

# CFE: Overcoming the Impasse

## Conventional Arms Control in Europe

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The present article rests upon the assumption that conventional arms control in Europe needs to be restored in order to boost both confidence and predictability in the field of European security. This concerns, above all, the CFE Treaty, which will be the focus here. Renewed effort to revive this important achievement of cooperative security is required to help prevent the collapse of the regime. This article poses the rather heretical question of whether Europe still needs CFE and considers possible ways out of the impasse as well as potential setbacks.

### CRUCIAL DEVELOPMENTS OF THE PAST TEN YEARS

According to a recent report by the EastWest Institute, today, ten years after the signing of ACFE, the Euro-Atlantic security environment is characterized by “a loss of mutual confidence, renewed tensions, and serious disagreements regarding not only practices but principles.” The last decade was a lost one, especially for arms control. Clearly, the transformation of the European security environment was not met by adequate action in the realm of cooperative security. This applies to the strategic as well as the sub-regional level of security. Whereas at the strategic level the first round of NATO enlargement was cushioned by the NATO-Russia Founding Act and the adaptation of CFE, the second round was not accompanied by similar cooperative measures. On the

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contrary, the accession of seven new states to NATO in 2004 took place against the negative background of the Alliance's 2002 decision to link ACFE ratification to Russian compliance with its Istanbul commitments. By taking this course, most likely on the insistence of the U.S., NATO associated the strategic relevance of CFE with the solution of two sub-regional conflicts in Georgia and Moldova. Up until today this link could not be dissolved. On 12 December 2007, Moscow declared its unilateral suspension of the treaty – an action not provided for in the treaty and therefore questionable from the legal point of view.

Nevertheless, psychological factors matter as well. This is especially true of Russia, which sees itself as encircled by an expanding Alliance. That the actual overall holdings of NATO member states, together with those of the six non-CFE countries that are NATO Members, are below the agreed ceiling of the Western Group of 1990 does not change Moscow's perception, and nor do the Alliance's assurances. Actions such as Washington's withdrawal from the ABM Treaty, the stationing of American rotational units in Romania and Bulgaria, the Bush Administration's plan to deploy missile defense components in the Czech Republic and Poland, the promise of accession given to Georgia and Ukraine, and the recognition of Kosovo's independence clearly gave a very different message, at least to Russian ears. Moscow's decision to counter the Georgian attempt to hold on to the breakaway region of South Ossetia by advancing deep into Georgian territory and, furthermore, to recognize the two regions as independent amounted not only to a violation of international law but seems to be the final nail in the coffin of CFE.

#### WHERE ARE WE NOW?

Unlike the years before the Russian suspension, NATO did shift its position in the fall of 2007, proposing a number of parallel steps to be taken. The so-called PAP (Parallel Actions Package) envisions starting the ratification process in a number of NATO states accompanied by Russia moving forward with the fulfillment of the Istanbul commitments. The Russian-Georgian war of 2008 further complicated this approach. The complete Russian withdrawal from the two breakaway regions in Georgia in the next few years is barely conceivable. More-

over, Russia has already criticized the PAP proposal, insisting on “reliable guarantees” for NATO’s ratification of ACFE. Another Russian sine qua non for the achievement of a package deal is the complete abolition of the Russian flank, which is said to be justified on the basis of Moscow’s “fight against terrorism.” Furthermore, the Kremlin insists on reduced levels of armaments for NATO member states, clarification of the term “substantial combat forces” as laid down in the NATO-Russia Founding Act, clear conditions for the accession of new NATO members to CFE (probably with regard to territorial ceilings), and the inclusion of a decision to start talks about updating ACFE immediately after its entry into force. Only under these circumstances is Russia willing to return to the CFE regime. In many regards, the Russian list is obviously a statement of Moscow’s maximum position, and thus not an adequate basis for the revival of CFE.

On the other hand, NATO’s proposal in its current version is also unlikely to reach success. The insistence on the Istanbul commitments and the flank regime are both “no-goes” for Russia, especially in light of the accession of Romania and Bulgaria to NATO – two flank states of the Eastern Group. Given these two starting positions, only carefully tailored solutions – ones that are face-saving for both sides – can conceivably lead to an agreement. Thus President Obama’s willingness to push the ‘reset button’ in U.S. relations with Russia, taken together with a new impetus on arms control (see Follow-up-to-START negotiations in Geneva) could ease tensions and restore trust. The latest signals, such as occasional bilateral consultations on CFE alongside the START negotiations in Geneva, together with the appointment of Victoria Nuland as U.S. Special Envoy for CFE, could point in the direction of at least a resumption of CFE consultations. Yet after two years of Russian noncompliance, there remains the question of if Europe still needs CFE.

#### DOES EUROPE STILL NEED CFE?

Before answering this question, it is necessary to first acknowledge two crucial facts. First, Europe’s cooperative security architecture no longer reflects the current strategic landscape; this is why it was unable to prevent negative development such as the Russian-Georgian war. Second,

Russia is not sufficiently included in Europe's security structures; this is why it acts like an outsider from time to time.

If one agrees on these two rather obvious findings, a second question inevitably comes up: Does Russia still need CFE? There are those, especially in the military apparatus of the Russian Federation, that favor the current situation, in which Russia enjoys complete freedom of movement for its troops to the south, while the Alliance to the west is still tied by CFE restrictions. Nevertheless such a view is shortsighted and lacks a strategic component.

The first argument in favor of CFE should therefore start from a thorough Russian self-examination. There can be no doubt that Russia's "soft underbelly" is in the south. Another problem is its long and uncontrolled border with China. The most likely threats to Russia emerging from those two areas are terrorism, drug trafficking, ethnically motivated turmoil, radical Islamization in Central Asia, and a potential Chinese grab for Siberia's vast natural resources. At the moment, Russia's western borders are secured by CFE and the complete absence of any realistic military threat scenario arising from NATO. The geographical orientation of Russia's military forces clearly supports this assessment. However, the current CFE stalemate cannot last indefinitely. 2010 might see the last round of unilateral information transfer to Moscow by NATO states. Another reason for Russia to worry is revealed by a clear and cool-headed assessment of America's Russia policy throughout the last 20 years. Such an assessment would inevitably come to the conclusion that Washington shows a high degree of political volatility when it comes to dealing with Russia. In view of these long-term developments, Russia should therefore seek to reach agreement at the strategic level in dealing with NATO and securing Russia's westernmost regions. Without CFE, Russia would go entirely unchecked – a scenario probably not favored by most of the states in Russia's direct neighborhood. The consequences could be reinforced military spending in these states and a heightened degree of unpredictability. Therefore the argumentation is: Europe needs CFE because Russia needs CFE.

A second argument for the preservation of CFE can be easily linked to the Obama Administration's long term goal of a 'global zero.' In talking about nuclear disarmament, one should not forget the tactical nucle-

ar level. Given the miserable state of Russia's conventional forces, negotiating deep cuts into Moscow's tactical arsenal seems totally unrealistic at the moment. Especially as Moscow's recently issued Military Doctrine reserves Russia the right to use nuclear weapons in response to an aggression against Russia with conventional weapons. Hence nuclear arms control, especially at the tactical level, has to be accompanied by a stable conventional arms-control regime. Without CFE or a comparable legally binding document, Russia will not loosen its hold on tactical nuclear weapons. Hence the link is: Europe needs CFE to accompany deep cuts at the tactical nuclear level.

The third argument in defense of CFE rests upon the assumption that confidence-building mechanisms such as transparency, on-site inspections, and information exchange foster predictability and military restraint. Without CFE, the unpredictability of military planning and spending could heighten the likelihood of renewed arms races, e.g. at the sub-regional level. A good example in this context is the establishment of equal ceilings for the three South Caucasian states by CFE. Without the treaty, Georgia, Armenia, and Azerbaijan could go totally unchecked. Thus the conclusion is: Europe needs CFE as an important tool for conflict prevention at the sub-regional level.

Nevertheless arms control does not exist in a political vacuum. If two sides decide to go to war, as Russia and Georgia did in 2008, without using the available mechanisms for conflict prevention – e.g. in the Vienna Document – one cannot blame arms control. Especially with regard to the South Caucasus and its protracted conflicts, arms control cannot serve as a panacea for overcoming deeply rooted tensions. But CFE can create the military conditions that reduce the probability of new conflicts breaking out. Any renewed effort to revive CFE therefore needs to aim for status-neutral solutions.

#### HOW SHOULD WE GO ON?

First of all, reviving the moribund CFE is not going to be an easy task. As explained before strategic, sub-regional, and also psychological factors (here especially Russian perceptions) have to be carefully considered. NATO's PAP proposal is a starting point, but it needs to overcome the link to Istanbul.

***First Step: Decouple the CFE Process from the Istanbul Commitments***

After Georgia, a consensus built upon the 1999 Istanbul commitments is barely conceivable. Renewed CFE consultations therefore have to overcome the link between ACFE ratification and the solution of the two sub-regional conflicts. Every consideration of the problem in the CFE context has to start from the point of status-neutrality. CFE cannot provide the forum for solving these two protracted conflicts. If a consensus can be reached to restart CFE consultations, the involved parties have to decide whether there is enough political will to move further with CFE or if European conventional arms control should continue to be held hostage to the resolution of sub-regional conflicts. The link to Istanbul can only be decoupled by careful consideration of each problem in its own appropriate forum – the CFE deadlock in multilateral negotiations in Vienna, the Georgian conflict in the Geneva talks. At the same time, all these talks need further positive input from all sides concerned.

***Second Step: Start Negotiations in Parallel with a Kind of Trial Application of ACFE***

The envisioned step-by-step ratification of ACFE by a number of willing NATO States seems to have two major negative side effects: (1) it could lead to division within the Alliance and would therefore put the pressure on the wrong party; (2) ratification by national parliaments is not certain because (a) the legislatures will have to accept an agreement that is already outdated and is being renegotiated at the time of ratification and (b) some national parliaments (e.g. the U.S. Senate) could tie additional demands for the negotiation process to the instrument of ratification. A kind of trial application of ACFE could help to overcome the stalemate. The Treaty on Open Skies could serve as a historical model for this. Concluded in 1992, the treaty only entered into force in January 2002. In the meantime, the states parties to the treaty developed a common practice of regularly testing the treaty in a manner comparable with a treaty in full force. A joint statement by CFE member states, Russia, and those states willing to accede to CFE could be the starting point. Such a statement could outline five common objectives: (1) the affirmation of the scope and principles of CFE and ACFE as stated in the preamble; (2) the confirmation to exercise military self-restraint; (3) the

resumption of the information and verification regime; (4) the commitment to start negotiations on updating CFE in parallel to the trial application; (5) the limitation of the trial application and the negotiations to an agreed timeframe.

***Third Step: Avoid Zero-Sum Games During Negotiations: Some Suggestions***

Avoiding zero-sum games requires all negotiation parties to make concessions. This applies to the Alliance and to Russia at the strategic level but also to states involved in conflicts at the sub-regional level.

At the strategic level, NATO needs to clarify what the term “substantial combat forces” means for the Alliance. This should be done as part of the internal process of elaborating a new strategy.

Another strategic issue is the Russian demand for reduced levels of armaments for NATO member states. The actual holdings of all NATO states are already considerably lower than the agreed ceilings of ACFE. Why not make these holdings the aggregate cap?

However, Russia has to accept that it cannot balance NATO, neither in qualitative and quantitative terms, nor in the field of military acquisition. Luckily, the concept of stability does not rest solely on the concept of equality, in which area CFE already provides the mechanism of the sufficiency rule. One proposal could be to place limits on NATO’s overall holdings in proportion to Russia’s conventional forces.

Russia wants clear conditions for the accession of new NATO Members to CFE. This is aimed at the three Baltic States. As NATO insists upon a “safety zone” in the oblasts of Pskov, Kaliningrad, and Leningrad, where Russia pledged to generally exercise restraint, as well as to abstain from additional deployment of substantial combat forces, NATO should offer the same to Russia with regard to the Baltic States.

Leaving responsibility for the negotiations solely in the hands of the Americans and the Russians could prove to be difficult. As a multilateral treaty, CFE requires the creative input of all states parties.

At the sub-regional level, the biggest obstacle lies with the flank. At the moment the old CFE flank rule no longer corresponds with the strategic goal it had at the end of the Cold War. At the same time, the ACFE flank rule is discriminatory insofar as it only concerns itself with Russian territory and a small part of Ukraine. Turkey, in particular,

insists on a 'safety zone' vis-à-vis Russia. However, an equivalent to the Russian southern flank does not exist on the Turkish side. Turkey could therefore station as many forces as provided for by ACFE on its Caucasian border, plus temporarily deployed NATO forces up to the equivalent of a brigade, plus additional forces without any limitations or transparency commitments in its "exclusion zone" in the Southeast. Hence the flank rule lacks military reciprocity with regard to Turkey. In its current form, the flank regime is a dead end.

This does not mean that all geographic limitations on Russian TLE should be abolished — Russia's direct neighbors have legitimate security interests after all. Rather the flank rule could be replaced by a system of geographically defined, thinned-out zones alongside international borders or demarcation lines. Comparable 'safety zones' already exist at the strategic level as a result of political commitments undertaken by Poland, Hungary and the Czech Republic at the conclusion of ACFE. Why not elaborate a complete network at the sub-regional level as well? Militarily thinned-out zones, especially where increased tensions already exist between neighboring states, could be subject to restrictions but also to increased information exchange and verification measures.

As mentioned before, arms control cannot replace political settlements. Protracted conflicts cannot be solved by CFE. Any solutions to the flank impasse have to be status-neutral with regard to Georgia. But status-neutrality would then apply to Russian troops in Abkhazia, South Ossetia and Transnistria as well. A renewed effort to revive CFE would benefit greatly from Russian willingness to make its forces in these regions subject to the CFE verification regime. The same applies to forces under Russian auspices that lack international recognition.

#### (JUST) TWO POTENTIAL SETBACKS

A number of possible obstacles to the process of reviving CFE lie ahead. Such obstacles could easily result in setbacks. For now, just two shall be mentioned here.

The first potential setback would arise if Russia were unwilling to define realistic circumstances for a 'suspension of the suspension'. Russia's demands in response to NATO's PAP proposal do not represent realistic circumstances. Maximal claims of this kind are unable to serve

as realistic basis for renewed negotiations. Russia therefore has to decide how far it is able and willing to change its position in pursuit of the long-term goal of a new treaty on conventional arms control. To simply wait for NATO states to fulfill Russian demands and then to join the CFE process the moment ACFE or a follow-up agreement is in full force will probably not work. As outlined above, Russia could positively influence the process by resuming the CFE verification regime, including its troops stationed in Georgia and Moldova in verification measures, reiterating that it intended to act in accordance with the principles of CFE and ACFE, and undertaking, in parallel, renewed efforts to seek political solutions to protracted conflicts. A return by Russia to complete fulfillment of its CFE obligations is unlikely because of the politically and technically outdated state of the treaty. At the same time, merely insisting that NATO ratify ACFE, as Russia does, is also questionable because of the flank restrictions the 1999 agreement still contains. Those restrictions run counter to Russian calls for the complete abolishment of the flank. Demanding ACFE ratification as a condition for a 'suspension of the suspension' would therefore be self-contradictory. Furthermore, NATO states cannot change the regulations that ACFE contains in order to accommodate the Russians on the flank issue. From a legal point of view, such undertakings would be impossible. Because of the already complicated situation, contradictory and maximal positions cannot serve as the basis for joint efforts to revive this important treaty. One way by which the 'suspension of the suspension' could be achieved would, for instance, be to strike a balance between NATO's PAP proposal and the Russian prerequisite that ACFE apply in full force. Of course NATO has to move on CFE, but Russia has to approach the Alliance as well.

The second potential setback could arise from negative developments in the area of nuclear arms. The Obama administration's latest plans to station missile defense components in Romania and possibly Bulgaria already seem to be having an adverse effect on the START follow-up negotiations. The same applies to the increasing reliance on tactical nuclear weapons announced in Russia's recent Military Doctrine. Furthermore, while a proposal made by Germany, the Benelux countries and Norway to discuss the withdrawal of the remaining American tactical nuclear missiles from Europe is entirely justified from an arms con-

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trol perspective, it could, however, further complicate the Alliance's internal review process for elaborating a new strategy. As conventional arms control is closely interlinked with developments in the area of tactical nuclear weapons, a joint threat assessment, initially based on American and Russian threat perceptions, and later extended to become a NATO-Russia threat assessment, could serve as the basis for identifying common ground. Such consultations should address the issue of Iran, Russia's conventional capabilities, as well as the drive on the part of certain European states for tactical nuclear reductions.

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According to Winston Churchill, "it's better to jaw-jaw than to war-war." This also implies that cooperative measures, such as multilateral negotiations are always better than silent reliance on arms. Two overarching questions in the context of cooperative security measures such as CFE have to be answered seriously by NATO and Russia. NATO members have to decide whether their future national security needs are adequately covered by Article 5 guarantees or whether they also require cooperative measures of mutual self-restraint that include non-NATO states. Russia for its part has to decide whether it is willing to accept and understand the legitimate security concerns of its closest neighbors, especially with regard to their full sovereignty. Even if both answers are "Yes," a lot more work still needs to be done to fix the European security acquis, especially in the realm of arms control. To predict whether CFE will be revived in the near future is impossible today. What is predictable is that there will be a growing need in the years to come for further efforts to update important instruments of European security such as the Vienna Document, the Treaty on Open Skies, and the OSCE's Code of Conduct on the Politico-Military Aspects of Security. Particularly now, when Russia and the West have lost a great deal of trust in each other, and trust is proving hard to restore, the maintenance of existing arms control regimes such as CFE remains an important political objective, even if the military rationale behind their establishment at the end of the Cold War has largely vanished.