ceilings and former "flank states" Norway, Iceland, Romania, Bulgaria, Greece, Turkey, Armenia, Azerbaijan and Georgia such exceeding was limited to 153 battle tanks, 241 armoured combat vehicles (zero for Russia) and 140 artillery systems only ("Basic Temporary Deployment"/BTD).[72]

Temporary exceeding of territorial ceilings and sub-ceilings in conformity with ACFE rules were made subject to strict information requirements. Accordingly, all interested CFE States Parties have the right to inspect such force deployments intrusively in designated areas, which could extend over a wide space of up to 10,000 km^2.[73] In addition,

68 ACFE, loc. cit. (Fn. 65), Article 6 (on CFE Treaty, Article V), 1., Protocol on Territorial Ceilings for Conventional Armaments and Equipment Limited by the Treaty on Conventional Armed Forces in Europe

69 Ibid.

70 While the former CFE Maximum Levels of National Holdings (MNLH) were politically coordinated within the Groups of CFE States Parties, the ACFE National Ceilings were directly enshrined in legally binding treaty provisions. Accordingly, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, the United Kingdom and the United States agreed to lower their former MNLH in defining new ACFE National Ceilings. Cf. ACFE, loc. cit. (Fn. 67), Protocol on National Ceilings … (of TLE)

71 ACFE, loc. cit. (Fn. 65), Article 6 (on CFE Article V), 1., Protocol on Territorial Ceilings … (of TLE)

72 ACFE, loc. cit. (Fn. 65), Article 8 (on CFE Article VII), 1

73 ACFE, loc. cit. (Fn. 65), Article 27 (on CFE Protocol on Inspection), Section IX

passive quota for on-site inspections were increased from 15% to 20% of all objects of verification of a State Party per calendar year.[74]

The ACFE did not extend the scope of TLE as defined in the CFE Treaty of 1990. As it did not include naval forces, units of the Black Sea Fleet did not constitute separate objects of verification. But the option to use inspections of “specified areas” (up to 23% of all on-site inspection quota) was retained and enabled state parties to observe naval infantry units and land-based naval combat aircraft.

The ACFE emphasises that host nation consent is required for the stationing of armed forces in the territories of State Parties.[75] This rule was also to be observed in regard of the Russian basic temporary deployment stationed in Georgia. For peace-keeping forces, however, that are stationed in conformity with a UN or OSCE mandate, such limitations did not apply.[76]

With the politically binding CFE Final Act[77], States Parties agreed on further stabilizing measures. It did not only contain provisions for the interim time until the ACFE would enter into force, but also established further guidance for the period thereafter. Accordingly, NATO would continue to apply the principles “restraint and flexibility” that were enshrined in the NATO-Russia Founding Act of 1997 and the Statement on Adaptation of the CFE Treaty issued by the North Atlantic Council and three invited States on 8 December 1998.[78] The alliance reiterated that it would not resort to additional permanent stationing of substantial combat forces in order to implement defence commitments after enlargement. Furthermore, the NATO acceding states Czech Republic, Hungary, Poland and Slovakia agreed to reduce their territorial ceilings by 2002 or 2003.[79]

Russia reciprocated NATO’s restraint promise and committed not to station permanently additional ground and air combat forces in the regions of Kaliningrad and Pskov.[80] Bilaterally, it agreed with Norway to apply the same rules for Northern Europe (Leningrad

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74 ACFE, loc. cit. (Fn. 65), Article 27 (on CFE Protocol on Inspection), Section II, 10., 13. Additional costs have to be carried by inspecting states.

75 ACFE, loc. cit. (Fn. 65), Article 2 (on CFE Article I), 3

76 ACFE, loc. cit. (Fn. 65), Article 6 (on CFE Article V), 2

77 Final Act of the Conference of States Parties to the Treaty on Conventional Armed Forces in Europe, loc. cit. (Fn. 66), preamble, 8th paragraph – referred to as CFE Final Act in the following text and footnotes

78 NATO. Adaptation of the Treaty on Conventional Armed Forces in Europe (CFE): Restraint and Flexibility. Statement on CFE, Ministerial Meeting of the North Atlantic Council with the Three Invited Countries held in Brussels. 8 Dec. 1998. Press release M-NAC-D-2(98)141 141 https://www.nato.int/cps/en/natohq/official_texts_25940.htm?selectedLocale=en

79 CFE Final Act, loc. cit. (Fn. 66), Annexes 1–4

80 CFE Final Act, loc. cit. (Fn. 66), Annex 5

Military District).[81] Moscow also committed to withdraw Russian Military Bases from Georgia and Moldova and negotiate respective provisions with Tbilisi and Chisinau. For the interim time, Tbilisi would grant host nation consent for the temporary deployment of one Russian BTD.[82] The three new NATO member states as well as Slovakia, Germany, Belarus and Ukraine committed not to make use of the ACFE provision to increase territorial ceilings in exchange for an equivalent decrease of another ACFE State Party.[83]

In sum, by agreeing to the ACFE and the CFE Final Act, CFE States Parties managed to adapt

the CFE Treaty to the changing geopolitical landscape in Europe, find a new balance of strategic interest, and thereby retain a consensus-based co-operative security order in the OSCE. To that end, all OSCE participating States with territories in the area of application between the Atlantic and the Urals were invited to accede to the ACFE upon its entry into force.[84]

2.3.3 Vienna Document 1994

During the CFE negotiations all of the CSCE participating States felt an urgent need to increase efforts for preventing the periodic large-scale deployment of military forces during military exercises of the two alliances from being used for surprise attacks or large-scale military offensive operations on short notice. The aim was early warning, transparency and limitation of certain military activities in the entire area of application between the Atlantic and the Urals rather than geographical limitation of military block holdings. Herein lie the origins of the politically binding Vienna Document.

OSCE participating States adopted the first Vienna Document in 1990.[85] It built on CSBMs agreed previously, in Helsinki in 1975 and in Stockholm 1986. The Helsinki Final Act already contained a provision, which required early notification of military exercises taking place within an area of 250 km distance to international borders and involving 25,000 or more military personnel, supplemented by an optional observation clause.[86] At the CSBM conference held in Stockholm 1986, further measures were agreed that later formed the core of the Vienna Document's early warning function: prior notification

81 Russian Federation, Foreign Minister (Igor Ivanov), "Letter to the Foreign Minister of the Kingdom of Norway, Knut Vollebaeck", Moscow, 25 March 1999 (translation from Russian into German by Bundessprachenamt, Abteilung Sprachmittlerdienst, August 1999)

82 Joint Statement of the Russian Federation and Georgia, Istanbul, 17 November 1999, annexed to CFE Final Act, loc. cit. (Fn. 66), Annex 14

83 CFE Final Act, loc. cit. (Fn. 66), Annexes 6–12

84 ACFE, loc. cit. (Fn. 65), Article 18 (on CFE Article XVIII), 1

85 CSCE. Vienna Document 1990 … on Confidence- and Security-Building Measures, loc. cit., (Fn. 8)

86 CSCE. Final Act, Helsinki 1975, Document on confidence-building measures and certain aspects of security and disarmament, 1 August 1975 https://www.osce.org/files/f/documents/5/c/39501.pdf

and observation of military exercises and unusual military activities, annual calendars and constraining provisions, strengthened by verification measures.[87]

The Vienna Document 1990 added important new provisions: an annual information exchange on force structures and major weapon and equipment systems (MWES), including verification through evaluation visits; a set of military contacts and visits to air bases; a communication network; and a risk reduction mechanism for de-escalation in case of unusual military activities and hazardous incidents.

The Vienna Document was modified three times between 1990 and 1999. In 1992, it was updated to take account of the fifteen new participating States on the territory of the former Soviet Union. By including the five states with territories in Central Asia, the VD zone of application expanded beyond the Urals. Lower thresholds for observation and of military exercises were defined, which reflected smaller sizes of divided and restructured forces. In addition, more detailed provisions for information and verification were incorporated. In 1994, after the collapse of former Yugoslavia, the document was modified again. Additional parameters for prior notification and observation of certain military activities, voluntary visits to military facilities and an annual implementation assessment meeting were incorporated.[88]

The Vienna Document 1999 included a chapter on regional measures, which was a response to sub-regional conflict. It aims at special CSBMs at the discretion of neighbouring states in order to de-escalate tensions and stabilize the military situation. Suggested measures include bilaterally agreed arms control measures or increased transparency of exercises, particularly in border areas, through additional information and on-site observations on the basis of lower thresholds.[89] In addition, a new chapter on defence planning aimed at improving the long-term predictability of military developments and intentions.

However, without legally binding limitations of holdings the document was suited only to complement, not to replace the CFE Treaty. Without specifically agreed definitions on armaments and equipment subject to the document, participating States tacitly agreed to use CFE definitions for information requirements and added anti-tank guided

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87 CSCE. Document of the Stockholm Conference on Confidence- and Security-Building Measures and Disarmament in Europe, 19 September 1986 https://www.osce.org/files/f/documents/5/d/41238.pdf

88 OSCE. Vienna Document 1994 on the Negotiations on Confidence- and Security-Building Measures, Vienna 1995

89 OSCE. Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures, Vienna 1999 (FSC.DOC/1/99 of 16 Nov 1999) – referred to as VD 99 in the following text and footnotes – , Chapter X https://www.osce.org/files/f/documents/b/2/41276.pdf

missile launchers mounted on armoured vehicles.[90] Moreover, only active formations and combat units of ground and air forces carrying such armaments and equipment are subject to verification provisions.[91] Their structures and holdings have to be revealed through annual information exchanges.[92] During a calendar year, notifications on changes are not required.

Similarly, also the VD provisions for verifying holdings of active combat units in peacetime locations are less intrusive and detailed than those of the CFE Treaty. The VD allows for one evaluation visit only per 60 active combat units in a calendar year.[93] That means that armaments held by non-active combat units, logistic units and depots, C^3 installations, air defence, navy, coastal defence and naval infantry units as well as strategic, central and internal security forces are not accounted for according to the VD.

However, participating States have to tolerate three "passive" inspection quota per calendar year for verification of specified areas where military activities take place, which do not exceed the thresholds for notification and observation (see below) or which were not duly notified.[94] Furthermore, participating States are required to invite observers for presentations of new weapon systems and, as a minimum, once within five years for a visit to a military air base and military facilities, formations or military activities.[95]

As opposed to the CFE Treaty, the VD focusses less on weapon holdings and military capabilities than on early warning 42 days in advance of large-scale military exercises and other unusual military activities of land forces and supporting units. In the 1992 modification of the document, personnel thresholds for notification of such activities were reduced from 13,000 down to 9,000, and for observation from 17,000 to 13,000. This, to some degree, reflected smaller sizes of divided and restructured forces after the

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90 Information is required on eight weapon categories (without specific definition): (1) battle tanks (2) helicopters (3) Armoured combat vehicles (4) armoured personnel carrier look-alikes and armoured infantry fighting vehicles look-alikes (5) anti-tank guided missile launchers permanently/integrally mounted on armoured vehicles (6) self-propelled and towed artillery pieces, mortars and multiple rocket launchers (100 mm calibre and above) (7) armoured vehicle launched bridges (8) combat aircraft. VD 99 and VD 2011 Chapter I Annual Exchange of Military Information No. (10.2.5.1) – (10.2.5.7), (10.5.5) – (10.5.5.2)

91 Cf. Vienna Document 2011 on Confidence- and Security-Building Measures, (FSC.DOC/1/11 of 30 November 2011), – referred to as VD 11 in the following text and footnotes – , Chapter IX. Compliance and Verification, Evaluation No. (107) – (108) https://www.osce.org/files/f/documents/a/4/86597.pdf

92 VD 11, loc. cit. (Fn. 91) I. Annual Exchange of Military Information. Information on Military Forces No. (10.1), (10.2), (10.5)

93 VD 11, loc. cit. (Fn. 91), Chapter IX. Compliance and Verification, Evaluation No. (109)

94 VD 11, loc. cit. (Fn. 91), Chapter IX. Compliance and Verification, Inspection No. (74), (76), (80)

95 VD 11, loc. cit. (Fn. 91), Chapter IV. Contacts, Visits to Air Bases, No. (20), Military Co-operation, Visits to military facilities, to military formations and observation of certain military activities No. (30.3), (30.4), Demonstration of new Types of Major Weapon and Equipment Systems, No. (31)

break-up of the former Soviet Union. As to armaments and equipment, thresholds were set at 250 battle tanks for notification and 300 battle tanks for observation. In 1994, 250 artillery systems or 500 armoured combat vehicles were added as further thresholds for both notification and observation. Offensive air support has to be notified as well if 200 or more sorties are involved. In the case of airborne, air landing or amphibious landing operations the threshold for notification was set at 3,000, for observation at 3,500 personnel involved.[96]

The VD also limits the number of large-scale military exercises. Not more than three exercises requiring notification should be conducted in parallel; not more than six manoeuvres requiring the invitation of observers should be held per calendar year, and not more than three if the thresholds of 25,000 personnel, 400 battle tanks, 800 armoured combat vehicles or 400 artillery systems are exceeded.[97] The VD also sets an upper limit for the size of military exercises: within three years, a maximum of one exercise is permitted, which exceeds the thresholds of 40,000 personnel, 900 battle tanks, 900 artillery systems and 2,000 armoured combat vehicles. That has to be announced in annual calendars for the second subsequent year.[98]

A special risk reduction mechanism offers states to discuss and explain unusual military activities which could give reason for concern. To dispel such concerns, states may invite concerned and other interested states for a visit to the areas, in which such military activities take place. It also entails a provision for de-escalating the situation once a military incident has occurred.[99]

With the Vienna Document, participating States established a culture of openness, mutual trust and co-operation that served both long- and short-term goals. The transparency it provided on force structures, major weapon holdings, introduction of new equipment and defence planning made it possible to predict long-term development of military capabilities. Its requirements for prior notification of certain military activities and constraints on large-scale military exercises entailed the potential to make major military activities transparent and predictable, and prevent an undetected short-term build-up of military offensive options.

Thus, the Vienna Document, belonging to all OSCE participating States, became the OSCE's core document for security co-operation in the military field. As opposed to the

96 Such threshold values were retained unchanged throughout the next iterations of the Vienna Document up to the VD 11. Cf. VD 11, loc. cit. (Fn. 91), Chapter V. Prior Notification of Certain Military Activities, No. (40.1.1), Chapter VI. Observation of Certain Military Activities, No. (47.4)

97 VD 11, loc. cit. (Fn. 91), Chapter VIII. Constraining Provisions, No. (67.3), (67.2), (67.2.1)

98 Ibid., No. (67.1), (68), (70)

99 VD 11, loc. cit. (Fn. 91), Chapter III. Risk Reduction, No. (16) – (18)

CFE Treaty, it kept its relevance despite geopolitical changes in Europe. Its multilateral structure and inclusive OSCE membership, its lack of limitations of military holdings and its non-legally binding nature seemed better adaptable to these changes, all the more as modifications did not require lengthy ratification processes.

2.3.4 Treaty on Open Skies

The Open Skies Treaty (OST)[100] was signed in 1992 by thirteen NATO member States, including the United States and Canada, five former non-Soviet WTO member states and the Russian Federation, Belarus, Ukraine and Georgia. Russian reservations could be overcome only, when President Putin convinced the Russian State Duma and Federal Council to ratify the treaty. Consequently, the OST was applied provisionally for ten years before it was eventually ratified by 27 States Parties in 2001. After its entry into force in 2002, their number rose to 34 and included also the Baltic States, Sweden, Finland and Bosnia-Herzegovina.

The OST permits co-operative observation flights over the territories of the States Parties in the OSCE area between Vancouver and Vladivostok. As opposed to the CFE Treaty and the Vienna Document its area of application includes also the territories of the United States, Canada and the Russian Federation east of the Urals. The treaty offers transparency of military activities, even in times of crisis, and provides for additional verification of conventional and nuclear arms control agreements. In this way, it contributes – also through direct military contacts – to confidence-building and a realistic assessment of situations.

The number of permitted observation flights is based on a quota system that takes into account the size of states. For the United States and Russia, which acceded to the treaty in a union with Belarus, the treaty allows for 42 observation flights each per calendar year; for Germany, France, the United Kingdom, Italy, Canada, Ukraine and Turkey, the quota is 12 each. For the remaining states, graduated quotas apply, down to only two flights for smaller states such as Portugal or Georgia.[101]

No State Party may conduct more observation flights than its "passive" quota allows for others to fly over its territory. In addition, each State Party shall use only 50% of its active quota for flights over another State Party.[102] Therefore, the U.S. and Russia may each use a maximum of 21 observation flights per year for mutual overflights. Nevertheless, the passive quota of 42 flights over Russia can be fully utilized, as it can be regularly crossed by aircraft of NATO and other partners. In contrast, there are fewer OS observation flights over the United States, as allies do not verify each other.

100 Treaty on Open Skies, loc. cit. (Fn. 13) – labelled OST in the following text and footnotes
101 OST, Article III 4., Annex A, Section I
102 OST, Article III 3., 10

The treaty takes into account the size of the overflown areas when determining maximum flight distances. It stipulates certain flight distance limits for designated OS airfields, from where observation flights have to commence. For example, there are limits of 250 km over the Danish Faroe Islands, 600 km over the Czech Republic, 1,200 km over Germany, 3,000 km over Alaska, and 6,500 km over the Asian part of Russia.[103]

The OST allows the use of certain sensors for observation flights that must not exceed a defined image resolution from a range of flight altitudes. A resolution of up to 30 cm is permitted for analogue (and later digital) optical panoramic and framing cameras as well as video cameras with real-time displays. This corresponds to the resolution of the best commercial satellite images. The certification of digital cameras, however, should only begin 16 years after the entry into force of the treaty. For the future, the treaty also provides for night-vision-capable infrared line-scanning devices with a resolution of 50 cm and sideways-looking radar systems (Synthetic Aperture Radar) with a resolution of three meters.[104]

The resolution of sensors is sufficient to differentiate between missile types, battle tanks, armoured infantry fighting vehicles, other armoured combat vehicles, artillery systems, aircraft and helicopters. However, sensitive information about radio and radar emissions or the software of target acquisition and guidance systems cannot be detected.

As not all States Parties possess their own OS observation aircraft or sensors, nine states agreed to share the use of aerial camera equipment ("Pod Group"). In addition, the treaty permits the use of aircraft of third states or the observed state if it has been certified for observation flights.[105]

OS observation flights are launched on short notice. The observing state must notify the observed state of the intent to do so at least 72 hours in advance. However, it will be informed of the selected flight route only after the observers have arrived in the observed state at the agreed point of entry. Once the route has been announced, a coordination process takes place, which may take no longer than eight hours.[106] The observed state may change the planned route only in case of force majeure or unavoidable flight safety requirements.[107] Twenty-four hours after the submission of the flight plan, the observation flight may commence, and it must be completed no later than 96

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103 OST, Article III 11., Annex A Section III

104 OST, Article IV 1., 2

105 OST, Article VI Section I 1., 2. Germany had to make use of this option after the crash of its national OS observation aircraft in 1997. "Pod Group" (with sensor package SAMSON): Belgium, Canada, France, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain.

106 OST, Article VI Section I 5. and Section II 6

107 OST, Article VIII Section I 4. and Section II 1

hours thereafter.[108] This limits the ability of the observed state to organize significant changes on the ground, such as major troop movements.

OS observation flights are, therefore, also more flexible than satellites, whose energy reserves are limited and allow only for a few changes in their defined orbits. In contrast, OS flights can be carried out on short notice with an appropriate flight route over an area selected by the observing state in accordance with situational requirements. Furthermore, observation flights in the agreed altitude range are also possible below cloud cover, which hinders optical satellite observation.

A more significant advantage of the OST compared to satellite observation, however, is its co-operative character of data collection. Observation flights are not only co-operatively agreed, but also conducted together. Escort teams of the observed state are always on board together with observers. They monitor that the provisions of the treaty, the flight plan and safety regulations are abided by. OS aircraft, cameras, and sensors are only allowed if they have been certified by the States Parties and checked by the escort team prior to the flights.[109] Therefore, OS footages are highly trustworthy.

In addition to the states participating in an observation flight, all other States Parties also receive the mission report. On request, they can purchase the image sequences obtained during the flights.[110] In this way, the results of the observation flights are shared with the 34 states, and the findings on military activities and the implementation of arms control agreements are multilateralized.

Such co-operative mechanisms for data collection provide states with an agreed data base, which can be used as a solid factual basis for security dialogue. In contrast to the exchange of data gained through national intelligence, findings from OS observation flights are not subject to prior political selection and evaluation. The fact that the data are jointly collected – so that their authenticity cannot be disputed – is one of the most striking advantages of the treaty. In addition, the treaty provides those State Parties, which do not possess national observation satellites, with an independent tool of data gathering and situational awareness that is suited to complement verification mechanisms of the CFE Treaty and the Vienna Document.

2.3.5 Other OSCE Documents

Global Exchange of Military Information[111]

In view of the geographical limitations of the CFE Treaty and the Vienna Document, in 1994 CSCE participating States recognized the importance of overall military transpar-

108 OST, Article VI Section I 9. and Section II 4 (E)
109 OST, Article III Section III and Annex G; Article IV 11. and Annex D; Article VI Section I 10.
110 OST, Article VI Section I 21.; Article IX Section IV
111 OSCE. Global Exchange of Military Information (DOC.FSC/5/96) 28 November 1994

ency in all of their national territories and of national armed forces stationed abroad. Consequently, they agreed to provide military information on their global conventional force postures, including in territories not subject to arms control and CSBM instruments, however, at much lower levels of disaggregation. The Global Exchange of Military Information (GEMI) takes place once in a calendar year and reveals the structure of major formations and their weapon holdings. As opposed to the CFE Treaty and the Vienna Document, it includes naval forces.

Stabilizing Measures for Localized Crisis Situations[112]

Based on the experience made in territorial conflicts in former Yugoslavia and at the southern fringes of post-Soviet states, CSCE participating States recognized the need to act as such crises posed a threat to sub-regional stability in the CSCE area. However, the involvement of non-state actors required special measures for containing unresolved territorial disputes. As such actors did not represent internationally recognized entities, international state-to-state agreements could not be applied without providing status, which was strictly opposed by central governments. Instead, special status-neutral arrangements were necessary to maintain ceasefire agreements and avoid new military escalation in a politically fragile environment. In 1993, CSCE participating States adopted a political document called Stabilizing Measures for Localized Crisis Situations. They contain a number of status-neutral measures to increase the transparency of military activities, enable contacts through mediation, prevent incidents and reduce risks of new escalation of conflicts.

Code of Conduct[113]

At the CSCE Summit in Budapest 1994, the CSCE participating States adopted the Code of Conduct on Politico-Military Aspects of Security. With this document, they recognized the importance of democratic control of armed and security forces and the rule of law that governs their leadership, training and conduct in peace and war. It includes a commitment to educate and train armed forces on the provisions of international humanitarian law and implement such rules in armed conflict.

Principles Governing Conventional Arms Transfers and Non-Proliferation

As a regional arrangement under chapter VIII of the UN Charter, the OSCE is required to implement UNSC decisions and other UN instruments and support efforts to maintain peace and stability globally. In this context, OSCE participating States adopted two documents: “Principles Governing Conventional Arms Transfers” (1993) and “Principles Governing Non-Proliferation” (1994).

112 CSCE. Stabilizing Measures for Localized Crisis Situations, loc. cit. (Fn. 25)
113 CSCE. Code of Conduct on Politico-Military Aspects of Security. Budapest, 3 December 1994 (DOC.FSC/1/95)

- With the "Principles Governing Conventional Arms Transfers"[114] states pledged to promote implementation of the UN Register on Conventional Arms within the OSCE area. Recognizing the potential destabilizing nature of large flows of conventional arms into conflict areas, the instrument was adopted by the UN General Assembly after the war in Iraq of 1991. It requested UN Member States to make their arms exports and imports transparent by annual information to the UN Secretariat. Similar to the CFE Treaty, it specifies five weapon categories of ground and air forces, namely battle tanks, armoured combat vehicles, artillery systems, combat aircraft and attack helicopters, and adds two further categories, namely navy ships and missile systems. In addition, it suggests states also to convey information on their holdings in such arms categories. After 2000, the UN Register on Conventional Arms was complemented by the category of small arms and light weapons and the sub-category of unmanned combat aerial vehicles (drones).
- After the experience made in Iraq with clandestine projects to acquire weapons of mass destruction and their illegal use against parts of the population, the Conference on Disarmament in Geneva in 1993 concluded negotiations on the Chemical Weapons Convention (CWC). It was soon adopted by the UN General Assembly and entered into force in 1997. In Europe, the question of the future non-nuclear status of three post-Soviet states arose. NATO allies and Russia wanted to keep up the nuclear non-proliferation regime and extend the Treaty on Non-Proliferation of Nuclear Weapons (NPT) in the 1995 review conference for an unlimited period of time. They urged Belarus, Kazakhstan and Ukraine to hand over nuclear weapons stationed on their territories to Russia and join the NPT as non-nuclear states. That was agreed in 1994 in context with a pledge of the United States, the United Kingdom and the Russian Federation not to use or threaten to use nuclear weapons against these countries and respect their sovereignty and territorial integrity ("Budapest Memorandum").

Against this background, the "Principles Governing Non-Proliferation"[115] became another focus of OSCE participating States. They committed to adhere to international non-proliferation instruments, in particular, respect and implement the requirements of the Chemical Weapons Convention (CWC), the Biological and Toxic Weapons Convention (BTWC) and the Treaty on Non-Proliferation of Nuclear Weapons (NPT), co-operate internationally to ensure their global application and observe related export controls on relevant materials, including on missiles capable of delivering weapons of mass destruction.

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114 CSCE. Principles Governing Conventional Arms Transfers, 25 November 1993 (DOC.FSC/3/96/Rev.1, 25 February 1998) (including Decision No. 13/97 of the Forum for Security Co-operation (FSC.DEC/13/97), dated 16 July 1997)

115 CSCE. Principles Governing Non-Proliferation, 3 December 1994 (DOC.FSC/6/96)

2.4 Conclusions

Ever since détente began to thaw the Cold War freeze in Europe, arms control and confidence-building agreements have played a crucial role in overcoming suspicion and distrust among states. They have provided a framework of politico-military stability and strategic reassurances. Together with other OSCE key documents, the legally binding Two-plus-Four Treaty and NATO-Russia co-operation formats they have allowed for a historical change of paradigm from all-out confrontation through peaceful co-existence to full-scale political and security co-operation within the OSCE.

OSCE participating States recognized that the value of arms control lies in security co-operation, balancing strategic interest and exercising mutual restraint in regard of military offensive capabilities. To that end, they accepted the principle of "sufficiency" and agreed on limitations, transparency and verification of armed forces in the framework of continuous security dialogue. The 1996 Lisbon Framework for Arms Control confirmed these principles and provided a solid ground for the future development of arms control.

States were aware that arms control and CSBMs can mitigate security concerns only if they respond to threat perceptions and security concerns prevailing at the time within a given geopolitical landscape. With the bipolar limitation concept, transparency and verification provisions of the CFE Treaty, states responded to the bloc confrontation of the Cold War in an attempt to prevent its return. To that end, they established numerical parity of the two blocs at lower force levels and abolished large-scale or surprise attack capabilities in context of alliance operations. In order to maintain military stability, states agreed to keep the CFE regime even after the WTO and the Soviet Union had been dissolved.

Almost all States Parties demonstrated their political will to embark on co-operative security by fully implementing CFE provisions. In particular, the large amount of TLE reductions was unprecedented in the peace-time history of Europe. The Russian Federation and Germany bore the brunt of these reductions.

Furthermore, states recognized that limitation concepts must tackle crucial weapon systems, which, if combined, generate offensive capabilities. They also recognized that ground-taking military operations could be conducted successfully only, if geographical and time conditions were taken into account, which allowed rapid deployment and massive concentration of forces in the centres of gravity. The CFE limitation regime was suited to reduce offensive capabilities significantly, delay residual attack options and diminish their impact.

With additional politically binding transparency and verification provisions the Vienna Document became the principal confidence- and security-building arrangement in Europe.

With all OSCE participating States having common ownership, the VD is the OSCE's core instrument for security co-operation in the military field.

As opposed to the CFE Treaty, the VD does not aim at bipolar legally binding limitations but offers verification options for all participating States with a focus on risk reduction through transparency and observation of those military activities, which could potentially be used for preparing offensive operations. With that, the OSCE established a culture of openness, mutual trust and co-operation that allowed states to observe long-term development of military capabilities and detect short-term build-up of military offensive options.

Due to its multilateral structure, inclusive membership, lack of limitations of military holdings, less intrusive transparency and verification, and its non-legally binding nature, the VD seemed better adaptable to geopolitical changes in the OSCE space than the CFE Treaty, all the more as it did not require lengthy ratification processes. For the same reason, it can only complement but not replace the CFE Treaty when it comes to ensuring military stability in Europe. Moreover, also adaptations of the VD can be achieved only once consensus has been reached in the OSCE. That became possible in 1992, 1994 and 1999.

The Treaty on Open Skies (OST) permits co-operative observation flights over the territories of the States Parties in the OSCE area between Vancouver and Vladivostok. As opposed to the CFE Treaty and the Vienna Document, its area of application includes also the territories of the United States, Canada and the Russian Federation east of the Urals. The treaty offers another tool for ensuring transparency of military activities, which is less vulnerable to force majeure on the ground, and provides for additional verification of conventional and nuclear arms control agreements. The OST could unfold its full value only in 2002, after ten years of provisional application, when the Russian President Putin had initiated its ratification by the State Duma and the Russian Federal Council.

Together, all three core instruments of arms control and CSBMs formed an interwoven net of co-operative security measures geared to ensure military restraint, transparency and predictability of military capabilities, intentions and activities. This security architecture also enabled states to maintain frequent direct military contacts, which facilitated mutual understanding of military matters and allowed for a realistic assessment of the situation. As opposed to sole reliance on national intelligence, co-operative mechanisms for data collection provided states with an agreed data base, which could be used as a solid factual basis for security dialogue. Therefore, political selection of data was less likely to derail friendly relations. In this co-operative politico-military framework, the CFE Treaty was recognized as the "corner stone" of European stability and security.

States also recognized that the continued existence of unresolved local territorial disputes had the potential to destabilize sub-regions. However, in the 1990s states refrained from exploiting such residual conflicts for renewed geopolitical zero-sum games and agreed on a partition of responsibilities to keep such conflicts at bay. To that end, they enforced ceasefire agreements and deployed peace-keeping forces, which were monitored by the OSCE and the UN. In particular, the Dayton Peace Accord and the monitoring of its connected sub-regional arms control and CSBM provisions was an example for cooperation among all major powers in Europe. The CFE Treaty and the Vienna Document served as blueprints.

In regard to local conflicts involving non-state actors, states were aware that any application of inter-state instruments entailed the risk to provide status and thus to prevent the outcome of negotiations on the eventual conflict resolution. Therefore, special status-neutral measures had to be applied to stabilize the military situation in the disputed areas. Such measures were reflected in respective ceasefire agreements and in the 1993 OSCE Document on Stabilizing Measures for Localized Crisis Situations.

The enlargement of NATO to the East, incorporating former Central and Eastern European WTO member states, changed the geopolitical conditions, on which conventional arms control was built. That was particularly true for the bloc-related limitation regime of the CFE Treaty. Therefore, NATO and Russia, together with other States Parties, agreed to adapt the CFE Treaty in order to maintain military stability and security in Europe. In particular, they replaced the bipolar group limitations by national and territorial TLE ceilings for every CFE States Party in Europe. However, they neither changed the definition of the area of application between the Atlantic and the Urals nor the scope of limited armaments and equipment (TLE) that were assessed to constitute offensive capabilities.

Such achievement was even more remarkable as renewed crises over Kosovo and the North Caucasus overshadowed negotiations. Despite of these frictions, at the 1999 OSCE Summit in Istanbul states managed to adopt three major European security documents:

- With the Adaptation Agreement to the CFE Treaty (ACFE), complemented by the CFE Final Act, states demonstrated their political will and conceptual ability to adapt conventional arms control to changing geopolitical conditions and, thereby, maintain stability and security co-operation in Europe. To that end, the ACFE, upon entry into force, was opened for accession by other OSCE participating States with territories in the area of application between the Atlantic and the Urals.
- With the Charter for European Security and the attached OSCE Platform for Co-operative Security, participating States recognized the principal role of the OSCE for security co-operation and conflict settlement in Europe. They committed to ensure that the evolution of multinational military and political organizations is fully compatible with the OSCE's comprehensive and co-operative concept of

security and is also fully consistent with arms control objectives. Accordingly, no participating State or organization or grouping should strengthen its security at the expense of the security of others, or regard any part of the OSCE area as a particular sphere of influence.
- With the fourth version of the Vienna Document 1999, participating States strengthened regional confidence- and security building measures, drawing lessons from local territorial conflicts in the OSCE area.

Such developments were guided by the principles enshrined in the 1996 Lisbon Framework for Arms Control. It had underlined the principles of sufficiency, limitations, transparency and verification, which were integrated in the ACFE concept. The Framework had also stressed the necessity to fully implement arms control agreements at all times, including in times of crisis, and to ensure through a process of regular review undertaken in the spirit of co-operative security that arms control agreements continue to respond to security needs in the OSCE.

3 Relevance of existing conventional arms control instruments for ensuring security in the OSCE area today

3.1 Geopolitical changes to the OSCE security landscape since 1999 and the erosion of conventional arms control

3.1.1 A promising re-start for security co-operation after 1999

With the NATO-Russia Founding Act of 1997 and the following signing of the Adaptation Agreement to the CFE Treaty (ACFE), the fourth version of the Vienna Document and the adoption of the Charter for European Security at the OSCE Summit in Istanbul in 1999, the political and conceptual foundation was laid for maintaining a co-operative security architecture in Europe in the face of new geopolitical changes.

The new focus of conventional arms control agreements was on preventing sub-regional concentration of forces through national and territorial TLE ceilings rather than keeping a balance of forces between two military blocs. At the same time, states had committed to strengthen the OSCE as the common centre of security co-operation, conflict prevention and conflict settlement, and develop a common space of equal security without dividing lines. With that concept, states responded to the disappearance of the Eastern bloc, the enlargement of NATO to Central and Eastern Europe, and the experience made in the past decade with inter- and intra-State conflicts after the collapse of the Soviet Union and former Yugoslavia.

During the following three years, states took several steps to make progress in implementing these agreements:

- The Russian Federation confirmed commitments to withdraw TLE from the North Caucasus in order to comply with agreed ACFE flank area sub-ceilings.[116] This process was accomplished in 2001 and recognized by NATO Member States in 2002 after a coordinated series of about 40 inspections in the Russian Federation.
- Russia also began reducing stationed forces from Georgia, disbanding the Russian Military Bases (RMB) at Gudauta and Vaziani and withdrawing TLE and ammuni-

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116 Statement of the Prime Minister of the Russian Federation Putin on the Significance of the OSCE Summit in Istanbul, Moscow (ITAR-TASS), 1 November 1999 (Original Russian), unofficial German translation in: Zentrum für Verifikationsaufgaben der Bundeswehr (ed.), Vertrag über Konventionelle Streitkräfte in Europa (KSE -Vertrag) – Textsammlung – Vol. 2, p. 133

tion from the Trans-Dniester Region as stated in the CFE Final Act and the OSCE Summit Declaration. The uploading was monitored by the OSCE in Moldova while trains arriving in Russia were observed by NATO member states.

- In 2000 and 2001, Germany invited CFE States Parties to take part in two large-scale verification exercises involving three combat brigades deployed in the field over large areas. The objective was to train implementing new ACFE provisions for observations in cases in which ACFE territorial ceilings would be exceeded temporarily. In 2002, Germany invited 15 potential candidate countries to a special ACFE seminar to encourage accession once it had entered into force.[117]
- In the same year, Russia had destroyed 14,500 conventional armaments east of the Urals. It also exercised restraint as to additional stationing of substantial combat forces in the regions of Pskov, Kaliningrad and the former Leningrad Military District as agreed at the first CFE Review Conference in 1996.[118]
- At the second CFE Review Conference in 2001, a majority of CFE States Parties expressed the view that conditions for ratifying the ACFE were fulfilled as they related to ACFE limitation rules. Another group of states underlined that some commitments enshrined in the CFE Final Act were still outstanding and had to be fulfilled before these states were able to move forward on national ratification.[119]
- Complementing these positive developments, States Parties to the Open Skies Treaty (OST) eventually accomplished ratification processes so that the OST entered into force in 2002.

After the terror attack on 11 September, 2001 against the World Trade Centre in New York, N.Y., all OSCE participating States including Russia showed solidarity with the United States and agreed on respective anti-terror measures, including in the UN Security Council. NATO Member States invoked defence commitments in accordance with Article 5 of the Washington Treaty and contributed troops for anti-terror and stability operations in Afghanistan while Russia opened its national air space and rail communications for NATO's military transports.

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117 The author represented Germany in organizing such exercises and seminars.

118 After Russia had accomplished such obligations, Germany came to the conclusion that the conditions for the ratification of the ACFE were fulfilled. Cf. Auswärtiges Amt, Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2001), Berlin, 24 April 2002, p. 12

119 Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiations on Personnel Strength. JCGEW216/v.1 (CFE DOC/1/ 01) Vienna, 1 June 2001. https://www.osce.org/files/f/documents/1/7/14121.pdf

3.1.2 NATO's enlargement and arms control policies, and the role of protracted conflicts

Despite this promising development of security co-operation after the turn of the century, new frictions again put strain on NATO-Russia relations. From 2002 onwards, NATO stated that Russia had first to fulfil all commitments contained in the Istanbul CFE Final Act, in particular referring to Georgia and Moldova, before allies were in a position to move forward on ratification of the ACFE.[120] However, even among allies no unity existed in defining of what constituted "all" such commitments and at what time they had to be implemented, all the more all CFE States Parties had committed in the same document to completing national ratification procedures expeditiously.[121]

In the Istanbul Final Act, CFE States Parties had underscored the central importance of full and continued implementation of the treaty and its associated documents until and following entry into force of the ACFE. In this context, states took note of the statement of the Russian government on 1 November 1999, in which Russia committed to all obligations under the Treaty and, in particular, to agreed TLE levels.[122] This included Russian flank ceilings that had been temporarily exceeded. Russian compliance with agreed flank levels was accepted by NATO in 2002.

In addition, a number of states, including the United States, Georgia, Moldova, the United Kingdom and Poland, wanted to replace Russian Peacekeeping Forces (PKF) in disputed territories, however, without creating reasons for terminating ceasefire agreements in which mandates for Russian and trilateral PKF were enshrined. Germany, France and other allies were of the view that Russian commitments to withdraw forces from Georgia and Moldova covered regular stationed forces only while PKF with OSCE or UNSC approval were expressively exempted from ACFE provisions. Underlining the CFE principle of host nation consent for the stationing of forces became the common denominator for future NATO statements.

Under President George W. Bush, ratification of the ACFE lost relevance as an element of security co-operation, which the Foreign Politics of the Unites States had been committed to under his predecessors. The Republican majority of the U.S. Congress

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120 Cf. NATO. Prague Summit Declaration. Press Release 127/2002, Prague, 21 November 2002, No. 15 https://nato/int/docu/pr/2002/p02-127e.htm

121 In early 2003, Germany confirmed that Russia complies with all ACFE ceilings and even stays significantly below such limitations. It regrets, however, that withdrawal of remaining ammunition from Moldova and Russian-Georgian negotiations on temporary deployment of stationed forces had been delayed. It warns that "some states" make ratification conditional to fulfilment of those political Istanbul commitments, which were not relevant to the ACFE. Auswärtiges Amt, Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2002), Berlin, 28 May 2003, p. 36

122 See Fn. 116

distrusted the OSCE concept of co-operative security with Russia, still found itself in a geopolitical competition with the former Cold War adversary and idealized it as a struggle between freedom and oppression. However, the Bush-Administration made efforts to use Moscow's interest in the entry into force of the ACFE in order to comply with the conditions the Republican majority of the U.S. Congress had imposed on 14 May 1997 on former President Bill Clinton. Such conditions constrained his future arms control policies and made it incumbent on the President to pursue three central objectives, namely, to support the territorial integrity of Moldova and Georgia within their former Soviet boundaries, to achieve the complete withdrawal of Russian forces from disputed territories, including peacekeeping forces, and to press forward with the extension of NATO towards Eastern Europe in order to promote the "freedom agenda".[123]

The military invasion of the United States in Iraq in 2003 became another issue for renewed dispute. Russia and China protested and held that the attack constituted an illegal aggression and a violation of international law. Also Germany and France had denied consent in the UN Security Council and most West-European States did not participate in the campaign. In contrast, U.S. Secretary of Defence Donald Rumsfeld backed up the "New Europe" in building a "coalition of the willing" and, thereby, risked the division of the alliance.

In the same year, a bilateral attempt of Moldova and Russia failed to achieve a breakthrough in settling the status of the Trans-Dniester region. A draft agreement (Kozak Memorandum) would have granted the region a strong autonomous status within a federal Moldovan Republic and legitimized the stationing of limited Russian forces up to 2020. After diplomatic interventions by U.S. and EU representatives, Moldova's President withdrew from the agreement shortly before the signature ceremonies were scheduled to take place. In early 2004, Russia stopped the withdrawal of ammunition from the site in Kolbasna. At that point, 50% of the ammunition and all Russian TLE had been withdrawn. Besides the PKF, another Russian light infantry battalion remained there designated to guard the rest of the ammunition.[124]

While Moscow had withdrawn Russian Military Bases (RMB) from Gudauta and Vaziani, Georgia, as scheduled by 2001, further negotiations on the conditions for the withdrawal of remaining regular troops from the RMB Alkalkalaki and Batumi appeared to be more difficult and were delayed until 2005. Georgia declined to grant to Russia the right of a

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123 Cf. Ulrich Kühn, From Capitol Hill to Istanbul. The Origins of the Current CFE Deadlock. Hamburg, Centre for OSCE Research (CORE), 2009 (Working Paper No. 19), p. 2, 9–13; see also Toal, Near Abroad, (Fn. 14), pp. 98–100, 103–104, 109–111, 115–124, 205–206

124 Cf. Mihai Gribincea, Withdrawal of the Russian Forces from Moldova – The Key to Revitalizing the CFE Treaty, in: W. Zellner, H.-J. Schmidt, G. Neuneck (ed.), Die Zukunft der konventionellen Rüstungskontrolle in Europa. The Future of Conventional Arms Control in Europe. Baden-Baden (Nomos) 2009, pp. 292–302

temporary deployment of forces in these two RMB as agreed in December 1999. Also, the use or common use of remaining facilities in Gudauta as an anti-terror centre proved to be a stumbling block. Tbilisi rejected this option, which was envisaged in the same agreement and had been attached to the CFE Final Act. The agreement responded to repeated operations of Chechen fighters in the Georgian Pankisi valley bordering Chechnya. Also an OSCE border monitoring mission had aimed at observing the border area in order to prevent the intrusion of Chechen guerrilla.[125] In contrast to the denial of an anti-terror centre commonly operated with Russia, Georgia accepted a "train and equip program" offered by the United States.[126]

By 2004, four CFE States Parties had ratified the ACFE, namely the Russian Federation, Belarus, Kazakhstan and Ukraine.[127] In the same year, the second enlargement of NATO to the East took place, this time including Slovakia, Romania, Bulgaria as well as the three Baltic States and Slovenia. For conventional arms control, it entailed significant consequences:

- With all former non-Soviet Warsaw Pact member states becoming NATO allies, the conceptual foundation of the CFE Treaty of 1990/92, and in particular its group-based limitation regime, became even more irrelevant than after the first enlargement of 1999.
- As Romania and Bulgaria belonged to the CFE flank area in which regional sub-ceilings of the "Eastern Group" of States Parties applied special CFE regulations for the stationing of forces in such sensitive zones had to be observed and coordinated with other "Eastern flank states", including Russia.[128]
- With the Baltic States and Slovenia joining the alliance, for the first time, four NATO member states were not bound by conventional arms control limitations. Since no legally binding territorial ceilings applied in these areas, the stationing of allied forces was not excluded on legal grounds. This situation would have changed only if and when the ACFE entered into force and these countries joined the ACFE.
- However, as NATO member states did not initiate national ratification procedures and insisted that Russia had to fulfil "all" Istanbul commitments first, the way towards entry into force of the ACFE was blocked.

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125 Cf. Rory McCorley, The 1999–2004 Georgia Border Monitoring Operation and the 2005–2009 Follow-up Projects – Lessons Learned and Potential Offerings for Future Engagement. In: IFSH /ed.), OSCE Yearbook 2015, Baden-Baden 2016, pp. 343–357 https://ifsh.de/file-CORE/documents/yearbook/english/15/McCorley-en.pdf

126 U.S. Department of State, Archive, Georgia Train and Equip Program (GTEP), Krtsanisi 9/11 Training Area, Georgia, February 1, 2003 https://2001-2009.state.gov/r/pa/ei/pix/b/eur/18737.htm

127 Ukraine did not deposit its instrument of ratification with the Netherlands as depositary.

128 CFE Treaty, loc. cit. (Fn. 12), Article V, 1. (A) – (C) Accordingly, temporary deployment is allowed only within the same Group of States Parties.

- In Moscow's view, the Russian security situation worsened, when the exclave Kaliningrad was now encircled by NATO member states with no legal agreement preventing an accumulation of NATO forces in this region.

Nevertheless, Moscow kept trying to bring the ACFE into force and requested the Baltic States to join the ACFE. In 2005, despite deteriorating bilateral relations between Moscow and Tbilisi, negotiations on the conditions for the withdrawal of remaining regular Russian forces from Georgia made progress. However, Georgia also expressed doubt whether the RMB Gudauta in Abkhazia (an airborne regiment) had been disbanded, as reported by OSCE experts that visited the base on 15 June 2002 upon Russian invitation.[129] The experts of the OSCE Mission to Georgia had also confirmed a Russian statement that after the withdrawal of the RMB some facilities were used as a logistical base by about 200 peacekeepers. For further verification, Germany tried to facilitate a status-neutral inspection on the spot under German lead.[130] While Moscow agreed in principle, Tbilisi was concerned because of status questions and demanded the presence of Georgian escorts at the base. As no solution could be found that satisfied Georgian demands, Tbilisi did not give consent to the inspection. In consequence, this verification option eventually failed to materialize and the question whether the Russian withdrawal was accomplished remained open to different interpretations.

Despite such bilateral Russian-Georgian problems, in 2006 both sides managed to conclude a treaty on the eventual withdrawal of remaining regular Russian forces from Alkalkalaki, Batumi and Tbilisi, which was to be accomplished by the end of 2007.[131] At the same time, Russia began to warn Western allies that the second enlargement of NATO had again changed the geopolitical landscape in Europe to the detriment of Russian security, and that the continued blockade of the entry into force of the ACFE would not go on without serious consequences for the political relevance of the CFE Treaty of 1990/92.[132]

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129 OSCE Mission to Georgia, OSCE experts visited Gudauta base in Abkhazia, Georgia. Tbilisi, 17 June 2002.

130 The author was involved as German representative. Cf. also Sergi Kapanadze et al., Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context. Hamburg (CORE), January 2017 (Working Paper No. 28), p. 21

131 Vladimir Socor, Agreements signed on Russian Military Withdrawals from Georgia. Eurasia Daily Monitor (The Jamestown Foundation), April 4, 2006 http://jamestown.org/program/agreements-signed-on-russian-military-withdrawal-from-georgia/

132 Cf. Speech of the Russian President Vladimir Putin at the 43rd Munich Security Conference (German translation) in: ag-friedensforschung.de http://www.ag-friedensforschung.de/themen//Sicherheitskonferenz/2007-putin-dt.html see also Vladimir Putin, Speech and the Following Discussion at the Munich Conference on Security, President of Russia, 10 February 2017 http://en.kremlin.ru/events/president/transcripts/24034; cf. Stephen Blank, Mission Impossible: Pursuing Arms Control with Putin's Russia, London, European Leadership Network, January 2018

At the third CFE review Conference in 2006, Moscow demanded an end to that blockade and the immediate commencement of national ratification procedures by all CFE States Parties. Allies responded with the standard formula that they would move forward on national ratification procedures once Russia had fulfilled "all" outstanding Istanbul commitments. Inside the alliance, however, still no unity existed about the exact meaning of this statement. For the first time, it was not possible to reach agreement on a final document of a CFE conference.[133]

At the same time, new frictions burdened the relations between a number of Western allies and Russia. Already in 2001, the United States under President George W. Bush had decided to withdraw from the Anti-Ballistic Missiles Treaty (ABM Treaty) on the limitation of strategic missile defence. The reason given was the suspected development of long-range ballistic missiles by Iran and potentially other states that could threaten Europe and the U.S. As a countermeasure, the U.S. agreed bilaterally, i.e. outside NATO, with Poland and the Czech Republic to install on their territories ABM-sites by 2007, which would contain ten interceptors and target-acquisition and tracking radar systems. Russia suspected that this stationing could be the beginning of a development leading to a regional missile defence regime that could potentially undermine Russian nuclear second-strike capabilities.

Also in 2007, and based on bilateral agreements, the United States stationed small rotating ground and air-combat units in Romania and Bulgaria. Again, allies were informed but not consulted. The U.S. declared that such forces were "non-substantial" and, therefore, would not violate respective provisions of the NATO-Russia Founding Act.[134] However, both host countries belonged to the CFE "Eastern Group of States Parties" where special TLE-ceilings, intra-group stationing rules and intra-group coordination requirements had to be observed in accordance with the CFE Treaty. Russia saw the rationale for CFE/ACFE flank ceilings generally undermined and requested to terminate Russian national flank sub-ceilings.[135]

133 Cf. Auswärtiges Amt, Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2007), Berlin, 7 May 2008, p. 44

134 Statement of the Delegation of the United States at the Joint Consultative Group, Vienna, July 2007; cf. also Dorinel Moldovan, Plamen Pantev, Matthew Rhodes, Joint Task Force East and Shared Military basing In Romania and Bulgaria. Marshall Center, Occasional Paper No. 021, September 2009 https://www.marshallcenter.org/en/publications/occasional-papers/joint-task-force-east-and-shared-military-basing-in-romania-and-bulgaria-0

135 Cf. Vladislav L. Chernov, The Collapse of the CFE Treaty and the Prospects for Conventional Arms Control in Europe, in: W. Zellner, H.-J. Schmidt, G. Neuneck (ed.), Die Zukunft der konventionellen Rüstungskontrolle in Europa. The Future of Conventional Arms Control in Europe. Baden-Baden (Nomos) 2009, pp. 184–189

In the meantime, bilateral relations between the United States and Georgia had developed to a "strategic partnership" in which both sides supported each other's political positions and military action. Washington actively promoted Tbilisi's ambition to join NATO and, as a pre-condition, integrate Abkhazia and South-Ossetia in Georgia within her former SSR borders. While strong U.S. advisory teams trained and equipped Georgian forces, Tbilisi contributed to the U.S.-led stationed forces in Iraq with the third strongest allied force contingent.[136]

Russia responded with stiff resistance to the enhanced U.S. presence in the Black Sea and Caucasus region and to the attempts to pull Georgia and Ukraine into the Western camp. In consequence, Moscow revised its position on protracted conflicts and turned from a "status-neutral" mediator in the 1990s to a supporter of separatist regimes. Thereby, it pursued the objectives to contain United States and NATO influence in the region.

3.1.3 The erosion of conventional arms control and the Russo-Georgian war of 2008

The host of problems that had been accumulated in early 2007 did not only burden relations between the United States, a number of allies and Russia, but also threatened to destroy security co-operation in Europe. In his speech at the Munich Security Conference in February 2007, President Putin criticized this development and warned of the erosion of the European security architecture in general and conventional arms control in particular.[137]

Shortly thereafter, Moscow requested to hold an extraordinary conference of CFE States Parties claiming that serious developments had undermined Russian security and questioned the validity of the CFE Treaty of 1990/92. It demanded that the conference need to deal with six Russian requests to save conventional arms control in Europe:

- Immediate ratification of the ACFE by all CFE States Parties
- Immediate accession of the Baltic States to the ACFE with agreed territorial ceilings
- Reducing of territorial ceilings by Poland, the Czech Republic, Hungary and Slovakia as promised in the Istanbul CFE Final Act of 1999
- Definition of the term "substantial combat forces" as contained in the NATO-Russia Founding Act of 1997
- Relinquishing of the Russian flank sub-ceilings provided for by the ACFE
- Reestablishment of the balance of forces in Europe[138]

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136 Cf. G. Toal, Near Abroad, (Fn. 14), pp. 108 ff., 119–124, 144–149

137 See Fn. 116

138 Cf. Auswärtiges Amt, Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2008), Berlin, 21 January 2009, pp. 26–27; cf. Also Jeffrey D. McCausland, Conventional Arms Control in Europe – Quality, Quantity and Stability, in: W. Zellner, H.-J. Schmidt, G. Neuneck (ed.), Die Zukunft der konventionellen Rüstungskontrolle in Europa. The Future of Conventional Arms Control in Europe. Baden-Baden (Nomos) 2009, pp. 222–234

Moscow announced it would suspend the CFE Treaty if no satisfying answers to these questions could be found within six months. On 12 December 2007, Russia suspended implementing the CFE Treaty, however, with some exceptions: It continued participating in the treaty-related dialogue in the Joint Consultative Group and provided charts once a year with aggregate Russian overall and regional TLE-holdings (except for the flanks). Thereby, it sought to demonstrate continued commitment to agreed force levels, in particular in the Baltic area.

Obviously, NATO was not prepared to give a comprehensive answer to the Russian demands immediately during the conference, which took place on 11-15 June 2007. However, thereafter the alliance rallied round a "Parallel Action Package" (PAP), which was geared to discuss with Russia how the outstanding commitments could be pursued "in parallel", including concrete steps initiating national ratification processes to enable entry into force of the ACFE.[139] With that, for the first time since 2001, allies deviated from the position that Russia had to fulfil all its commitments in full before NATO was able to move forward on ratification. Implicitly, they accepted that ratification of the ACFE was an Istanbul commitment, too.

The Alliance entrusted the United States to discuss the PAP bilaterally with Russia while Germany, France and Spain made special efforts to promote such talks with topical seminars and conferences. In addition, Germany organized a "structured dialogue" in the CFE Joint Consultative Group in Vienna on the six points that Russia had raised during the extraordinary CFE conference. Although such efforts produced some informal results in fall 2007 and spring 2008, infrequent bilateral U.S.-Russian talks made little progress. They finally faded away after many allies had recognized the independence of Kosovo from Serbia in February 2008 and NATO, at its Bucharest Summit in April 2008, assured Georgia and Ukraine of future NATO membership, though without specifying a concrete date and initiating a Membership Action Plan.[140]

While Russia criticized the decision of the majority of Western States to accept the unilateral declaration of independence of Kosovo from Serbia in February 2008, it enhanced its unofficial support for separatist regimes to counter the U.S. push for Georgia's accession to NATO. In May 2008, having observed certain Georgian mobilization efforts, Moscow began to repair the railroad leading from Sochi to Gali in Abkhazia, and deployed a 500 troops-strong PKF reserve unit to the region without consulting Tbilisi.[141]

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139 Auswärtiges Amt, Jahresabrüstungsbericht 2008, loc. cit. (Fn. 138)

140 NATO. Bucharest Summit Declaration. Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Bucharest on April 3, 2008. Bucharest, 3 April 2008 (Press Release 49/2008) https://www.nato.int/cps/ua/natohq/official_texts_8443.htm

141 For an overview see G. Toal, Near Abroad, (Fn. 14), pp. 141–165

However, the Bucharest Summit had also revealed discord within NATO: While the United States, the United Kingdom and East-European allies were in favour of accepting immediate accession of Ukraine and Georgia to the Alliance and turning the Black Sea area into a region dominated by NATO, Germany and France, supported by West-European allies, warned about destabilizing consequences and rejected the initiation of a Membership Action Plan.

Despite this ambiguous position of the Alliance, the Georgian leadership obviously felt encouraged by such NATO commitments and, particularly, by the strategic partnership with the United States. The first common military exercise in Georgia, which took place in the former Russian Military Base of Vaziani on 15-31 July 2008 with the participation of about 1,000 U.S. troops, was celebrated as a "historic" event.[142] Against this background, Tbilisi saw a strategic opportunity to resolve territorial disputes and integrate break-away regions by force. Several incidents in South-Ossetia in early July 2008 almost led to full-fledged war, but could be contained through diplomatic intervention by the OSCE, the EU and the United States.[143]

After renewed clashes in early August, Georgia on 7 August 2008 launched a full-scale attack on South-Ossetian militias and Russian PKF with the centre of gravity in the town of Zchinvali, which was severely shelled by Georgian artillery. The attack, involving four army and special purpose forces brigades, succeeded in the first 24 hours. Ossetian militias and Russian PKF suffered severe losses and had to retreat to inner quarters of the town and to surrounding hills, before units of the Russian 5th army launched a counterattack on 8 August through the Roki-Tunnel into South-Ossetia. Several days before, the 5th army had ended the KAVKAS 2008 exercise, which obviously served to prepare for such contingency. While most units had returned to peacetime locations, two battalion tactical groups were kept in alert close to the border and, thus, were in a position to respond in short time after receiving respective orders.

Within four days, Russian units succeeded in retaking Zchinvali and advancing up to the Georgian town of Gori, although the Georgian air defence achieved to shoot down several Russian aircraft. It had been strengthened by Ukrainian BUK-systems shortly before the outbreak of open hostilities and had received air intelligence from allies. In parallel, the U.S. Air Force transported units of the Georgian 1st brigade from Iraq back to Tbilisi. On 9 August, the Russian Black Sea Fleet began to blockade the Georgian coastline and to land naval infantry and army units in Abkhazia. From there, Abkhaz and

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142 Reuters, U.S. troops start training exercise in Georgia ("Immediate Response 2008"), July 15, 2008 https://www.reuters.com/article/us-georgia-usa-exercises-idUSL1556589920080715

143 The author participated in the OSCE de-escalation mission as representative of Germany

Russian forces on 10 August launched a second charge and occupied some Georgian settlements east of the Inguri River.[144]

The war ended on 12 August 2008 after diplomatic intervention of the Finnish OSCE Chair and the French Presidency of the EU. Together, they brokered a ceasefire agreement between Georgia and the Russian Federation requesting both sides to retreat their forces back to the positions held before 7 August. At the same time, an accord was reached that the EU would monitor the ceasefire agreement complemented by OSCE military observers, which would be reinforced. After the EU Monitoring Mission for Georgia (EUMM) was established in October 2008, Russian forces withdrew to the lines held before the war. However, due to different interpretations of the French and Russian text of the agreement, Moscow held the view that the EUMM was entitled to operate only in the territory controlled by the Georgian government but had no mandate for observation in South-Ossetia.[145]

Shortly thereafter, on 17 August 2008, Moscow announced to recognize both Abkhazia and South-Ossetia as independent states. It claimed that any prospects of a peaceful integration of the two break-away regions into Georgia had been proven to be unrealistic. Obviously, Moscow also reacted on the declaration by Tbilisi that it considered the ceasefire agreements of 1992 and 1994 as null and void. As these agreements had provided mandates for the presence of Russian PKF in the regions, Georgia implicitly denied host nation consent to that presence in future. Due to ensuing status disputes, the OSCE could not reach agreement to prolong the mandate for the OSCE mission in Georgia. Consequently, the OSCE mission in Tbilisi had to be withdrawn in June 2009, including the OSCE military observers in the region.

The developments leading to the armed conflict of August 2008 demonstrated a remarkable change of politics of a number of OSCE participating states. In the 1990s, all OSCE states had recognized that linking particular interests in local territorial disputes to wider strategic objectives had the potential to destabilize sub-regions and undermine overall security co-operation in Europe. Consequently, they refrained from exploiting such disputes for renewed geopolitical zero-sum games to the detriment of each other's security interest. Instead, they had put emphasis on continuing and strengthening co-operation, whereby arms control was to serve as an instrument to balance strategic

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144 Cf. Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Vol. I, (Geneva/Brussels), September 2009, p. 10–12 (No. 2, 3), 19 (No. 14), 22–23 (No. 19, 20) and Vol. II, pp. 204–225 https://news.bbc.co.uk/2/shared/bsp/hi/pdfs/30_09_09_iiffmgc_report.pdf; cf. Wolfgang Richter, Militärische Anfangsoperationen während des Georgienkrieges im August 2008, in: Russland-Analysen, 193 (4.12.2009), pp. 26–31

145 Cf. Kapadnadze et al., Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context. Hamburg (CORE), January 2017 (Working Paper No. 28), p. 23 f., footnote 18

interests and assure each other of continued strategic restraint. Therefore, the OSCE participating states agreed on a partition of responsibilities to keep local conflicts at bay.

Now, some states made security co-operation contingent upon preferred solutions to such conflicts. This change of policies, inducing the August War of 2008, had several repercussions for the OSCE security architecture and NATO-Russia relations in general, and conventional arms control in particular:

- It revealed that local territorial disputes involving major powers become inaccessible – and certainly cannot be resolved by force – when they are seen as pawns in a larger geopolitical zero-sum game.
- It showed that renewed geopolitical rivalry in Europe had the potential to destroy the co-operative security architecture of the OSCE. In particular, NATO-Russia relations suffered a serious set-back. Allies temporarily suspended the dialogue in the NATO-Russia Council.
- It demonstrated that linking conventional arms control to preferred solutions to local status conflicts would not advance arms control but rather destroy it. Thus, PAP talks were not resumed after the war while the CFE Treaty stayed suspended by Russia.
- It also raised the question why arms control instruments and CSBMs were not in a position to prevent armed conflict or, at least, to provide early warning so as to enable political leaders to take timely action. Obviously, a report of a CFE inspection that took place in June 2008 in Gori, close to the security zone around Zchinvali, had hinted to an unusual accumulation of arms and troops on site with tank units deployed in the field, others prepared for action and brand-new TLE, which had not been notified. However, the report failed to attract political attention.
- It reaffirmed the importance of status-neutral CSBMs in disputed territories as inter-state agreements cannot be applied due to concerns that they would pre-empt political solutions to open status questions. Thus, no transparency existed in regard of UTLE. Tbilisi's use of reconnaissance drones over such territories and Abkhaz and Russian air defence and offensive counter-air measures triggered armed clashes and disputes on the legality of drone and combat aircraft operations as they were seen as violations of both ceasefire agreements and the integrity of Georgian airspace.[146]

3.1.4 A failed restart for conventional arms control in Europe

In 2009, President Barack Obama recognized the importance of security co-operation, nuclear arms control and non-proliferation, and the need to "reset" bilateral relations

146 Independent International Fact-Finding Mission on the Conflict in Georgia, Report. Volume II, Geneva, September 2009, pp. 24, 46, 200 https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf

with Russia. Strategic stability talks were resumed and a New START Treaty on reductions and limitations of strategic nuclear weapons concluded in 2010. An attempt was made also to renew conventional arms control in Europe, although without any ambition to return to the CFE Treaty or the CFE Adaptation Agreement. To that end, informal talks were held in winter 2010/11 in a new format "at 34". That allowed for the participation of all 30 CFE States Parties plus the four NATO countries that were not bound by the CFE Treaty, namely the three Baltic States and Slovenia.

Initially, such talks "at 34" progressed well. It seemed to overcome the most difficult political hurdle, namely, to produce a compromise definition of the principle of "host nation consent" for the stationing of forces, which could enjoy acceptance by all participants. However, the formula that such consent pertains to states "within their internationally recognized borders" eventually did not meet consensus. After bilateral consultations, the United States and Georgia insisted that this formula had to be clarified to mean Georgia in its borders recognized before August 2008. That implied that Russia had to withdraw its recognition of South-Ossetia and Abkhazia as independent states. Thus, again conventional arms control was linked to political settlement of local status conflicts, and the emerging consensus was spoiled.[147]

After the 2011 review conference of States Parties to the CFE Treaty, NATO allies stopped providing Russia with annual CFE information exchanges, and Russia stopped providing annual charts that informed on aggregate Russian TLE holdings. In contrast, Russia ended its participation in consultations at the CFE Joint Consultative Group in Vienna only in 2015, after NATO-Russia relations had deteriorated further in the wake of the Ukraine crisis.

Before 2014, NATO-Russia relations were kept in a relatively relaxed mood although NATO did not change its "open door policy" and did not revise its Bucharest decision offering Ukraine and Georgia future accession to the alliance. In its Lisbon Strategic Concept of 2010[148] NATO reaffirmed this policy in principle but refrained from putting a concrete Membership Action Plan on its operational agenda. The strategy described terrorist attacks and regional instability as most dangerous challenges and defined collective defence, stability operations and co-operation as equally important tasks, which would guide the development of military capabilities and shape the mandates for missions abroad. However, allied intervention in Libya caused new frictions in 2011.

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147 Talks of the author with Delegates of NATO Member States, Vienna, July 2011; Auswärtiges Amt, Bericht der Bundesregierung zum Stand der Bemühungen um Rüstungskontrolle, Abrüstung und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jahresabrüstungsbericht 2011), Berlin, 29 Feb 2012, p. 26

148 NATO. Active Engagement, Modern Defence. Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation Adopted by the Heads of State and Government in Lisbon, No. 27, of 19 November 2010 https://www.nato.int/cps/en/natolive/official_texts_68580.htm

Moscow held that this intervention exceeded the mandate given by the UN Security Council and, thus, violated international law.

The OSCE under Greek and Kazakh chair in 2009 and 2010 tried to renew security co-operation. Based on the Corfu process, the OSCE Summit in Astana achieved to reaffirm the earlier acquis by the "Astana Commemorative Declaration" on the occasion of the 35th anniversary of the Helsinki Final Act.[149] Despite such rather rhetorical confessions, no viable attempt was made to renew conventional arms control.

3.1.5 The return of military confrontation to Europe

In March 2014, Moscow's annexation of the district of Sevastopol and the Crimean Peninsula and continued support for separatist militias in East-Ukraine brought about a fundamental change of the security paradigm in Europe. The Russian action contravened international law, the Budapest Memorandum and bilateral treaties with Ukraine. It revived threat perceptions in the West and restored historical fears and reservations towards Russia, particularly in Eastern and Central Europe.

Moscow's action came as a surprise to Europe. While its root causes can be traced back to the events of the year 2008, it obviously reacted on the victory of the Maidan movement. The Maidan protest wave was triggered in December 2013 by the question whether Ukraine would accede to an Association Agreement and a Deep and Comprehensive Free Trade Agreement (DCFTA) offered by the EU in the framework of the EU Eastern Neighbourhood Policy. Moscow assessed such offers as competing with own plans to establish closer economic and political ties with post-Soviet states within the Eurasian Economic Union (EEU). The Kremlin held that the EU DCFTA conditions would endanger the Russian market given the de facto free trade between Russia and Ukraine through open borders, and asked for trilateral coordination. While EU representatives initially declined such requests, they showed more openness to Russian proposals in early 2014. Still at the time of the Minsk Ceasefire Agreement in 2015, the President of France and the German Chancellor committed to pursue a policy in the EU towards establishing a common economic space between Lisbon and Vladivostok.[150]

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149 OSCE. Summit Meeting, Astana 2010, Astana Commemorative Declaration. Towards a Security Community, SUM.DOC/1/10/Corr.1*, 3 December 2010

150 Auswärtiges Amt, Erklärung der Präsidenten der Russischen Föderation, des Präsidenten der Ukraine, des Präsidenten der Französischen Republik und der Bundeskanzlerin der Bundesrepublik Deutschland zur Unterstützung des Maßnahmenpakets zur Umsetzung der Minsker Vereinbarungen, angenommen am 12. Februar 2015 in Minsk, Pressemitteilung, 12.2.2015 https://archiv.bundesregierung.de/archiv-de/meta/startseite/declaration-by-the-president-of-the-russian-federation-the-president-of-the-ukraine-the-president-of-the-french-republic-and-the-chancellor-of-the-federal-republic-of-germany-in-support-of-the-package-of-measures-for-the-implementation-of-the-misnk-agreements-adopted-on-february-12-2015-in-minsk-603989

However, the leaders of the Maidan movement and several Western supporters portrayed these trade-related decisions as a fundamental choice of Ukraine's political orientation between joining a free Western world or accepting Soviet-style Russian dominance. When President Victor Yanukovych during the EU Summit in Vilnius in November 2013 declined acceding to the DCFTA agreement, violent street fighting broke out in Kiev and other locations in West-Ukraine. After armed clashes between security forces and protesters involving the use of firearms and resulting in severe casualties, the Foreign Ministers of Germany, France and Poland attempted to mediate a peaceful way out of the crisis. However, although the ministers managed to broker an agreement that was accepted by all factions of the Parliament in Kiev, it was rejected by Maidan commanders who threatened to continue fighting. Based on recommendations of his security advisors, President Yanukovych then ordered security forces to retreat and fled the country while in East-Ukraine anti-Maidan forces assembled and started taking over local control with clandestine support by Russia.[151]

Moscow stated that the Maidan protest movement was instigated by the West and Ukrainian Fascist groups and denied accepting the new provisional government in Kiev. But obviously, it was not the DCFTA that dominated Moscow's risk assessment but rather the objective of the Maidan to join NATO.[152] With Ukraine's accession to NATO, Russia would lose control of the Black Sea Fleet in Sevastopol and Crimea and be pushed back to the mouth of the Don River behind the Sea of Azov while NATO's and the United States' defence commitments would be extended to most of the coast lines of the Black Sea.

Such an assessment had already overshadowed the war in Georgia in 2008 when the then Ukrainian President Victor Yushchenko warned he would curtail Russian harbour rights unless the Black Sea Fleet stopped blockading Georgian coastlines.[153] Presumably, this warning was the starting point for the Russian General Staff to develop a contingency plan for taking control of the peninsula in case that such geopolitical change was assessed imminent. In order to defend strategic interest, Russia did not shy away

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151 For an overview see G. Toal, Near Abroad, (Fn. 14), pp. 209–214; Wolfgang Richter, Die Ukrainekrise. Die Dimension der Europäischen Sicherheitskooperation. SWP-Aktuell 23, Berlin, Mai 2014; on the role of the OSCE: see Fred Tanner, The OSCE and the Crisis in and around Ukraine: First Lessons for Crisis Management. In: IFSH (ed.), OSCE Yearbook 2015, Baden-Baden 2016, pp. 241–250

152 President Putin had warned of the consequences of NATO's Bucharest Summit in April 2008. Accordingly, accession of Ukraine (and Georgia) to NATO would cross a "red line" for Russia's security. Cf. Vladimir Putin, Press Statement and Answers to Journalists' Questions Following a Meeting of the Russia-NATO-Council April 4, 2008. http://en.kremlin.ru/events/president/transcripts/24903; In February 2019, the Ukrainian Parliament decided to enshrine in the constitution the objective of accession to NATO and the EU. Cf. Andrej F. Novak/Andreas Umland, "Die Ukraine unterwegs in Richtung Westen", in: Neue Zürcher Zeitung, 8 February 2019

153 Interview with President Victor Yushchenko, Die Welt, September 11, 2008 https://www.welt.de/politik/article2429300/Ukraine-will-Russland-in-die-Grenzen-weisen.html

from violating international law, bilateral agreements and the CSCE Helsinki Final Act. It was not the first time since the end of World War II that a sovereign state in Europe was stripped of parts of its territory by force; but it was the first time since 1945 that such territory was annexed by another state.

Remarkably, Ukrainian forces in Crimea did not resist the infringement on Ukrainian sovereignty and territorial integrity although they were superior in numbers. About two thirds of the Ukrainian Black Sea Fleet troops turned to the Russian side and were integrated in the Russian Black Sea Fleet. When the Ukrainian government initiated an "anti-terror operation" against anti-Maidan forces in East-Ukraine in spring 2014, weak Ukrainian armed forces were complemented by volunteer battalions. While the number of casualties in the ensuing full-fledged war increased steeply, Germany and France tried to stop hostilities by diplomatic intervention.

With the "Normandy Format", together with the Presidents of Ukraine and the Russian Federation, Germany and France brokered the Minsk Agreement in late summer 2014. It aimed at ending offensive operations, disengaging forces and achieving political solutions to the conflict in Donbas with the objectives to restore peace and maintain the sovereignty and territorial integrity of Ukraine. However, Crimea was no subject to the Minsk Agreement. The OSCE had reacted immediately in March 2014 by activating field operations, establishing a trilateral contact group and dispatching the OSCE Special Monitoring Mission in Ukraine (SMM).[154] Remarkably, Russia had joined the consensus on a mandate for the SMM but denied its access to Crimea. But only with the second agreement in 2015 ("Minsk II")[155], which added more concrete political and military details to the Minsk I ceasefire agreement, was it possible to halt major offensive operations. Since then, the frontline has not moved significantly, although violations of the ceasefire occur on a daily basis. The OSCE prolonged and adapted the mandate for the OSCE SMM regularly, increased its personnel strength and enhanced its technical monitoring capabilities, inter alia, by reconnaissance drones.

NATO has reacted on new threat perceptions by reaffirming defence commitments and strengthening collective preparations for protecting allies at NATO's Eastern flank, inter alia, through increasing air and sea patrols, enhancing rapid reaction capabilities, conducting frequent large-scale military exercises, and adapting force postures. At the same time, allies stopped regular dialogue in the NATO-Russia Council and its expert groups.

Moscow, in turn, views NATO's reaction on the Russian intervention in Ukraine and annexation of Crimea as unjustified and a hostile act. It has restructured and strengthened

154 OSCE Permanent Council, Decision No. 1162: Extension of the Mandate of the OSCE Special Monitoring Mission to Ukraine, 12 March 2015 (=PCOEW5968)

155 Minsk Agreement, in Financial Times, 12 February 2015 https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de

own armed forces in the Western and Southern Military District, including in Crimea, and continues conducting large-scale military exercises as well as “readiness tests” without prior notification.

In consequence, military intervention, unresolved conflict and ensuing political tensions have resulted in confrontational behaviours of states, changing and more capable force postures, frequent military activities and riskier manoeuvres of armed forces, while conventional arms control instruments are eroding and CSBMs are obviously not capable to dissuade concerns and de-escalate the situation. The termination of military-to-military dialogue has further aggravated the situation. In combination, that has given room for speculations on mutual intentions and worst case assessments of military activities and changing force postures.

3.1.6 Escalation of territorial conflict over Nagorno-Karabakh

In fall 2020, another hot spot of protracted territorial conflicts in the OSCE area erupted again and evolved to a full-fledged hot war, which lasted from 27 September to 9 November 2020. After long-standing political tensions, recurrent military incidents and long-term build-up of armed forces in excess of CFE maximum national levels of holdings, Azerbaijan successfully launched large-scale offensive military operations. Supported by Turkey, it took control of territories that had been part of the former Soviet Socialist Republic of Azerbaijan up to the collapse of the Soviet Union in 1990 but were controlled by Armenian troops after the war of 1990-1994. In addition to areas, which had been populated by ethnic Azeri majorities up to 1990, Baku also occupied parts of the former autonomous region of Nagorno-Karabakh with mainly ethnic Armenian settlements.[156]

After Armenian troops had been forced to retreat, and after unsuccessful coordination efforts by the OSCE Minsk Group, Moscow intervened diplomatically and brokered a ceasefire agreement[157] with the stationing of Russian Peacekeeping Forces for a duration of five years. Although Armenia is an ally of Russia within the Collective Security Treaty Organization (CSTO), the agreement reflects military realities on the ground and is “status-neutral”.

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156 For an overview see Uwe Halbach, Russlands Einflussmacht im Kaukasus. Konkurrenz und Kooperation mit Regionalmächten und globalen Akteuren. SWP-Studie 2021/S10, 08.07.2021; Michael Kofmann, A Look at the Military Lessons of the Nagorno-Karabakh Conflict. Russia Matters, 14 December 2020; Ron Synowitz, Technology, Tactics, and Turkish Advice Lead Azerbaijan to Victory in Nagorno-Karabakh. RFE/RL, 13 November 2020; Andreas Wittkowsky, Divide et impera? Karabach nach dem 44-Tage-Krieg. Zentrum für Internationale Friedenseinsätze (zif) Studie. May 2021; Michael A. Reynolds, Confidence and Catastrophe: Armenia and the Second Nagorno-Karabakh War. War on the Rocks, 11 January 2021

157 Declaration by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation, Moscow, 10 November 2020 http://kremlin.ru/events/president/news/64384

The agreement provides for
- freezing the lines of contact existing when the military operations were interrupted,
- a return of territories to Azerbaijan that did not belong to Nagorno-Karabakh before 1990,
- assuring a small territorial corridor at Lachin between Armenia and those areas of Nagorno-Karabakh remaining under Armenian control,
- stationing a 2,000 troops-strong Russian peace-keeping force at the lines of contact with a focus on the Lachin corridor,
- guaranteeing access of Azerbaijan through Armenian territory to its exclave Nakhichevan, and
- establishing a centre for peacekeeping operations in the region jointly operated by Russia and Turkey.

The OSCE, with the Minsk Group in the lead, remains responsible for the eventual political settlement of the conflict and for humanitarian questions.

Despite such measures, the situation on the ground has remained unstable and the future of the region insecure. Again, the military action demonstrated the long-term risks emanating from unresolved territorial conflicts, which potentially do not only threaten regional but also European security.

Remarkably, however, the Nagorno-Karabakh conflict did not exacerbate the security situation in and around Ukraine and did not widen the rift between Russia and the West. As in the past, both sides refrained from linking the conflict to the wider geopolitical disputes in Europe and did not raise additional security concerns in this regard. Instead, they kept pursuing an ambiguous political course stressing that conflict resolution has to be based on both territorial integrity of states and the rights of people to national self-determination. In contrast, Turkey's commitment to territorial revision in favour of Azerbaijan remained undiminished while it achieved to be recognized as a dominating power in the post-Soviet South-Caucasus region on equal footing with Russia.[158]

3.1.7 Changing force structures

In the 1990s and the first decade of the new millennium, the sizes of armed forces of states in Europe had declined steadily. This was the consequence of the end of the Cold War, the collapse of the WTO and the Soviet Union, NATO's enlargement to Central and Eastern Europe and the successful implementation of the CFE Treaty, which led to the largest arms reductions in peacetime Europe. Risk perceptions, tasks and missions of armed

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158 On the status-neutral policies of the Minsk Group: OSCE Minsk Group Co-Chairs issue statement on Nagorno-Karabakh, Madrid, 29 Nov 2007 ("Madrid Principles"); https://www.osce.org/mg/49237; OSCE Statement by the OSCE Minsk Group Co-Chair countries, L'Aquila, 10 July 2009 https://www.osce.org/mg/51152

forces continued to change. While large-scale high-intensity combat operations in Europe became less likely, states downsized and transformed their force structures in accordance with new politico-military requirements, i.e., multinational stability operations inside and outside Europe. Reformed force structures contained significantly less heavy armoured formations, while particular emphasis was put on light mobile land units, strategic mobility with air and naval assets, long-range strike capabilities, missile defence and interoperability.

In consequence, most CFE States Parties have remained below their maximum national levels of holdings within CFE group ceilings. Yet, such group ceilings have lost their relevance given the fundamental changes to conflict scenarios and strategic conditions in terms of forces, geographical space and time available for initiating and sustaining military operations in Europe. CFE group ceilings had been construed to keep a balance of forces in view of a high-intensity bloc-to-bloc conflict throughout Europe, with an emphasis on its geographical centre. Today, the synergetic effects of multinational cooperation and interoperability, net-centric warfare concepts with space- and computer-based intelligence, command, control and communication, precise long-range strike and strategic mobility carry more weight than foreseen during CFE negotiations, in particular in asymmetric scenarios.

However, it would be misleading to conclude that TLE defined in the CFE Treaty have lost their importance in high intensity conflicts should they occur in Europe between capable military powers. Recent conflicts, manoeuvres and military preparations demonstrate their undiminished value in battle when combined with modern assets, which have not been made subject to existing arms control and CSBM instruments. Russian armed forces have been reformeaccordingly after the war in Georgia in 2008 and increased their readiness. Since 2014, Russia has restructured a number of light brigades to form again heavy mechanized divisions in areas where it perceives the risk of potential military confrontation and high-intensity operations.

In the wake of the Ukraine crisis since 2014, also NATO reacted to new military risks in Europe and reassured allies at its eastern flank with classical force elements that are capable of conducting combined arms battles. In view of the dramatic end of the Afghanistan mission and the heightened political and military tensions in Europe allies are likely to continue this reorientation of missions and structures and reflect that in a new strategic concept (NATO 2030). It is planned to be adopted in the next NATO Summit in July 2022.[159] A number of allies have initiated a return to organic heavy armoured formations with increased readiness suitable to conduct high-intensity operations on short notice.

159 NATO. Brussels Summit Communiqué. Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Brussels on 14 June, 2021. Press Release 086/2021 Brussels, 14 June 2021, No. 5., 6. h., 7., 79 https://www.nato.int/cps/en/natohq/news_185000.htm

3.2 Current risk and threat assessments

In view of renewed political confrontation and increased military activities in Europe, threat perceptions have developed that refer to aggressive intentions of states in context with current military interventions, changing force postures and strategies, enhanced military capabilities, large-scale military exercises and increased military activities.

3.2.1 Concerns about aggressive intentions of states and military interventions

NATO and Nordic EU member states are of the view that Russia's annexation of Crimea and intervention in East-Ukraine constitute flagrant violations of international law and demonstrate that Moscow is not willing to adhere to a rules-based security order in Europe as agreed in Helsinki in 1975 or Paris in 1990 and other key documents such as the Budapest Memorandum of 1994. They assume that Moscow might aim at revising this order by military or hybrid means to attain national strategic objectives, including uniting all ethnic Russians under one national roof or even reviving the past Soviet Union as its collapse was assessed by the Russian President a "geopolitical catastrophe".[160]

Based on these perceptions, specific concerns are raised in certain sub-regions, in particular by the Baltic States.[161] As Estonia and Latvia harbour large ethnic Russian groups of population, both states are worried that Moscow could repeat the action undertaken in Crimea and again claim to protect "countrymen" within a larger "Russian World". In March 2014, the Russian Federation Council had given the President a mandate for an intervention to protect Russian ethnic majorities in Crimea, which were allegedly threatened by Kiev, and, referring to a plebiscite, accept their application for acceding to the Russian Federation.

Obviously, the Baltic States feel that their minorities are vulnerable to Moscow's propaganda as many ethnic Russians have not obtained citizenship and remain "non-state citizens". They fear that covertly operating illegal armed groups, induced by Russian "information war" and clandestine military support, might take the Crimean action as a blueprint, seize official buildings, claim national self-determination rights and call on Russia for military support. In parallel, Russia could deploy regular conventional armed forces along the border lines to threaten intervention and thereby prevent governments from taking effective action against rebels.[162]

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160 Cf. G. Toal, Near Abroad, (Fn. 14), pp. 55 ff.

161 Cf. Republic of Latvia, The National Security Concept (informative section), 2015, p. 3; see also Ministry of National Defence, The Defence Concept of the Republic of Poland, Warsaw, May 2017, in particular p. 23

162 For an overview, see Wolfgang Richter, Sub-Regional Arms Control for the Baltics. What is desirable? What is feasible?, Hamburg (IFSH), Juli 2016 (Deep Cuts Working Paper No. 8), pp. 2–4

Apart from potential Russian hybrid action, another scenario is dominating the discourse within the West, namely a full-fledged military aggression by Russian armed forces on the Baltic States. This scenario focuses on sub-regional disparities in favour of Russia as to numbers of forces vis-à-vis the Baltic States, geographical distances, communication lines and time available for quick reinforcement. Accordingly, Moscow could make use of locally superior Russian conventional forces permanently present in the sub-region for launching a surprise attack, and reinforce them with operational reserves, which would be moved forward rapidly from inner parts of the country, in particular the Russian Western Military District.

Such estimates also underline Russian anti-access/area denial (A2/AD) capabilities, which are assessed as capable of severely restricting or slowing down movements of NATO's Response Forces to the sub-region. The focus would be on the crucial "Suwalki Gap", an only 80-100 km broad strip between the Russian exclave of Kaliningrad and the territory of Belarus, through which NATO land forces would have to move from Poland to Lithuania in order to reinforce the Baltic States.[163]

In addition, a number of experts believe that Russia could use tactical nuclear weapons to prevent NATO from further escalation, secure territory gained during offensive operations and stop the war under favourable conditions. In this context, they interpret the Russian nuclear doctrine as implying an element of aggression and acceptance of limited nuclear war ("escalate to de-escalate doctrine").[164]

According to threat assessments by a number of Western allies, a third scenario of potential Russian military aggression refers to the resumption of full-scale offensive operations in Ukraine. Accordingly, Russia could make use of land forces recently deployed to the south-western part of the Western Military District and to Black Sea areas of the Southern Military District, including Crimea, for launching an attack on Ukraine. Its potential objectives would be taking energy and water supply resources in Ukrainian territories adjacent to Crimea, seizing a land connection between Crimea and

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163 Cf. Wesley Clark, Jüri Luik, Egon Ramms, Richard Shirreff, Closing NATO's Baltic Gap. Tallinn, International Centre for Defence and Security, May 2016; David A. Shlapak, Michael W. Johnson, Reinforcing Deterrence on NATO's Eastern Flank. Wargaming the Defence of the Baltics. Santa Monica, Rand Corporation, 2016 https://www.rand.org/pubs/research_reports/RR1253.html Scott Boston, Michael W. Johnson, Nathan Beauchamp-Mustafaga, Yvonne K. Crane, Assessing the Conventional Deterrence in Europe. Implications for Countering Russian Local Superiority. Santa Monica, Rand Corporation, 2018; On threat perceptions before 2014 see Wolfgang Zellner (co-ordinator) et al., Threat Perceptions in the OSCE Area, (OSCE Network of Think Tanks and Academic Institutions), Vienna 2014

164 Cf. W. Clark et al., Closing NATO's Baltic Gap, D.A. Shlapak et al., Reinforcing Deterrence on NATO's Eastern Flank, loc. cit., (Fn. 163) Overview on threat perceptions also in: Samuel Charap, Alice Lynch, John J. Drennan, Dara Massicot, Giacomo Persi Paoli, A New Approach to Conventional Arms Control in Europe. Addressing the Security Challenges of the 21st Century. Santa Monica Rand Corporation, 2020, pp. 15–38

Donbas or establishing a land corridor throughout the southern part of Ukraine to the Trans-Dniester region in Moldova, including the city of Odessa.[165]

In contrast, Moscow perceives NATO as an instrument of power projection of the United States and NATO's enlargement to East-Europe and the Balkans as geopolitically motivated and directed against Russian security interests. It holds that such policy violated the political acquis reached at the end of the Cold War, destroyed the balance of interests agreed in key OSCE and arms control instruments, and only served the purpose to contain and roll-back Russia. In particular, it suspects that "regime change" policies, initiated through the "Freedom Agenda" of former U.S. President George W. Bush, have been geared to drag Ukraine and Georgia into the Western camp, turn the Black Sea in a space controlled by NATO and push Russia geographically back behind the Sea of Azov. The Kremlin obviously believes that Russian action in 2014 to secure Crimea was necessary to defend its own strategic interests and resist Western hybrid policies.

In line with this narrative of strategic defence, Moscow has always denied threat perceptions of NATO allies and Nordic EU partners regarding the Baltic States as unrealistic and artificially construed in order to punish Russia for its action in Crimea and increase military pressure on Russia's north-western flank. It perceives NATO's military reassurances for eastern flank states a serious risk. In particular, it believes that the military build-up of an enhanced forward presence, logistical preparations for accommodating rapid reaction forces in the region and frequent large-scale exercises in direct vicinity of both St. Petersburg and the geographically isolated exclave of Kaliningrad could evolve to a direct military threat.[166]

Moscow also believes that the military support for Ukrainian forces granted by a number of NATO member states could inspire Kiev to escalate the Donbas conflict or take military action against Russian forces in Crimea. In this context, it criticizes lethal arms transfers to Ukraine, the presence of 470 military advisors of Canada, Denmark, Lithuania, Poland, Sweden, the United Kingdom and United States in West-Ukraine, the large-scale military exercises of allies with Ukrainian and Georgian forces and the

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165 Assessments of former NATO Generals Philip Breedlove, Heinrich Brauß and Ben Hodges in: Peter Carstens, Thomas Gutschker: "Putins Optionen für die Ukraine", Frankfurter Allgemeine Zeitung 21 April 2021; cf. Ukraine Crisis Media Center: "Russland kurz vor einer weiteren Aggression gegen die Ukraine: Was sich in einer Woche getan hat", Kiev, 16 April 2021 https://uacrisis.org/de/russia-one-step-away-from-starting-a-large-scale-invasion-of-ukraine

166 Military Doctrine of the Russian Federation, approved by the President of the Russian Federation on 25 December 2014; National Security Strategy of the Russian Federation, approved by the President of the Russian Federation on 31 December 2015. See also S. Charap et al., A New Approach to Conventional Arms Control in Europe. Loc. cit. (Fn. 164), pp. 25–35

repeated "freedom of navigation" operations of allied navy vessels in disputed territorial waters around Crimea.[167]

3.2.2 Concerns about changes to force postures

Russia's military reform, which was initiated after the poor performance of Russian forces in the war with Georgia in August 2008, and Russia's repeated large-scale military exercises, unannounced readiness checks, and frequent air- and sea-patrols have added to concerns especially among NATO allies and partner countries. Such activities are often interpreted as preparations for launching surprise attacks into the Baltic States and Ukraine or building-up military threats to exert political pressure.

Reacting to new threat perceptions, NATO allies have gradually upgraded their military reassurances for NATO member states bordering Russia and Belarus as well as for allied Black Sea littoral states. At their Summits in Wales (2014)[168], Warsaw (2016)[169], Brussels (2018)[170] and Brussels (2021)[171] they decided to

- increase defence budgets aiming to reach a level of 2% of national GDPs by 2024, with a 20% share of expenditure for investment,
- strengthen allied air patrols over the Baltic States and increase allied maritime and air presence in and over the Baltic, Black and North Sea,
- initiate a continuous series of military exercises throughout allied territory in Europe and the High Sea ("heel to toe"),
- upgrade the NATO Response Force (NRF) to a strength of 40,000 troops,
- maintain a Very High Readiness Joint Task Force (VJTF) comprising up to 20,000 personnel with a land component of up to 5,000 personnel that shall be ready for deployment within five to seven days,
- prepare their deployment logistically with eight smaller NATO Force Integration Units stationed in Central and Southeast European states,
- establish an "enhanced forward presence" through the rotational stationing of four multinational battalion-size battle groups in Estonia, Latvia, Lithuania and Poland under the lead of the United Kingdom, Canada, Germany and the United States, with about 4,500 military personnel,
- build a multinational training brigade in Romania and Bulgaria,

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167 Statements of Russian participants in the Russia-NATO Dialogue (Track II); on advisors in Ukraine cf. International Institute for Strategic Studies (IISS), The Military Balance 2021, Chapter Five: Russia and Eurasia, p. 212

168 NATO. Wales Summit Declaration. Press Release 120/2014, 05 September 2014, No. 8, 16–23 http://www.nato.int/cps/en/natohq/official_texts_112964.htm?selectedLocale=en

169 NATO. Warsaw Summit Communiqué. Press Release 100/2016, 9 July 2016, No. 36–41 https://www.nato.int/cps/en/natohq/official_texts_133169.htm

170 NATO. Brussels Summit Declaration. Press Release 74/2018, 11 July 2018, No. 6, 47 https://www.nato.int/cps/en/natohq/official_texts_156624.htm

171 NATO. Brussels Summit Communiqué. Press Release 086/2021, 14 June 2021 https://www.nato.int/cps/en/natohq/news_185000.htm

- launch a NATO Readiness Initiative that aims at providing within 30 days 30 combat vessels, 30 combat battalions and 30 combat air squadrons.

In spite of such strengthening of collective defence preparations, Germany, France and other West-European allies underlined that such measures did not violate commitments enshrined in the NATO-Russia Founding Act of 1997. In particular, NATO's multinational and rotational "forward presence" of four battalion-size combat groups would be in compliance with the promise not to resort to permanent stationing of additional substantial combat forces. Their purpose would be limited to demonstrating that any attack on allies would immediately involve the alliance as a whole and trigger collective defence. Accordingly, four battalions were not in a position to threaten Russia and also corresponded to proposed definitions of the term "substantial combat forces", which had been envisaged at the CFE Joint Consultative Group during the structured dialogue on the Parallel Action Package in 2007/08.

In parallel to NATO's upgrading of collective defence measures, and mainly based on bilateral agreements, the United States have taken additional national measures in the framework of the European Deterrence (Reassurance) Initiative,[172] such as

- the build-up of storage sites in Germany, Belgium and the Netherlands containing armament and equipment for staging an army combat brigade that would be regularly stationed in the U.S. homeland, but frequently air-lifted to Europe for exercises with allies,
- the rotational presence of a U.S. combat brigade in Eastern Europe and frequent military exercises with allies under the lead of the United States (e.g. Defender Europe 21),
- a strong maritime presence in the Baltic and Black Sea,
- stationing "non-substantial" air and land combat units, air and missile defence, logistic and C^3-units in Poland, Romania and Bulgaria, and
- re-establishing the V Corps with a forward deployed headquarter-element in Poland.

NATO also keeps an ambiguous strategic concept regarding the role of nuclear weapons. It states that nuclear first use is a very remote option but never relinquished it. While France and the United Kingdom retain independent nuclear deterrence arsenals, NATO's non-nuclear weapon states rely on positive nuclear security guaranties provided by the United States. In particular, NATO's eastern flank-states regard nuclear sharing arrangements vital to demonstrate United States defence commitments to Europe, stress solidarity, risk and burden sharing by allies, and deter Russia. The U.S. Nuclear Posture

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172 U.S. European Reassurance Initiative 2014 http://comptroller.defense.gov/Portals/45/Documents/def-budget/fy2018_ERI_J-Book.pdf; U.S. European Command, FY 2020 European Deterrence Initiative (EDI) Fact Sheet. https://www.eucom.mil/document/39921/fy-2020-european-deterrnece-initiative-fact-sheet-s

Review of 2018[173] seemed to respond to scenarios in which limited nuclear war is assessed a realistic option. Therefore, it announced procurement of nuclear low yield-warheads for sea-launched ballistic and cruise-missiles.

While NATO is worried about sub-regional stability, Russia is concerned about the strategic imbalance in Europe providing NATO with a high conventional land, air and sea superiority in numbers and quality and U.S. far-range precise attack options. Therefore, Moscow perceives its own capabilities for conventional operations as rather limited. While not in a position to protect all parts of its long border lines equally, it has to focus on a few centres of gravity and keep strong and mobile reserve forces in the depth of its territory for rapid reinforcement of selected parts at the periphery in case of emergencies. This also seems to be the main scheme for large-scale military exercises and unannounced readiness checks ("snap exercises"), which often are combined with large force movements over far distances.

For compensating perceived conventional inferiority, Moscow also retains the option of nuclear first use, if the very survival of the Russian state was at risk.[174] However, it has rejected interpretations by a number of Western experts as unfounded that Russia would pursue an "escalate to de-escalate"-doctrine aimed at securing territory gained through offensive military operations against neighbouring states.

Beginning in 2015, Russia has re-structured and re-located army units in its Western and Southern Military Districts. The centre of gravity for re-deployments is on South-west-Russia and the Black Sea region. Until 2016, no significant permanently deployed formations were located in areas close to Ukrainian territory, with the exception of Crimea. Thereafter, Russia built two new mechanized rifle division headquarters, namely the 144th at Yelnya (Smolensk) and the 3rd at Boguchar, which are subordinated to the 20th Army at Voronesh. It is one of the three armies controlled by the Western Military District. A third new (150th) mechanized rifle division is located at Novocherkassk and subordinated to the 8th Army in Rostov-on-Don, which is one of the three armies deployed in the Southern Military District. Combat and support units, which were formerly located

173 U.S. Department of Defence, Nuclear Posture Review February 2018 https://media.defense.gov/2018/Feb/02/2001872886/-1/-1/1/2018-NUCLEAR-POSTURE-REVIEW-FINAL-REPORT.PDF

174 The Military Doctrine of the Russian Federation, approved by the President of the Russian Federation on December 25, 2014, No. Pr.-2976, in: The Embassy of the Russian Federation to the United Kingdom of Great Britain and Northern Ireland. Pres Release 29.06.2015 https://rusemb.org.uk/press/2029

around Moscow and in central parts of Russia, were assigned to the new divisions and relocated to these areas, and to the 22nd army corps in Simferopol, Crimea.[175]

In contrast, Moscow did not hurry in upgrading its forces opposite to the Baltic States. The 6th army with headquarters in St. Petersburg commands two motorized rifle brigades, one deployed in the Pskov area close to Latvia and Estonia, and one in Kamenka at the Finnish border. The 6th army is still the smallest and least equipped among the three armies of the Western Military District. However, for regional force comparisons also the 76th air assault division in Pskov and the 11th Army Corps in Kaliningrad must be considered. The lightly equipped 76th air assault division has been stationed in Pskov since the time of the Cold War. It is part of the strategic airborne forces under independent command, which are foreseen as rapid reaction forces and often airlifted and deployed in and beyond the Southern Military District and abroad.[176]

All units in Kaliningrad are assigned to the Baltic Fleet. Its land component comprises a naval infantry brigade and two brigade-size mechanized motor-rifle formations with small battle tank support. They are currently restructured to form a division-size formation after reinforcement by another battle tank unit. The main task of this army corps seems to be protecting the strategically important Baltic Fleet Base. To that end, strong air/missile defence and coastal missile artillery units as well as a dual-capable Iskander short-range ballistic/cruise missile brigade are assigned to the corps. Their wide combat ranges could cover adjacent territories of neighbouring countries and potentially create anti-access/area denial (A2/AD) capabilities.[177]

Russian land forces at the periphery of the Western and Southern Military District can be supported and reinforced from interior parts of Russia, in particular the 1st Guards Tank Army deployed around Moscow and the 2nd army in Samara east of the Urals, which is one of the two armies of the Central Military District. The 1st Guards Tank Army controls one tank division, one mechanized motor-rifle division, one mechanized and one tank brigade, and a number of combat support units. The 2nd army controls one (90th) tank division and several motorized-rifle brigades and support units.[178]

Both armies can provide additional offensive power when being deployed to the periphery. For transports of heavy equipment and logistics over wide distances, they have to

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175 Cf. Catherine Harris, Frederick W. Kagan, Russia's Military Force Posture: Ground Forces Order of Battle, Washington D.C., Institute for the Study of War (ISW), March 2018, pp. 12–15; cf. also Konrad Muzyka, Rochan Consulting, Russian Forces in the Western Military District. CNA Occasional Paper, IOP-202-U-028759-Final, Arlington, VA, December 2020

176 Ibid.

177 Cf. Stephan Frühling, Guillaume Lasconjarias, NATO, A2/AD and the Kaliningrad Challenge, in: Survival, 58 (2016) 2, pp. 95–116

178 Cf. Harris/Kagan, Russia's Military Force Posture loc. cit., K. Muzyka, Russian Forces in the Western Military District loc. cit. (Fn. 175)

rely primarily on rail communications. This option of the 2nd army and other units, mainly from the Southern Military District, was demonstrated by Russian unannounced readiness checks and force assemblies in Southwest-Russia opposite to Ukraine in April and May 2021.[179] However, such large-scale and time-consuming force movements would not be carried out unnoticed and, therefore, are not suited for a surprise attack.

While the Central Military District is responsible for protecting the largest area in Russia's centre, it prepares contingencies for dispatching operational reserve forces in both strategic directions to the west or the Far East. With a force base stationed in Tajikistan, it is also responsible for stabilizing the southern borders of the Collective Security Treaty Organization (CSTO) in Central Asia. After NATO's retreat from Afghanistan and the takeover of the country by the Taliban, the strategic weight of the counter-terror mission in this region will increase significantly.

3.2.3 Concerns about modern weapons technologies and increase of military capabilities

NATO and Nordic EU member states are concerned about modern Russian anti-access/area denial (A2/AD) capabilities in NATO-Russia contact zones, particularly those located in the Kaliningrad and Pskov region adjacent to Baltic States and Poland, but also in the High North, Crimea and other areas of the Black Sea region. Such capabilities are generated by highly effective S-400 Triumf (SA-21) surface-to-air missiles with a range of up to 400 km and multiple target acquisition and tracking capacity, as well as P-800 Oniks (Bastion) coastal anti-ship missile units with a 600 km range. A third system would provide for the capability to destroy crucial land targets, namely the surface-to-surface 9K720 Iskander-M (SS-26) ballistic and cruise missiles with a range of approx. 500 km. Such ranges cover wide areas of neighbouring countries and, therefore, are assessed to be capable of restricting or slowing down movements of NATO's Response Forces to the sub-region.

According to this assessment, Russian air defence units in Kaliningrad could provide for regional air superiority of Russian air forces in support of an attack against the Baltic States, and, together with coastal missile units, prevent NATO air and sea transport to the region. In parallel, Russian land and air forces could block the crucial "Suwalki Gap" for movements of allied land forces, supported by strikes of Iskander M-missile units against allied lines of communication and critical infrastructure, including rail and road bridges.[180]

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179 Cf. Wolfgang Richter, Moskau zieht zusätzliche Truppen nahe der Ukraine und auf der Krim wieder ab. Um die Lage zu stabilisieren, muss militärische Zurückhaltung vereinbart werden. Berlin, SWP-Aktuell Nr. 39 Mai 2021

180 See Fn. 163, 164

Furthermore, suspected new Russian ground-launched INF systems with ranges far above 500 km (9M729 / SSC-8), as well as dual-capable 3M54 Kalibr sea-launched cruise missiles (SLCM) and air-launched stand-off missiles could support such action and hold at risk critical targets within Central European NATO countries. NATO experts also point at the increased Russian capability to reinforce sub-regional operations by air-lifting strategic airborne troops and heavy armoured units over wide distances, using enhanced air transport potentials.

Russia points at NATO's overall conventional superiority in numbers and the qualitative edge of allied air and sea forces in Europe and globally. Moscow is particularly concerned about allied rapid reaction capabilities, based on enhanced air transport and readiness of NATO's Response Force, as well as logistical and C^3-preparations in countries neighbouring Russia. They would enable reinforcements to commence military operations immediately upon arrival. A second area of Russian concerns refers to NATO's modern stand-off air-to-surface attack missiles (JASSM-ER) and United States far-reaching and precise Tomahawk SLCM on board Aegis navy vessels. When operating in Europe's marginal seas, such as the Baltic and Black Sea, Tomahawk SLCM can reach targets deep in the Russian heartland, including Moscow.[181]

Also the development of new U.S. Army ground-launched land attack missiles is a concern to Moscow. If deployed in Europe, such missiles would have an asymmetrical effect on potential targets in Russia, which could not be balanced by Russia with equal means given the geostrategic asymmetries between Europe and the North American continent. Already in the past, Moscow suspected that Mk-41 launchers of U.S. missile defence systems (Aegis ashore) in Deveselu, Romania, and – in the near future – in Redzikovo, Poland, could potentially be used for launching land-attack missiles against targets in Russia. This would not only have violated the INF-Treaty, which both sides had terminated in 2019, but also contradict NATO's long-standing position that its Phased Adaptive Approach to establish missile defence in Europe would not be directed against Russia. In this context, Russia is also worried that the combination of U.S. global missile defence systems and conventional long-range strike systems (including strategic drones) would complement the strategic nuclear potentials of the United States and, in future, provide for an enhanced first strike capability. In consequence, the diminished Russian second strike potential could be intercepted by land-based and mobile sea-based missile defence systems.[182]

In sum, it seems that precise ground-, sea- and air-launched long-range strike systems and transport capacities of the potential adversary are of mutual concern to both sides.

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181 Sergey Rogov, Russian Academy of Science. Director of the Institute for United States and Canada Studies. Statements in the Russia-NATO Dialogue (Track II), spring 2021

182 Ibid.

In addition, NATO is worried about sub-regional Russian A2/AD bubbles generated by air-/missile defence units, which had been seen in the past as purely “defensive” assets. In turn, Russia is concerned that United States/NATO missile defence in Europe could help to undermine Russian nuclear second-strike capabilities or be used for launching attack missiles against Russia. Moreover, all sides regard enhanced modern electronic warfare tools, including cyber-attacks, as both threats against own defence capabilities and vital national infrastructure and opportunities to interrupt communication of the adversary, disturb his sensors and guidance systems, and diminish his command and control capabilities and critical national resources.

3.2.4 Concerns about increased frequency and size of military exercises and other activities

Russian forces regularly conduct large-scale exercises rotating among its four military districts that were recently complemented by a fifth one of the Northern Fleet. In addition, the Russian General Staff frequently orders parallel readiness checks of numerous formations and units in all districts (“snap exercises”), which are not announced before they have started. Often, these drills are combined with large re-deployments of forces over wide distances. They demonstrate Russia’s capability to reinforce formations at the periphery on short term with troops from faraway locations.[183] In April 2021, the quick concentration of Russian forces at the south-western periphery of the Western Military District opposite to Ukraine caused concerns in neighbouring countries and political tensions with NATO.[184] Moscow claimed to have reacted on new escalatory developments in East-Ukraine and the large-scale exercise “Defender Europe 21” led by the United States, which took place in Eastern Europe, including in Balkan countries neighbouring Ukraine.[185]

Also NATO member states have resorted to a scheme of continuous multinational military exercises throughout allied territories and with partner states such as Sweden, Finland, Ukraine and Georgia. Focusing on the Baltic and the Black Sea region, such drills aim to train interoperability in combined arms battles, including in high intensity war scenarios, rapid transfer of units from the logistical hub in Germany to the periphery, enforcing

183 Cf. Johan Norberg, Military exercises and Russian fighting power 2009–2016, in: Beatrice Heuser, Tormod Heier, Guillaume Lasconjarias (Ed.) Military Exercises: Political Messaging and Strategic Impact (NDC Forum Paper 26), Rome 2018, pp. 243–268; “ZAPAD 2017 and Euro-Atlantic Security”, in: NATO Review 14 December 2017 https://www.nato.int/docu/review/2017/Also-in-2017/zapad-2017-and-euro-atlantic-security-military-exercise-strategic-russia/EN/index.htm; Wolfgang Richter, The Implications of the State of Arms Control for European Security, Hamburg IFSH, August 2018, (Deep Cuts Working Paper No, 12), p. 10–13

184 Cf. NATO. Brussels Summit Communiqué, loc. cit. (Fn. 171), No. 11

185 Cf. W. Richter, Moskau zieht zusätzliche Truppen nahe der Ukraine und auf der Krim wieder ab. Loc. cit. (Fn. 179)

access to areas protected by A2/AD capabilities and ensuring logistics and replacement of units for enduring operations.[186]

Moreover, both sides conduct significantly more sea and air patrols in international sea and air space than before 2014, including in and over disputed territorial waters around the Crimean Peninsula. That has led to occasional incidents and an increase in numbers of quick-starts and air escorts (scrambling) of fighter interceptors in Air Defence Identification Zones (ADIZ) over the High Sea. In consequence, close encounters between NATO and Russian patrols at sea and in the air have occurred more frequently, entailing the risk of further incidents.[187]

3.2.5 Plausibility of risk and threat perceptions and conclusions

In contrast to the situation at the end of the Cold War, it is not the large-scale attack scenario throughout the European theatre, which dominates Western and Russian threat assessments. Both sides rather concentrate on potential sub-regional military interventions after a short build-up of forces at selected areas of the own periphery. To that end, they assess the offensive capabilities of forces present at such locations, their possible reinforcements by rapid response forces and operational reserve formations to be moved over long distances, and capabilities to provide fire support by long-range strike systems and area protection by A2/AD-capabilities.

However, there are also serious doubts as to the plausibility of such attack scenarios: Russia's concerns about offensive operations of NATO forces into Russian territory from a spring-board in the Baltic countries are not convincing. Politically, it is unrealistic to assume that NATO member states would reach consensus on launching an attack on Russia and taking the risk of nuclear escalation. While NATO allies are committed to collective defence, they have no reason, no intention and no plan to initiate a military aggression. Militarily, NATO's enhanced Forward Presence consisting of four battalion-size battle groups equals a trip wire rather than a threatening offensive power. It is significantly inferior in numbers to Russian forces present in the sub-region.

Furthermore, allies made it abundantly clear that such scattered units cannot be characterized as "substantial combat forces" referred to in the NATO-Russia Founding Act. Their only purpose is demonstrating collective defence commitments and NATO's resolve to repel any attack collectively. It is not their tactical/operational offensive strength

186 In 2018, 104 exercises at various levels were conducted under the lead of NATO HQs and 188 alliance-related exercises under national control. Cf. NATO. The Secretary General's Annual Report 2018, Brussels 2019, p. 54 https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20190315_sgar2018-en.pdf

187 Denitsa Raynova, Lukasz Kulesa, Russia-West Incidents in the Air and at the Sea 2016–2017, Out of the Danger Zone?, London (ELN) 2018; Thomas Frear, Lessons Learned? Success and Failure in Managing Russia-West Incidents 2014–2018, London (ELN) 2018

Russia has to fear but rather the strategic consequences of an attack against NATO allies. For the same reason, any construction by some Western political quarters and think tanks of scenarios, which are confined to assessing only tactical or operational options in and for the sub-region, is flawed.

As to a Russian hybrid action against the Baltic States, one should note that their political, economic and military conditions are quite different from those prevailing in Crimea in 2014. While there are no Russian forces stationed in these countries, Baltic States enjoy membership of the strongest military alliance globally and can rely on allied defence commitments demonstrated by NATO's military reassurance policies. Estonia and Latvia with their strong ethnic Russian minorities have all means to raise resilience, bank on high economic standards and social welfare systems and prevent hybrid attack scenarios related to ethnic minorities by accepting their full inclusion in the society with equal rights and obligations including state citizenship.

Considering a conventional attack scenario against the Baltic States, geographic factors favouring Russia cannot be neglected. But they have not changed either since NATO's enlargement brought the alliance in direct geographic neighbourhood of Russia. This situation will last, and the large military power of Russia is bound to be superior to national Baltic forces. It remains unclear, however, which strategic rationale would drive Moscow to launch an attack on NATO member states and which objective it would pursue. A number of assumptions have to be accepted to regard this scenario plausible:

1. Russia would have to disregard collective defence commitments of the strongest military alliance on the globe and NATO's overall conventional arms superiority in Europe, or assess it to be irrelevant.
2. In contrast to the intervention in 2014, where Russia sought to prevent Ukraine's accession to NATO and secure strategically important naval bases with forces stationed in Crimea and Sevastopol in more than 80 locations, Russia would take action without such strategic objective and without the support of stationed forces.
3. Russia would take it for granted that a high-intensity land and air war between NATO and Russia in Europe could be limited geographically to one sub-region chosen only by the potential aggressor.
4. Therefore, Russia would concentrate its conventional land forces available in the Western Military District in one comparatively small area at an overextended periphery, and disregard serious risks in other areas, e.g. the Black Sea and Caucasus region, or locations abroad, to which Russian expeditionary forces have been deployed.
5. Russian A2/AD capabilities in the Baltic region would be invulnerable to air attacks of NATO's air forces, which enjoy a high qualitative standard and superiority in numbers.

6. Belarus would join a Russian attack on NATO and accept the risk of becoming a conventional or even nuclear battlefield.
7. Russia would regard limited nuclear war and the risk of nuclear escalation a viable option.

In short, beyond considerations on operational-tactical conditions in the Baltic NATO-Russia contact zone, one should not omit strategic consequences of sub-regional operations. It is obvious that the capabilities to concentrate reserve forces at certain points at the periphery of the extended land borders of Russia are limited. As they cannot be available at all critical parts of border lines and potential conflict areas, amassing them in one sub-region would entail serious risks for other potential hot spots at the periphery. Sensible strategic planning would certainly not assume that a high intensity war in Europe could be restricted to one sub-region only chosen by one side of a military conflict. Instead, taking into account the larger strategic balance of forces in Europe is needed for assessing military capabilities and conflict scenarios realistically.

Against this background, one might safely assume that neither NATO nor Russia have an intention to wage war. However, mutual threat perceptions are part of current political realities and such narratives are suited to justify own positions, no matter how convincing they are analytically. Rather than debating their plausibility, it seems more reasonable for states to take them seriously, find appropriate ways to dispel such concerns and de-escalate the situation.

This is all the more necessary as the current situation in regard of force deployments remains unstable and the development of the volatile conflict in Ukraine unpredictable. Both NATO and Russia seem to fear that a rapid concentration of potentially adversarial forces at the periphery could fundamentally change the military conditions on the ground, under which offensive operations are likely to be launched. In face of the current distrust and nervous alarmism, large-scale exercises, including unannounced snap exercises and short-term assembly of combat forces in the vicinity of borderlines, have a potentially threatening and thus provocative character. They could trigger misperceptions of such activities and misjudgements of intentions, and, therefore, lead to further instability and possible escalation.

Furthermore, the high frequency of air- and sea-patrols in and above the High Sea and in disputed territorial waters entail high risks of dangerous close military encounters and hazardous incidents. Both could generate spill-over effects and a potential for unintended escalation into open military conflict.

3.3 Relevance of existing arms control instruments for maintaining military stability and predictability in the OSCE area

It is obvious that present political realities in Europe stand in stark contrast to the OSCE concept of security co-operation and the objective to create a common space of equal security without dividing lines. However, while arms control and CSBMs cannot address the root causes of disputes and conflict, they could provide appropriate measures to contain the risks emanating from military instability, prevent further escalation and restore military predictability. According to the 1996 OSCE Document of Lisbon, "A Framework for Arms Control", this can be achieved preferably through full implementation of arms control agreements at all times, including in times of crisis. In order to maintain their relevance, participating States have committed to ensure that arms control agreements continue to respond to security needs in the OSCE.

However, in contrast to such commitments, available OSCE arms control instruments and CSBM tools have been deteriorating for long and are no longer suited to contain the inherent risks generated by mutual deterrence relations in Europe, de-escalate tensions and re-establish military predictability and stability.

3.3.1 Irrelevance of the Treaty on Conventional Armed Forces in Europe

The limitation regime of the CFE Treaty was geared to disengage NATO and WTO concentrations of forces in Central Europe, particularly Germany, reduce and delay their potential reinforcements from adjacent areas and establish numerical parity between two military blocs existing up to 1991. However, the CFE Treaty did not envisage changes to the geopolitical framework and the composition of military blocs labelled "Groups of State Parties". Due to the dissolution of the WTO, the collapse of the Soviet Union and NATO's enlargement to the East, which today includes all former WTO member states and three former Soviet Republics, this bloc-related limitation regime lost relevance.

Thereby, geographical conditions carry significantly more conceptual weight than numbers of armaments limited by the treaty (TLE) for each of the two groups of States Parties. Even if most CFE State Parties do not reach the maximum national levels of TLE holdings, which had been agreed within these two groups, it is the geographical space, which shapes the conditions for distances, force movements and time needed to launch offensive operations and achieve their objectives. In 1990, this fact was acknowledged by all negotiating states and therefore became the very basis for CFE regional limitations. Today, the "Eastern Group of States Parties" has lost political relevance while NATO's eastern frontiers extend 1,000 km eastwards of the Elbe River, and directly border Russia in the Kaliningrad, Pskov, St. Petersburg areas.

An attempt to adapt the strategically important CFE Treaty to such geopolitical changes failed as its ratification was made subject to preferred solutions of local territorial disputes in two post-Soviet states. Obviously, geopolitical objectives played a significant role. Furthermore, the Baltic States never acceded to the CFE Treaty and Russia suspended it in 2007. In consequence, no legally binding arms control regime exists in current NATO-Russia contact zones. In contrast to the objectives and principles established by the OSCE "Framework for Arms Control", the CFE Treaty does not have any impact on the military situation in areas where it would be urgently needed, namely in the Baltic and Black Sea regions and the High North.

Moreover, Russia's suspension of the CFE Treaty also implied that the CFE information and verification regime ceased to be operational in relation to Russia, causing a significant lack of transparency of Russian force postures and military activities. While NATO deplores this development and calls upon Russia to return to compliance with the CFE Treaty, the alliance under U.S. leadership did not change its position on adapting and reviving conventional arms control.

In the South-Caucasus region, maximum national levels of TLE holdings agreed within the Eastern Group of CFE States Parties have been exceeded significantly since 2006. Furthermore, CFE information requirements were disregarded when it came to armaments of non-state actors in disputed territories and armed forces deployed in frontline positions. That has created both regional imbalances in conventional arms and a lack of military transparency. Once military superiority had been achieved, it was exploited for initiating offensive operations with the aim to resolve territorial disputes. They evolved to full-fledged wars and created more instability in the region and unpredictability for the future. While some CFE States Parties helped to create these imbalances by excessive arms exports, the majority of CFE states preferred to neglect such violations of treaty provisions and turn a blind eye to its predictable consequences.

Today, neither the CFE bloc-related and regional limitation regime nor the composition of its TLE and other armaments and equipment subject to the treaty's information and verification regime is sufficiently suited to respond to current threat perceptions and allay respective concerns. This is particularly true for long-range strike systems, A2/AD capabilities and strategic and operational long-distance transport potentials, which do not belong to the scope of CFE regulations.

3.3.2 Stalled "modernization" of the Vienna Document 2011 (VD 11)

In consequence of the erosion of the CFE Treaty, a legally binding arms control regime, Russian military transparency diminished. The political and military significance of the ensuing transparency gap increased with the beginning of the Ukraine conflict in 2014. Therefore, several participating States made a number of proposals to adapt ("modernize") the politically binding OSCE Vienna Document on security and confidence-building measures in order to close "loopholes", which would be exploited by Russia.[188]

After three revisions in the 1990s, the current edition of the VD was slightly revised in 2011 (VD 11) and further amended in 2012 by a FSC decision[189], which encouraged voluntary notifications by participating States of most significant military exercises below the established thresholds. Before 2014, Russia had made several proposals to further adapt the VD 11 but failed since Washington showed no interest. When NATO returned to deterrence policies after Russia's intervention in Ukraine in 2014, Russia withdrew such proposals and continues refusing consensus on Western suggestions to "modernize" the document. Moscow suspects that such revisions aim at transparency of Russian armed forces' activities only and serve to replace revitalizing conventional arms control, which the United States and many NATO member states still reject. Moscow also holds that NATO should first return to security cooperation and refrain from military activities geared to contain Russia.[190]

Transparency of military activities

The VD was able to complement the CFE Treaty through additional transparency measures, particularly in regard of certain military activities. But the VD is neither designed nor suited to replace a CFE-like conventional arms control agreement as it lacks legally binding limitations of TLE holdings. Furthermore, its information and verification regime is far less detailed and intrusive than that of the CFE Treaty. Only formations and combat units of ground and air forces are subject to the annual information exchange and only active combat units holding certain major weapon and equipment systems are subject to evaluation visits. Such systems have to be reported. While they largely mirror the TLE of the CFE Treaty (plus mounted or integrated anti-tank rocket systems), they lack specific definitions. During a calendar year, notifications on changes are not required so that dynamic developments in shorter periods of time are not accounted for.

The VD allows for one evaluation visit only per 60 active ground and air combat units in a calendar year, which (2021) amounts to three evaluations in the VD area of application in Russia, two in France and one in each other participating State. Armaments held by non-active combat units, logistic units and depots, C^3 installations, coastal defence and naval infantry as well as strategic, central and internal security forces are not subject

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188 Cf. Package proposal by a group of 34 states: Proposal for a VD Plus Draft Decision, FSC.DEL/213/19/Rev.2 of 5 March 2020

189 OSCE. Vienna Document Plus Decision No. 9/12 on Prior Notification of Major Military Activities FSC.DEC/9/12 of 17 October 2012 https://www.osce.org/fsc/96492

190 Statement by the Delegation of the Russian Federation, 950th Plenary Meeting of the Forum. FSC.JOUR/956 of 1 July 2020, Annex 3 https://www.osce.org/files/f/documents/3/4/457450.pdf see also Statement by the Delegation of the Russian Federation, Special (834th) Plenary Meeting of the Forum, FSC.JOUR/840, 9 November 2016, Annex 3 https://www.osce.org/files/f/documents/3/e/282856.pdf

to the VD. By comparison, the CFE Treaty permitted on-site inspections in 15 % of all objects of verification of land and air force units that hold TLE, of which 23 % could be devoted to observations of units and installations of naval infantry, internal security forces or central storage sites. Ten additional inspection quota had been agreed for areas excluded from the original CFE flank region in 1996, which also referred to the Pskov oblast adjacent to Latvia. In consequence, the overall number of CFE on-site inspections in Russia rose to almost 50 per calendar year until 2007. According to the CFE Adaptation Agreement this figure could have been increased by one third, resulting in 60-70 inspections in Russia per year. This figure makes clear the loss of transparency and verification opportunities, which the blockade of the ACFE implied.

However, the VD as a CSBM instrument focusses less on weapon holdings, which is a priority task of an arms control regime, than on early warning and observation of large-scale military exercises and other unusual military activities of ground forces and their supporting units. Such activities have to be notified at least 42 days before they commence if the thresholds of 9,000 personnel involved (or 250 battle tanks/250 artillery systems/500 armoured combat vehicles) are reached. If 13,000 or more personnel participate (or 300 battle tanks/250 artillery systems/500 armoured combat vehicles), military observers have to be invited. Offensive air support has to be notified if 200 or more sorties are flown during the exercise. For airborne, air landing or amphibious landing operations the threshold for notification is set at 3,000, for observation at 3,500 personnel involved.

NATO allies and several partner states believe that such threshold values are too high and that Russia would exploit certain counting rules of the VD ("loopholes"), which all participating States had agreed upon since the inception of the Document. They pertain to the scope and size of force elements that have to be counted for notifications, and to exceptions from notification and observation requirements for "snap exercises" and parallel exercises of formations, the size of which falls short of established thresholds if counted individually. Western states suspect that Russia in this way would fragment exercises, which otherwise could be seen as one single operation, in order to avoid notifications or observations. Therefore, they have proposed to lower the personnel and armaments thresholds significantly and limit exceptions.

Scope for VD transparency provisions

However, such proposals do not seem to hit the conceptual core of the issue. As long as notifications of exercises are confined to ground forces only, there will always be a gap between VD notification requirements and the actual size of large-scale exercises involving also naval and coastal defence forces, air and missile defence, offensive counter-air operations, strategic and other forces under central command and interior security forces or civil protection units. Therefore, Russian manoeuvres like ZAPAD 2017, which took place in the Russian Western Military District and Belarus from 14 to

20 September 2017, increased threat perceptions in NATO and partner states as the assessments of their size varied. While Belarus announced that 12,700 military personnel took part, Russia held that those parts of the exercise that were conducted in the area of St. Petersburg fell short of VD thresholds.

In contrast, NATO circles assessed the combined size of the exercise phases in both countries at approx. 70,000 and above. The Polish general staff estimated the drills to cover 100,000, Lithuania announced 140,000 and Ukraine came up with more than 240,000.[191] Also the assessments of the possible objectives of ZAPAD 2017 varied between a lasting Russian occupation of Belarus, an aggression against the Baltic States and the establishment of a third front in preparation of an attack into Ukraine.[192]

While such estimates were vastly exaggerated, they point at an important shortfall of the VD transparency regime, namely the definition of its scope, which obviously leaves room for interpretation. Accordingly, also the Swedish exercise AURORA, which was conducted together with NATO forces in parallel to ZAPAD 2017, was notified to involve 12,500 personnel and, therefore, stayed just below the threshold for obligatory observation. However, its actual strength amounted to 21,500 by counting all units involved[193], including those that were not subject to VD transparency provisions. Similarly, in NATO's manoeuvre TRIDENT JUNCTURE, which took place from 25 October to 23 November 2018, more soldiers participated than notified, namely 50,000 as opposed to 37,000 notified.[194] Such problems cannot be rectified by only lowering thresholds for notification but require widening the scope of forces to be counted.

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191 Igor Sutyagin, Zapad-2017: Why Do the Numbers Matter?, London, Royal United Services Institute (RU-SI), 12 Sep 2017 https://rusi.org/commentary/zapad-2017-why-do-numbers-matter; "ZAPAD 2017 and Euro-Atlantic Security", in: NATO Review 14 December 2017 loc. cit. (Fn. 183) Johan Norberg, Military exercises and Russian fighting power 2009–2016, loc. cit. (Fn. 183)

192 Keir Giles, Russia begins huge 'Zapad 2017' drills, in: CNN: Russia's military exercises: Could they turn into war? September 14, 2017 https://edition.cnn.com/2017/08/15/opinion/zapad-2017-keir-giles/index.html Alexander Smith, Mac William Bishop, Courtney Kube, Russia Kicks Off Huge Zapad 2017 Military Exercises With Belarus, August 2, 2017 https://www.nbcnews.com/news/world/russia-plans-huge-zapad-2017-military-exercises-with-belarus Ukrainian President Poroshenko expressed concerns that Russia may be planning a "full-scale invasion", in: Simon Saradzhyan: Yes, Russia's Military is Training for a "Mega War". That's What Militaries Do http://nationalinterest.org/print/feature/yes-russias-military-training-mega-war-what-militaries-do Eric Schmitt, Vast Exercise Demonstrated Russia's Growing Military Prowess, in: New York Times, October 1, 2017 https://www.nytimes.com/2017/10/01/us/politics/zapad-russia-military-exercise.html

193 Colonel (GS) Johan Huovinen, Topic 3: Incident Prevention and Response Mechanisms, in: Austrian OSCE Chairmanship 2017 (ed.), Promoting Military Stability and Security. Key findings and documents of the Intersessional Dialogue on Military Doctrines and the Breakout Workshops on CSBMs, December 2017, pp. 211–213; see also Government Offices of Sweden, Swedish Armed Forces Exercise Aurora 17 will increase military capability http://www.government.se/articles/2017/09/swedish-armed-forces-exercise-aurora-17-will-increase-military-capability

194 NATO. Trident Juncture 2018. https://www.nato.int/en/natohq/157833.htm

Its limited scope also implies that the VD cannot respond to current threat perceptions regarding long-range strike systems, A2/AD capabilities and strategic transport potentials as such systems are not subject to the document. However, participating States are required to invite observers for presentations of new weapon systems and, as a minimum, once within five years for a visit to a military air base and military facilities, formations or military activities. This rule could be used to present modern weapon systems beyond the scope of the VD 11. As to naval systems with long-range strike components, voluntary visits to harbours and fleet bases could be considered. In this respect, one should note that the VD description of its area of application principally includes adjoining sea areas (VD 11, Annex I, footnote). However, such provision was never defined.

Fragmented parallel exercises

According to the VD, only military exercises of formations of land forces that are conducted as single activities under a single operational command have to be notified once they reach notifiable levels. This rule does not exclude conducting other military activities of other formations in parallel. It refers to various operational purposes and specific tasks of different formations rather than to the general purpose of strategic defence and deterrence, which all armed forces have to pursue. Therefore, such parallel activities do not count as one single activity, even if their combined strength exceeded threshold values for notification. The VD only stipulates that no more than three exercises, each exceeding the threshold for obligatory invitation to observation, may take place at the same time.

These rules are not unfounded and cannot be regarded a "loopholes". It is obvious that states that cover large territories and possess large armed forces with a high number of different levels of command and control have to conduct more drills than small countries with less forces. For increasing transparency of parallel exercises of land formations, lower threshold values might serve the purpose. But also voluntary notifications of smaller exercises as foreseen in the VD Plus Decision by the FSC in 2012[195] could be considered in a spirit of returning to co-operative security.

Furthermore, according to the VD every participating State must accept three ("passive") verification quota per calendar year for the inspection of specified areas where military activities take place, including in cases where thresholds for observation are not exceeded or which were not duly notified. Increasing the number of such inspections could be another option.

However, also the national responsibility of states for the notification and observation of exercises in their territories[196] is an issue, since it could lead to fragmented large-scale

195 See Fn. 189
196 VD 11, Chapter V. Prior Notification of Certain Military Activities, No. (39)

exercises in allied countries that only reach notifiable levels in combination. In this context, NATO sources count approx. 300 allied exercises of varying levels of participation that were conducted per year since 2015 under national or NATO command in allied territory or at and above the High Sea.[197]

Unannounced readiness tests ("snap exercises")

Russian short-notice alert exercises have repeatedly alarmed Western states. Such drills serve the purpose to test the readiness of forces without prior notice. Therefore, they are exempted from prior notification according to VD 11 rules even if they exceed threshold values. In this case, they have to be notified only once they have commenced. Even if they reach the levels for otherwise obligatory invitations of observers, observations can be skipped if the drills terminate within 72 hours. Western states have proposed to reduce this term to 48 hours or compensate the lost observation by later observations at the discretion of observing states.

However, it is questionable whether the reduction of time for such exceptions has the desired effect. First, the scope of VD transparency measures remains an unresolved issue, which also has a bearing on the interpretation of thresholds for snap exercises. Second, alert of troops can send different signals depending on their locations. It could trigger anxieties in neighbouring countries and lead to escalation if combat forces are put in high readiness and amassed near international borders. The implications might be less alarming if logistic or air defence units are tested in far remote areas. Geography plays an important role.

To that end, and taking into account lessons learned from sub-regional conflict, a chapter on regional measures was added to the Vienna Document in 1999. It aims at special CSBMs at the discretion of neighbouring states in order to de-escalate tensions and stabilize the military situation. Suggested measures include bilateral arms control agreements and restrictions of exercises in border areas and additional information and verification through on-site observations. Such measures could help to de-escalate tensions in areas adjacent to NATO-Russia borders and increase predictability of military activities. Also implementing and enhancing the chapter on defence planning and annual calendars for large-scale exercises could improve long-term transparency of military developments. Regrettably, however, earlier bilateral CSBMs between Russia and the Baltic States – partially taking the CFE Treaty as a blueprint – had been terminated by Russia after NATO turned to military reassurance measures for the Baltic States.[198] Moscow perceived allied military activities as hostile acts, which would pose military risks to the security of Russia.

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197 See NATO. The Secretary General's Annual Reports 2015–2020 loc. cit. (Fn. 186) See also NATO. Warsaw Summit Communiqué, 9 July 2016, No. 37 g, loc. cit. (Fn. 169)

198 The Russian Federation terminated the bilateral Agreement with Lithuania on additional CSBMs on April 4, 2014.

Risk reduction and non-state actors

A special VD risk reduction mechanism offers states to discuss and explain significant, unusual and unscheduled military activities on the territory of another participating state, which could give reason for security concerns. Accordingly, concerned states may request explanations by the state that has initiated such activities within not more than 48 hours and, as a second step, ask for consultations within the Forum for Security Co-operation and the Permanent Council of the OSCE.[199] This mechanism was invoked several times, inter alia, by Ukraine, Georgia, the U.S. and Canada. In most cases, the results of such discussions were not satisfying; in some cases, states that were requested to explain such activities refused substantial participation claiming that such requests would falsely portray or exaggerate the situation and were politically motivated.

Furthermore, in order to dispel such concerns, states conducting ambiguous activities may invite concerned and other interested OSCE states for a visit to the areas in which such military activities take place.[200] In contrast, in spring 2014, Ukraine invited international observers several times to own territories in East-Ukraine in which hostilities had erupted between non-state actors that were supported by Russia and Ukrainian government troops and volunteer units carrying out "anti-terror operations". In a later stage, Kiev switched to voluntary VD inspections in own territories beyond VD quota limitations. That allowed excluding Russian inspectors. Thereby, Kiev hoped to attract more international attention to the conflict, control the situation in East-Ukraine and gain more information about the situation on the ground.

However, as in other conflict areas in the OSCE space where non-state actors operate, such attempts did not bring about the desired results. Armed opposition groups and separatist movements have no interest in making their militias subject to VD transparency rules and disclose their structures, holdings and operational dispositions. As they do not recognize central governments, they also reject their authority for granting inspection rights to foreign observers. They rather suspect that allied inspectors would only seek to acquire intelligence. Therefore, inspectors cannot invoke legality of their observations and might even face serious risks when caught by rebels.[201]

As the VD is an agreement between states, it cannot be implemented between recognized central governments and renegade armed groups without providing status to unrecognized de facto regimes. Also attempts by third states to carry out VD observations in other disputed territories, such as North-Cyprus, Abkhazia, South Ossetia or

199 VD 11, Chapter III. Risk Reduction, No. 16
200 VD 11, Chapter III. Risk Reduction, No. 18
201 A multinational German-led observation team was detained by rebels in Donbas in May 2014.

Nagorno-Karabakh, failed for the same reason,[202] since either the central government or the de facto-regime or both refused to give their consent to such verification activities. In the case of Ukraine, it was the Minsk Agreement brokered by the heads of state and government of France, Germany, the Russian Federation and Ukraine in the "Normandy-format", which eventually brought about a halt to large offensive operations on the basis of political and military ceasefire provisions under OSCE monitoring.

VD risk reduction mechanisms also entail a provision for de-escalating the situation once a hazardous incident of a military nature has occurred.[203] To that end, the OSCE communication network and consultation mechanisms may be used to clarify the issue, defuse tensions and avoid further escalation. However, this mechanism can only complement other bilateral risk reduction agreements and direct military-to-military contacts as immediate reaction by operational headquarters is needed to de-escalate the situation. Therefore, this VD mechanism has been used only once since its inception.[204]

Summarizing, since 1990 the VD as a political CSBM instrument – together with the two legally binding treaties on CFE and Open Skies – has contributed significantly to the transparency of military structures, capabilities, planning and activities in Europe. It has complemented the CFE Treaty by focusing on transparency and early warning of military exercises and unusual large-scale activities. Today, with the CFE Treaty having lost relevance and new threat perceptions and military tensions dominating mutual deterrence relations, a number of shortfalls of the VD appear to be more relevant than in the past to address current security concerns. However, the VD was neither designed nor is it in a position to replace the CFE Treaty as an arms control instrument with legally binding limitations and a far more intrusive information and verification regime. Against this background, the VD can satisfy only minimum requirements for ensuring military transparency and risk reduction in the area of application in Europe between the Atlantic and the Urals.

In particular, the scope of the VD is too narrow to cover fully large-scale exercises involving all services and branches of armed services. For this very reason, it cannot respond to current threat perceptions in regard of modern long-range strike systems, A2/AD bubbles and enhanced rapid reaction capabilities, including strategic transport. Furthermore, the VD lacks regional limitations of permanent force deployments and restrictions of unusual military activities in sensitive areas, in particular close to bor-

202 Cf. Kapadnadze et al., Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context. Hamburg (CORE), January 2017 (Working Paper No. 28)

203 VD 11, Chapter III. Risk Reduction, No. 17

204 Cf. Benno Laggner, Topic IV: Risk reduction, in: Austrian OSCE Chairmanship 2017. Federal Ministry of Defence and Sports/Federal Ministry for Europe, Integration and Foreign Affairs (ed.), Promoting Military Stability and Security. Key findings and documents of the Intersessional Dialogue on Military Doctrines and the Breakout Workshops on CSBMs. Vienna, December 2017, p. 103

derlines. VD Chapter X encourages special regional measures to address such concerns. However, in the past existing bilateral arrangements were withdrawn and special regional measures in areas adjacent to NATO-Russia borders were not seriously considered.

3.3.3 Eroding Open Skies Treaty with skies closing

OST contribution to enhance military transparency and implementation issues

Since the entry into force of the Open Skies Treaty (OST), States Parties have undertaken more than 1,500 observation flights, of which 500 were over Russia and Belarus, involving the participation of about 200 missions carried out by the United States. In contrast, Russia conducted about 70 flights over the United States between 2002 and 2016, and it has used the bulk of its flight quotas for missions over European countries (87 %). This fact excludes unilateral advantages of Russia over the United States and points at the Russian interest in observing NATO forces in Europe.[205]

In general, most of the observation flights were carried out without major problems. They made a significant contribution to obtaining objective information on the situations in the areas observed. In connection with the Ukrainian crisis and the military-political tensions in the Baltic-Russian border region, Western States Parties have intensified their observation flights regionally. Between March and July 2014 alone, they made 22 flights over Russia and Ukraine. In December 2018, following the escalation in the Kerch Strait, a special observation mission was flown with the consent of all parties involved to assess the situation in the area of tension.

However, political tensions had put a strain on the annual coordination of the distribution of flight quotas in the Open Skies Consultative Commission (OSCC) and sometimes prevented agreement. Due to the Russian-Georgian territorial conflict, no observation flights were possible in 2018. A Greek-Turkish dispute over Cyprus' accession to the treaty has repeatedly called into question the consensual adoption of the OSCC agenda since its entry into force. In early 2016, Ankara refused a Russian observation flight in the Turkish border area with Syria. In 2013 and in September 2018, the United States delayed the certification of Russian digital cameras. In September 2019, Russia rejected a segment of a planned observation flight of the United States and Canada over an area in Central Siberia where the large-scale exercise Tsentr was taking place.

205 For an overview see Alexandra Bell, Wolfgang Richter, Andrei Zagorski, How to fix, preserve and strengthen the Open Skies Treaty. Deep Cuts Issue Brief #9, March 2020; see also Katarina Kertysova, Closing the Open Skies. Wilson Quarterly / Summer 2021; Alexander Graef, Sicherheitspolitik: Der "Vertrag über den Offenen Himmel" ist gefährdet. Gastkommentar. Neue Zürcher Zeitung, 28 November 2019; Wolfgang Richter, Attack on the Open Skies Treaty. President Trump Wants to Withdraw from the Open Skies Treaty. SWP Comment No. 29, Berlin, June 2020; and: Open Skies-Vertrag in Gefahr. Nach den USA kündigt auch Russland an, aus dem Vertrag auszutreten. SWP-Aktuell No. 10, Berlin, February 2021; Hartwig Spitzer, The Treaty on Open Skies – Status Quo and Prospects, in: IFSH (ed.), OSCE Yearbook 2004, Baden-Baden 2005, pp. 369–380

In addition, the United States had restricted Russian observation flights over Alaska and the Pacific Islands since 2017 in response to Russian flight limitations over Kaliningrad and the borders along disputed territories of Georgia. However, it was also possible to settle contentious issues amicably. For example, Russia relinquished the minimum flight altitude over Chechnya in 2016.

In 2012, Georgia suspended the OST with regard to Russia and did not allow any more Russian observation flights.[206] Thereby, it responded to Moscow's recognition of breakaway areas of Abkhazia and South Ossetia as independent states in 2008, and on subsequent Russian flight restrictions in the vicinity of their borders. Moscow claimed only to implement treaty provisions, which require keeping a distance of 10 km from the border of non-States Parties for observation flights.[207] This also met with criticism from NATO allies. But it was not until autumn 2017 that the coordination of quotas for the following year failed, when Moscow was no longer willing to accept the blockade of Russian observation flights over Georgia. As a result, no observation flights took place in 2018 – with the exception of the Kerch mission.

Flights could only be resumed when Moscow made concessions in the coordination of flight quotas for 2019. But this did not present a long-term solution to the problem. Since neither Washington nor Moscow showed particular interest and initiative, the role of mediator remained with the Europeans, and especially Germany, since the flight quotas have been coordinated under German chairmanship. The conflict could have been solved pragmatically if Moscow had continued applying its later policy of de facto non-application of the distance zone and Western states signalled that they are not planning any flights in this zone. Given the range capabilities of the sensors, the 10 km zone is of little importance for the acquisition of information.

Another pragmatic option would have been to allow Russian guest observers to participate in national OS observation flights over Georgia of Western States Parties provided that both sides would forego maximum positions and that such missions would be conducted in a "status-neutral" way. This would imply that such flights would not affect the basic positions of States Parties with regard to (non-)recognition of the independence of Abkhazia and South Ossetia.

Another issue was the Russian limitation of air routes over the Kaliningrad exclave. The reason for that restriction was obviously a Polish OS flight in 2014 that lasted several

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206 Statement of the Ministry of Foreign Affairs of Georgia on a decision to cease performing its obligation vis-à-vis the Russian Federation under the Open Skies Treaty, 5 April 2012 http://italy.mfa.gov.ge/index.php?lang_id=ENG&sec_id=193?info_id=14626

207 OST, Article VI, Section II. 2

hours over this small area of only 15,000 km^2.[208] According to Russian explanation, the local airspace had therefore to be closed for other flights. In doing so, Poland made full use of the treaty rules that allow a maximum flight distance of 5,000 km for the whole of western Russia from the Kubinka OS airfield. For Kaliningrad, the treaty does not provide for a separate flight distance limitation. In order to avoid repetition, Russia then unilaterally declared a specific route limit of 500 km for flights over this area that were to be started at Kaliningrad airport.

In principle, the OST takes into account the size of the overflown areas when determining maximum flight distances. For example, there are limits of 250 km over the Danish Faroe Islands, 600 km over the Czech Republic, 1,200 km over Germany, 3,000 km over Alaska, and 6,500 km over the Asian part of Russia.[209] However, the treaty does not permit unilateral rule changes. All modifications of its provisions must be agreed upon co-operatively.

Nevertheless, the unilateral Russian flight distance limitation over Kaliningrad does not prevent the purpose of the treaty from being fulfilled, as observation flights over the exclave remain possible to a sufficient extent. Accordingly, allies – although criticizing Russia's unilateral decision – did not claim that there was an essential restriction on the implementation of the treaty, which would constitute a material breach. Therefore, a number of allies sought to reach amicable solutions to the problem through consultations in the OSCC. A compromise could have been to allow a new OS airfield in the region that may deviate from the unilateral Russian determination, but which does not overburden local airspace.

United States withdrawal from the OST and justifications

In February 2020, Russia allowed an observation flight of the United States over Kaliningrad with a slightly extended flight range limitation, thus showing a sense of compromise. Nevertheless, the Trump administration on 22 May 2020 gave notice of the intent to withdraw from the treaty. Thereby, it referred to violations by Russia of treaty provisions, but did not claim material breach. Instead, it accused Russia of "weaponizing" the OST for "espionage" to the detriment of the national security of the United States. In contradiction to this claim, it also stated that satellite observation would provide much better images with significantly higher resolution than that of sensors permitted under the OST.

These explanations ignore the co-operative nature of OST fact-finding. Observation flights are mutually agreed and conducted together. Escort teams of the observed state are always on board together with observers. They monitor that the provisions of the

208 Alexandra Bell et al., How to fix, preserve and strengthen the Open Skies Treaty. loc. cit. (Fn. 205), p. 3

209 OST, Article III 11., Annex A Section III

treaty are abided by. OS aircraft, cameras, and sensors are only allowed if they have been certified by the States Parties and checked by the escort team prior to the flights.

The resolution of the sensors permitted under the OST is sufficient to differentiate between missile types, armoured infantry fighting vehicles, other armoured combat vehicles, artillery systems, aircraft and helicopters. This capability could be used also to verify the stationing of ground-launched short-range and suspected medium-range missiles. As opposed to satellites with fixed orbits and limited energy for rerouting, OS observation flights can respond more flexibly to situational requirements. Observing states can select appropriate flight routes over areas of interest on short notice, repeat such aerial surveillance in short time, and fly below cloud cover, which hinders optical satellite observation. However, sensitive information about radio and radar emissions or the software of target acquisition and guidance systems cannot be detected.

Therefore, OS observation flights are well-suited for the purpose of reducing risks and enhancing transparency of military activities in Europe and beyond, including in zones of tensions. Furthermore, the findings on military activities and the implementation of arms control agreements are multilateralized. In addition to the States Parties participating in observation flights, all other parties also receive the mission reports. On request, they can purchase the image sequences obtained during the flights. In this way, the results of the observation flights were shared with 34 States Parties.

In contrast to the exchange of data gained through national intelligence, findings from OS observation flights are not subject to prior political selection and evaluation. The fact that the data are jointly collected – so that their authenticity cannot be disputed – is one of the most important advantages of the treaty. They allow for a fact-based security dialogue in multilateral fora and for more objective and independent national assessments of the situation. This is particularly important for states that do not possess own satellite reconnaissance. With the end of the OST, these states will be more dependent on intelligence provided by allies. And compensating for the loss of the OST by sharing national intelligence data is exactly what the Trump Administration has offered to allies.

The United States under the Trump Administration left the OST on 22 November 2020. In June 2021, the Biden Administration declared that it would not return to the treaty, although Biden had criticized Trump's decision to withdraw from it during the election campaign.[210] Instead, it repeated Trump's explanation that satellite observation was superior to sensors allowed under the OST and that the U.S. would share intelligence with allies. It also pointed at outstanding solutions to implementation issues and the

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210 Arms Control Association, U.S. Will Not Rejoin Open Skies Treaty, in: Arms Control Today, June 2021 https://www.armscontrol.org/act/2021-06/news-briefs/us-not-rejoin-open-skies-treaty

cost of replacing old observation aircraft by new ones. The required financial means would be spent on more important purposes.

In consequence, both U.S. governments neglected a statement in favour of maintaining the OST issued by France, Germany and ten other European states on 22 May 2020.[211] European allies also warned in a NATO Council meeting of the same day that they would not simply follow the U.S. in withdrawing. Shortly thereafter, the German Bundestag, with unanimous support from all factions, posted a letter to the U.S. Senate and the House of Representatives calling on the United States government to remain in the treaty.

Imminent withdrawal of Russia from the OST and justification

Russia on 18 June 2021 gave notice on the intent to withdraw from the treaty as well with an effective date of 18 December 2021. In January, the Russian Foreign Minister explained that the responses given by European capitals to Russian requests were unsatisfactory[212], namely, to assure continued permission for Russian aerial observations of U.S. installations and stationed forces in Europe, and not to deliver to the United States information gained through observation flights over Russian territory. But Moscow slowed down national procedures in preparation of formal withdrawal from the treaty, until the Biden Administration made clear in June 2021 that it did not intend to return to the treaty.

Moscow obviously is concerned to be left in a strategically disadvantageous position if allies continued observing Russian territory while Russia was barred from reciprocally flying over U.S. territory. Thus, it discarded the option to continue implementing this segment of security cooperation with the Europeans without the participation of the United States. Such a decision was possible as European states had signalled their readiness to do so. That would also reflect the fact that Russia had regularly conducted six times more observation flights over European states than over the territory of the United States. However, Moscow gave priority to staying on an equal footing with Washington and attached more importance to strategic equality and reciprocity in relation to the United States. Thereby, it neglected European interests and the chance to continue aerial surveillance of U.S. military bases in Europe, including missile defence sites.

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211 Federal Foreign Office. Statement of the Foreign Ministries of Belgium, Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden on the announcement by the US to withdraw from the Open Skies Treaty. 22 May 2020 – Press release https://www.auswaertiges-amt.de/en/newsroom/news/joint-delaration-open-skies/234892

212 Statement of the Russian Foreign Ministry on the beginning of domestic procedures for the withdrawal of the Russian Federation from the Open Skies Treaty 39-15-01-2021 https://www.mid.ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4522563

Whether Belarus will follow the Russian withdrawal from the OST had not been announced by the time this study was finalized (10 August 2021). It had acceded to the OST in union with Russia but does not possess national OS observation aircraft nor sensors. However, other European states are likely to withdraw from the OST as well, since continued implementation of the treaty would lack any viable operational purpose. With the withdrawal of the two largest States Parties, the OST will cease to exist as an instrument of co-operative security that covers the northern hemisphere from Vancouver to Vladivostok, and no longer contribute to military transparency and predictability in Europe.

3.4 Identification of shortfalls of existing arms control instruments

The arms control and CSBM architecture in the OSCE area with its main components, the CFE Treaty, the Open Skies Treaty and the Vienna Document, that had been created at the end of the Cold War, has been unravelling for almost two decades. Despite some residual value for bilateral relations, e.g. between Poland and Belarus, the CFE Treaty has ceased to provide military stability in Europe and is largely defunct. As opposed to the 1990s and in contradiction to the Lisbon "Framework for Arms Control", the treaty has lost its role as a "cornerstone of conventional stability" in Europe. Its bloc limitations are obsolete, and an attempt to adapt it to geopolitical changes has failed. Moreover, states in NATO-Russia contact zones and areas of conflict do either not adhere to the treaty or have violated agreed maximum national levels of holdings. For stabilizing and deescalating tensions in these sensitive areas in Europe the treaty has become irrelevant.

Had the CFE Adaptation Agreement entered into force and been implemented, it could still contribute significantly to military stability as it would provide for territorial limitations of TLE holdings and enhanced military transparency and verification. However, some of its rules were overtaken by events and would have to be modified as well. That is particularly true for those on temporary deployments, which allow for massive and potentially destabilizing accumulations of forces in sub-regions, where military tensions peak today. Furthermore, the scope of treaty limitations and transparency rules had not been adapted. It is too narrowly defined and, therefore, cannot fully respond to current threat perceptions. Specifically, ground-, sea- and air-launched long-range strike systems, A2/AD capabilities and strategic and operational transport capacities are not covered.

The Open Skies Treaty is in sharp decline as well. It will soon lose its value as a flexible transparency instrument, which was suited to observe military installations and activities on short notice throughout the area of application at the discretion of observing states. In consequence of the demise of the OST, transparency and predictability of military developments in Europe and beyond will shrink further to the detriment of military security of OSCE participating States.

If attempts fail to revitalize conventional arms control, the OSCE would be left with the Vienna Document that was designed as a CSBM instrument but never intended nor suited to substitute for the CFE Treaty. Its purpose was rather to complement it with a focus on transparency of military activities and contacts of all participating states throughout its area of application in Europe and Central Asia. The perceived shortfalls of the VD became relevant only in times of crisis with increased military tensions and in comparison to a comprehensive arms control regime, which would provide for limitations, full and detailed information, and more intrusive verification, but which has ceased to exist. Therefore, states that continue to block revitalizing conventional arms control put more emphasis on "modernizing" the Vienna Document in order to increase military transparency and predictability, in particular in regard of Russian large-scale and unannounced snap exercises. This desire stands in a remarkable contrast to the negligence of the demise of the Open Skies Treaty, which exactly served this purpose.

Against this background, major perceived VD shortfalls include

- limited numbers of evaluation visits and inspection quota,
- (too) high thresholds for the notification and observation of military exercises,
- exceptions for prior notifications of snap exercises and
- parallel exercises, which are not conducted as a single activity under a single operational command, and
- unsatisfying risk reduction mechanisms.

However, even if transparency were increased by adapting and enhancing these provisions, other significant shortfalls would be left unattended. They refer to

- the absence of limits to destabilizing permanent or temporary force concentrations in sensitive areas, particularly along international borders and in NATO-Russia contact zones,
- the limited scope for information exchanges required under the VD and
- too narrowly defined counting rules for notifications of certain military activities.

Due to its limited scope, that mirror CFE rules, modern weapon systems, which drive threat perceptions, are not accounted for by VD provisions, inter alia, ground-, sea- and air-launched long-range strike systems, A2/AD capabilities and strategic and operational transport capacities. For similar reasons, there is a gap between certain military activities notifiable under the VD and the actual size of such activities, which could comprise armed services and branches other than land force formations and their supporting units.

On the other hand, the VD contains provisions that were not given sufficient attention to but which could help to redress such shortfalls. Chapter X encourages voluntary bilateral and regional measures that would reduce tensions and increase military stability and predictability. Among the regional measures recommended are enhanced military-to-military contacts, additional arms control agreements, restrictions of temporary deployments and large-scale exercises, increased exchange of military information, and intrusive mutual verification, particularly in border areas.

In the absence of such measures, the largely defunct and further unravelling arms control architecture in Europe is not capable of responding adequately to current threat perceptions and curb the inherent risks of deterrence relations in order to prevent further escalation. In contradiction to the objectives and principles of the Lisbon "Framework for Arms Control" the following shortfalls can be observed:

- lack of predictability of the use of military force,
- lack of transparency and verification of military activities,
- too narrowly defined scope of available instruments excluding modern weaponry,
- lack of limitations of force accumulations in a regional context,
- lack of military contacts and expert exchange,
- lack of political will to adapt existing or design new instruments to increase politico-military stability in the OSCE area.

There is also a lack of understanding how to stabilize sub-regions in conflict in which non-state actors are involved and inter-state agreements cannot be applied for status reasons. Pending political solutions to such conflicts, "status-neutral" ways and methods could be considered in order to prevent and respond to incidents, contain the risk of escalation, and create more predictability through a minimum of contacts and transparency. In this context, the OSCE document on "Stabilizing Measures for Localized Crisis Situations" has received little attention in the past. However, it should be noted that a number of ceasefire agreements, including the Minsk Agreement, and the operation of the OSCE Special Monitoring Mission de facto apply measures proposed by this document.

It should also be noted that some other OSCE CSBM instruments are still operational, inter alia,

- the Global Exchange of Military Information (GEMI) with a wider scope but limited details,
- the Dayton Peace Accord Article IV-Agreement on regional stability,
- the Code of Conduct on Politico-Military Aspects of Security, which calls for democratic control of state security forces and adherence to International Humanitarian Law, although its implementation is challenged in a number of states.

Furthermore, the OSCE as a Regional Arrangement under Chapter VIII of the UN Charter implements a number of decisions of the Security Council and Agreements reached in the UN General Assembly, which it has refined and made operational for use within the OSCE. That shows remaining common interests in fighting terrorism and weapons' proliferation. In this regard, the following OSCE documents are noteworthy:

- Principles Governing Non-Proliferation
- Principles Governing Conventional Arms Transfers
- OSCE Document on Small Arms and Light Weapons
- OSCE Document on Stockpiles of Conventional Ammunitions

However, although such documents and their provisions still enjoy common respect, they have no bearing on the tense security situation in Europe.

4 Elements for a renewal of conventional arms control in Europe

4.1 Political considerations and matters of principle

4.1.1 The case for conventional arms control: containing military risks

Bridging the current gap of mutual suspicion and mistrust between Russia and most Western states would require both a credible commitment and adherence to a rules-based and co-operative security order in Europe in line with fundamental principles of international law and OSCE key documents and also military restraint and predictability to contain threat perceptions.

The rules-based security order to which OSCE participating States have committed includes respect for the sovereignty and territorial integrity of states and for their legitimate security interests. In this context, OSCE participating States have agreed to co-operate and create a common space of equal security without dividing lines. Accordingly, no State, organization or grouping should strengthen its security at the expense of the security of others or regard any part of the OSCE area as a particular sphere of influence.

Present political realities stand in stark contrast to such objectives of security co-operation. However, the nature of the current conflict differs fundamentally from that of the Cold War. Today, it is not an all-out political, ideological, economic and military confrontation between two blocs spanning the whole of Europe, which threatens to undermine the security of all OSCE participating States. Present security risks rather centre upon local territorial conflicts, which are perceived as elements of a larger geo-political competition between the Russian Federation and the West, with both sides seeking to enlarge own spheres of influence and potentially undermine the security of the opposing side. In turn, such conflicts cannot be settled by only focusing on local issues as long as such perceptions prevail and a new balance of security interest cannot be found.

However, given the direct involvement of the two largest nuclear powers and the strongest military alliance globally, today's risks of mutual deterrence relations are not less dangerous as those prevailing in the Cold War. Therefore, and as long as political settlements of current territorial conflicts are pending, the military instability emanating from these risks needs to be addressed in order to prevent escalation and restore military predictability.

According to the 1996 OSCE Document of Lisbon, “A Framework for Arms Control”, this can be achieved preferably through full implementation of arms control agreements at all times, including in times of crisis. To that end, participating States have committed to ensure through a process of regular review undertaken in the spirit of co-operative security that arms control agreements continue to respond to security needs in the OSCE.

Today, no comprehensive arms control regime and only limited transparency exist in Europe. This has serious implications particularly in those areas, in which new military tensions have flared up between NATO and Russia after 2014, when Russia annexed Crimea, began supporting armed rebels in Donbas, and NATO responded to new threat perceptions of East-European allies with increased readiness of NATO’s Response Forces, the enhanced Forward Presence of four multinational battalion-size battle groups in the Baltic States and Poland, additional national reassurance measures, and a series of military exercises throughout NATO’s eastern flank.

The high number of sea and air patrols and military exercises of both sides along border areas, in and above the High Sea and disputed territorial waters is particularly worrying as more close encounters entail the risk of incidents and escalation. Massive accumulation of forces through large-scale military manoeuvres and unannounced snap exercises, particularly in the vicinity of borders, harbour the risk of miscalculation and escalatory responses.

Against this background, an attempt was made in the OSCE to revitalize conventional arms control. To that end, the German OSCE chair, supported by a group of like-minded countries, in 2016 proposed to initiate a “Structured Dialogue” to discuss and analyse the conditions for such an endeavour. It also underlined the need for new arms control measures to tackle military instabilities in certain sub-regions as well as modern weapon technologies and local conflicts.

Following the Ministerial Declaration issued in Hamburg in December 2016[213], the OSCE conducted a number of informal meetings within the “Structured Dialogue” under the successive chair of Germany, Belgium, the Netherlands and Spain. It discussed a rich menu of issues, inter alia, political commitments and principles, current territorial conflicts, status of arms control and CSBM instruments, conventional balances in Europe, military doctrines, potentially destabilizing military activities, incident prevention, cyber and hybrid warfare.

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213 OSCE Ministerial Council, Hamburg 2016, “From Lisbon to Hamburg. Declaration on the Twentieth Anniversary of the OSCE Framework for Arms Control”, MC.DOC/4/16, 9 December 2016 https://www.osce.org/files/f/documents/3/e/289496.pdf

The debate did not only reveal controversial perceptions of the nature of current risks and threats but also contradicting views on political conditions for a revival of conventional arms control. Therefore, any new approach to renew conventional arms control in Europe faces a twofold challenge, although it is legitimized in general by OSCE key documents: It needs to overcome political blockades and be construed conceptually in such a way that it can respond effectively to current threat perceptions.

4.1.2 Pan-European arrangements versus sub-regional needs: role of territorial conflicts

As proven by past experience, the complicated political situation in areas of conflict with disputed territories involving non-state actors will hinder or render impossible finding solutions for pan-European arms control stipulations which are acceptable to all sides involved. For such areas, temporary "status-neutral" methods should be applied to contain the risks of renewed hostilities and further military escalation. To that end, incident prevention and response mechanisms are advisable, which can serve the purpose without providing status pending political conflict settlement.[214] Various ceasefire agreements have followed this scheme.

Also the special needs of other areas with military tensions stand in the way of pan-European arms control arrangements, which are equally suitable for all European regions. Therefore, inter-state agreements, which focus on certain (sub-)regions, where military tensions have flared up but no territorial disputes exist, have more prospect of being acceptable to states than those involving areas of dispute and non-state actors, which are not internationally recognized.

4.1.3 Host nation consent for the stationing of foreign forces

In line with the OSCE Framework for Arms Control and other key documents, participating States have committed to the principle of host nation consent for the stationing of foreign forces. However, while this principle has undiminished value in the relations between sovereign states, establishing linkages between arms control and protracted conflicts in disputed areas with the aim to enforce preferred solutions to the conflict has neither promoted conflict settlement nor arms control in Europe.

In the past, the adaptation of the CFE Treaty and subsequent attempts to revive conventional arms control failed because they were made conditional upon prior withdrawal of Russian stationed and peacekeeping forces from certain disputed territories. Invoking the principal of host nation consent served as a legal justification of such demand, although it stood in contradiction to the approval by the OSCE and the UN of peacekeeping operations in Georgia up to 2008. The assumption was that Moscow's interest

214 Cf. Kapadnadze et al., Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context. Hamburg (CORE), January 2017 (Working Paper No. 28)

in arms control would have precedence over its positions on local conflicts. This policy, which also aimed at creating the conditions for Georgia's accession to NATO, obviously underestimated Russia's resolve.

With this linkage to local disputes, the chance was abandoned to agree on a strategically important arrangement, namely the ACFE, which would have ensured military restraint, renewed a balance of security interests, and thereby also promoted local conflict settlement. In the absence of such strategic agreement, local conflicts have become far less tractable, as they are seen as pawns in a geopolitical zero-sum game.

The principle of host nation consent as such cannot be disputed and will carry undiminished value also in future. However, if a future arms control arrangement should have a realistic chance of being adopted, genuine definitions of this principle should be aimed at that have proven to find consensus, e.g. the definition contained in the CFE Adaptation Agreement.[215] Any attempt to enforce concrete solutions to local conflicts by using arms control as a lever would endanger the objective to contain military risks in the whole of Europe and prevent escalation without facilitating conflict settlement.

4.1.4 "No business as usual" versus risk reduction

In 2014, NATO Member States suspended regular dialogue in the NATO-Russia Council and replaced security co-operation with Russia by a policy of military reassurances for allies. In the same vein, they adopted a "no business as usual"-policy towards Russia.[216] Any return to normal relations was made conditional to Russia's withdrawal from occupied areas in Ukraine and termination of supporting rebels in Donbas. The United States and eastern flank states have expressed the view that renewing conventional arms control would contradict such NATO decisions.

However, it is questionable whether containing imminent military risks and preventing further escalation in quite unusual circumstances in Europe would qualify as "business as usual". In times of crisis, arms control aims at enhancing security for all states by increasing military transparency and predictability and preventing destabilizing accumulation of forces, which could be used for offensive operations. Also current attempts to "modernize" the Vienna Document contradict this interpretation as they pursue exactly the same objectives. The VD is the principal OSCE instrument for security co-operation in the military field. Any attempt to adapt its provisions requires consent by – and therefore co-operation with – all participating states, including Russia.

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215 ACFE, loc. cit. (Fn. 65) Article 2 (replacing CFE Article I): ACFE Article I 3

216 NATO's "no business as usual"-policy was confirmed last in: NATO. Brussels Summit Communiqué, 14 June 2021, loc. cit. (Fn. 171), No. 9

Furthermore, any creation of new risk reduction mechanisms between NATO and Russia would require resuming military-to-military contacts at the expert levels. Insofar, there is a need for NATO states to reconsider whether holding on to an uncompromising position of principle still serves the purpose of maintaining security interests of the alliance and the OSCE as a whole.

4.1.5 Regional political agreements replacing a comprehensive arms control treaty

The actual question behind this argument of principle is whether it is desirable to adopt reciprocal agreements on containing destabilizing force concentrations, which would also effect the freedom of action for own force deployments beyond enhancing military transparency.

Therefore, the alliance and Russia should thoroughly weigh the serious disadvantages of facing uncontained military risks of continued deterrence relations, which might spiral out of control, in comparison to the relative disadvantage of restricting own force deployments, which would be mitigated by reciprocal commitments of the opposite side and be based on the principle of sufficiency for defence.

Scepticism in the United States against conventional arms control in Europe might also emanate from the slim chances for the U.S. Senate to pass a new legal instrument. Therefore, a more realistic way forward seems to be striving for political agreements, which could tackle certain regional hotspots without aiming at a comprehensive European arms control treaty that would replace the CFE Treaty.

Instead, still existing agreements such as the Vienna Document, especially its chapter on regional measures, and the commitments contained in the NATO-Russia Founding Act could be taken as a point of departure. However, they would have to be revisited and clarified, where there is a lack of definitions. Also their scope would need to be extended, if a modified arrangement were to make a real contribution to allaying current threat perceptions.

4.1.6 Sufficiency and reciprocity: Securing individual and collective defence

To make arms control arrangements politically acceptable, they must have the potential to effectively respond to today's threat perceptions and contain offensive capabilities in line with the principles of sufficiency and reciprocity. As such measures will have to focus on areas of heightened military tension, states located in zones adjacent to NATO-Russia borders and regions of conflict might suspect that regional arms control arrangements will isolate them, create zones of different security, and undermine national and collective defence.

Although NATO member states enjoy the protection of the strongest military alliance globally, such concerns need to be taken into account when elaborating on new arms control concepts. It should be made clear that future European arms control, as in the past, would aim at reducing and eliminating capabilities to launch large-scale offensive operations or surprise attacks. The principle of reciprocal sufficiency implies that prudently construed arms control would secure and strengthen defence capabilities.

At the same time, arms control concepts would have to take into account special regional conditions, since "front states" feel particularly vulnerable as opposed to other states in the rest of Europe. Therefore, any regional provisions would have to find an acceptable balance between the principle of reciprocity and geostrategic asymmetries. The CFE Treaty has provided precedence for construing such balance.

4.2 Building-blocks for conventional arms control in Europe

4.2.1 Point of departure: Responding to risk and threat perceptions

Arms control is not an end in itself. It serves the purpose to enhance the security of states. Therefore, it pursues the objectives to contain military risks, reduce capabilities for launching large-scale offensive operations or surprise attacks, keep sufficient military capabilities for individual and collective defence, and win time for the preparation of successful defence if security co-operation fails.

Arms control concepts have, therefore, to be construed in such a way that they provide suitable measures, which respond effectively to threat perceptions prevailing under the specific geopolitical and military conditions of the time. If such conditions change, arms control concepts have to be adapted or replaced to maintain relevance. As this principle was neglected for the last two decades, the European arms control architecture has eroded and largely become irrelevant for containing today's military risks. Furthermore, lack of political will and negligence of such risks have led to further unravelling of the European arms control architecture.

Today, the bipolar Germany-centred CFE bloc limitations are obsolete as one bloc has disappeared, while NATO has enlarged 1,000 km to the east of the Elbe River. Its eastern frontier directly borders Russian territory in the Kaliningrad, Pskov and St. Petersburg areas. Russia is involved in sub-regional conflicts in the Black Sea area. Both sides are engaged in operations outside Europe but have changed their force postures again to reflect mutual deterrence relations with a view to high intensity war scenarios in Europe, focusing on certain sub-regions.

4.2.2 (Sub-)regional focus replacing overall force balances

As opposed to the Cold War, today's threat perceptions do not refer to large-scale offensive bloc operations conducted throughout the European theatre. They are rather concentrating on sub-regional scenarios, whereby troops are amassed on short term at the periphery of own territories. Consequently, both sides prepare for contingencies limited to certain sub-regions, with the centres of gravity in the Baltic Sea and Black Sea regions.

Against this background, only comparing overall numbers of conventional forces in Europe would not suffice to project an adequate picture of offensive capabilities in sub-regions. For the same reason, aiming at an overall bloc force balance would not help to attain more conventional stability in Europe's sub-regions. Such an attempt would be unrealistic, both politically and militarily. Instead, forces, time and space for regionally limited attack operations should be taken into account.

Containing threat perceptions related to certain sub-regions requires a new arms control concept that would aim at regional military balances. This needs to be based on the principle of military sufficiency for conducting defensive operations. Such an approach would centre upon

- active forces present in these areas,
- operational reserve forces, which can be brought forward from rear areas, taking into account their readiness and mobility, including land, air and sea transport capabilities,
- time and space for such reinforcements in view of geostrategic asymmetries,
- modern weapon systems, that could deny or delay access of reinforcements of the opposing side, which have not been accounted for by past and present arms control regimes.

4.2.3 Operational factors: forces, time and geographic space

Short-term available forces in critical sub-regions

Surprise attacks can be carried out successfully by forces present in the sub-region if they

- are located in strike distance to borderlines after short preparation,
- maintain a high status of readiness,
- hold armaments and equipment suitable for mobile combat operations under high intensity war conditions, i.e. TLE as defined in the CFE/ACFE Treaty,
- can achieve sufficient local superiority over opposing forces in the (sub-)region in order to conduct successful breakthrough operations,
- are supported by long-range strike systems that delay access of opposing reinforcements,
- are sufficiently trained to conduct combined arms operations,
- have prepared sufficient logistics for sustaining such operations,
- are sufficiently protected against air-, missile and electronic attacks,

- are led by an able and experienced military leadership and resilient C^3 system, and
- guided by effective intelligence.

While not all of these elements are accessible for arms control measures, effective arms control can reduce capabilities to carry out surprise attacks and win time for preparing defence. To that end, arms control can

- establish sub-regional balances for present forces to prevent short-term local superiority, in particular,
- limit their short-term available armaments and equipment suitable for initial mobile combat operations,
- establish minimum distances from border lines for certain combat forces,
- establish upper limits for large-scale exercises in the sub-region and assure observation,
- restrict unannounced readiness checks that could be used as springboards to attain an edge in time for initial mobile combat operations, and
- provide verified transparency of force activities of the opposing side within a defined geographical zone in order to raise situational awareness and win time for reaction on unwanted or ambiguous activities.

To be militarily effective, the definition of this zone must take into account time and space for fast mobile operations and provide for a geographical depth that has a bearing on military operations, including the option to reinforce locally present forces from outside the region. CFE regional limitations provided for a depth of 250–600 km to delay access of reinforcements.

Rapid response forces located outside critical sub-regions

Rapid response forces deployed outside critical sub-regions are designed to reinforce the permanently located troops in the sub-region. Thereby, they can increase the combat power on the potential frontline to attain a time edge in establishing local superiority or introduce operational reserves in order to sustain operations in progress, if they

- are held in high readiness,
- can be moved in short time by rail, air or sea transport,
- hold armaments and equipment suitable for mobile combat operations under high intensity war conditions,
- are sufficiently trained to conduct combined arms operations,
- can rely on sufficient logistics within the sub-region in order to be equipped and staged in short time for initiating and sustaining such operations,
- are sufficiently protected against air-, missile and electronic attacks,
- are led by an able and experienced military leadership and resilient C^3 system, and
- are guided by effective intelligence.

While again not all of these elements are accessible for arms control measures, effective arms control can reduce massive short-term concentrations of forces in sub-regions and win time for own military counter-measures. To that end, arms control can

- restrict large-scale military exercises and force movements in such sub-regions that could be used as springboard for reinforcing and sustaining mobile offensive operations,
- raise situational awareness of rapid response forces and other operations/ strategic reserve forces, which could be available in short time through verified transparency of their activities inside and outside the sub-region, including air transport capacities,
- enhance transparency and observation of large-scale exercises outside the sub-region,
- establish geographical minimum distances from the lines of contact for large-scale and snap exercises outside the sub-region,
- limit and verify storage sites in the sub-region in which armaments and equipment are stored to enable short-term staging of rapid reinforcements.

Limitations of storage-sites would have to take into account geo-strategic asymmetries, which may hamper or facilitate the deployment of reinforcements. However, they should be placed under effective transparency and verification rules.

Long-range strike systems (LRS) and anti-access/area denial (A2/AD) capabilities

Modern long-range strike systems (LRS) and anti-access and area denial (A2/AD) capabilities are based on sophisticated air-/missile defence, land-, air or sea-launched cruise missiles and air-to-surface standoff weapons launched by combat aircraft. These systems are located inside and outside critical sub-regions and have the potential to

- alter force balances in the sub-region,
- prevent or delay movements of opposing reinforcements into the sub-region by far-range air-/missile defence and deep strikes against lines of communications, airfields and harbours, and
- support offensive operations through the destruction of critical targets inside and outside the sub-region.

Threat perceptions of both sides attach high importance to such systems. While NATO believes that such capabilities could endanger reinforcements of the Baltic States in case of an attack, Russia seems to be worried about the overall superiority of United States and NATO LRS, including modern jet fighters, stand-off air-to-surface missiles and sea- and air-launched cruise missiles as well as long-range drones. Such capabilities are neither accounted for by the CFE Treaty nor the Vienna Document. Therefore, extending the traditional scope of European arms control would be required in order to tackle the risks related to these systems.

However, novel arms control and CSBM concepts would have to consider that such systems have tasks and utility far beyond the critical sub-regions. Therefore, it might be useful to apply a flexible approach. New arms control measures could

- raise awareness of and define such systems according to qualitative parameters,
- provide information on systems located in critical sub-regions,
- restrict or freeze the number of such systems located in critical sub-regions,
- make systems located outside such sub-regions subject to transparency requirements, e.g. notifications once they approach positions in strike distance, and
- convey regular information once new systems are going to be introduced in active service in Europe or deployed from outside to Europe including its marginal waters.

Strategic consequences of sub-regional force concentrations

As discussed above, a bloc-related parity of forces in Europe is no realistic approach, and it is not advised to aim for it. However, beyond considerations on operational-tactical conditions in NATO-Russia contact zones, mutual threat assessments should not omit the strategic consequences of massive sub-regional high-intensity operations. It is obvious that the capabilities of both sides to concentrate reserve forces at certain points at the periphery of the extended land borders are limited. As they cannot be available at all parts of border lines, deploying them in one sub-region would entail serious risks in other areas at the periphery. The assumption that a high-intensity war in Europe could be restricted to one sub-region only chosen by one party to a military conflict seems flawed.

It is this consideration, which requires taking into account the larger strategic balance of forces in Europe. To that end, the Vienna Document, as the only remaining CSBM instrument in Europe and Central Asia, should be enhanced to increase transparency in regard of the whole area of application. This can and should be combined with specific sub-regional measures to improve military stability in Europe.

4.2.4 Scope and limitations

Containing the high risks generated by mutual deterrence relations requires special stability measures in areas adjacent to NATO-Russia borders. To that end, modernizing the Vienna Document will not suffice. Even if the transparency and early awareness of large-scale exercises was enhanced, such measures would not prevent a potentially destabilizing accumulation of forces in sensitive areas, in particular in the vicinity of international borders. To that end, sub-regional restrictions are necessary, which include limitations, transparency and verification provisions significantly enhanced in comparison to today's VD provisions. Moreover, the scope must be extended to account for modern capabilities, in particular long-range systems.

For preventing destabilizing sub-regional concentrations of forces, the following limitations could be considered:

- limiting the permanent stationing of additional substantial combat forces in areas adjacent to borders between NATO member states and Russia as well as Belarus,
- limiting armaments in storage sites in such areas in which armaments and equipment are held for short-term staging of rapid reinforcements, taking into account geostrategic asymmetries,
- limiting large-scale exercises and snap exercises of forces present in these zones,
- restricting the size and duration of large-scale deployments of additional forces to such areas for drills, including parallel and snap exercises,
- limiting the presence of longer-range land-, air- and sea-based systems in areas adjacent to NATO-Russia borders.

Limitations for the permanent stationing of additional substantial combat forces do not have to be invented from scratch but can be based on existing commitments enshrined in the NATO-Russia Founding Act, the CFE Final Act and the bilateral exchange of letters between Norway and Russia of 1999. However, the meaning of this term would need to be defined. Thereby, one could take into account the approximations reached in the structured dialogue of the CFE Joint Consultative Group in winter 2007/2008, where a brigade-size unit and an air combat group were envisaged.[217]

For restricting large-scale deployments of additional forces to such areas the flank regulations for temporary deployments of the Adaptation Agreement to the CFE Treaty could be taken as a precedent. They allowed for the temporary deployment of one reinforced combat brigade exceeding territorial limitations for permanently located forces.

Limiting the presence of longer-range land-, air- and sea-based systems (LRS) in NATO-Russia border zones and adjacent areas would require a novel approach, i.e. enlarging the scope of the Vienna Document and the CFE Treaty. To this end, definitions of such systems and of adjacent areas should be considered. They could take into account strike distances to the critical sub-regions and to locations of units earmarked as reinforcements for these sub-regions. For deployments of sea-launched LRS, sea areas would have to be considered and defined. To that end, the term “adjoining sea areas” contained in the Vienna Document[218] could serve as a precedent. But it needs to be complemented by a suitable definition.

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217 The author participated in this dialogue as German representative.
218 VD 11, Annex I, Footnote *

4.2.5 Transparency and verification

Military transparency and verification remain preconditions for enhancing military stability and restoring trust in critical sub-regions and in the whole of Europe and Central Asia. Its core elements, as contained in the Vienna Document, remain

- information exchange on force structures and holdings of armaments,
- on-site evaluation visits and specified area inspections,
- notifications and observations of large-scale military activities, and
- risk reduction mechanisms.

However, the shortfalls of the Vienna Document and special requirements to improve the security situation in certain sub-regions of tension need to be addressed. Therefore, a two-pronged approach seems advisable:

1. For the whole of Europe and Central Asia the provisions of the Vienna Document should be improved with a focus on
   a) extending its scope for notifications of large-scale exercises to include all services and branches of armed forces that participate in such activities,
   b) extending its scope for information on armaments and equipment to account for long-range strike systems, other A2/AD capabilities, and air transport capacities,
   c) providing more opportunities (quota) for evaluation visits, inspections and observations,
   d) and improving risk reduction mechanisms.
2. For critical sub-regions, transparency rules and verification should be extended significantly beyond VD requirements, based on the experience with CFE and ACFE provisions. They should contain
   a) more intrusive and continuous exchange of information on military postures and activities in these areas, with a focus on ceilings for the permanent stationing of substantial combat forces,
   b) increased on-site inspection quota taking CFE provisions as precedent,
   c) comprehensive notifications of military exercises and temporary deployments,
   d) intrusive and long-term observation of military exercises with a focus on limits for temporary deployments, that exceed ceilings for permanently located combat forces,
   e) novel rules for information exchange on LRS in critical sub-regions and adjacent areas, e.g. regular information on permanently located systems and case-by-case notifications, before such systems are entering these areas,
   f) observation of such systems in their peacetime locations (including naval bases) or while deployed to the region, including visits to harbours.

For observation of large-scale exercises and deployments of additional substantial combat forces to critical sub-regions, respective provisions for temporary deployments as contained in the CFE Adaptation Agreement could be taken as a precedent.

There is an urgent need to counter the loss of transparency resulting from the erosion of the Treaty on Open Skies. A new aerial observation regime should be designed and politically agreed, which is based on the experience made with the OST and allows for flexible observation of large areas upon short notice. It could take the form of a political stand-alone document or be connected to a sub-regional stability regime or a modified Vienna Document.

4.2.6 Military contacts and incident prevention and response mechanisms

Together with multiplied military activities of both sides at the High Sea and in international airspace, an increase of national air space violations was reported. However, they seem to represent exceptions only and are mainly related to unintended errors rather than intended provocations. In this context, it should be noted that sea and air patrols outside national territorial waters (generally a zone within 12 nautical miles distance to coastlines) are permitted under the Law of the Sea.[219] Exclusive Economic Zones (EEZ), Flight Information Regions (FIR) and Air Defence Identification Zones (ADIZ) serve economic, civil aviation or national air defence purposes but do not constitute national territorial air or sea space nor inhibit freedom of navigation.[220]

However, the sharp increase in numbers of sea and air patrols and military exercises of Russia as well as NATO member states together with partner countries in the vicinity of border areas and in or above the High Sea entail the risk of close encounters, accidents and escalation.[221] Enforcing the right of innocent passage in and above disputed territorial waters are particularly risky as they could be perceived as intended provocations. Therefore, incident prevention and de-escalation once incidents have occurred are most urgent tasks to be dealt with in regard of military interaction.

Twelve bilateral Agreements on Prevention of Incidents at Sea and in the Airspace Above the Sea (IncSea Agreements) between the United States, certain NATO Member States and Russia entail minimum safety standards to be obeyed by seamen and airmen in situations of close encounters. On this basis, additional bilateral and multilateral agreements should be concluded. Enhanced provisions on keeping minimum distances between ships and aircraft, avoiding hostile action and following safety procedures of

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219 UN Convention on the Law of the Sea (UNCLOS), Part I, Articles 1–4, 17–21

220 UNCLOS, Part II, Art. 33; Part V, Arts 55–58; Part VI, Arts 76–78, Part VII, Art. 87; in no way can such special areas be claimed as "own sea or airspace". Cf. Andrew Foxall (The Henry Jackson Society), Close Encounters: Russian Military Intrusion into UK Air- and Sea Space Since 2005. Russia Studies Centre Policy Paper No. 7, 2015

221 Cf. Thomas Frear, European Leadership Network (ELN), List of Close Military Encounters Between Russia and the West, March 2014–March 2015; Thomas Frear, ELN, Lessons Learned? Success and Failure in Managing Russia-West Incidents 2014–2018. Euro-Atlantic Security Policy Brief, April 2018

interaction between crews should guide framing common rules of responsible behaviour in order to prevent incidents.[222]

Resuming joint work within the Co-operative Airspace Initiative (CAI) in order to strengthen CSBM along the NATO-Russia line of contact could help to initiate enhanced agreements. In addition, resuming a navigational data exchange on the air situation in this zone, which existed in the past, could be a further element to improve safety and security. It should include provisions on notification of heavy bomber flights of the United States and Russia near NATO-Russia border lines.[223]

In order to contain the dangers of certain military activities of land forces carried out in close geographical vicinity reference could be made to the bilateral Agreement on Preventing Dangerous Military Activities Agreement (DMA), which was concluded in 1989 between the United States and the Soviet Union during the time of the partition of Germany. It required troops to behave with caution in border areas. Furthermore, due attention should be given to effective safety distances between the areas of large manoeuvres of land and air forces of both sides and, in particular, to border lines. Reciprocal zones could be established along such lines in which major military activities would not be conducted and certain military armaments and equipment be limited.

Prior information of such activities and appropriate explanations are indispensable to avoid misperceptions and overreactions of the opposite side. To that end, and for de-escalation once incidents have occurred, direct military contacts between operational headquarters of neighbouring countries and military alliances should be established via hotlines and liaison officers. Joint de-confliction mechanisms and procedures for de-escalation of incidents should be developed, particularly in sensitive areas such as the Baltic Sea, High North and Black Sea regions. In view of the indivisibility of security in the OSCE space, the OSCE network should be used for exchanging relevant information and quick reporting on incidents, including of measures taken to de-escalate the situation.

Taking into account security risks and wider political repercussions ambiguous military activities could cause for all participating States, concerned states should make full use of relevant OSCE fora, such as the Security Dialogue in the Forum for Security Co-operation (FSC) or joint meetings of the FSC and the Permanent Council (PC). They provide for appropriate multilateral mechanisms to explain such activities with a view to de-escalating the situation. Mandatory participation in bilateral and multilateral

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222 Also the Sino-American agreement of 2014 with an additional Protocol of 2015 on the prevention of incidents could be taken as a source of ideas and approaches. It refers to the prevention of incidents at sea and during military activities in general. Cf. Recommendations of the Participants of the Expert Dialogue on NATO-Russia Military Risk Reduction in Europe. Moscow/London, December 2020, Specific Proposals 2. Incident Prevention

223 Ibid.

discussions under the chairs of the FSC and the PC on unusual military activities, which cause concern, and on incidents as foreseen by the Vienna Document (chapter III) should be considered. Furthermore, OSCE participating States should take advantage of the option to invite observers of other states to areas where ambiguous military activities take place in order to dispel concerns.

However, unilateral invitations of international observers to conflict zones in which non-state actors are conducting military operations are inappropriate and could endanger their lives. In contrast, such monitoring needs to be authorized by ceasefire agreements and OSCE mandates reached by consensus. Their provisions need to ensure the security and safety of observers. Robust military peace-keeping would need proper authorization by the UN Security Council. In order to enhance the capability of the OSCE to quickly deploy observers to crisis areas the OSCE Secretary General should be authorized to design and update a list of trained observers provided by participating States. He should also be authorized to dispatch fact-finding teams with the agreement of the states concerned to areas where developing crises entail the risk of armed violence.

All such measures require resuming and enhancing military-to-military contacts in the NATO-Russia context, within bilateral arrangements and in multilateral OSCE fora. A professional military dialogue is the precondition to improve the tense military situation in Europe and to contain the risks of escalation.

4.2.7 Areas of application

Differentiation of security needs: tailored pan-European and regional arrangements

Due to different conditions and specific needs of various sub-regions in Europe, specifically those in conflict or with heightened military tensions, it will be difficult to design a "one-fits-all"-approach towards future arms control in a politically and geographically fragmented Europe with various geostrategic and military conditions. Politically, it would carry only slim chances to be accepted. Therefore, this approach seems unrealistic. While the Vienna Document, encompassing Europe from the Atlantic to the Urals and Central Asia, remains the central OSCE document for security co-operation in the military field, several focused sub-regional arrangements will be necessary in order to prevent further escalation and restore military stability in Europe.[224]

Such a patchwork of sub-regional arrangements with different degrees of intrusiveness and layered measures of limitation, transparency and verification could take the form of politically agreed documents complementing the Vienna Document in accordance with Chapter X on Regional Measures. If sub-regional arrangements should have a real military impact, they will have to be more intrusive and comprehensive than the general rules contained in the Vienna Document. They would include limitations as well as transparency and verification rules similar to CFE/ACFE rules.

Areas adjacent to borders between NATO member states and Russia as well as Belarus

Given current threat perceptions, hedging military instabilities in areas adjacent to borders between NATO member states and Russia seems to have high priority. The focus would be on the Baltic Sea and the Black Sea region. Due to protracted territorial conflicts, the multiplicity of different actors and interests, the involvement of non-state actors and uncompromising national positions, it will be more difficult to reach agreement in the Black Sea region than in the Baltic Region, where military tensions are running high but no territorial conflicts exist.

Geographic definitions of such areas must take into account forces, time and space for military operations to have a real impact. Furthermore, it must avoid isolating states or regions and creating zones of diminished security. Therefore, such areas must be large enough to avoid such discrimination and restrict effectively offensive operations of land forces. In the case of the Baltic Sea region, this can be achieved by extending the area of application to include on the Western side the Baltic States, Poland, and the Eastern part of Germany. On the Eastern side the Russian oblasts of Kaliningrad, Pskov and St. Petersburg, the northwest area of the Russian Western Military District as well as Belarus could be part of the sub-region. The EU Member States Sweden and Finland might consider joining transparency and observation provisions.

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224 On proposals for tailored sub-regional arms control in Europe see also Wolfgang Zellner, Olga Oliker, Steven Pifer, A Little of the Old, a Little of the New: A Fresh Approach to Conventional Arms Control in Europe. Deep Cuts Issue Brief #11, September 2020; Evgeny Buzhinsky, Oleg Shakirov, Outlines for future conventional arms control in Europe: a sub-regional regime in the Baltics, London 2019 (European Leadership Network); Wolfgang Zellner (Co-ordinator), Philip Remler, Wolfgang Richter, Andrei Zagorski (Drafting Group) et al., Reducing the Risks of Conventional Deterrence in Europe. Arms Control in the NATO-Russia Contact Zones. OSCE Network of Think Tanks and Academic Institutions. Vienna, December 2018; a discussion and list of possible measures can be found in: Samuel Charap et al., A New Approach to Conventional Arms Control in Europe. Addressing the Security Challenges of the 21st Century, loc. cit. (Fn. 164), particularly in Chapter V

It should be noted that such sub-regional arrangement could be based to a large extent on existing commitments. In accordance with the NATO-Russia Founding, the CFE Final Act and a bilateral exchange of letters between Russia and Norway, NATO and Russia have committed not to permanently station additional substantial combat forces after NATO's enlargement and in areas close to the borders of one another. That includes the Pskov and Kaliningrad oblasts and the former Leningrad Military District. The Eastern part of Germany is subject to special legally binding restrictions on the stationing of foreign forces in accordance with the "Two-plus-four"-Treaty on the unification of Germany.

Zones of territorial conflict

Stabilizing measures in zones of sub-regional territorial conflicts will likely continue to rest on ceasefire agreements pending political settlements. However, de-escalation of military tensions and reducing risks, emanating from deterrence relations between NATO and Russia, might have a potential to improve general political relations and mitigate assessments, that local conflicts are part of a geopolitical competition and a zero-sum game. In consequence, such local conflicts could become more accessible to political conflict settlement once reciprocal measures of military risk reduction and de-escalation signal geopolitical restraint.

List of Abbreviations

A2/AD	Anti-Access/Area Denial
ABM	Anti-Ballistic Missiles
ACFE	Adaptation Agreement to the CFE Treaty
ADIZ	Air Defence Identification Zone
ASSR	Autonomous Soviet Socialist Republic
ATTU	Area between the Atlantic and the Urals
BTD	Basic Temporary Deployment
BTWC	Biological and Toxic Weapons Convention
C^3	Command, Control and Communication
CAEST	Conventional Armament and Equipment Subject to the CFE Treaty
CAI	Co-operative Airspace Initiative
CAT	Conventional Arms Transfers
CFE	Conventional Armed Forces in Europe
CFE 1a	Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe (CFE 1a-Agreement)
CIS	Commonwealth of Independent States
CoC	(OSCE) Code of Conduct
CSTO	Collective Security Treaty Organization
CSBM	Confidence and Security-Building Measures
CSCE	Conference on Security and Co-operation in Europe
CWC	Chemical Weapons Convention
DCFTA	Deep and Comprehensive Free Trade and Association Agreement
DMA	Dangerous Military Activities
DPA	Dayton Peace Agreement
DPSS	Designated Permanent Storage Sites
EEU	Eurasian Economic Union
EU	European Union
EUMM	EU Monitoring Mission for Georgia
FSC	(OSCE) Forum for Security Co-operation
GEMI	(OSCE) Global Exchange of Military Information
GDR	German Democratic Republic
IFOR	International Stabilization Force in Bosnia and Herzegovina
INF	Intermediate-Range Missiles
IncSea	Prevention of Incidents at Sea and in the Airspace above the Sea
LRS	Long-Range Strike Systems
MLNH	Maximum Levels of National Holdings (of TLE)
MWES	Major Weapon and Equipment Systems
NATO	North Atlantic Treaty Organization
NPT	Treaty on Non-Proliferation of Nuclear Weapons
OOV	Object of Verification

OSCE	Organization for Security and Co-operation in Europe
OST	Treaty on Open Skies
PAP	Parallel Action Package
PC	(OSCE) Permanent Council
PKF	Peacekeeping Forces
RMB	Russian Military Base
SLCM	Sea-Launched Cruise Missiles
SMM	(OSCE) Special Monitoring Mission in Ukraine
SSR	Soviet Socialist Republic
START	Strategic Arms Reduction Talks
TLE	Armaments and Equipment Limited by the CFE Treaty
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNSC	UN Security Council
UNOMIG	UN Observer Mission in Georgia
U.S.	United States (of America)
USSR	Union of Soviet Socialist Republics
UTLE	TLE not controlled and unaccounted for by States Parties to the CFE Treaty
VD	Vienna Document
WTO	Warsaw Treaty Organization